Queensland

# Disability Services Act 2006

**Current as at [Not applicable]**

**Indicative reprint note**

This is an ***unofficial*** version of a reprint of this Act that incorporates all proposed amendments to the Act included in the Disability Services and Other Legislation (Worker Screening) Amendment Bill 2018. This indicative reprint has been prepared for information only—***it is not an authorised reprint of the Act***.

The point-in-time date for this indicative reprint is the introduction date for the Disability Services and Other Legislation (Worker Screening) Amendment Bill 2018—20 March 2018.

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# Disability Services Act 2006

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# Disability Services Act 2006

**An Act to protect and promote the rights of people with a disability, and for other purposes**

## Part 1 Preliminary

### Division 1 Introduction

#### 1 Short title

This Act may be cited as the *Disability Services Act 2006*.

#### 2 Commencement

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

#### 3 Act binds all persons

(1) This Act binds all persons, including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

(2) Nothing in this Act makes the Commonwealth or a State liable to be prosecuted for an offence.

#### 4 Contravention of this Act does not create civil cause of action

No provision of this Act creates a civil cause of action based on a contravention of the provision.

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### 5 Act does not affect other rights or remedies

(1) This Act, other than sections 189, 190, 218, 219, 251 to 253 and 255, does not affect or limit a civil right or remedy that exists apart from this Act, whether at common law or otherwise.

(2) Without limiting subsection (1), compliance with this Act does not necessarily show that a civil obligation that exists apart from this Act has been satisfied or has not been breached.

## Division 2 Objects

### 6 Objects of Act

The objects of this Act are—

(a) to acknowledge the rights of people with a disability including by promoting their inclusion in the life of the community generally; and

(b) to ensure that people with a disability have choice and control in accessing relevant disability services; and

(c) to ensure that disability services funded by the department are safe, accountable and respond to the needs of people with a disability; and

(d) to safeguard the rights of adults with an intellectual or cognitive disability including by regulating the use of restrictive practices by funded service providers in relation to those adults—

(i) only where it is necessary to protect a person from harm; and

(ii) with the aim of reducing or eliminating the need for use of the restrictive practices.

### 7 How objects are mainly achieved

The objects are mainly achieved by—

(a) stating the human rights principle and supporting rights applying to people with a disability; and

(b) stating the principles for service delivery to people with a disability to be promoted by service providers; and

(c) regulating disability services funded by the department to enable consumer choice and ensure the quality, safety, responsiveness and accountability of the services; and

(d) helping to protect people with a disability using services funded by the department from abuse, neglect and exploitation; and

(e) stating requirements for when funded service providers may use restrictive practices in relation to adults with an intellectual or cognitive disability.

### 8 Finite resources available

In administering this Act, regard must be had to the following—

(a) the State has finite resources available to provide services to people with a disability;

(b) there is a need to distribute the resources fairly having regard to the State's priorities.

## Division 3 Interpretation

### 9 Definitions

The dictionary in schedule 8 defines particular words used in this Act.

### 10 Notes in text

A note in the text of this Act is part of the Act.

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## 11 What is a *disability*

(1) A ***disability*** is a person's condition that—

(a) is attributable to—

(i) an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment; or

(ii) a combination of impairments mentioned in subparagraph (i); and

(b) results in—

(i) a substantial reduction of the person's capacity for communication, social interaction, learning, mobility or self care or management; and

(ii) the person needing support.

(2) For subsection (1), the impairment may result from an acquired brain injury.

(3) The disability must be permanent or likely to be permanent.

(4) The disability may be, but need not be, of a chronic episodic nature.

## 12 What are *disability services*

***Disability services***, for people with a disability, means 1 or more of the following—

(a) accommodation support services;

(b) respite services;

(c) community support services;

(d) community access;

(e) advocacy or information services or services that provide alternative forms of communication;

(f) research, training or development services;

(g) another service prescribed by regulation.

### 13 Meaning of *service provider*

(1) A ***service provider*** is a person providing services for people with a disability.

(2) The service provider may provide the services—

(a) specifically to people with a disability; or

(b) generally to people in the community, including people with a disability.

(3) The service provider may provide the services with the intention of making a profit.

### 14 Meaning of *funded service provider*

(1) A ***funded service provider*** is—

(a) a service provider that receives funds from the department to provide disability services; or

(b) a service provider that provides disability services prescribed by regulation to a participant under the participant's plan.

(2) A funded service provider includes the department to the extent it provides disability services.

(3) However, a funded service provider does not include—

(a) another department receiving funds from the department; or

(b) another department providing disability services prescribed by regulation to a participant under the participant's plan.

### 15 Meaning of *non-government service provider*

(1) A ***non-government service provider*** is a service provider, other than the State, providing disability services.

(2) A non-government service provider may be a local government.

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### 16 Meaning of *funded non-government service provider*

(1) A ***funded non-government service provider*** is a non-government service provider receiving recurrent or one-off funds from the department to provide disability services.

(2) It is immaterial whether other funds or resources are also used by the non-government service provider to provide disability services.

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

An ***NDIS non-government service provider*** is a non-government service provider that provides disability services prescribed by regulation to a participant under the participant's plan.

# Part 2 Disability rights

## Division 1 Human rights principle

### 17 Persons encouraged to have regard to human rights principle

Persons are encouraged to have regard to the human rights principle in matters relating to people with a disability.

### 18 Principle that people with a disability have the same human rights as others

(1) People with a disability have the same human rights as other members of society and should be empowered to exercise their rights.

(2) People with a disability have the right to—

(a) respect for their human worth and dignity as individuals; and

(b) realise their individual capacities for physical, social, emotional, cultural, religious and intellectual development; and

(c) live lives free from abuse, neglect or exploitation; and

(d) participate actively in decisions affecting their lives, including the development of disability policies, programs and services; and

(e) recognition of their individual autonomy and independence, including the freedom to exercise choice and have control of their lives.

(3) When using disability services people with a disability have the right to—

(a) services supporting their achieving quality of life in a way that supports their family unit and their full participation in society; and

(b) receive services in a way that results in the minimum restriction of their rights and opportunities; and

(c) receive services in a way that respects the confidentiality of their information; and

(d) receive services in a safe, accessible built environment appropriate to their needs; and

(e) pursue grievances about services without fear of the services being discontinued or recrimination from service providers; and

(f) support to enable them to pursue grievances about services; and

(g) support, and access to information, to enable them to participate in decisions affecting their lives.

(4) People with a disability have the right to receive services, and information necessary to support rights, in ways that are appropriate having regard to their disabilities and cultural backgrounds.

(5) Subsections (2), (3) and (4) do not limit subsection (1).

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## Division 2 Service delivery principles

### 19 Service delivery principles to be promoted by service providers

(1) This division sets out the principles that service providers are encouraged to apply and promote in the development and implementation of services for people with a disability.

(2) For subsection (1), the application and promotion of the principles is encouraged to the extent they reasonably apply to a service provider.

### 20 Focus on the development of the individual

Services should be designed and implemented so that their focus is on developing the individual and on enhancing the individual's opportunity to establish a quality life.

### 21 Participation in planning and operation of services

(1) Services should be designed and implemented so that people with a disability are encouraged, and able, to participate continually in the planning and operation of the services they receive.

(2) Services provided to people with a disability should provide opportunities for consultation in relation to the development of major policy changes.

### 22 Focus on a lifestyle the same as other people and appropriate for age

Services should be designed and implemented to ensure that the conditions of everyday life of people with a disability are—

(a) the same as, or as close as possible to, the conditions of everyday life valued by the general community; and

(b) appropriate to their chronological age.

### 23 Coordination and integration of services with general services

Services should be designed and implemented as part of local coordinated service systems and integrated with services generally available to members of the community.

### 24 Services to be tailored to meet individual needs and goals

(1) Services should be tailored to meet the individual needs and goals of people with a disability.

(2) To be responsive to the needs and goals of people with a disability, innovation and flexibility are encouraged when designing services.

### 25 People with a disability experiencing additional barriers

Services should be designed and implemented to meet the needs of people with a disability who may experience additional barriers—

(a) because they are Aborigines or Torres Strait Islanders; or

(b) because of their age, gender or culturally or linguistically diverse backgrounds; or

(c) because of their rural or remote location.

### 26 Promotion of competency, positive image and self-esteem

Services should be designed and implemented to—

(a) promote recognition of the competence of people with a disability; and

(b) promote a positive image of people with a disability; and

(c) enhance the self-esteem of people with a disability.

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### 27 Inclusion in the community

Services should be designed and implemented to promote the inclusion of people with a disability in the life of the community.

### 28 No single service provider to exercise control over life of person with disability

Services should be designed and implemented to ensure that no single service provider exercises control over all or most aspects of the life of a person with a disability.

### 29 Consideration for others involved with people with a disability

Services should be designed and implemented to—

(a) have sufficient regard to the needs of families, carers and advocates of people with a disability; and

(b) recognise the demands on the families of people with a disability; and

(c) take into account the implications for, and demands on, the families of people with a disability.

### 30 Service providers to make information available

(1) Service providers should make available information that allows the quality of their services to be judged.

(2) The information should be available to the people using the services, their families, carers and advocates, people giving financial assistance for the services and the community generally.

### 31 Raising and resolving grievances

Services should be designed and implemented to ensure that appropriate ways exist for people with a disability and their

advocates to raise grievances about services and have them resolved.

### 32 Access to advocacy support

Services should be designed and implemented to ensure people with a disability have access to necessary independent advocacy support so they can participate adequately in decision-making about the services they receive.

