

THIS PUBLIC BILL has this day been read a Third time and passed

The Clerk of the Parliament.

*Legislative Assembly Chamber,
Brisbane, June 2019*



Queensland

**No.
A BILL for**

An Act to amend the Coroners Act 2003, the Disability Services Act 2006, the Guardianship and Administration Act 2000, the Public Guardian Act 2014 and the Working with Children (Risk Management and Screening) Act 2000 for particular purposes



Queensland

Disability Services and Other Legislation (NDIS) Amendment Bill 2019

Contents

		Page
Part 1	Preliminary	
1	Short title	8
2	Commencement	8
Part 2	Amendment of Disability Services Act 2006	
3	Act amended	8
4	Amendment of s 6 (Objects of Act)	8
5	Amendment of s 7 (How objects are mainly achieved)	9
6	Insertion of new s 10A	10
	10A References to entity include department	10
7	Amendment of s 13 (Meaning of service provider)	10
8	Omission of s 14 (Meaning of funded service provider)	10
9	Replacement of s 16A (Meaning of NDIS non-government service provider)	10
	16A Meaning of NDIS non-government service provider	11
10	Amendment of pt 3, hdg (Complaints about the delivery of disability services by funded service providers)	11
11	Insertion of new s 32A	11
	32A Application of part	11
12	Amendment of s 33 (Complaints by consumers)	12
13	Amendment of s 37 (Definitions for pt 4)	12
14	Amendment of pt 5, hdg (Screening of particular persons engaged by department or particular funded service providers)	12
15	Insertion of new s 41A	12
	41A This part does not apply to prescribed NDIS non-government service providers	12
16	Amendment of s 44A (Meaning of sole trader)	13
17	Amendment of s 46 (Persons engaged by a funded non-government	

Contents

	service provider or an NDIS non-government service provider at a service outlet)	13
17A	Amendment of s 65 (Starting engagement of certain regular engaged persons other than volunteers)	13
17B	Amendment of s 66 (Starting engagement of new engaged persons other than volunteers)	14
17C	Amendment of s 67 (Continuing engagement of persons other than volunteers)	14
17D	Insertion of new s 69A	14
	69A Person in paid regulated engagement convicted of serious offence	14
17E	Amendment of s 70 (Prohibited engagement)	16
17F	Amendment of s 86 (Suspension of positive notice if charged with disqualifying offence or subject to temporary or interim order)	17
17G	Amendment of s 87 (Ending of suspension and issue of further prescribed notice)	17
17H	Amendment of s 132 (Withdrawal of engaged person’s consent to screening)	17
18	Amendment of s 139 (Purpose of pt 6)	17
19	Replacement of s 140 (Service providers to which pt 6 applies)	18
	140 Application of part	18
20	Amendment of s 143 (Explanation of operation of pt 6)	19
21	Insertion of new s 150A	19
	150A Authorisation of containment or seclusion	19
22	Insertion of new s 165A	20
	165A Authorisation of chemical, mechanical or physical restraint or restricting access	20
23	Amendment of s 181 (Requirement to develop respite/community access plan)	20
24	Insertion of new s 183A	21
	183A Other requirements for developing respite/community access plan	21
25	Amendment of s 191 (Requirement to give statement about use of restrictive practices)	21
26	Amendment of s 193 (Requirement to keep and implement procedure)	21
27	Amendment of s 194 (Requirement to keep records and other documents)	22
28	Amendment of s 195 (Notification requirements about approvals given for use of restrictive practices)	22

29	Amendment of s 199 (Requirement to give information about use of restrictive practice to chief executive)	22
30	Amendment of s 200E (Additional functions of authorised officers in relation to NDIS non-government service providers)	23
31	Amendment of s 200M (Issue of warrant)	23
32	Amendment of s 200S (General powers)	23
33	Amendment of s 200W (Power to require information)	23
34	Replacement of s 216 (Application of div 2)	24
	216 Application of division	24
35	Amendment of s 217 (Definitions for div 2)	25
36	Amendment of s 218 (Immunity from liability—relevant service provider)	25
37	Amendment of s 219 (Immunity from liability—individual acting for relevant service provider)	26
38	Amendment of s 220 (Department’s policy about locking of gates, doors and windows)	26
39	Amendment of s 226 (Person with a disability must advise chief executive about compensation)	26
40	Amendment of s 227 (Confidentiality of information about criminal history and related information)	26
41	Amendment of s 228 (Confidentiality of other information)	27
42	Amendment of s 239 (Regulation-making power)	28
43	Insertion of new s 241AA	30
	241AA Review of particular matters	30
44	Omission of s 241B (Expiry of pt 6A)	30
45	Omission of pt 9, div 10 (Transitional provisions for Disability Services and Other Legislation Amendment Act 2016)	30
46	Insertion of new pt 9, div 12	31
	Division 12 Transitional provisions for Disability Services and Other Legislation (NDIS) Amendment Act 2019	
	Subdivision 1 Preliminary	
	345 Definitions for division	31
	Subdivision 2 Screening	
	345A Effect of pre-commencement charge for serious offence	32
	345B Effect of conviction or charge for new serious offence	32
	346 Effect of conviction or charge for new disqualifying offence	33
	346A Effect of conviction for new disqualifying offence on existing positive notice or positive exemption notice	33

Contents

347	Particular existing prescribed notice applications and exemption notice applications	34
348	Existing positive notice held by person convicted of new serious offence or new disqualifying offence	35
349	Existing positive exemption notice held by person convicted of new serious offence or new disqualifying offence	37
350	Existing applications to cancel negative notices or negative exemption notices	38
351	Particular existing applications to end suspension of positive notices	39
352	Particular existing applications to end suspension of positive exemption notices	40
353	Existing eligibility applications	40
354	Particular existing eligibility declarations	40
355	Existing application for reversal of decision refusing an eligibility declaration	41
356	Undecided reviews and appeals by new disqualified persons	41
357	Review of part 5 reviewable decision about new disqualified person	42
358	Appeal by new disqualified person against decision of tribunal on review of part 5 reviewable decision	42
359	Existing appeal by chief executive against decision of tribunal on review of part 5 reviewable decision	43
360	Appeal by chief executive against decision of tribunal on review of part 5 reviewable decision	44
361	Disqualification orders for new disqualifying offences committed before commencement	44
	Subdivision 3 Immunity from liability	
362	Definition for subdivision	44
363	Immunity from liability—use of restrictive practices before commencement	45
364	Immunity from liability—locking gates, doors and windows before commencement	45
	Subdivision 4 Repeal of particular provisions	
365	Repeal of former ss 339 and 340	45
	Subdivision 5 Transitional regulation-making power	
366	Transitional regulation-making power	45
46A	Amendment of sch 2 (Current serious offences)	46
46B	Amendment of sch 3 (Repealed or expired serious offences)	47

47	Amendment of sch 4 (Current disqualifying offences)	47
47A	Amendment of sch 5 (Repealed or expired disqualifying offences)	49
48	Amendment of sch 8 (Dictionary)	49
Part 3	Amendment of Coroners Act 2003	
49	Act amended	50
50	Amendment of s 7 (Duty to report deaths)	50
51	Amendment of s 9 (Death in care defined)	51
52	Insertion of new pt 6, div 5	54
	Division 5 Transitional provision for Disability Services and Other Legislation (NDIS) Amendment Act 2019	
	116 Deaths before commencement	54
53	Amendment of sch 2 (Dictionary)	54
Part 4	Amendment of Guardianship and Administration Act 2000	
54	Act amended	55
55	Amendment of s 80R (Application of ch 5B)	55
56	Amendment of s 80U (Definitions for ch 5B)	55
57	Insertion of new ch 12, pt 13	55
	Part 13 Transitional provision for Disability Services and Other Legislation (NDIS) Amendment Act 2019	
	275 Transitional regulation-making power	55
58	Amendment of sch 4 (Dictionary)	56
Part 5	Amendment of Public Guardian Act 2014	
59	Act amended	57
60	Amendment of s 12 (Functions—adult with impaired capacity for a matter)	57
61	Amendment of s 14 (Powers)	57
62	Amendment of s 39 (Definitions for pt 6)	57
63	Amendment of s 41 (Inquiry and complaint functions)	60
64	Amendment of s 44 (Power to do all things necessary or convenient)	60
65	Amendment of s 47 (Reports by community visitors (adult))	60
66	Insertion of new s 49A	61
	49A Requirement for particular registered NDIS providers to give information to public guardian	61
67	Amendment of s 51 (Definitions for ch 4)	62
68	Amendment of s 56 (Functions of community visitor (child), etc.)	62
69	Insertion of new s 68A	62
	68A Community visitor (child) may ask NDIS agency or NDIS	