## Part 3 Complaints about the delivery of disability services by funded service providers

### 33 Complaints by consumers

(1) The following may make a complaint to the chief executive about the delivery of disability services by a funded service provider—

(a) a consumer;

(b) a family member, carer or advocate of a consumer;

(c) another person on behalf of a consumer.

(2) The chief executive must maintain a system that deals effectively with complaints received.

### 34 Chief executive may refer matters to complaints agency

The chief executive may—

(a) liaise with a complaints agency about matters relating to people with a disability; and

(b) refer matters relating to people with a disability to a complaints agency; and

(c) enter into an arrangement with a complaints agency aimed at avoiding inappropriate duplication of activities.

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### 35 Complaints agency to inform chief executive about actions taken for complaint

(1) This section applies if—

(a) the chief executive refers a matter about a person with a disability to a complaints agency; and

(b) the chief executive, by notice to the agency, asks for information about the way in which the agency is dealing or has dealt with the matter.

(2) The agency must inform the chief executive about any action taken for dealing with the matter or, if it is resolved, the resolution of the matter.

(3) Subsection (2) applies despite any express provision in an Act establishing a complaints agency that makes it an offence for anyone involved with administration of the Act to disclose the information.

## Part 4 Funding to people with a disability

### 36 Purpose of pt 4

The purpose of this part is to enable people with a disability to receive funding to obtain relevant disability services.

### 37 Definitions for pt 4

In this part—

***individual funding agreement*** means an individual funding agreement made under this part.

***parent***, of a child with a disability, includes—

(a) a person who exercises parental responsibility for the child, other than a person standing in the place of a parent of a child on a temporary basis; and

(b) for an Aboriginal child—a person who, under Aboriginal tradition, is regarded as a parent of the child; and

(c) for a Torres Strait Islander child—a person who, under Island custom, is regarded as a parent of the child.

***relevant disability services***, for a person with a disability, means disability services, and care and support associated with the person's disability.

***relevant person*** means—

(a) for an adult with a disability—

(i) a person nominated by the adult to deal with matters under this part on behalf of the adult; or

(ii) a guardian or an administrator for the adult; or

(iii) an attorney appointed by the adult under an enduring power of attorney under the *Powers of Attorney Act 1998*; or

(iv) a member of the adult's support network, other than a paid carer for the adult within the meaning of the *Guardianship and Administration Act 2000*; or

(b) for a child with a disability—a parent of the child.

## 38 Approval for funding

(1) The Minister may approve funding to—

(a) a person with a disability, to enable the person to obtain relevant disability services; or

(b) a relevant person for a person with a disability, to enable the relevant person to obtain relevant disability services for the person with a disability.

(2) If the Minister approves funding to a person mentioned in subsection (1), the funding can not be provided to the person unless the person has entered into an individual funding agreement under section 39 in relation to the funding.

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### 39 Individual funding agreement

(1) If the Minister approves funding to a person under section 38, the person may enter into an individual funding agreement with the chief executive for the funding.

(2) The individual funding agreement must—

(a) include the terms and conditions the chief executive considers appropriate; and

(b) state the relevant disability services to be obtained with the funding.

# Part 5 Screening of particular persons engaged by department or particular funded service providers

## Division 1 Preliminary

### 40 Main purpose of pt 5

The main purpose of this part is to enable the chief executive to obtain the criminal history of, and related information about, persons engaged or to be engaged at a service outlet by the department, a funded non-government service provider or an NDIS non-government service provider.

### 41 Safety of people with a disability to be paramount consideration

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

### 42 This part does not apply to persons engaged to provide disability services to children

This part does not apply in relation to persons engaged or to be engaged by the department, a funded non-government service provider or an NDIS non-government service provider to provide disability services only to children.

*Note—*

For employment screening of persons engaged or to be engaged by the department or a funded non-government service provider to provide disability services to children, see the Working with Children Act, chapter 8.

### 43 This part does not apply to registered health practitioners

This part does not apply to the engagement of a registered health practitioner to the extent the engagement relates to the health practitioner's functions as a registered health practitioner.

### 44 This part applies despite the Criminal Law (Rehabilitation of Offenders) Act 1986

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

## Division 2 Interpretation

### *44A Meaning of sole trader*

*A **sole trader** is an individual who—*

*(a) is an NDIS non-government service provider; and*

*(b) in providing disability services as an NDIS non-government service provider, provides the disability services personally.*

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### 45 Persons engaged by the department at a service outlet

Each of the following persons at a service outlet of the department is engaged by the department at the service outlet—

(a) a public service employee in the department;

(b) a person contracted by the chief executive to provide disability services for the department;

(c) members of committees established under section 222;

(d) a person working in the department as a volunteer or as a student on work experience.

### 46 Persons engaged by a funded non-government service provider or an NDIS non-government service provider at a service outlet

(1) For this part, a funded non-government service provider or an NDIS non-government service provider is engaging a person at a service outlet of the service provider if the provider has an agreement with the person for the person to carry out work at the outlet.

(2) Without limiting subsection (1), each of the following persons at a service outlet of a funded non-government service provider or an NDIS non-government service provider is engaged by the service provider—

(a) an employee of the service provider employed under a contract of service;

(b) a volunteer of the service provider;

(c) a person employed by the service provider under a contract for services;

(d) a member of a board, management committee or other governing body of the service provider;

(e) an executive officer of the service provider;

(f) a student on work experience with the service provider.

*(3) Also, for this part, an NDIS non-government service provider who is a sole trader is taken to be engaged by the service provider to carry out work at a service outlet of the service provider if the sole trader carries out, or is to carry out, the work at the outlet.*

(4) It is immaterial for this section—

(a) whether the agreement is written or unwritten; and

(b) the time for which the person is engaged to carry out the work; and

(c) whether the agreement provides for the person to carry out work on 1 occasion or on an ongoing basis, whether regularly or irregularly.

(5) Also, for this section, the nature of the work is immaterial.

(6) However, the following are not engaged by a funded non-government service provider or an NDIS non-government service provider—

(a) a consumer of the service provider even if the consumer carries out work at a service outlet of the service provider;

(b) a tradesperson who—

(i) from time to time performs work at a service outlet of the service provider; and

(ii) is not an employee of the service provider employed under a contract of service.

(7) Also, a volunteer is not engaged by a funded non-government service provider or an NDIS non-government service provider if—

(a) the volunteer is a relative of a person with a disability who is receiving disability services at a service outlet of the service provider; and

(b) the volunteer is at the service outlet only to help with the care of the person.

(8) In this section—

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***cousin*** means a first cousin.

***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.

***relative***, of a person with a disability—

(a) means the person's parent, grandparent, great grandparent, brother, sister, uncle, aunt, niece, nephew or 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 natural parent—includes anyone who would be a relative mentioned in paragraph (a) if the parent were a natural parent.

*Example for paragraph (d)—*

The daughter of a person's step-parent is a relative of the person.

## 47 What is a *serious offence*

(1) A ***serious offence*** is—

(a) an offence against a provision of an Act mentioned in schedule 2 or 3, column 1, subject to any qualification relating to the provision mentioned opposite in column 3; or

(b) an offence of counselling or procuring the commission of an offence of a kind mentioned in paragraph (a); or

(c) an offence of attempting, or of conspiring, to commit an offence of a kind mentioned in paragraph (a); or

(d) an offence that has, as an element, an intention to commit an offence of a kind mentioned in paragraph (a); or

(e) an offence that, at the time it was committed, was an offence of a kind mentioned in paragraph (a); or

(f) another offence that is a reportable offence under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* that is not otherwise a serious offence under this Act; or

(g) an offence under a law of another jurisdiction that, if it had been committed in Queensland, would have constituted an offence mentioned in paragraphs (a) to (f).

*Note—*

Column 2 in schedules 2 and 3 is included for information purposes only and states a section heading for the provision mentioned opposite in column 1.

(2) For this section, it is immaterial if a provision mentioned in schedule 2 or 3, column 1, for an Act has been amended from time to time or that the provision was previously numbered with a different number.

## 48 What is a *disqualifying offence*

(1) A ***disqualifying offence*** is—

(a) an offence against a provision of an Act mentioned in schedule 4 or 5, column 1, subject to any qualification relating to the provision mentioned opposite in column 3; or

(b) an offence of counselling or procuring the commission of an offence of a kind mentioned in paragraph (a); or

(c) an offence of attempting, or of conspiring, to commit an offence of a kind mentioned in paragraph (a); or

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(d) an offence that has, as an element, an intention to commit an offence of a kind mentioned in paragraph (a); or

(e) an offence that, at the time it was committed was an offence of a kind mentioned in paragraph (a); or

(f) an offence under a law of another jurisdiction that, if it had been committed in Queensland, would have constituted an offence mentioned in paragraphs (a) to (e).

*Note—*

Column 2 in schedules 4 and 5 is included for information purposes only and states a section heading for the provision mentioned opposite in column 1.

(2) For this section, it is immaterial if a provision mentioned in schedule 4 or 5, column 1, for an Act has been amended from time to time or that the provision was previously numbered with a different number.

## Division 3 Risk management strategies

### 49 Risk management strategies about persons engaged by funded non-government service providers or NDIS non-government service providers

(1) This section applies to a funded non-government service provider or an NDIS non-government service provider who engages a person at a service outlet of the service provider.

(2) For each year, the funded non-government service provider or NDIS non-government service provider must develop and implement a written strategy (a ***risk management strategy***) for persons engaged by the service provider.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence—20 penalty units; or

(b) for a funded non-government service provider or an NDIS non-government service provider—100 penalty units.