Contents

	commissioner for particular information	63
70	Amendment of s 70 (Reports by community visitors (child))	63
71	Insertion of new s 72A	63
	72A Requirement for particular NDIS providers and registered NDIS providers to give information to public guardian	63
72	Amendment of s 110 (Eligibility for appointment as community visitor (adult))	64
73	Amendment of s 111 (Eligibility for appointment as community visitor (child))	64
74	Insertion of new ch 7, pt 3	65
	Part 3 Transitional provisions for Disability Services and Other Legislation (NDIS) Amendment Act 2019	
	190 Definitions for part	66
	191 Inquiries in relation to former visitable sites started before commencement	66
	192 Existing complaints about former visitable sites	67
	193 Existing requests for community visitor (adult) to visit former visitable site	67
	194 Existing authorisations to enter former visitable sites outside normal hours	68
	195 Reports about visits to former visitable sites before commencement	69
	196 Proceedings for particular offences	70
75	Amendment of sch 1 (Dictionary)	70
Part 6	Amendment of Working with Children (Risk Management and Screening) Act 2000	
76	Act amended	72
77	Amendment of s 401 (Regulation-making power)	72
78	Insertion of new ch 11, pt 20	73
	Part 20 Transitional provision for Disability Services and Other Legislation (NDIS) Amendment Act 2019	
	590 Transitional regulation-making power	74
79	Amendment of sch 1, s 6 (Health, counselling and support services)	75
80	Amendment of sch 7 (Dictionary)	75
Part 7	Other amendments	
81	Acts amended	76
Schedule 1	Other amendments	77
	Disability Services Act 2006	77
	Guardianship and Administration Act 2000	79

2019

A Bill

for

An Act to amend the Coroners Act 2003, the Disability Services Act 2006, the Guardianship and Administration Act 2000, the Public Guardian Act 2014 and the Working with Children (Risk Management and Screening) Act 2000 for particular purposes

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Disability Services and Other Legislation (NDIS) Amendment Act 2019*.

2 Commencement

- (1) The following provisions commence on assent—
 - section 44;
 - section 45;
 - section 46, other than to the extent it inserts new part 9, division 12, subdivisions 2, 3 and 5.
- (2) The remaining provisions of this Act commence on 1 July 2019.

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(b)—
omit.

(2) Section 6—

insert—

(ca) to support the operation of the national disability insurance scheme in Queensland and ensure the quality and safety of disability services in the context of the national regulatory framework; and

(3) Section 6(d), ‘funded’—

omit, insert—

relevant

(4) Section 6(c) and (ca)—

renumber as section 6(b) and (c).

(5) Section 6—

insert—

(2) In this section—

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

national regulatory framework means the national regulatory framework for service providers established under the *National Disability Insurance Scheme Act 2013* (Cwlth).

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

(1) Section 7(c), ‘enable consumer choice and’—

omit.

(2) Section 7—

insert—

(ca) regulating particular aspects of the provision of disability services by particular NDIS

[s 6]

providers and registered NDIS providers under the *National Disability Insurance Scheme Act 2013* (Cwlth) to ensure the quality and safety of the services; and

- (3) Section 7(e), from ‘requirements’ to ‘may’—

omit, insert—

the circumstances in which relevant service providers are authorised to

- (4) Section 7(ca) to (e)—

renumber as section 7(d) to (f).

6 Insertion of new s 10A

After section 10—

insert—

10A References to entity include department

In this Act, a reference to an entity includes a reference to a department.

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

Section 13(1), ‘a person’—

omit, insert—

an entity

8 Omission of s 14 (Meaning of *funded service provider*)

Section 14—

omit.

9 Replacement of s 16A (Meaning of *NDIS non-government service provider*)

Section 16A—

omit, insert—

16A Meaning of *NDIS non-government service provider*

An *NDIS non-government service provider* is a non-government service provider that is an NDIS provider, or a registered NDIS provider, providing disability services prescribed by regulation.

10 Amendment of pt 3, hdg (Complaints about the delivery of disability services by funded service providers)

Part 3, heading, ‘funded’—

omit, insert—

particular

11 Insertion of new s 32A

Before section 33—

insert—

32A Application of part

- (1) This part applies in relation to the following service providers—
 - (a) the department;
 - (b) a service provider that receives funds from the department to provide disability services, other than a service provider that is another department;
 - (c) another service provider prescribed by regulation.
- (2) However, this part does not apply in relation to a service provider—
 - (a) prescribed by regulation; or

[s 12]

(b) to the extent the service provider is providing disability services prescribed by regulation.

12 Amendment of s 33 (Complaints by consumers)

Section 33(1), ‘funded service provider’—

omit, insert—

service provider in relation to which this part applies

13 Amendment of s 37 (Definitions for pt 4)

Section 37, definition *relevant disability services*, ‘disability.’—

omit, insert—

disability, prescribed by regulation.

14 Amendment of pt 5, hdg (Screening of particular persons engaged by department or particular funded service providers)

Part 5, heading, ‘funded’—

omit.

15 Insertion of new s 41A

After section 41—

insert—

41A This part does not apply to prescribed NDIS non-government service providers

This part does not apply in relation to an NDIS non-government service provider prescribed by regulation.

16 Amendment of s 44A (Meaning of *sole trader*)

Section 44A, paragraph (a), after ‘provider’—

insert—

in relation to which this part applies

17 Amendment of s 46 (Persons engaged by a funded non-government service provider or an NDIS non-government service provider at a service outlet)

(1) Section 46(3), ‘provider who’—

omit, insert—

provider that

(2) Section 46—

insert—

(7A) Despite anything else in this section—

- (a) an NDIS non-government service provider is engaging a person at a service outlet of the provider if a regulation provides that the provider is engaging the person; and
- (b) an NDIS non-government service provider is not engaging a person at a service outlet of the provider if a regulation provides that the provider is not engaging the person.

(3) Section 46(7A) and (8)—

renumber as section 46(8) and (9).

17A Amendment of s 65 (Starting engagement of certain regular engaged persons other than volunteers)

Section 65(2)(b), after ‘the person’—

insert—

and section 69A does not apply in relation to the person

[s 17B]

17B Amendment of s 66 (Starting engagement of new engaged persons other than volunteers)

Section 66(2)(b), after ‘the person’—

insert—

and section 69A does not apply in relation to the person

17C Amendment of s 67 (Continuing engagement of persons other than volunteers)

Section 67(2), from ‘unless’ to ‘the person.’—

omit, insert—

unless—

- (a) the service provider has applied for a prescribed notice or exemption notice, or a further prescribed notice or exemption notice, about the person; and
- (b) section 69A does not apply in relation to the person.

17D Insertion of new s 69A

After section 69—

insert—

69A Person in paid regulated engagement convicted of serious offence

- (1) This section applies if—
 - (a) a prescribed notice application or exemption notice application has been made about a person in relation to whom section 65, 66 or 67 applies; and
 - (b) the application has not been decided or withdrawn; and

- (c) the chief executive becomes aware the person was convicted of a serious offence—
 - (i) if the person held a positive notice or positive exemption notice when the application was made—after the application was made; or
 - (ii) if the person held a positive notice or positive exemption notice that expired before the application was made—after the person’s notice expired; or
 - (iii) otherwise—before or after the application was made.
- (2) The chief executive must give the person a written notice that states—
 - (a) the person is not allowed to work at a service outlet of a service provider before the person’s application is decided; and
 - (b) it is an offence for the person to continue to work at a service outlet of a service provider, or start in regulated engagement, unless the person is issued a positive notice or positive exemption notice.
- (3) If the chief executive gives the person a notice under subsection (2), the person must not, unless the person is issued a positive notice or positive exemption notice—
 - (a) if the person is engaged at a service outlet of a service provider when given the notice under subsection (2)—work at the service outlet; or
 - (b) start in other regulated engagement.

Maximum penalty—500 penalty units or 5 years imprisonment.

- (4) Subsection (5) applies if—

[s 17E]

- (a) the chief executive gives the person a notice under subsection (2); and
 - (b) the person is engaged by a funded non-government service provider or an NDIS non-government service provider.
- (5) The chief executive must give the service provider a written notice that states—
- (a) the person is not allowed to work at a service outlet of a service provider before the person's application is decided; and
 - (b) it is an offence for a service provider to allow the person to work at a service outlet of the service provider unless the person is issued a positive notice or positive exemption notice; and
 - (c) the service provider must not terminate the person's engagement or continued engagement solely or mainly because the service provider is given the notice.
- (6) A service provider may not terminate the person's engagement or continued engagement solely or mainly because the service provider is given a notice under subsection (5).

17E Amendment of s 70 (Prohibited engagement)

- (1) Section 70(2)(b), before subparagraph (i)—

insert—

- (ia) a notice under section 69A(5) that the engaged person is not allowed to work at a service outlet of a service provider before the person's application is decided; or

- (2) Section 70(2)(b)(i), after 'section 132(5)'—

insert—

, (6) or (7)

- (3) Section 70(2)(b)(ia) to (ii)—
renumber as section 70(2)(b)(i) to (iii).