(3) The purpose of a risk management strategy is to implement engagement practices and procedures in relation to people with a disability to—

(a) promote their wellbeing; and

(b) protect them from abuse, neglect or exploitation.

(4) Without limiting subsection (3), a regulation may prescribe the matters that are to be included in a risk management strategy.

## Division 4 Screening of persons engaged by the department at a service outlet

### 50 Undertaking screening of persons engaged by department at a service outlet

(1) This section applies in relation to a person engaged or to be engaged by the department at a service outlet of the department.

*Note—*

See—

- the *Public Service Act 2008* for the engagement of the department's employees generally; and
- the Working with Children Act for the engagement of the department's employees in regulated employment within the meaning of that Act.

(2) The chief executive may ask the person for written consent for the chief executive to undertake screening of the person under this part.

(3) Subsection (2) applies even if the person is a public service employee at the time the person is engaged or is to be engaged by the department at a service outlet of the department.

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(4) If the person does not give the consent, or withdraws his or her consent, the chief executive must ensure the person is not engaged by the department at a service outlet of the department.

(5) If the person gives the consent, the chief executive may—

(a) if the person does not hold a WWC positive notice—undertake screening of the person under this part, and issue a prescribed notice to the person, as if the chief executive were deciding a prescribed notice application about the person; or

(b) if the person holds a WWC positive notice—undertake screening of the person under this part, and issue an exemption notice to the person, as if the chief executive were deciding an exemption notice application about the person.

(6) The person's consent to screening may be withdrawn under section 132(2), (3), (4) or (6) as if—

(a) for a person who does not hold a WWC positive notice—a prescribed notice application has been made about the person; or

(b) for a person who holds a WWC positive notice—an exemption notice application has been made about the person.

## Division 5 Issue of prescribed notices for funded non-government service providers and NDIS non-government service providers

### 51 Division does not apply to holders of WWC positive notice

This division does not apply in relation to the engagement of a person who holds a WWC positive notice.

*Note—*

See division 6 in relation to the engagement of a person who holds a WWC positive notice.

## 52 Application for prescribed notice

*(1) A funded non-government service provider or an NDIS non-government service provider who proposes to start engaging, or continue engaging, a person (the **engaged person**) at a service outlet of the service provider, may apply to the chief executive for a prescribed notice about the engaged person.*

(2) The application must be—

(a) in the approved form; and

(b) signed by, or on behalf of, the funded non-government service provider or NDIS non-government service provider; and

*(c) signed by the engaged person, unless the engaged person is a sole trader; and*

(d) accompanied by the prescribed fee.

(3) The approved form must include provision for—

(a) identifying information about the engaged person; and

*(b) certification by the following entity that the entity has sighted documents, relating to proof of the engaged person's identity, prescribed by regulation—*

*(i) for an application by a funded non-government service provider or an NDIS non-government service provider, other than a sole trader—the service provider;*

*(ii) for an application by a sole trader—a prescribed person; and*

(c) the engaged person's consent to screening under this part; and

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(d) a declaration by the engaged person that he or she is not a disqualified person.

(4) On receiving the application, the chief executive may ask the funded non-government service provider, NDIS non-government service provider or engaged person for further information that the chief executive reasonably considers necessary to establish the engaged person's identity.

(5) If a funded non-government service provider or an NDIS non-government service provider asks a person to sign an application under subsection (1) about the person, the service provider must warn the person that it is an offence for a disqualified person to sign the application as an engaged person.

Maximum penalty—10 penalty units.

(6) For an application under subsection (1)—

(a) the engaged person is liable to pay the funded non-government service provider or NDIS non-government service provider the fee mentioned in subsection (2)(d); and

(b) if the service provider pays the fee, the amount of the fee is a debt payable by the engaged person to the service provider.

(7) Subsection (6) applies subject to—

(a) a written agreement entered into between the funded non-government service provider or NDIS non-government service provider and the engaged person; or

(b) an industrial instrument under the *Industrial Relations Act 2016*; or

(c) another document that regulates wages and conditions of employment and is enforceable under any of the following—

(i) the *Fair Work Act 2009* (Cwlth);

(ii) the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cwlth);

(iii) the repealed *Workplace Relations Act 1996* (Cwlth).

*(8) Subsections (5) to (7) do not apply to a sole trader.*

## 53 Notice of change of engagement, or name and contact details in prescribed notice application

(1) This section applies if a prescribed notice application is made about an engaged person and any of the following (each a ***relevant change***) happens before the chief executive has issued a prescribed notice to the engaged person in relation to the application—

(a) the engaged person's name or contact details, as stated in the application, change;

(b) the engaged person's engagement, as stated in the application, ends.

(2) The engaged person must give notice, in the approved form, to the chief executive of the relevant change within 14 days after the relevant change happens.

Maximum penalty—10 penalty units.

(3) The approved form mentioned in subsection (2) must provide for an engaged person to give notice withdrawing the person's consent to screening under this part.

## 54 Decision on application

(1) This section applies if a prescribed notice application is made about an engaged person.

(2) The chief executive must decide the application by issuing either of the following unless the application is withdrawn—

(a) a notice declaring the application for the prescribed notice is approved (a ***positive notice***);

Not authorised—indicative only

Not authorised—indicative only



(b) a notice declaring the application for the prescribed notice is refused (a ***negative notice***).

(3) Subject to subsection (4), the chief executive must issue a positive notice to the engaged person if the chief executive—

(a) is not aware of any police information about the engaged person; or

(b) is not aware of a conviction of the engaged person for any offence but is aware that there is 1 or more of the following about the engaged person—

(i) investigative information;

(ii) a charge for an offence other than a disqualifying offence;

(iii) a charge for a disqualifying offence that has been dealt with other than by a conviction; or

*Note for subparagraph (iii)—*

See sections 86 and 132(6) in relation to charges for disqualifying offences that have not been dealt with.

(c) is aware of a conviction of the engaged person for an offence other than a serious offence.

(4) The chief executive is required to issue a positive notice under subsection (3)(b) or (c) unless the chief executive is satisfied it is an exceptional case in which it would not be in the best interests of people with a disability for the chief executive to issue a positive notice.

(5) If the chief executive is satisfied under subsection (4) that it is an exceptional case, the chief executive must issue a negative notice.

(6) Subject to subsection (8), the chief executive must issue a positive notice to the engaged person if the chief executive—

(a) has, under section 82, cancelled a negative notice issued to the engaged person; or

(b) has issued an eligibility declaration to the engaged person and the eligibility declaration has not expired.

(7) The chief executive must issue a negative notice to the engaged person if the chief executive is aware the person is a relevant disqualified person, other than only because the person is subject to either or both of the following—

(a) a temporary offender prohibition order;

(b) an interim sexual offender order.

(8) Subject to subsection (11), the chief executive must issue a negative notice to an engaged person to whom subsection (6)(a) or (b) applies if the chief executive is aware of any police information about the person, other than information known to the chief executive at the time of taking the action mentioned in the subsection.

(9) Subject to subsection (11), the chief executive must issue a negative notice to the engaged person if the chief executive is aware the person—

(a) is a relevant disqualified person because the person is subject to a temporary offender prohibition order or interim sexual offender order; or

(b) has been a relevant disqualified person at any time but is no longer a relevant disqualified person (other than a person who was a relevant disqualified person by reason of a conviction, sentence or order that was set aside on appeal); or

(c) has been convicted of a serious offence.

(10) Subject to subsection (11), the chief executive must issue a negative notice to the engaged person if the chief executive is aware the person has been convicted of a serious offence.

(11) The chief executive is required to issue a negative notice under subsection (8), (9) or (10) unless the chief executive is satisfied it is an exceptional case in which it would not harm the best interests of people with a disability for the chief executive to issue a positive notice.

(12) If the chief executive is satisfied under subsection (11) that it is an exceptional case, the chief executive must issue a positive notice.

Not authorised—indicative only

Not authorised—indicative only



### 55 Decision-making under s 54 in relation to discretionary matters

(1) This section applies if the chief executive is deciding whether or not there is an exceptional case for a person.

(2) If the chief executive is aware that a person has been convicted of, or charged with, an offence, the chief executive must have regard to the following—

(a) in relation to the commission, or alleged commission, of an offence by the person—

(i) whether it is a conviction or a charge; and

(ii) whether the offence is a serious offence and, if it is, whether it is a disqualifying offence; and

(iii) when the offence was committed or is alleged to have been committed; and

(iv) the nature of the offence and its relevance to engagement that involves people with a disability; and

(v) in the case of a conviction—the penalty imposed by the court and if it decided not to impose an imprisonment order for the offence, or decided not to make a disqualification order under section 137, the court's reasons for its decision;

(b) any information about the person given to the chief executive under section 118 or 119;

(c) a report, if any, about the person's mental health given to the chief executive under section 126;

(d) any information about the person given to the chief executive under section 128 or 129;

(e) anything else relating to the commission, or alleged commission, of the offence that the chief executive reasonably considers to be relevant to the assessment of the engaged person.

(3) If the chief executive is aware of investigative information about a person, the chief executive must have regard to the following—

(a) when the acts or omissions constituting the alleged offence to which the investigative information relates were committed;

(b) anything else relating to the commission of the acts or omissions that the chief executive reasonably considers relevant to the assessment of the engaged person.

## 56 Actions of chief executive after making decision on application

(1) After making a decision about a prescribed notice application, the chief executive must issue a prescribed notice to the engaged person.

(2) If the prescribed notice is a negative notice, the prescribed notice must be accompanied by a notice stating the following—

(a) the reasons for the chief executive's decision on the application;

(b) the relevant review and appeal information.

(3) The notice must also include a copy of part 5, division 11, subdivision 1.

(4) After the chief executive issues the prescribed notice to the engaged person under this section, the chief executive must give notice to the funded non-government service provider or NDIS non-government service provider stating whether the engaged person was given a positive notice or negative notice.

*(5) Subsection (4) does not apply in relation to an NDIS non-government service provider who is a sole trader.*

(6) Within 14 days after a prescribed notice is issued under this section to an engaged person who previously held another prescribed notice, or an exemption notice, the engaged person must give the chief executive—

Not authorised—indicative only

Not authorised—indicative only



(a) the previously held prescribed notice or exemption notice; and

(b) if the engaged person previously held a prescribed notice that was a positive notice—the positive notice card previously held by the engaged person.

*Maximum penalty for subsection (6)—10 penalty units.*

## 57 Chief executive to invite submissions from engaged person about particular information

(1) This section applies if, for a prescribed notice application, the chief executive must decide whether or not there is an exceptional case for a person.

(2) If the chief executive proposes to decide the application by issuing a negative notice, the chief executive must give the engaged person a notice—

(a) stating the police information about the engaged person that the chief executive is aware of; and

(b) inviting the engaged person to give the chief executive, within a stated time, a written submission about why the chief executive should not issue a negative notice.

(3) The stated time must be reasonable and, in any case, at least 7 days after the chief executive gives the notice to the engaged person.

(4) Before deciding the application, the chief executive must consider any submission received from the engaged person within the stated time.

## 58 Currency of prescribed notice and positive notice card

(1) A negative notice remains current until it is cancelled under division 8.

(2) A positive notice remains current for 3 years after it is issued, unless it is earlier cancelled under division 8.

(3) A positive notice card relating to a positive notice remains current for the same period as the positive notice.

## Division 6 Issue of exemption notices for funded non-government service providers and NDIS non-government service providers

### 59 Application for exemption notice

(1) A funded non-government service provider or an NDIS non-government service provider who proposes to start engaging, or continue engaging, a person who holds a WWC positive notice (the ***engaged person***) at a service outlet of the service provider, may apply to the chief executive for an exemption notice about the engaged person.

(2) The application must be—

(a) in the approved form; and

(b) signed by, or on behalf of, the funded non-government service provider or NDIS non-government service provider; and

*(c) signed by the engaged person, unless the engaged person is a sole trader.*

(3) The approved form must include provision for—

(a) identifying information about the engaged person; and

*(b) certification by the following entity that the entity has sighted documents, relating to proof of the engaged person's identity, prescribed by regulation—*

*(i) for an application by a funded non-government service provider or an NDIS non-government service provider, other than a sole trader—the service provider;*

*(ii) for an application by a sole trader—a prescribed person; and*

Not authorised—indicative only

Not authorised—indicative only



(c) a declaration by the engaged person that—

(i) he or she holds a WWC positive notice; and

(ii) his or her WWC positive notice has not been suspended under the Working with Children Act; and

(d) the engaged person's consent to screening under this part.

(4) On receiving the application, the chief executive may ask the funded non-government service provider, NDIS non-government service provider or engaged person for further information that the chief executive reasonably considers necessary to establish the engaged person's identity.

## 60 Notice of change of engagement, or name and contact details in exemption notice application

(1) This section applies if an exemption notice application is made about an engaged person and any of the following (each a ***relevant change***) happens before the chief executive has issued an exemption notice to the engaged person in relation to the application—

(a) the engaged person's name or contact details, as stated in the application, change;

(b) the engaged person's engagement, as stated in the application, ends.

(2) The engaged person must give notice, in the approved form, to the chief executive of the relevant change within 14 days after the relevant change happens.

Maximum penalty—10 penalty units.

(3) The approved form mentioned in subsection (2) must provide for an engaged person to give notice withdrawing the person's consent to screening under this part.

## 61 Decision on application

(1) This section applies if an exemption notice application is made about an engaged person.

(2) The chief executive must decide the application by issuing either of the following unless the application is withdrawn—

(a) a notice declaring the application for the exemption notice is approved (a ***positive exemption notice***);

(b) a notice declaring the application for the exemption notice is refused (a ***negative exemption notice***).

(3) The chief executive must issue a positive exemption notice to the engaged person if—

(a) the chief executive is not aware of any police information about the engaged person; and

(b) the chief executive—

(i) has, under section 62, been advised that the engaged person is the holder of a WWC positive notice whose WWC positive notice is not suspended under the Working with Children Act; and

(ii) has not, under section 62, been advised to undertake further screening of the engaged person under this part.

*Note—*

If a person's WWC positive notice is suspended under the Working with Children Act after the application is made, the person's consent to employment screening may be withdrawn under section 132(7).

(4) If subsection (3) does not apply, the chief executive must decide the application in the way the chief executive would be required to decide the application if it were a prescribed notice application.

(5) For subsection (4), sections 54(3) to (12), 55 and 57 apply in relation to making the decision as if—

Not authorised—indicative only

Not authorised—indicative only



(a) a reference in the sections to a prescribed notice application were a reference to an exemption notice application; and

(b) a reference in the sections to issuing a positive notice were a reference to issuing a positive exemption notice; and

(c) a reference in the sections to issuing a negative notice were a reference to issuing a negative exemption notice.

### 62 Obtaining advice from chief executive (employment screening)

(1) This section applies if an exemption notice application is made about a person who claims to be the holder of a WWC positive notice.

(2) For deciding the application, the chief executive may ask the chief executive (employment screening) to advise the chief executive—

(a) whether or not the person is the holder of a WWC positive notice and, if so, the expiry date of the WWC positive notice; and

(b) whether or not the person's WWC positive notice has been suspended under the Working with Children Act; and

(c) if the person is the holder of a WWC positive notice—whether the chief executive may need to undertake further screening of the person under this part.

(3) For subsection (2), the chief executive's request may include the following information—

(a) the person's name and any other name that the chief executive believes the person may use or may have used;

(b) the person's gender and date and place of birth;

(c) the person's address;

(d) any number or date given by the person about the WWC positive notice the person holds or claims to hold.

(4) The chief executive (employment screening) must comply with the request.

(5) However—

(a) the chief executive (employment screening) may give advice under subsection (2)(c) only if the chief executive (employment screening) is aware of police information about the person; and

(b) if paragraph (a) applies, the advice must be that the chief executive may need to undertake further screening of the person under this part.

(6) If the chief executive (employment screening) gives the chief executive advice under subsection (2)(c), the advice must be accompanied by a notice stating that no adverse inference about the person's criminal history or suitability for engagement, or continued engagement, in regulated engagement may be drawn by the fact the advice was given.

(7) In this section—

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

## 63 Actions of chief executive after making decision on application

(1) After making a decision about an exemption notice application, the chief executive must issue an exemption notice to the engaged person.

(2) If the exemption notice is a negative exemption notice, the exemption notice must be accompanied by a notice stating the following—

(a) the reasons for the chief executive's decision on the application;

(b) the relevant review and appeal information.

(3) The notice must also include a copy of part 5, division 11, subdivision 1.

Not authorised—indicative only

Not authorised—indicative only



(4) After the chief executive issues the exemption notice to the engaged person under this section, the chief executive must give notice to the funded non-government service provider or NDIS non-government service provider stating whether the engaged person was given a positive exemption notice or negative exemption notice.

*(5) Subsection (4) does not apply in relation to an NDIS non-government service provider who is a sole trader.*

(6) Within 14 days after an exemption notice is issued under this section to an engaged person who previously held another exemption notice or a prescribed notice, the engaged person must give the chief executive—

(a) the previously held exemption notice or prescribed notice; and

(b) if the engaged person previously held a prescribed notice that was a positive notice—the positive notice card previously held by the engaged person.

*Maximum penalty for subsection (6)—10 penalty units.*

## 64 Currency of exemption notice

(1) A negative exemption notice remains current until it is cancelled under division 8.

(2) A positive exemption notice remains current while its holder holds a WWC positive notice, unless it is earlier cancelled under division 8.

# Division 7 Obligations and offences relating to prescribed notices and exemption notices

## Subdivision 1 Engagement of persons by funded non-government service provider or NDIS non-government service provider

### 65 Starting engagement of certain regular engaged persons other than volunteers

(1) This section applies in relation to a person if—

(a) the person is not engaged by a funded non-government service provider or an NDIS non-government service provider at a service outlet of the service provider but has previously been engaged by the service provider at a service outlet of the service provider; and

(b) it is less than 1 year since the person was last engaged by the service provider at a service outlet of the service provider; and

(c) after considering any agreement relating to a proposed engagement of the person and the person's engagement during the period when the person was last engaged by the service provider at a service outlet of the service provider, the service provider reasonably expects that the person is likely to carry out work as part of the proposed engagement for the minimum frequency for regulated engagement; and

(d) under the proposed engagement, the person is to be engaged by the service provider other than as a volunteer.

(2) The funded non-government service provider or NDIS non-government service provider must not engage the person at a service outlet of the service provider unless—

Not authorised—indicative only

Not authorised—indicative only



(a) the person has a current positive notice or current positive exemption notice and the service provider has notified, in the approved form, the chief executive that the service provider is proposing to engage the person at a service outlet of the service provider; or

(b) the service provider has applied for a prescribed notice or exemption notice, or a further prescribed notice or exemption notice, about the person.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence—50 penalty units; or

(b) for a funded non-government service provider or an NDIS non-government service provider—250 penalty units.