17F Amendment of s 86 (Suspension of positive notice if charged with disqualifying offence or subject to temporary or interim order)

- (1) Section 86, heading, before ‘disqualifying’—
insert—

serious or

- (2) Section 86(1)(a), after ‘charged with a’—
insert—

serious offence or

17G Amendment of s 87 (Ending of suspension and issue of further prescribed notice)

- Section 87(6)(a) and (c), before ‘disqualifying offence’—
insert—

serious offence or

17H Amendment of s 132 (Withdrawal of engaged person’s consent to screening)

- Section 132(6)(a), after ‘charged with a’—
insert—

serious offence or

18 Amendment of s 139 (Purpose of pt 6)

- Section 139(a) and (b), ‘funded’—
omit, insert—

[s 19]

relevant

19 Replacement of s 140 (Service providers to which pt 6 applies)

Section 140—

omit, insert—

140 Application of part

- (1) This part applies in relation to the following service providers that provide disability services to an adult with an intellectual or cognitive disability—
 - (a) an NDIS provider;
 - (b) a registered NDIS provider;
 - (c) the department;
 - (d) a service provider that receives funds from the department to provide disability services, other than a service provider that is another department;
 - (e) another service provider prescribed by regulation.
- (2) However, this part does not apply in relation to a service provider—
 - (a) prescribed by regulation; or
 - (b) to the extent the service provider is providing disability services prescribed by regulation.
- (3) A service provider is a ***relevant service provider*** to the extent this part applies in relation to the provider under subsections (1) and (2).
- (4) To remove any doubt, it is declared that this part applies in relation to a relevant service provider in relation to the provision of disability services to all adults with an intellectual or cognitive

disability receiving disability services from the provider even if particular disability services are not provided with funding received from the Commonwealth or the State.

Note—

For when this part applies to a forensic disability client, see also the *Forensic Disability Act 2011*, section 47.

20 Amendment of s 143 (Explanation of operation of pt 6)

(1) Section 143—

insert—

(1AA) This part states the circumstances in which a relevant service provider is authorised under this part to use a restrictive practice in relation to an adult with an intellectual or cognitive disability.

(2) Section 143(1), ‘The purpose of this section is to’—

omit, insert—

Subsections (3) and (4)

(3) Section 143(1AA) to (4)—

renumber as section 143(1) to (5).

21 Insertion of new s 150A

Before section 151—

insert—

150A Authorisation of containment or seclusion

A relevant service provider is authorised under this part to contain or seclude an adult with an intellectual or cognitive disability if—

- (a) for an adult who must be assessed under section 148—the assessment has been carried out; and

[s 22]

- (b) the relevant service provider may contain or seclude the adult under sections 151 to 154; and
- (c) for an adult who is the subject of a containment or seclusion approval—any change to the adult’s positive behaviour support plan has been made by the chief executive under subdivision 3.

22 Insertion of new s 165A

Before section 166—

insert—

165A Authorisation of chemical, mechanical or physical restraint or restricting access

A relevant service provider is authorised under this part to use chemical, mechanical or physical restraint on, or restrict access of, an adult with an intellectual or cognitive disability if—

- (a) for an adult who must be assessed under section 148—the assessment has been carried out under that section; and
- (b) the relevant service provider may use the restrictive practice under sections 166 to 171; and
- (c) for an adult in relation to whom subdivision 2 applies—any change to the adult’s positive behaviour support plan is made by the relevant service provider under section 174.

23 Amendment of s 181 (Requirement to develop respite/community access plan)

Section 181(2)—

insert—

(m) any other matter prescribed by regulation.

24 Insertion of new s 183A

After section 183—

insert—

**183A Other requirements for developing
respite/community access plan**

In developing a respite/community access plan, the relevant service provider must comply with any other requirements prescribed by regulation.

25 Amendment of s 191 (Requirement to give statement about use of restrictive practices)

Section 191(1)—

omit, insert—

- (1) This section applies to a relevant service provider, other than a relevant service provider prescribed by regulation, that—
 - (a) is providing disability services to an adult with an intellectual or cognitive disability; and
 - (b) is considering using restrictive practices in relation to the adult.

26 Amendment of s 193 (Requirement to keep and implement procedure)

Section 193(1), ‘provider who’—

omit, insert—

provider, other than a relevant service provider prescribed by regulation, that

[s 27]

27 Amendment of s 194 (Requirement to keep records and other documents)

Section 194(1), after ‘provider’—

insert—

, other than a relevant service provider prescribed by regulation, that is

28 Amendment of s 195 (Notification requirements about approvals given for use of restrictive practices)

(1) Section 195(1)(a), after ‘a relevant service provider’—

insert—

, other than a relevant service provider prescribed by regulation,

(2) Section 195(2), ‘provider who’—

omit, insert—

provider that

(3) Section 195(3)(a), after ‘a relevant service provider’—

insert—

, other than a relevant service provider prescribed by regulation,

(4) Section 195(5), ‘provider who’—

omit, insert—

provider that

29 Amendment of s 199 (Requirement to give information about use of restrictive practice to chief executive)

Section 199(1), after ‘provider’—

insert—

, other than a relevant service provider prescribed by regulation, that is

30 Amendment of s 200E (Additional functions of authorised officers in relation to NDIS non-government service providers)

Section 200E(a), ‘this Act; and;’—

omit, insert—

a provision of this Act, other than a provision prescribed by regulation (an *excluded provision*); and

31 Amendment of s 200M (Issue of warrant)

(1) Section 200M(1), from ‘place—’—

omit, insert—

place to check whether an NDIS non-government service provider has complied with, or is complying with, a provision of this Act, other than an excluded provision.

(2) Section 200M(2)—

omit.

(3) Section 200M(3)—

renumber as section 200M(2).

32 Amendment of s 200S (General powers)

Section 200S(1)(i), ‘this Act’—

omit, insert—

a provision of this Act, other than an excluded provision,

33 Amendment of s 200W (Power to require information)

(1) Section 200W(1), from ‘believes—’—

omit, insert—

[s 34]

believes an offence against a provision of this Act, other than an excluded provision, has been committed by an NDIS non-government service provider.

- (2) Section 200W(2), ‘or matter mentioned in subsection (1)’—
omit.
- (3) Section 200W(6), ‘provider who’—
omit, insert—
provider that
- (4) Section 200W(11)—
omit.

34 Replacement of s 216 (Application of div 2)

Section 216—

omit, insert—

216 Application of division

- (1) This division—
 - (a) applies in relation to the following service providers that provide disability services to an adult with an intellectual or cognitive disability—
 - (i) an NDIS provider;
 - (ii) a registered NDIS provider;
 - (iii) the department;
 - (iv) a service provider that receives funds from the department to provide disability services, other than a service provider that is another department;
 - (v) another service provider prescribed by regulation; and
 - (b) applies if—

-
- (i) a service provider in relation to which this division applies locks gates, doors or windows at premises where disability services are provided to adults with an intellectual or cognitive disability; and
 - (ii) the only reason the gates, doors or windows are locked is to prevent physical harm being caused to an adult with a skills deficit.
- (2) However, this part does not apply in relation to a service provider—
- (a) prescribed by regulation; or
 - (b) to the extent the service provider is providing disability services prescribed by regulation.
- (3) A service provider is a ***division 2 service provider*** to the extent this division applies in relation to the provider under subsections (1)(a) and (2).

35 Amendment of s 217 (Definitions for div 2)

(1) Section 217, definition *relevant service provider*—
omit.

(2) Section 217—
insert—

division 2 service provider see section 216(3).

36 Amendment of s 218 (Immunity from liability—relevant service provider)

(1) Section 218, heading, ‘relevant’—
omit, insert—

division 2

[s 37]

(2) Section 218(1), ‘The relevant’—

omit, insert—

A division 2

(3) Section 218(1), ‘the relevant’—

omit, insert—

the division 2

37 Amendment of s 219 (Immunity from liability—individual acting for relevant service provider)

Section 219, ‘relevant’—

omit, insert—

division 2

38 Amendment of s 220 (Department’s policy about locking of gates, doors and windows)

Section 220(2) and (4), ‘relevant’—

omit, insert—

division 2

39 Amendment of s 226 (Person with a disability must advise chief executive about compensation)

Section 226(1)(a)(ii) and (3)(b), after ‘funded’—

insert—

non-government

40 Amendment of s 227 (Confidentiality of information about criminal history and related information)

(1) Section 227(4)—

insert—

(ca) if—

- (i) the disclosure is made, or access is given, by the chief executive to the NDIS commissioner; and
- (ii) the chief executive is satisfied the disclosure or giving of access would assist in the performance of the NDIS commissioner's functions under the *National Disability Insurance Scheme Act 2013* (Cwlth); or

(cb) if—

- (i) the disclosure is made, or access is given, by the chief executive to an entity responsible for the administration or enforcement of a corresponding law; and
- (ii) the chief executive is satisfied the disclosure or giving of access would assist in the performance of the entity's functions relating to the corresponding law; or

(2) Section 227(4)(ca) to (d)—

renumber as section 227(4)(d) to (f).

41 Amendment of s 228 (Confidentiality of other information)

(1) Section 228(2), 'subsection (4) or (5)'—

omit, insert—

subsection (4), (5) or (6)

(2) Section 228—

insert—

(6) The chief executive may—

[s 42]

- (a) disclose information to the NDIS commissioner if satisfied the disclosure would assist in the performance of the commissioner's functions under the *National Disability Insurance Scheme Act 2013* (Cwlth); or
- (b) disclose information to an entity responsible for the administration or enforcement of a corresponding law if satisfied the disclosure would assist in the performance of the entity's functions relating to the corresponding law.

42 Amendment of s 239 (Regulation-making power)

(1) Section 239(2), before paragraph (a)—

insert—

- (aa) delay the application of a provision of part 5 in relation to a new NDIS non-government service provider, or the engagement of a person by a new NDIS non-government service provider, for a period of not more than 1 year after the day the provider becomes a new NDIS non-government service provider; and
- (ab) delay the application of a provision of part 5 in relation to a new engaged person for a period of not more than 1 year after the day the person becomes a new engaged person; and
- (ac) make provision about a matter for which it is necessary, desirable or convenient to make provision in relation to—
 - (i) a service provider becoming a former service provider; or

-
- (ii) a person becoming a former engaged person; and
- (2) Section 239(2)(aa) to (b)—
renumber as section 239(2)(a) to (e).

- (3) Section 239—

insert—

- (3) In this section—

former engaged person means a person who, because of the making or amendment of a regulation under section 46(8), becomes a person who is not, for part 5, engaged by an NDIS non-government service provider.

former service provider means—

- (a) a service provider in relation to which part 3 stops applying because of the making or amendment of a regulation under section 32A; or
- (b) a service provider in relation to which part 5 stops applying because of the making or amendment of a regulation under section 16A or 41A; or
- (c) a service provider in relation to which part 6 stops applying because of the making or amendment of a regulation under section 140; or
- (d) a service provider in relation to which part 8, division 2 stops applying because of the making or amendment of a regulation under section 216.

new engaged person means a person who, because of the making or amendment of a regulation under section 46(8), becomes a person who is, for part 5, engaged by an NDIS non-government service provider.

[s 43]

new NDIS non-government service provider means a service provider that becomes an NDIS non-government service provider in relation to which part 5 applies because of the making or amendment of a regulation under section 16A or 41A.

43 Insertion of new s 241AA

After section 241A—

insert—

241AA Review of particular matters

- (1) The Minister must review—
 - (a) section 32A; and
 - (b) section 140; and
 - (c) the chief executive's functions under part 6, division 3, subdivisions 2 and 3; and
 - (d) section 216.
- (2) The review must be completed within 1 year after the commencement.

44 Omission of s 241B (Expiry of pt 6A)

Section 241B—

omit.

45 Omission of pt 9, div 10 (Transitional provisions for Disability Services and Other Legislation Amendment Act 2016)

Part 9, division 10—

omit.

46 Insertion of new pt 9, div 12

Part 9—

insert—

**Division 12 Transitional provisions for
Disability Services and
Other Legislation (NDIS)
Amendment Act 2019**

Subdivision 1 Preliminary

345 Definitions for division

In this division—

amended Act means this Act as amended by the amending Act.

amending Act means the *Disability Services and Other Legislation (NDIS) Amendment Act 2019*.

former, in relation to a provision, means as in force immediately before the provision was amended or repealed under the amending Act.

new disqualified person means a person who is a disqualified person only because the person has been convicted or is convicted of a new disqualifying offence.

new disqualifying offence means an offence that is a disqualifying offence under the amended Act but was not a disqualifying offence under this Act immediately before the commencement.

new relevant disqualified person means a person who is a relevant disqualified person only because the person has been or is convicted of a new disqualifying offence for which an imprisonment order was or is imposed.

[s 46]

new serious offence means an offence that is a serious offence under the amended Act but was not a serious offence under this Act immediately before the commencement.

Subdivision 2 Screening

345A Effect of pre-commencement charge for serious offence

- (1) This section applies if a person is the subject of a charge for a serious offence that has not been dealt with on the commencement.
- (2) For applying the amended Act in relation to the person, the person is taken to have been charged with the offence on the commencement.

345B Effect of conviction or charge for new serious offence

- (1) For applying the amended Act in relation to a person convicted of a new serious offence, it is immaterial—
 - (a) when the offence was committed; or
 - (b) when the person was convicted of the offence.
- (2) The amended Act applies in relation to a person who is charged with a new serious offence, even if—
 - (a) the person was charged before the commencement; or
 - (b) the acts or omissions constituting the offence happened before the commencement.

346 Effect of conviction or charge for new disqualifying offence

- (1) For applying section 97(1)(a) and schedule 8, definition *relevant disqualified person*, paragraph (a) in relation to a person who has been or is convicted of a new disqualifying offence, it is immaterial when the offence was committed or the person was convicted.
- (2) Without limiting this division, in applying the amended Act from the commencement, it is immaterial—
 - (a) when a new disqualifying offence was committed; or
 - (b) when a person was convicted of a new disqualifying offence; or
 - (c) when a charge for a new disqualifying offence, or the acts or omissions constituting the alleged offence, happened.

Example—

An offence may have been committed, and the person convicted of the offence, before the commencement.

- (3) For applying the amended Act to a current positive notice held by a person immediately before the commencement, a person the subject of a charge for a new disqualifying offence that has not been dealt with on the commencement is taken to have been charged with the offence on the commencement.

346A Effect of conviction for new disqualifying offence on existing positive notice or positive exemption notice

- (1) This section applies if—

[s 46]

- (a) a person held a current positive notice or positive exemption notice immediately before the commencement; and
 - (b) the person was convicted of a new disqualifying offence before the commencement.
- (2) For applying the amended Act to the person's positive notice or positive exemption notice, the offence is taken to be, or to continue to be, a serious offence despite the enactment of the amending Act.
- (3) Without limiting subsection (2), if the person applies for another positive exemption notice after the commencement, or section 347, 348 or 349 applies in relation to the person—
- (a) the person's conviction for the offence is taken to be, or to continue to be, a conviction for a serious offence; and
 - (b) the person is taken not to be a disqualified person or relevant disqualified person in relation to the person's conviction for the offence.

347 Particular existing prescribed notice applications and exemption notice applications

- (1) This section applies if—
- (a) before the commencement, a prescribed notice application or exemption notice application had been made about a person; and
 - (b) immediately before the commencement, the application had not been decided or withdrawn; and
 - (c) on the commencement—

- (i) the person is a new disqualified person;
or
 - (ii) the person is the subject of a charge for a new disqualifying offence that has not been dealt with.
- (2) The prescribed notice application or exemption notice application is taken to be withdrawn.
- (3) The chief executive must give notice of the withdrawal to—
- (a) the person; and
 - (b) the funded non-government service provider, or NDIS non-government service provider, that made the application.

348 Existing positive notice held by person convicted of new serious offence or new disqualifying offence

- (1) This section applies if—
- (a) immediately before the commencement, a person held a current positive notice; and
 - (b) before the commencement, the person was convicted of—
 - (i) a new serious offence; or
 - (ii) a new disqualifying offence that is taken to be a serious offence under section 346A(2).
- (1A) Section 74 does not apply to the person in relation to the person's conviction for the offence.
- (1B) The chief executive must—
- (a) consider whether it is appropriate to cancel the person's positive notice under this section because of the person's conviction for the offence; and

[s 46]

- (b) give the person a notice stating that, because of the enactment of the amending Act, the chief executive is considering under this section whether the person should continue to hold the person's positive notice.
- (1C) If the person is engaged by a funded non-government service provider or an NDIS non-government service provider and is not a sole trader, the chief executive must give the service provider a notice mentioned in subsection (1B)(b).
- (2) The chief executive may cancel the positive notice and substitute a negative notice if satisfied that, if the chief executive were to decide a prescribed notice application about the person under the amended Act, the chief executive would issue a negative notice to the person.

Note—

See also section 85 for when the chief executive must cancel a positive notice held by a person who becomes a relevant disqualified person.

- (3) Section 83(2), (3), (5) and (6) apply to the decision under subsection (2) as if a reference in section 83 to making a decision, or proposing to substitute a negative notice, were a reference to making a decision, or proposing to substitute a negative notice, under subsection (2).
- (4) If the chief executive decides not to cancel the person's positive notice under this section, the chief executive must give the persons mentioned in subsection (5) a notice stating that the chief executive is satisfied, having considered the enactment of the amending Act, the person should continue to hold the person's positive notice.
- (5) For subsection (4), the persons to whom the notice must be given are—
 - (a) the person; and

- (b) each service provider given a notice under subsection (1B).

349 Existing positive exemption notice held by person convicted of new serious offence or new disqualifying offence

- (1) This section applies if—
 - (a) immediately before the commencement, a person held a current positive exemption notice; and
 - (b) before the commencement, the person was convicted of—
 - (i) a new serious offence; or
 - (ii) a new disqualifying offence that is taken to be a serious offence under section 346A(2).
- (1A) Section 74 does not apply to the person in relation to the person's conviction for the offence.
- (1B) The chief executive must—
 - (a) consider whether it is appropriate to cancel the person's positive exemption notice under this section because of the person's conviction for the offence; and
 - (b) give the person a notice stating that, because of the enactment of the amending Act, the chief executive is considering under this section whether the person should continue to hold the person's positive exemption notice.
- (1C) If the person is engaged by a funded non-government service provider or an NDIS non-government service provider and is not a sole trader, the chief executive must give the service provider a notice mentioned in subsection (1B)(b).