(3) The approved form for subsection (2)(a) must include provision for—

(a) identifying information about the person; and

(b) certification by the funded non-government service provider or NDIS non-government service provider that the service provider has sighted the documents, relating to proof of the person's identity, prescribed under a regulation.

*(4) This section does not apply to a sole trader.*

## 66 Starting engagement of new engaged persons other than volunteers

(1) This section applies in relation to a person if—

(a) the person is not engaged by a funded non-government service provider or an NDIS non-government service provider at a service outlet of the service provider; and

(b) a funded non-government service provider or an NDIS non-government service provider proposes to engage the person at a service outlet of the service provider; and

(c) after considering any agreement relating to the proposed engagement, the service provider reasonably expects that the person is likely to carry out work as part of the proposed engagement for the minimum frequency for regulated engagement; and

(d) under the proposed engagement, the person is to be engaged by the service provider other than as a volunteer.

(2) The funded non-government service provider or NDIS non-government service provider must not engage the person at a service outlet of the service provider unless—

(a) the person has a current positive notice or current positive exemption notice and the service provider has notified, in the approved form, the chief executive that the service provider is proposing to engage the person at a service outlet of the service provider; or

(b) the service provider has applied for a prescribed notice or exemption notice, or a further prescribed notice or exemption notice, about the person.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence—50 penalty units; or

(b) for a funded non-government service provider or an NDIS non-government service provider—250 penalty units.

(3) The approved form for subsection (2)(a) must include provision for—

(a) identifying information about the person; and

(b) certification by the funded non-government service provider or NDIS non-government service provider that the service provider has sighted the documents, relating to proof of the person's identity, prescribed under a regulation.

*(4) This section does not apply to a sole trader.*



Not authorised—indicative only

Not authorised—indicative only



### 67 Continuing engagement of persons other than volunteers

(1) This section applies in relation to a person if—

(a) the person is engaged by a funded non-government service provider or an NDIS non-government service provider at a service outlet of the service provider other than as a volunteer; and

(b) after considering any agreement relating to the engagement and the hours or times that the person previously carried out work for the service provider at a service outlet of the service provider, the service provider reasonably expects that the person is likely to carry out work as part of the engagement for the minimum frequency for regulated engagement; and

(c) the person does not have a current positive notice or current positive exemption notice.

(2) The funded non-government service provider or NDIS non-government service provider must not continue to engage the person at a service outlet of the service provider unless the service provider has applied for a prescribed notice or exemption notice, or a further prescribed notice or exemption notice, about the person.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence—50 penalty units; or

(b) for a funded non-government service provider or an NDIS non-government service provider—250 penalty units.

*(3) This section does not apply to a sole trader.*

### *67A Restriction on sole trader providing disability services*

*A person who is a sole trader must not provide disability services as an NDIS non-government service provider at a service outlet of the service provider unless—*

*(a) the person has a current positive notice or current positive exemption notice; or*

*(b) the person holds a WWC positive notice that is not suspended under the Working with Children Act and the person has applied for an exemption notice.*

*Maximum penalty—250 penalty units.*

### *67B Currency of prescribed notice for sole trader*

*(1) This section applies if—*

*(a) a sole trader providing disability services as an NDIS non-government service provider at a service outlet of the service provider has a positive notice (the **previous notice**); and*

*(b) the sole trader applied for a further prescribed notice or exemption notice at least 30 days before the previous notice expires; and*

*(c) the application has not been decided.*

*(2) Despite section 58(2), the previous notice remains current from the day it would otherwise end under that subsection until the application is decided or withdrawn, unless the previous notice is earlier cancelled under division 8.*

### 68 Starting engagement of volunteers

(1) A funded non-government service provider or an NDIS non-government service provider must not engage a volunteer at a service outlet of the service provider unless—

(a) the volunteer has a current positive notice or current positive exemption notice and the service provider has notified, in the approved form, the chief executive that the service provider is proposing to engage the volunteer at a service outlet of the service provider; or

(b) the volunteer holds a WWC positive notice that is not suspended under the Working with Children Act and the



Not authorised—indicative only

Not authorised—indicative only



service provider has applied for an exemption notice about the volunteer.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence—50 penalty units; or

(b) for a funded non-government service provider or an NDIS non-government service provider—250 penalty units.

*Note—*

*See section 46(7) for particular volunteers who are not volunteers engaged by a non-government service provider.*

(2) The approved form mentioned in subsection (1)(a) must include provision for—

(a) identifying information about the volunteer; and

(b) certification by the funded non-government service provider or NDIS non-government service provider that the service provider has sighted documents, relating to proof of the volunteer's identity, prescribed under a regulation.

## 69 Currency of prescribed notice for volunteer continuing engagement

(1) This section applies if—

(a) a volunteer engaged by a funded non-government service provider or an NDIS non-government service provider at a service outlet of the service provider has a positive notice (the ***previous notice***); and

(b) the service provider applied for a further prescribed notice or an exemption notice about the volunteer at least 30 days before the previous notice expires; and

(c) the application has not been decided.

(2) Despite section 58(2), the previous notice remains current from the day it would otherwise end under that subsection

until the application is decided or withdrawn unless the previous notice is earlier cancelled under division 8.

*Note—*

See, however, section 86 for the effect of a suspension of a positive notice.

## 70 Prohibited engagement

(1) This section applies if a person (the ***engaged person***) does not have a current positive notice or current positive exemption notice.

(2) A funded non-government service provider or an NDIS non-government service provider must not engage, or continue to engage, the engaged person at a service outlet of the service provider if the service provider—

(a) has applied for a prescribed notice or exemption notice about the engaged person and has been notified by the chief executive, other than as provided under paragraph (b)(i), that the engaged person has withdrawn the engaged person's consent to screening under this part; or

(b) has been given—

(i) a notice of deemed withdrawal relating to the engaged person under section 132(5); or

(ii) a notice under section 131(3) because of a change in police information mentioned in section 131(3)(g); or

(c) is aware that a negative notice or negative exemption notice has been issued to the engaged person and is current.

Maximum penalty—

(a) for paragraph (a)—

(i) for an individual guilty under chapter 2 of the Criminal Code of an offence—40 penalty units; or

Not authorised—indicative only

Not authorised—indicative only



(ii) for a funded non-government service provider or an NDIS non-government service provider—200 penalty units; or

(b) for paragraphs (b) and (c)—

(i) for an individual guilty under chapter 2 of the Criminal Code of an offence—200 penalty units or 2 years imprisonment; or

(ii) for a funded non-government service provider or an NDIS non-government service provider—1000 penalty units.

*(3) This section does not apply to a sole trader.*

## Subdivision 2 Obligations if holder of negative notice or negative exemption notice, or prescribed notice or exemption notice application is withdrawn

### 71 Person holding negative notice or negative exemption notice not to apply for, or start or continue in, regulated engagement etc.

(1) A person who has a current negative notice or current negative exemption notice must not—

(a) sign an application as an engaged person under section 52 or 59; or

(b) apply for, or start or continue in, regulated engagement.

Maximum penalty—500 penalty units or 5 years imprisonment.

(2) However, if the person held a positive notice but a negative notice or negative exemption notice was substituted for the positive notice under section 83(1), 85 or 87, a court may not find the person contravened subsection (1) unless the court is

satisfied that notice of the substitution was given to the person.

(3) Also, if the person held a positive exemption notice but a negative exemption notice was substituted for the positive exemption notice under section 84(1) or 89, a court may not find the person contravened subsection (1) unless the court is satisfied that notice of the substitution was given to the person.

### 72 Person who has withdrawn consent to screening not to start or continue in regulated engagement

A person must not start or continue in regulated engagement if—

(a) a prescribed notice application or exemption notice application about a person was made; but

(b) the person withdrew the person's consent to screening under this part before a prescribed notice or exemption notice was issued to the person.

Maximum penalty—

(a) if the person's consent to screening is withdrawn under section 132(2)—100 penalty units or 1 year's imprisonment; or

(b) otherwise—500 penalty units or 5 years imprisonment.

## Subdivision 3 Changes in police information

### 73 Acquiring police information

For a person who does not have police information, there is taken to be a change in the person's police information if the person acquires police information.

Not authorised—indicative only

Not authorised—indicative only



### 74 Effect of conviction for serious offence

(1) This section applies to a person with a current positive notice or positive exemption notice if the person is convicted of a serious offence.

(2) The person must immediately return the positive notice or positive exemption notice to the chief executive, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(3) Until and unless a prescribed event happens for the person, the person must not start or continue in regulated engagement.

Maximum penalty—500 penalty units or 5 years imprisonment.

(4) For subsection (3), a ***prescribed event*** happens for a person if the person's positive notice or positive exemption notice is cancelled and the person is issued a new positive notice or positive exemption notice.

(5) In this section, a reference to a person's positive notice is taken to include a reference to any positive notice card relating to the notice.

### 75 Change in police information of person engaged by funded non-government service provider or NDIS non-government service provider

*(1) Subsections (2) to (4) apply to a person engaged by a funded non-government service provider or an NDIS non-government service provider, other than a sole trader, if there is a change in the person's police information.*

(2) The person must immediately disclose to the funded non-government service provider or NDIS non-government service provider that there has been a change in the person's police information.

Maximum penalty—100 penalty units.

(3) On receiving the disclosure, the funded non-government service provider or NDIS non-government service provider

must not continue to engage the person at a service outlet of the service provider without applying for a prescribed notice or exemption notice, or further prescribed notice or exemption notice, about the person.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence—100 penalty units; or

(b) for a funded non-government service provider or an NDIS non-government service provider—500 penalty units.

(4) To remove any doubt, it is declared that—

(a) it is not a requirement of subsection (2) that the person give the funded non-government service provider or NDIS non-government service provider any information about the change other than that a change has happened; and

(b) it is not a requirement of subsection (3) that the funded non-government service provider or NDIS non-government service provider stop engaging the person at a service outlet of the service provider on receiving the disclosure.

*(5) Subsections (6) and (7) apply to a person who is a sole trader if—*

*(a) the person is providing disability services as an NDIS non-government service provider at a service outlet of the service provider; and*

*(b) there is a change in the person's police information.*

*(6) The person must immediately disclose to the chief executive that there has been a change in the person's police information.*

*Maximum penalty—100 penalty units.*

*(7) To remove any doubt, it is declared that it is not a requirement of subsection (6) that the person give the chief executive any*

Not authorised—indicative only

Not authorised—indicative only



*information about the change other than that a change has happened.*

## 76 Change in police information of person engaged by department

(1) This section applies to a person engaged by the department at a service outlet of the department if there is a change in the person's police information.

(2) The person must immediately disclose to the chief executive that there has been a change in the person's police information.

Maximum penalty—100 penalty units.

(3) If the chief executive receives information about a change in the person's police information under subsection (2), the chief executive may, under section 50, ask the person for written consent for the chief executive to undertake screening of the person under this part.

(4) To remove any doubt, it is declared that it is not a requirement of subsection (2) that the person give the chief executive any information about the change other than that a change has happened.

## 77 Change in police information of other persons

(1) This section applies if—

(a) a person has a current positive notice or current positive exemption notice; and

(b) there has been a change in the person's police information since the notice was issued; and

(c) the person is not engaged at a service outlet by the department, a funded non-government service provider or an NDIS non-government service provider.

(2) Before starting engagement with a funded non-government service provider or an NDIS non-government service provider at a service outlet of the service provider, the person must

notify the service provider that there has been a change in the person's police information since the person's current positive notice or current exemption notice was issued.

Maximum penalty—100 penalty units.

*(3) Subsection (2) does not apply in relation to an NDIS non-government service provider who is a sole trader.*

(4) On receiving the disclosure, the funded non-government service provider or NDIS non-government service provider must not engage the person at a service outlet of the service provider without applying for a further prescribed notice or exemption notice about the person.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence—100 penalty units; or

(b) for a funded non-government service provider or an NDIS non-government service provider—500 penalty units.

*(5) Subsection (6) applies if the person is a sole trader.*

*(6) Before providing disability services as an NDIS non-government service provider at a service outlet of the service provider, the person must notify the chief executive that there has been a change in the person's police information since the person's current positive notice or current exemption notice was issued.*

*Maximum penalty—100 penalty units.*

## Subdivision 4 General

### 78 False or misleading disclosure

A person must not—

(a) give a funded non-government service provider or an NDIS non-government service provider who is

Not authorised—indicative only

Not authorised—indicative only



proposing to engage the person information for this part that is false or misleading in a material particular; or

(b) state anything to the chief executive for this part that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units or 2 years imprisonment.

### 79 False or misleading documents

(1) A person must not give the chief executive a document for this part containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units or 2 years imprisonment.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

(a) tells the chief executive, to the best of the person's ability, how it is false or misleading; and

(b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

### 80 Return of cancelled positive notice to chief executive

(1) This section applies to a person with a current positive notice (***old notice***) if the chief executive cancels the notice and issues a negative notice or negative exemption notice to the person.

(2) The person must immediately return the old notice and any positive notice card issued to the person to the chief executive, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

### 81 Return of cancelled positive exemption notice to chief executive

(1) This section applies to a person with a current positive exemption notice (***old notice***) if the chief executive cancels the notice and issues a negative exemption notice to the person.

(2) The person must immediately return the old notice to the chief executive, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

## Division 8 Cancellation of prescribed notices and exemption notices etc.

### 82 Cancellation of negative notice or negative exemption notice and issuing of positive notice or positive exemption notice

(1) This section applies if the chief executive has issued a negative notice or negative exemption notice to a person and the notice is current.

(2) However, this section does not apply to the person if the person is a relevant disqualified person.

(3) The person may apply to the chief executive to cancel the notice.

(4) The application may not be made less than 2 years after the issue of the notice or any previous application by the person under this section, unless—

(a) the decision to issue the negative notice or negative exemption notice was based on wrong or incomplete information; or

(b) the negative notice or negative exemption notice was issued because the person was a relevant disqualified person and the person is no longer a relevant disqualified person.

(5) The application must be—

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Not authorised—indicative only



(a) in the approved form; and

(b) signed by the person; and

(c) accompanied by the fee prescribed under a regulation for the application.

(6) The person may state in the application anything the person considers relevant to the chief executive's decision including, in particular, any change in the person's circumstances since the negative notice or negative exemption notice was issued.

(7) Sections 54, 55, 56 and 57 apply to the application as if—

(a) the application were an application for a prescribed notice; and

(b) a reference in the provisions to issuing a positive notice were a reference to granting the application; and

(c) a reference in the provisions to issuing a negative notice were a reference to refusing the application.

(8) If the chief executive grants the application, the chief executive must—

(a) for an application relating to a negative notice—cancel the negative notice and issue a positive notice to the person; or

(b) for an application relating to a negative exemption notice—cancel the negative exemption notice and issue a positive exemption notice to the person.

(9) However, the chief executive may issue a positive notice or positive exemption notice under subsection (8) only if the chief executive is satisfied the person is proposing, if the positive notice or positive exemption notice is issued, to be engaged in regulated engagement.

## 83 Chief executive may cancel a prescribed notice and substitute another prescribed notice

(1) The chief executive may cancel a positive notice (the ***cancelled notice***) about a person and substitute a negative notice if the chief executive is satisfied that—

(a) the decision on the application for the cancelled notice was based on wrong or incomplete information and, based on the correct or complete information, the chief executive should issue the negative notice; or

(b) it is appropriate to cancel the positive notice having regard to—

(i) information received under section 117, 118, 119 or 130 about the person, other than information known to the chief executive at the time the cancelled notice was issued; or

(ii) a decision of a court made after the cancelled notice was issued, including the reasons for the decision, relating to an offence committed by the person.

(2) If the person is engaged by a funded non-government service provider or an NDIS non-government service provider at the time the negative notice is substituted, the chief executive must give notice of the substitution to the service provider.

*(3) Subsection (2) does not apply if the person is a sole trader.*

*(4) The chief executive may cancel a negative notice (the **cancelled notice**) about a person and, subject to subsection (7), substitute it with a positive notice if—*

(a) the chief executive is satisfied that the decision on the application for the cancelled notice was based on wrong or incomplete information and, based on the correct or complete information, the chief executive should issue a positive notice to the person; or

(b) the negative notice was issued because the person was a relevant disqualified person and the person is no longer a relevant disqualified person; or

(c) the chief executive is satisfied that it is appropriate to cancel the negative notice having regard to information not known to the chief executive at the time the negative notice was issued.

Not authorised—indicative only

Not authorised—indicative only



*(5) In making a decision under subsection (1) or (4), the chief executive must make the decision as if it were a decision about an application for a prescribed notice and, for that purpose, sections 54, 55 and 56 apply to the decision under this section.*

(6) If the chief executive proposes to substitute a negative notice as mentioned in subsection (1), the chief executive must first comply with section 57 as if—

(a) the reference in section 57(2) to deciding the application by issuing a negative notice were a reference to substituting a negative notice for a positive notice; and

(b) the reference in section 57(4) to deciding the application were a reference to substituting a negative notice for a positive notice.

*(7) If, for subsection (4), the chief executive's decision under subsection (5) is that the person should be issued a positive notice, the chief executive may issue a positive notice to the person only if the chief executive is satisfied the person is proposing, if the positive notice is issued, to be engaged in regulated engagement.*

*(8) The chief executive may cancel a person's negative notice under subsection (4) even if—*

*(a) a positive notice is not issued to the person under subsection (7) until a later time; or*

*(b) a positive notice is never issued to the person under subsection (7).*

*(9) The chief executive may act under subsection (4) only on the chief executive's own initiative.*

*Note—*

For the chief executive's power to cancel a negative notice on application by a person, see section 82.

Not authorised—indicative only

## 84 Chief executive may cancel an exemption notice and substitute another exemption notice

(1) The chief executive may cancel a positive exemption notice (the ***cancelled notice***) about a person and substitute a negative exemption notice if the chief executive is satisfied that—

(a) the decision on the application for the cancelled notice was based on wrong or incomplete information and, based on the correct or complete information, the chief executive should issue a negative exemption notice to the person; or

(b) it is appropriate to cancel the cancelled notice having regard to—

(i) information received under section 117, 118, 119 or 130 about the person, other than information known to the chief executive at the time the cancelled notice was issued; or

(ii) a decision of a court made after the cancelled notice was issued, including the reasons for the decision, relating to an offence committed by the person.

(2) If the person is engaged by a funded non-government service provider or an NDIS non-government service provider at the time the negative exemption notice is substituted, the chief executive must give notice of the substitution to the service provider.