[s 46]

- (2) The chief executive may cancel the positive exemption notice and substitute a negative exemption notice if satisfied that, if the chief executive were to decide an exemption notice application about the person under the amended Act, the chief executive would issue a negative exemption notice to the person.

Note—

See also section 64(2) for the currency of a positive exemption notice.

- (3) Section 84(2), (3), (5) and (6) apply to the decision under subsection (2) as if a reference in section 84 to making a decision, or proposing to substitute a negative exemption notice, were a reference to making a decision, or proposing to substitute a negative exemption notice, under subsection (2).
- (4) If the chief executive decides not to cancel the person's positive exemption notice under this section, the chief executive must give the persons mentioned in subsection (5) a notice stating that the chief executive is satisfied, having considered the enactment of the amending Act, the person should continue to hold the person's positive exemption notice.
- (5) For subsection (4), the persons to whom the notice must be given are—
 - (a) the person; and
 - (b) each service provider given a notice under subsection (1B).

350 Existing applications to cancel negative notices or negative exemption notices

- (1) This section applies if—
 - (a) before the commencement, a person had applied to the chief executive under section

-
- 82 to cancel the person's negative notice or negative exemption notice; and
- (b) immediately before the commencement, the application had not been decided.
- (2) If, on the commencement, the person is a new relevant disqualified person—
- (a) the application is taken to be withdrawn; and
 - (b) the chief executive must give the person notice of the withdrawal.
- (3) If, on the commencement, the person is not a new relevant disqualified person, the chief executive must decide the application under the amended Act.

351 Particular existing applications to end suspension of positive notices

- (1) This section applies if—
- (a) before the commencement, a person had applied to the chief executive under section 87 to cancel the person's suspended positive notice; and
 - (b) immediately before the commencement, the application had not been decided; and
 - (c) on the commencement, the person is not a new relevant disqualified person.
- (2) The chief executive must decide the application under the amended Act.

Note—

See also section 85 for when the chief executive must cancel a positive notice held by a person who becomes a relevant disqualified person.

352 Particular existing applications to end suspension of positive exemption notices

- (1) This section applies if—
 - (a) before the commencement, a person had applied to the chief executive under section 89 to cancel the person's suspended positive exemption notice; and
 - (b) immediately before the commencement, the application had not been decided; and
 - (c) on the commencement, the person is not a new relevant disqualified person.
- (2) The chief executive must decide the application under the amended Act.

Note—

See also section 64(2) for the currency of a positive exemption notice.

353 Existing eligibility applications

- (1) This section applies if—
 - (a) before the commencement, a person had made an eligibility application; and
 - (b) immediately before the commencement, the eligibility application had not been decided or withdrawn.
- (2) The chief executive must decide the application under the amended Act.

354 Particular existing eligibility declarations

- (1) This section applies if—
 - (a) before the commencement, the chief executive issued, or was taken to have issued, an eligibility declaration to a person; and

- (b) immediately before the commencement, the eligibility declaration had not expired; and
 - (c) on the commencement, the person—
 - (i) is a new relevant disqualified person; or
 - (ii) is charged with a new disqualifying offence.
- (2) The eligibility declaration is taken to have expired.

355 Existing application for reversal of decision refusing an eligibility declaration

- (1) This section applies if—
- (a) before the commencement, a person had made an application under section 107(2) to the chief executive; and
 - (b) immediately before the commencement, the application had not been decided or withdrawn.
- (2) The chief executive must decide the application under the amended Act.

356 Undecided reviews and appeals by new disqualified persons

- (1) This section applies if—
- (a) before the commencement, a person—
 - (i) applied, under section 109, for a review of a part 5 reviewable decision; or
 - (ii) appealed, under the QCAT Act, against a decision of the tribunal relating to a part 5 reviewable decision; and
 - (b) immediately before the commencement, the application or appeal had not been decided or withdrawn; and

[s 46]

- (c) on the commencement, the person is a new disqualified person.
- (2) The application or appeal, and any proceeding in relation to the application or appeal, must be dismissed—
 - (a) if a proceeding in relation to the application or appeal is before a court—by the court; or
 - (b) otherwise—by the tribunal, even if the dismissal would be contrary to a direction of the Court of Appeal.

357 Review of part 5 reviewable decision about new disqualified person

- (1) This section applies if—
 - (a) before the commencement—
 - (i) the chief executive made a part 5 reviewable decision about a person; and
 - (ii) the person had not applied for a review of the decision under section 109; and
 - (b) on the commencement, the person is a new disqualified person.
- (2) The amended Act applies in relation to the part 5 reviewable decision.

358 Appeal by new disqualified person against decision of tribunal on review of part 5 reviewable decision

- (1) This section applies if—
 - (a) before the commencement, a person may have appealed under the QCAT Act against a decision of the tribunal relating to a part 5 reviewable decision; and

- (b) on the commencement—
 - (i) the time within which the person may appeal under the QCAT Act has not passed; and
 - (ii) the person is a new disqualified person.
- (2) Any appeal started by the person against the decision must be dismissed—
 - (a) if a proceeding in relation to the appeal is before a court—by the court; or
 - (b) otherwise—by the tribunal, even if the dismissal would be contrary to a direction of the Court of Appeal.

359 Existing appeal by chief executive against decision of tribunal on review of part 5 reviewable decision

- (1) This section applies if—
 - (a) before the commencement, the chief executive appealed, under the QCAT Act, against a decision of the tribunal relating to a part 5 reviewable decision about a person; and
 - (b) immediately before the commencement, the appeal had not been decided or withdrawn; and
 - (c) on the commencement, the person is a new disqualified person.
- (2) The entity hearing the appeal must apply the amended Act in relation to the matter the subject of the appeal.

[s 46]

360 Appeal by chief executive against decision of tribunal on review of part 5 reviewable decision

- (1) This section applies if—
 - (a) before the commencement, the chief executive may have appealed under the QCAT Act against a decision of the tribunal relating to a part 5 reviewable decision about a person; and
 - (b) on the commencement—
 - (i) the time within which the chief executive may appeal under the QCAT Act (the *appeal period*) has not passed; and
 - (ii) the person is a new disqualified person.
- (2) The chief executive may appeal against the decision within the appeal period and the entity hearing the appeal must apply the amended Act in relation to the matter the subject of the appeal.

361 Disqualification orders for new disqualifying offences committed before commencement

A court may make a disqualification order under section 137 in relation to a person convicted after the commencement of a new disqualifying offence committed before the commencement.

Subdivision 3 Immunity from liability

362 Definition for subdivision

In this subdivision—

relevant service provider has the meaning given by former section 140(1).

363 Immunity from liability—use of restrictive practices before commencement

Former part 6, division 7, subdivision 1 continues to apply in relation to the use of a restrictive practice by a relevant service provider, or an individual acting for a relevant service provider, before the commencement.

364 Immunity from liability—locking gates, doors and windows before commencement

Former sections 218 and 219 continue to apply in relation to the locking of gates, doors or windows by a relevant service provider, or an individual acting for a relevant service provider, before the commencement.

Subdivision 4 Repeal of particular provisions

365 Repeal of former ss 339 and 340

The *Acts Interpretation Act 1954*, sections 20 and 20A do not apply in relation to the repeal of former sections 339 and 340.

Subdivision 5 Transitional regulation-making power

366 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

[s 46A]

as it was in force immediately 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 of commencement.
- (3) A transitional regulation must declare it is a transitional regulation.
- (4) A transitional regulation may only be made within 2 years after the commencement.
- (5) This subdivision and any transitional regulation expire 3 years after the day of commencement.

46A Amendment of sch 2 (Current serious offences)

- (1) Schedule 2, item 4, entry for the Criminal Code—

insert—

315A Choking, suffocation or strangulation in a domestic setting

- (2) Schedule 2, item 4, entry for the Criminal Code, section 300, all the words in column 3—

omit.

- (3) Schedule 2, item 6, entry for the Criminal Code (Cwlth), section 270.6 Sexual servitude offences—

omit.

- (4) Schedule 2, item 6, entry for the Criminal Code (Cwlth)—

insert—

270.5 Servitude offences

271.4 Offence of trafficking in children

271.7 Offence of domestic trafficking in children

46B Amendment of sch 3 (Repealed or expired serious offences)

Schedule 3—

insert—

3 Criminal Code (Cwlth)

Provision of Act	Relevant heading	Qualification relating to the provision of the Act
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270.6	Sexual servitude offences	only if an offender was or could have been liable as mentioned in section 270.8, as the provisions were in force from time to time before their repeal by the <i>Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013</i> (Cwlth)
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47 Amendment of sch 4 (Current disqualifying offences)

(1) Schedule 4, item 4, entry for the Criminal Code—

insert—

211 Bestiality

306 Attempt to murder

309 Conspiring to murder

315A Choking, suffocation or strangulation in a domestic setting

[s 47]

320A	Torture	if the offence was committed against a child
354	Kidnapping	if the offence was committed against a child and the context in which the offence was committed was not familial
354A	Kidnapping for ransom	if the offence was committed against a child
363	Child-stealing	if the context in which the offence was committed was not familial
363A	Abduction of child under 16	if the context in which the offence was committed was not familial
364	Cruelty to children under 16	

- (2) Schedule 4, item 4, entry for the Criminal Code, entry for section 300, ‘and was committed against a child’—
omit.
- (3) Schedule 4, item 4, entry for the Criminal Code, entries for sections 349, 350 and 351, ‘if the offence was committed against a child’—
omit.
- (4) Schedule 4, item 5, entry for the Criminal Code (Cwlth), entry for section 270.6 Sexual servitude offences—
omit.
- (5) Schedule 4, item 5, entry for the Criminal Code (Cwlth)—

insert—

- 270.5 Servitude offences if the offence was committed against a child
- 271.4 Offence of trafficking in children
- 271.7 Offence of domestic trafficking in children

47A Amendment of sch 5 (Repealed or expired disqualifying offences)

Schedule 5—

insert—

3 Criminal Code (Cwlth)

Provision of Act	Relevant heading	Qualification relating to the provision of the Act
270.6	Sexual servitude offences	only if an offender was or could have been liable as mentioned in section 270.8, as the provisions were in force from time to time before their repeal by the <i>Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013</i> (Cwlth)

48 Amendment of sch 8 (Dictionary)

- (1) Schedule 8, definitions *funded service provider, participant, participant's plan, plan* and *relevant service provider—omit.*
- (2) Schedule 8—
insert—

corresponding law means a law of another State

[s 49]

that relates to the screening of persons engaged or to be engaged at a service outlet.

division 2 service provider see section 216(3).

excluded provision see section 200E(a).

NDIS commission means the NDIS Quality and Safeguards Commission established under the *National Disability Insurance Scheme Act 2013* (Cwlth), section 181A.

NDIS commissioner means the Commissioner of the NDIS commission appointed under the *National Disability Insurance Scheme Act 2013* (Cwlth), section 181L.

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

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

relevant service provider see section 140(3).

- (3) Schedule 8, definition *consumer*, ‘funded non-government service provider or an NDIS non-government’—
omit.

Part 3 Amendment of Coroners Act 2003

49 Act amended

This part amends the *Coroners Act 2003*.

50 Amendment of s 7 (Duty to report deaths)

- (1) Section 7(2), after ‘section 9(1)(a)’—
insert—

or (e)

- (2) Section 7(8), definition *relevant service provider*—
omit, insert—

relevant service provider means—

- (a) in relation to the death in care of a person mentioned in section 9(1)(a)—the provider of the residential service, or accommodation, mentioned in that section in which the person ordinarily lived for the purposes of being in care; or
- (b) in relation to the death in care of a person mentioned in section 9(1)(e)—the registered NDIS provider that was providing the services or supports mentioned in that section.

51 Amendment of s 9 (*Death in care defined*)

- (1) Section 9(1)(e)—
omit, insert—

- (e) the person was a participant who was not living in a private dwelling or an aged care facility and who was receiving or entitled to receive, under the person's participant's plan, services or supports—
 - (i) paid for wholly or partly from funding under the NDIS; and
 - (ii) provided by a registered NDIS provider that is registered under the NDIS Act, section 73E to provide a relevant class of supports; and
 - (iii) within the relevant class of supports.

- (2) Section 9—
insert—

[s 51]

- (3A) For subsection (1)(a)(iii)(A) and (e), the deceased person was living in a private dwelling if the dwelling was used, or used principally, as a separate residence for—
- (a) if a restrictive practice was used at the dwelling in relation to the deceased person under a chapter 5B approval in effect immediately before the person died—the deceased person and 1 or more of the deceased person’s relations; or
 - (b) if specialist positive behaviour support was provided at the dwelling under the deceased person’s participant’s plan and the support involved the use of a restrictive practice—the deceased person and 1 or more of the deceased person’s relations; or
 - (c) if specialist disability accommodation was provided at the dwelling under the deceased person’s participant’s plan—the deceased person and 1 or more of the deceased person’s relations; or
 - (d) if paragraphs (a), (b) and (c) do not apply—the deceased person and 1 or more of the deceased person’s relations, or the deceased person only.
- (3) Section 9(4), definitions *participant’s plan* and *plan*—
omit.
- (4) Section 9(4)—
insert—

chapter 5B approval means an approval given under the *Guardianship and Administration Act 2000*, chapter 5B.

national disability insurance scheme rules means the National Disability Insurance Scheme rules made under the NDIS Act, section 209.

participant's plan, for a deceased person, means a plan for the person under the NDIS Act that was in effect under section 37 of that Act immediately before the person died.

relation, of a deceased person, means—

- (a) a person who is related to the deceased person by blood, spousal relationship, adoption or a foster relationship; or
- (b) if the deceased person is an Aboriginal person—a person who, under Aboriginal tradition, is regarded as a relative of the deceased person; or
- (c) if the deceased person is a Torres Strait Islander—a person who, under Island custom, is regarded as a relative of the deceased person.

relevant class of supports means any of the following classes of supports under the NDIS Act—

- (a) high intensity daily personal activities;
- (b) assistance with daily life tasks in a group or shared living arrangement;
- (c) specialist positive behaviour support that involves the use of a restrictive practice;
- (d) specialist disability accommodation.

restrictive practice means—

- (a) a restrictive practice within the meaning of the *Disability Services Act 2006*, section 144; or
- (b) a regulated restrictive practice within the meaning of the national disability insurance scheme rules made for the NDIS Act, section 73H about conditions applying to

[s 52]

registered NDIS providers in relation to the use of regulated restrictive practices.

specialist disability accommodation means SDA within the meaning of the national disability insurance scheme rules made for the NDIS Act, section 35 about the funding of SDA.

specialist positive behaviour support has the same meaning as in the *National Disability Insurance Scheme Act 2013* (Cwlth).

- (5) Section 9(3A) and (4)—
renumber as section 9(4) and (5).

52 Insertion of new pt 6, div 5

Part 6—

insert—

Division 5 **Transitional provision for Disability Services and Other Legislation (NDIS) Amendment Act 2019**

116 Deaths before commencement

This Act as in force immediately before the commencement continues to apply in relation to the death of a person before the commencement.

53 Amendment of sch 2 (Dictionary)

Schedule 2—

insert—

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

Part 4 **Amendment of Guardianship and Administration Act 2000**

54 **Act amended**

This part amends the *Guardianship and Administration Act 2000*.

Note—

See also the amendments in schedule 1.

55 **Amendment of s 80R (Application of ch 5B)**

Section 80R, from ‘funded’—

omit, insert—

relevant service provider.

56 **Amendment of s 80U (Definitions for ch 5B)**

Section 80U, definition *relevant service provider*—

omit.

57 **Insertion of new ch 12, pt 13**

Chapter 12—

insert—

Part 13 **Transitional provision for Disability Services and Other Legislation (NDIS) Amendment Act 2019**

275 Transitional regulation-making power

(1) A regulation (a *transitional regulation*) may

[s 58]

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 immediately before the commencement to the operation of this Act as amended by the amending 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 of commencement.
 - (3) A transitional regulation must declare it is a transitional regulation.
 - (4) A transitional regulation may only be made within 2 years after the commencement.
 - (5) This part and any transitional regulation expire 3 years after the day of commencement.
 - (6) In this section—

amending Act means the *Disability Services and Other Legislation (NDIS) Amendment Act 2019*.

58 Amendment of sch 4 (Dictionary)

Schedule 4, definition *relevant service provider*—

omit, insert—

relevant service provider see the *Disability Services Act 2006*, section 140(3).

Part 5 **Amendment of Public Guardian Act 2014**

59 **Act amended**

This part amends the *Public Guardian Act 2014*.

60 **Amendment of s 12 (Functions—adult with impaired capacity for a matter)**

Section 12(1)(g), '(as defined under section 80U of that Act)'—

omit.

61 **Amendment of s 14 (Powers)**

Section 14—

insert—

- (3) Without limiting subsection (2), the public guardian may ask the NDIS agency or NDIS commissioner for information the public guardian considers necessary or convenient to perform the public guardian's functions.

62 **Amendment of s 39 (Definitions for pt 6)**

- (1) Section 39, definition *private dwelling house*—

omit.