*(3) Subsection (2) does not apply if the person is a sole trader.*

*(4) The chief executive may cancel a negative exemption notice (the **cancelled notice**) about a person and, subject to subsection (7), substitute a positive exemption notice if—*

(a) the chief executive is satisfied that the decision on the application for the cancelled notice was based on wrong or incomplete information and, based on the correct or complete information, the chief executive should issue a positive exemption notice to the person; or

Not authorised—indicative only



(b) the negative exemption notice was issued because the person was a relevant disqualified person and the person is no longer a relevant disqualified person; or

(c) the chief executive is satisfied that it is appropriate to cancel the negative exemption notice having regard to information not known to the chief executive at the time the negative exemption notice was issued.

*(5) In making a decision under subsection (1) or (4), the chief executive must make the decision as if it were a decision about an exemption notice application and, for that purpose, sections 61, 62 and 63 apply to the decision under this section.*

(6) If the chief executive proposes to substitute a negative exemption notice as mentioned in subsection (1), the chief executive must first comply with section 57 as if—

(a) the reference in section 57(2) to deciding the application by issuing a negative notice were a reference to substituting a negative exemption notice for a positive exemption notice; and

(b) the reference in section 57(4) to deciding the application were a reference to substituting a negative exemption notice for a positive exemption notice.

*(7) If, for subsection (4), the chief executive's decision under subsection (5) is that the person should be issued a positive exemption notice, the chief executive may issue a positive exemption notice to the person only if the chief executive is satisfied the person is proposing, if the positive exemption notice is issued, to be engaged in regulated engagement.*

*(8) The chief executive may cancel a person's negative exemption notice under subsection (4) even if—*

*(a) a positive exemption notice is not issued to the person under subsection (7) until a later time; or*

*(b) a positive exemption notice is never issued to the person under subsection (7).*

*(9) The chief executive may act under subsection (4) only on the chief executive's own initiative.*

*Note—*

For the chief executive's power to cancel a negative exemption notice on application by a person, see section 82.

## 85 Cancellation of positive notice if relevant disqualified person

(1) This section applies if a person who is the holder of a positive notice, including a positive notice that is suspended under section 86, becomes a relevant disqualified person other than only because the person is subject to either or both of the following—

(a) a temporary offender prohibition order;

(b) an interim sexual offender order.

(2) The chief executive must cancel the positive notice held by the person and substitute a negative notice.

(3) At the time the chief executive gives the person the negative notice, the chief executive must give the person a further notice stating—

(a) the person can not apply under section 82 for the cancellation of the negative notice, even after 2 years; and

(b) the relevant review and appeal information.

(4) Also, if the person is engaged by a funded non-government service provider or an NDIS non-government service provider, the chief executive must give notice to the service provider stating the person was given a negative notice.

*(5) Subsection (4) does not apply if the person is a sole trader.*

Not authorised—indicative only

Not authorised—indicative only



### 86 Suspension of positive notice if charged with disqualifying offence or subject to temporary or interim order

(1) The chief executive must, by notice, suspend a positive notice held by a person if the person—

(a) is charged with a disqualifying offence; or

(b) becomes a relevant disqualified person because the person is subject to a temporary offender order or interim sexual offender order.

(2) The notice about the suspension must state the following—

(a) the positive notice held by the person is suspended;

(b) the reason for the suspension;

(c) how long the suspension will continue;

(d) the effect of the suspension;

(e) the person must return the positive notice, and the positive notice card, to the chief executive within 7 days after the notice is given to the person;

(f) the relevant review and appeal information.

(3) Until the suspension ends, the person whose positive notice is suspended and who is given a notice under subsection (1) must not apply for, or start or continue in, regulated engagement.

Maximum penalty—500 penalty units or 5 years imprisonment.

(4) Within 7 days after a person is given notice under subsection (1), the person must return each of the following to the chief executive—

(a) the positive notice;

(b) the positive notice card relating to the positive notice.

Maximum penalty—100 penalty units.

(5) Also, if the person is engaged by a funded non-government service provider or an NDIS non-government service

provider, the chief executive must give notice to the service provider stating that the positive notice held by the person is suspended and the effect of the suspension.

*(6) Subsection (5) does not apply if the person is a sole trader.*

(7) A notice under subsection (5) to a funded non-government service provider or an NDIS non-government service provider must state that—

(a) the service provider must not allow the person to work at a service outlet of the service provider; and

(b) the service provider must not terminate the person's engagement or continued engagement solely or mainly because the person's positive notice is suspended.

(8) A funded non-government service provider or an NDIS non-government service provider to whom a notice is given under subsection (5) must not allow the person engaged by the service provider to work at a service outlet of the service provider.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence—200 penalty units or 2 years imprisonment; or

(b) for a funded non-government service provider or an NDIS non-government service provider—1000 penalty units.

(9) A funded non-government service provider or an NDIS non-government service provider to whom a notice is given under subsection (5) about a person must not terminate the person's engagement or continued engagement solely or mainly because the service provider is given the notice.

(10) Without limiting subsection (3) and despite section 58(2), a positive notice remains current during the period of suspension even if it would otherwise end under section 58(2) during that period.

Not authorised—indicative only

Not authorised—indicative only



## 87 Ending of suspension and issue of further prescribed notice

(1) This section applies to a positive notice held by a person that is suspended under section 86 (the ***suspended notice***).

(2) The suspension ends if—

(a) the suspended notice is cancelled under another provision of this division; or

(b) on the chief executive's own initiative or on application by the person—

(i) the chief executive cancels the suspended notice and issues a further positive notice or a negative notice to the person; or

(ii) the chief executive cancels the suspended notice as mentioned in subsection (5).

(3) In making a decision to cancel the suspended notice and, subject to subsection (5), issue a further positive notice or a negative notice to the person, the chief executive must make the decision as if it were a decision about an application for a prescribed notice and, for that purpose, sections 54, 55 and 56 apply to the decision under this section.

(4) If the chief executive proposes to issue a negative notice, the chief executive must first comply with section 57.

(5) The chief executive may cancel the suspended positive notice without issuing a further prescribed notice to the person if the chief executive is satisfied that the person is no longer proposing to be engaged in regulated engagement, even if a further positive notice is issued to the person.

(6) Despite an application made by the person as mentioned in subsection (2)(b), the chief executive is not required to decide the application—

(a) while a charge against the person for a disqualifying offence is pending; or

(b) while the person is a relevant disqualified person because the person is subject to a temporary offender prohibition order or interim sexual offender order; or

(c) if the person has been convicted of a disqualifying offence and—

(i) the period allowed for an appeal relating to the conviction or sentence of the person has not ended; or

(ii) an appeal relating to the conviction or sentence has started but has not been decided; or

(d) if the person is subject to a final offender prohibition order, disqualification order or final sexual offender order and—

(i) the period allowed for an appeal relating to the order has not ended; or

(ii) an appeal relating to the order has started but has not been decided.

## 88 Suspension of a positive exemption notice if WWC positive notice suspended

(1) This section applies if—

(a) a person holds a positive exemption notice on the basis the person also holds a WWC positive notice; and

(b) the WWC positive notice is suspended under the Working with Children Act.

(2) The chief executive must suspend the person's positive exemption notice by notice given to the person.

(3) The notice about the suspension must state the following—

(a) the positive exemption notice held by the person is suspended;

(b) the reason for the suspension;

(c) how long the suspension will continue;

Not authorised—indicative only

Not authorised—indicative only



(d) the effect of the suspension;

(e) the person must return the positive exemption notice to the chief executive within 7 days after the notice about the suspension is given to the person;

(f) the relevant review and appeal information.

(4) Until the suspension ends, the person whose positive exemption notice is suspended and who is given a notice under subsection (2) must not apply for, or start or continue in, regulated engagement.

Maximum penalty—500 penalty units or 5 years imprisonment.

(5) Within 7 days after a person is given notice under subsection (2), the person must return the person's positive exemption notice to the chief executive.

Maximum penalty—100 penalty units.

(6) Also, if the person is engaged by a funded non-government service provider or an NDIS non-government service provider, the chief executive must give notice to the service provider stating the following—

(a) the positive exemption notice held by the person is suspended;

(b) how long the suspension will continue;

(c) the effect of the suspension;

(d) that the service provider must not allow the person to work at a service outlet of the service provider while the person's positive exemption notice is suspended;

(e) the service provider must not terminate the persons engagement or continued engagement solely or mainly because the person's positive exemption notice is suspended.

*(7) Subsection (6) does not apply if the person is a sole trader.*

(8) A funded non-government service provider or an NDIS non-government service provider to whom notice is given

under subsection (6) must not allow the person to work at a service outlet of the service provider while the person's positive exemption notice is suspended.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence—200 penalty units; or

(b) for a funded non-government service provider or an NDIS non-government service provider—1000 penalty units.

(9) A funded non-government service provider or an NDIS non-government service provider to whom a notice is given under subsection (6) about a person must not terminate the person's engagement or continued engagement solely or mainly because the service provider is given the notice.

## 89 Ending of suspension and issue of further exemption notice or prescribed notice

(1) This section applies to a positive exemption notice held by a person that is suspended under section 88 (the ***suspended notice***).

(2) The suspension ends if—

(a) the suspended notice is cancelled under another provision of this division; or

(b) the suspended notice ceases to have effect under section 64(2) because the person's WWC positive notice is cancelled under the Working with Children Act; or

(c) on the chief executive's own initiative or on application by the person—

(i) the chief executive cancels the suspended notice and issues a further positive exemption notice or negative exemption notice to the person; or

(ii) the chief executive cancels the suspended notice as mentioned in subsection (6).