- (2) Section 39—

insert—

chapter 5B approval means an approval given under the *Guardianship and Administration Act 2000*, chapter 5B.

funded adult participant means an adult—

[s 62]

- (a) with impaired capacity for a personal matter or a financial matter, or with an impairment; and
- (b) who is a participant under the *National Disability Insurance Scheme Act 2013* (Cwlth) and has a participant's plan.

private dwelling house means premises at which an adult, with impaired capacity for a personal matter or a financial matter or with an impairment, lives if the premises are used, or used principally, as a separate residence for—

- (a) if a restrictive practice is being used at the premises in relation to the adult under a chapter 5B approval—the adult and 1 or more of the adult's relations; or
- (b) if specialist positive behaviour support is being provided at the premises under the adult's participant's plan and the support involves the use of a restrictive practice—the adult and 1 or more of the adult's relations; or
- (c) if specialist disability accommodation is being provided at the premises under the adult's participant's plan—the adult and 1 or more of the adult's relations; or
- (d) if paragraphs (a), (b) and (c) do not apply—the adult and 1 or more of the adult's relations, or the adult only.

relation, of an adult, means—

- (a) a person who is related to the adult by blood, spousal relationship, adoption or a foster relationship; or
- (b) if the adult is an Aboriginal person—a person who, under Aboriginal tradition, is regarded as a relative of the adult; or

- (c) if the adult is a Torres Strait Islander—a person who, under Island custom, is regarded as a relative of the adult.

relevant class of supports means any of the following classes of supports under the *National Disability Insurance Scheme Act 2013* (Cwlth)—

- (a) high intensity daily personal activities;
- (b) assistance with daily life tasks in a group or shared living arrangement;
- (c) specialist positive behaviour support that involves the use of a restrictive practice;
- (d) specialist disability accommodation.

specialist disability accommodation means SDA within the meaning of the national disability insurance scheme rules made for the *National Disability Insurance Scheme Act 2013* (Cwlth), section 35 about the funding of SDA.

specialist positive behaviour support has the same meaning as in the *National Disability Insurance Scheme Act 2013* (Cwlth).

- (3) Section 39, definition *visitable site*—

insert—

- (ba) premises, other than a private dwelling house, at which a funded adult participant lives and receives services or supports that—
 - (i) are paid for wholly or partly from funding under the national disability insurance scheme; and
 - (ii) are provided under the adult's participant's plan; and
 - (iii) are provided by a registered NDIS provider that is registered under the *National Disability Insurance Scheme*

[s 63]

Act 2013 (Cwlth), section 73E to provide a relevant class of supports; and

(iv) are within the relevant class of supports; or

(4) Section 39, definition *visitable site*, paragraphs (ba) and (c)—
renumber as paragraphs (c) and (d).

63 Amendment of s 41 (Inquiry and complaint functions)

Section 41(3)—

insert—

(c) refer any other matter in relation to a complaint to the NDIS commissioner if the community visitor (adult) considers the NDIS commissioner has functions in relation to the matter.

64 Amendment of s 44 (Power to do all things necessary or convenient)

Section 44(1)—

insert—

(g) ask the NDIS agency or NDIS commissioner for information the visitor considers necessary or convenient to perform the visitor's functions.

65 Amendment of s 47 (Reports by community visitors (adult))

(1) Section 47(4)(e), from 'under' to 'site—'—

omit, insert—

is being used at the visitable site under a chapter 5B approval—

(2) Section 47(4)—

insert—

- (h) if the report relates to the provision of services or supports by a registered NDIS provider at the visitable site and section 49A applies to the provider in relation to the services or supports—the NDIS commissioner.

66 Insertion of new s 49A

After section 49—

insert—

49A Requirement for particular registered NDIS providers to give information to public guardian

- (1) This section applies to a registered NDIS provider that provides services or supports to a consumer under the consumer's participant's plan at a visitable site if—
 - (a) the services or supports are paid for wholly or partly from funding under the national disability insurance scheme; and
 - (b) the registered NDIS provider is registered under the *National Disability Insurance Scheme Act 2013* (Cwlth), section 73E to provide a relevant class of supports; and
 - (c) the services or supports are within the relevant class of supports.
- (2) The registered NDIS provider must give the public guardian, in the way and at the times prescribed by regulation, required information that is in the provider's custody or control, unless the provider has a reasonable excuse.

Maximum penalty—25 penalty units.

[s 67]

(3) In this section—

required information means information about the provision of the services or supports prescribed by regulation.

67 Amendment of s 51 (Definitions for ch 4)

Section 51, definition *residential facility*—

insert—

- (f) to a child, under the child's participant's plan, for the purpose of providing respite services in relation to the child.

68 Amendment of s 56 (Functions of community visitor (child), etc.)

(1) Section 56—

insert—

- (3A) Without limiting subsection (1)(b), the function of a community visitor (child) mentioned in that subsection includes referring a matter in relation to a child's concerns and grievances to the NDIS commissioner if the visitor considers the NDIS commissioner has functions in relation to the matter.

(2) Section 56(3A) to (5)—

renumber as section 56(4) to (6).

69 Insertion of new s 68A

Before section 69—

insert—

68A Community visitor (child) may ask NDIS agency or NDIS commissioner for particular information

A community visitor (child) may ask the NDIS agency or NDIS commissioner for information the visitor considers necessary or convenient to perform the visitor's functions.

70 Amendment of s 70 (Reports by community visitors (child))

Section 70(4)—

insert—

(h) the NDIS commissioner.

71 Insertion of new s 72A

After section 72—

insert—

72A Requirement for particular NDIS providers and registered NDIS providers to give information to public guardian

- (1) This section applies to an NDIS provider or a registered NDIS provider that provides a child accommodation service to a child, under the child's participant's plan, for the purpose of providing respite services in relation to the child.
- (2) The NDIS provider or registered NDIS provider must give the public guardian, in the way and at the times prescribed by regulation, required information that is in the provider's custody or control, unless the provider has a reasonable excuse.

Maximum penalty—25 penalty units.

- (3) In this section—

[s 72]

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

required information means information about the provision of the child accommodation service prescribed by regulation.

72 Amendment of s 110 (Eligibility for appointment as community visitor (adult))

Section 110(2)—

insert—

- (d) holds office as the chief executive officer of the NDIS agency; or
- (e) is an employee of the NDIS agency; or
- (f) is a consultant engaged by the NDIS agency under the *National Disability Insurance Scheme Act 2013* (Cwlth), section 171; or
- (g) holds office as the NDIS commissioner; or
- (h) is an employee of the NDIS commission; or
- (i) is a consultant engaged by the NDIS commissioner under the *National Disability Insurance Scheme Act 2013* (Cwlth), section 181V.

73 Amendment of s 111 (Eligibility for appointment as community visitor (child))

(1) Section 111(2), ‘person is’—

omit, insert—

person

(2) Section 111(2)(a), ‘a member’—

omit, insert—

is a member

- (3) Section 111(2)(b), ‘a public’—
omit, insert—
is a public
- (4) Section 111(2)(c), ‘engaged’—
omit, insert—
is engaged
- (5) Section 111(2)(d), ‘an approved’—
omit, insert—
is an approved
- (6) Section 111(2)—
insert—
- (e) holds office as the chief executive officer of the NDIS agency; or
 - (f) is an employee of the NDIS agency; or
 - (g) is a consultant engaged by the NDIS agency under the *National Disability Insurance Scheme Act 2013* (Cwlth), section 171; or
 - (h) holds office as the NDIS commissioner; or
 - (i) is an employee of the NDIS commission; or
 - (j) is a consultant engaged by the NDIS commissioner under the *National Disability Insurance Scheme Act 2013* (Cwlth), section 181V.

74 Insertion of new ch 7, pt 3

Chapter 7—
insert—

Part 3

Transitional provisions for Disability Services and Other Legislation (NDIS) Amendment Act 2019

190 Definitions for part

In this part—

amending Act means the *Disability Services and Other Legislation (NDIS) Amendment Act 2019*.

former, in relation to a provision, means as in force immediately before the provision was amended or repealed under the amending Act.

former visitable site means a place that was a visitable site under former chapter 3, part 6 but is not a visitable site under chapter 3, part 6 as amended by the amending Act.

191 Inquiries in relation to former visitable sites started before commencement

- (1) This section applies if—
 - (a) before the commencement, a community visitor (adult) inquired, or started to inquire, under former section 41(2) into a matter in relation to a former visitable site; and
 - (b) immediately before the commencement, the community visitor (adult) had not reported to the public guardian on the matter.
- (2) The community visitor (adult) must continue to perform the inquiry functions under section 41(2) in relation to the matter.
- (3) Section 41(4) and chapter 3, part 6, division 4 apply to the performance of the inquiry functions

as if—

- (a) the functions were being performed under section 41(2); and
- (b) the former visitable site were a visitable site under chapter 3, part 6.

192 Existing complaints about former visitable sites

- (1) This section applies if—
 - (a) before the commencement, a complaint was made about a matter mentioned in former section 41(2) in relation to a former visitable site; and
 - (b) immediately before the commencement, a community visitor (adult) for the former visitable site had not resolved the complaint, or referred it, under former section 41(3).
- (2) A community visitor (adult) for the former visitable site must perform the complaint functions mentioned in section 41(3) in relation to the complaint.
- (3) Section 41(4) and chapter 3, part 6, division 4 apply to the performance of the complaint functions as if—
 - (a) the functions were being performed under section 41(3); and
 - (b) the former visitable site were a visitable site under chapter 3, part 6.

193 Existing requests for community visitor (adult) to visit former visitable site

- (1) This section applies if, before the commencement, a person made a request under former section 43(1)(a) or (b) in relation to a

[s 74]

former visitable site.

- (2) Subsection (3) applies if—
 - (a) the request was made under former section 43(1)(b) to a staff member at the former visitable site; and
 - (b) immediately before the commencement—
 - (i) the staff member had not told the public guardian about the request; and
 - (ii) the period that is 3 business days after the request is made had not ended.
- (3) The staff member must, within 3 business days after the request is made, tell the public guardian about the request.

Maximum penalty—40 penalty units.

- (4) If, immediately before the commencement, a community visitor (adult) for the former visitable site had not visited the site in accordance with the request—
 - (a) a community visitor (adult) for the site must visit the site as soon as practicable after being informed of the request; and
 - (b) chapter 3, part 6, division 4 applies to the performance of the function under paragraph (a) as if—
 - (i) the function were being performed under section 43; and
 - (ii) the former visitable site were a visitable site under chapter 3, part 6.

194 Existing authorisations to enter former visitable sites outside normal hours

- (1) An existing authorisation in relation to an existing complaint continues to have effect according to its

terms and conditions.

(2) In this section—

existing authorisation means an authorisation given under former section 45 that was in effect immediately before the commencement.

existing complaint means a complaint in relation to which section 192 applies.

195 Reports about visits to former visitable sites before commencement

- (1) This section applies if, before the commencement, a community visitor (adult) visited a former visitable site.
- (2) If, immediately before the commencement, the community visitor (adult) had not complied with former section 47(1) in relation to the visit—
 - (a) the community visitor (adult) must prepare a report on the visit under section 47 and give a copy of the report to the public guardian; and
 - (b) the public guardian must, as soon as practicable after receiving a copy of the report, give a copy of the report to a person in charge of the site.
- (3) If, immediately before the commencement, the public guardian had not complied with former section 47(3) in relation to a report on the visit, the public guardian must give a copy of the report to a person in charge of the site.
- (4) Section 47(4) applies in relation to a copy of a report on the visit received by the public guardian before or after the commencement.

[s 75]

196 Proceedings for particular offences

- (1) This section applies in relation to an offence committed against any of the following provisions, in relation to a former visitable site, before the commencement—
 - (a) former section 43(2);
 - (b) former section 44(3);
 - (c) former section 49.
- (2) Without limiting the *Acts Interpretation Act 1954*, section 20, a proceeding for the offence may be started or continued, and a person may be convicted of and punished for the offence, as if the amending Act, section 62 had not commenced.
- (3) Subsection (2) applies despite the Criminal Code, section 11.

75 Amendment of sch 1 (Dictionary)

Schedule 1—

insert—

chapter 5B approval, for chapter 3, part 6, see section 39.

funded adult participant, for chapter 3, part 6, see section 39.

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

national disability insurance scheme rules means the National Disability Insurance Scheme rules made under the *National Disability Insurance Scheme Act 2013* (Cwlth), section 209.

NDIS agency means the National Disability

Insurance Scheme Launch Transition Agency established under the *National Disability Insurance Scheme Act 2013* (Cwlth), section 117.

NDIS commission means the NDIS Quality and Safeguards Commission established under the *National Disability Insurance Scheme Act 2013* (Cwlth), section 181A.

NDIS commissioner means the Commissioner of the NDIS commission appointed under the *National Disability Insurance Scheme Act 2013* (Cwlth), section 181L.

participant's plan, for a person, means a plan for the person under the *National Disability Insurance Scheme Act 2013* (Cwlth) that is in effect under section 37 of that Act.

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

relation, of an adult, for chapter 3, part 6, see section 39.

relevant class of supports, for chapter 3, part 6, see section 39.

restrictive practice means—

- (a) a restrictive practice within the meaning of the *Disability Services Act 2006*, section 144; or
- (b) a regulated restrictive practice within the meaning of the national disability insurance scheme rules made for the *National Disability Insurance Scheme Act 2013* (Cwlth), section 73H about conditions applying to registered NDIS providers in relation to the use of regulated restrictive practices.

specialist disability accommodation, for chapter

[s 76]

3, part 6, see section 39.

specialist positive behaviour support, for chapter 3, part 6, see section 39.

Part 6

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

76 Act amended

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

77 Amendment of s 401 (Regulation-making power)

Section 401—

insert—

- (4) A regulation made under this Act may—
 - (a) delay the application of a provision of chapter 8 in relation to a new NDIS non-government service provider, or the employment of a person by a new NDIS non-government service provider, for a period of not more than 1 year after the day the provider becomes a new NDIS non-government service provider; or
 - (b) delay the application of a provision of chapter 8 in relation to a new employee for a period of not more than 1 year after the day the person becomes a new employee; or
 - (c) make provision about a matter for which it is necessary, desirable or convenient to make provision in relation to—

- (i) a service provider becoming a former NDIS non-government service provider; or
 - (ii) a person becoming a former employee.
- (5) In this section—

former employee means a person whose employment stops being regulated employment because of the making or amendment of a regulation under schedule 1, section 6(4).

former NDIS non-government service provider means a service provider that stops being an NDIS non-government service provider because of the making or amendment of a regulation under the *Disability Services Act 2006*, section 16A or 41A.

new employee means a person whose employment becomes regulated employment because of the making or amendment of a regulation under schedule 1, section 6(4).

new NDIS non-government service provider means a service provider that becomes an NDIS non-government service provider because of the making or amendment of a regulation under the *Disability Services Act 2006*, section 16A or 41A.

service provider see the *Disability Services Act 2006*, section 13.

78 Insertion of new ch 11, pt 20

Chapter 11—

insert—

Part 20 Transitional provision for Disability Services and Other Legislation (NDIS) Amendment Act 2019

590 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 immediately 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 of commencement.
- (3) A transitional regulation must declare it is a transitional regulation.
- (4) A transitional regulation may only be made within 2 years after the commencement.
- (5) This part and any transitional regulation expire 3 years after the day of commencement.
- (6) In this section—

amended Act means this Act as amended by the *Disability Services and Other Legislation (NDIS) Amendment Act 2019*.

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

(1) Schedule 1, section 6(3), ‘subsection (1)’—

omit, insert—

subsection (1) or (2)

(2) Schedule 1, section 6—

insert—

(3A) Despite subsections (2) and (3)—

(a) the employment of a person by an NDIS non-government service provider is regulated employment if a regulation provides that the employment is regulated employment; and

(b) the employment of a person by an NDIS non-government service provider is not regulated employment if a regulation provides that the employment is not regulated employment.

(3) Schedule 1, section 6(3A) and (4)—

renumber as schedule 1, section 6(4) and (5).

80 Amendment of sch 7 (Dictionary)

Schedule 7, definition *NDIS non-government service provider*—

omit, insert—

NDIS non-government service provider—

(a) means an NDIS non-government service provider within the meaning of the *Disability Services Act 2006*, section 16A; but

(b) does not include an NDIS non-government service provider prescribed by regulation

[s 81]

under the *Disability Services Act 2006*,
section 41A.

Part 7 **Other amendments**

81 **Acts amended**

Schedule 1 amends the Acts it mentions.

Schedule 1 Other amendments

section 81

Disability Services Act 2006

1 Section 17, ‘Persons’—

omit, insert—

Entities

**2 Sections 49(1), 52(1), 56(5), 59(1), 63(5), 77(3), 78(a), 98(3)
and 132(10), ‘provider who’—**

omit, insert—

provider that

3 Section 141(1), ‘a person’—

omit, insert—

an entity

4 Section 141(1), ‘who’—

omit, insert—

that

5 Section 141(2), ‘person’—

omit, insert—

entity

6 Section 144, definition *decision notice*, paragraph (b), 'person to whom'—

omit, insert—

entity to which

7 Section 144, definition *decision notice*, paragraph (b), 'person receives'—

omit, insert—

entity receives

8 Sections 156(3) and 157, 'persons'—

omit, insert—

entities

9 Section 158(4)(b), 'person who'—

omit, insert—

entity that

10 Section 158(6), 'persons'—

omit, insert—

entities

11 Section 163(2), 'persons'—

omit, insert—

entities

12 Section 178(9), 'A person'—

omit, insert—

An entity

- 13 Sections 182 and 183, ‘persons’—**
omit, insert—
entities
- 14 Section 186, definition *interested person*, ‘a person to whom’—**
omit, insert—
an entity to which
- 15 Section 200O(2)(b), ‘section 200M(3)’—**
omit, insert—
section 200M(2)
- 16 Section 204(1)(d), ‘person’—**
omit, insert—
entity
- 17 Section 233(6), after ‘participant’—**
insert—
under the *National Disability Insurance Scheme Act 2013* (Cwlth)

Guardianship and Administration Act 2000

- 1 Sections 13A(6)(c) and 29(1)(c)(iii), ‘under chapter 5B’—**
omit.

2 Sections 80W(2)(c) and 80ZE(6)(c), ‘person’—

omit, insert—

entity or department

3 Section 80ZQ, ‘persons’—

omit.

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