(3) If subsection (2)(b) applies—

Not authorised—indicative only

Not authorised—indicative only



(a) the chief executive may, on the chief executive's own initiative or on application by the person, issue a positive notice or negative notice to the person; and

(b) in making a decision under paragraph (a), the chief executive must make the decision as if it were a decision about a prescribed notice application and, for that purpose, sections 54, 55 and 56 apply in relation to making the decision.

(4) In making a decision under subsection (2)(c) to cancel the suspended notice and, subject to subsection (6), issue a replacement notice to the person, the chief executive must make the decision as if it were a decision about an exemption notice application and, for that purpose, sections 61, 62 and 63 apply in relation to making the decision.

(5) If the chief executive proposes to issue a negative notice or negative exemption notice under subsection (3) or (4), the chief executive must first comply with section 57 as if—

(a) the reference in section 57(2) to deciding the application by issuing a negative notice were a reference to issuing a negative notice or negative exemption notice under this section; and

(b) the reference in section 57(4) to deciding the application were a reference to cancelling the suspended notice and issuing a prescribed notice or exemption notice under this section.

(6) The chief executive may cancel the suspended positive exemption notice without issuing a further exemption notice or a prescribed notice to the person if the chief executive is satisfied that the person is no longer proposing to be engaged in regulated engagement, even if a positive exemption notice or positive notice is issued to the person.

(7) If the chief executive issues a negative notice or negative exemption notice to the person under this section, the chief executive must give the person a notice stating—

(a) the reasons for the chief executive's decision to issue a negative notice or negative exemption notice to the person; and

(b) the relevant review and appeal information.

(8) Also, if the person is engaged by a funded non-government service provider or an NDIS non-government service provider and the chief executive issues a further exemption notice or a prescribed notice to the person under this section, the chief executive must give notice to the service provider stating—

(a) the person's suspended notice has been cancelled under this section or, if subsection (2)(b) applies, ceased to have effect under section 64; and

(b) whether the person has been issued a positive notice, negative notice, positive exemption notice or negative exemption notice.

*(9) Subsection (8) does not apply if the person is a sole trader.*

(10) Despite an application made by the person as mentioned in subsection (2)(c), the chief executive is not required to decide the application while the person's WWC positive notice is suspended under the Working with Children Act.

## 90 Notifying holder of expiry of positive exemption notice

(1) This section applies if—

(a) a person was issued a positive exemption notice; and

(b) the person no longer holds a WWC positive notice that is current under the Working with Children Act.

(2) The chief executive must give the person a notice stating that the person's positive exemption notice has ceased to have effect under section 64.

(3) The notice must also advise the person that a prescribed notice application may be made about the person if the person does not hold a WWC positive notice and is not a disqualified person.

Not authorised—indicative only

Not authorised—indicative only



(4) Also, if the person is engaged by a funded non-government service provider or an NDIS non-government service provider at a service outlet of the service provider, the chief executive must give the service provider a notice stating that—

(a) the positive exemption notice held by the person has ceased to have effect under section 64; and

(b) a prescribed notice application may be made about the person if the person does not hold a WWC positive notice and is not a disqualified person.

*(5) Subsection (4) does not apply if the person is a sole trader.*

(6) A person who is given notice under subsection (2) that the person's positive exemption notice has ceased to have effect must immediately return the positive exemption notice to the chief executive, unless the person has a reasonable excuse.

*Maximum penalty for subsection (6)—100 penalty units.*

## 91 Request to cancel positive notice or positive exemption notice

(1) A person, including a person whose positive notice is suspended under section 86 or whose positive exemption notice is suspended under section 88, may, by notice, ask the chief executive to cancel the person's positive notice or positive exemption notice.

(2) After receiving the notice, the chief executive must—

(a) cancel the positive notice or positive exemption notice; and

(b) give the person a notice stating that—

(i) the positive notice or positive exemption notice has been cancelled; and

(ii) the person must not apply for, or start or continue in, regulated engagement.

(3) The person must not apply for, or start or continue in, regulated engagement unless the chief executive issues a

further positive notice or positive exemption notice to the person.

Maximum penalty—500 penalty units or 5 years imprisonment.

(4) If the person is engaged by a funded non-government service provider or an NDIS non-government service provider, the chief executive must give notice about the cancellation of the person's positive notice or positive exemption notice to the service provider.

*(5) Subsection (4) does not apply if the person is a sole trader.*

(6) A notice under subsection (4) must state that a funded non-government service provider or an NDIS non-government service provider to whom the notice is given must not engage, or continue to engage, the person at a service outlet of the service provider.

## 92 Replacement of positive notice, positive notice card or positive exemption notice

(1) If a person's current positive notice, positive notice card, or positive exemption notice, is lost or stolen, the person must, within 14 days after the loss or theft—

(a) give the chief executive notice of the loss or theft; and

(b) if the person has a current positive notice and a positive notice card and only the notice is lost or stolen, or only the card is lost or stolen, return the card or the notice that is not lost or stolen to the chief executive; and

(c) either—

(i) apply for a replacement notice or card; or

(ii) ask the chief executive to cancel the person's positive notice or positive exemption notice under section 91.

Maximum penalty—10 penalty units.

Not authorised—indicative only

Not authorised—indicative only



(2) An application under subsection (1)(c)(i) must be in the approved form and accompanied by the fee prescribed under a regulation for the application.

(3) The chief executive must—

(a) cancel—

(i) for a lost or stolen positive notice—the lost or stolen notice and any positive notice card issued for it; or

(ii) for a lost or stolen positive notice card—the lost or stolen card and the positive notice for which it was issued; or

(iii) for a lost or stolen positive exemption notice—the lost or stolen notice; and

(b) if the person makes an application under subsection (1)(c)(i)—issue to the person—

(i) for a lost positive notice or positive notice card—a replacement positive notice and, if the person had a positive notice card for the person's previous positive notice, a replacement positive notice card; or

(ii) for a lost or stolen positive exemption notice—a replacement positive exemption notice.

(4) The chief executive must issue the replacement notice or card with a different registration number to the number of the lost or stolen notice or card.

(5) If the person's lost or stolen notice or card is returned to, or otherwise recovered by, the person after the application for a replacement notice or card, the person must give the replaced notice or card to the chief executive within 14 days after it is returned to, or otherwise recovered by, the person.

Maximum penalty—10 penalty units.

(6) The chief executive must give notice to the police commissioner about the fact that a current positive notice,

current positive notice card, or current positive exemption notice, has been lost or stolen.

## 93 Change of details for positive notice, positive notice card or positive exemption notice

(1) This section applies if the holder of a positive notice or positive exemption notice does any of the following (each of which is a ***relevant change***)—

(a) changes a name the holder has previously given to the chief executive;

(b) starts to use a different name to the name or names the holder has previously given to the chief executive;

(c) changes contact details previously given to the chief executive.

(2) The holder must give notice, in the approved form, to the chief executive about the relevant change within 14 days after the relevant change.

Maximum penalty—10 penalty units.

(3) If the chief executive considers it is appropriate to do so, the chief executive may issue to the holder—

(a) for the holder of a positive notice—a replacement positive notice and, if the holder also has a positive notice card, a replacement positive notice card; or

(b) for the holder of a positive exemption notice—a replacement positive exemption notice.

(4) If the chief executive issues the holder a replacement positive notice, positive notice card or positive exemption notice, the holder must return the replaced notice or card to the chief executive within 14 days after receiving the replacement notice or card.

Maximum penalty—10 penalty units.

(5) The chief executive must cancel the previously held positive notice, positive notice card or positive exemption notice if the chief executive has issued a replacement notice or card.

Not authorised—indicative only

Not authorised—indicative only



### 94 Replacement notice etc. if change in engagement details

(1) This section applies if the holder of a positive notice that is not suspended changes the person's engagement by a funded non-government service provider or an NDIS non-government service provider from engagement as a volunteer to engagement as other than a volunteer (the ***relevant change***).

(2) The holder must give notice, in the approved form, to the chief executive about the relevant change within 14 days after the change.

Maximum penalty—10 penalty units.

(3) If, under subsection (6), the notice is accompanied by the prescribed application fee, the chief executive must issue to the holder a new positive notice and, if the holder also has a positive notice card, a new positive notice card.

(4) If the chief executive issues to the holder a new positive notice or positive notice card under subsection (3), the holder must return the person's previously held notice or card to the chief executive within 14 days after receiving the new notice or card.

Maximum penalty—10 penalty units.

(5) The chief executive must cancel the previously held positive notice or positive notice card if the chief executive has issued a new notice or card.

(6) The notice under subsection (2) must be accompanied by the prescribed application fee if the application for the positive notice was made—

(a) before 1 July 2010; or

(b) on the basis the holder was engaged, or to be engaged, in regulated engagement as a volunteer.

(7) In this section—

***prescribed application fee***, for a notice given under subsection (2), means the prescribed fee for a prescribed

notice application about a person engaged in regulated engagement other than as a volunteer.

## Division 9 Persons who hold or held a WWC positive notice

### 95 Application of div 8 to person who holds WWC positive notice and prescribed notice

(1) This section applies if—

(a) a person holds a current positive notice or current negative notice; and

(b) the person also holds a WWC positive notice.

(2) The person's positive notice or negative notice continues in effect subject to section 58.

(3) Division 8 continues to apply in relation to the person's positive notice or negative notice while it remains current.

(4) If, under a provision of division 8, the chief executive is required or permitted to issue a positive notice to the person and the chief executive is aware the person also holds a WWC positive notice, the chief executive must instead issue a positive exemption notice to the person.

(5) If, under a provision of division 8, the chief executive is required or permitted to issue a negative notice to the person and the chief executive is aware the person holds a WWC positive notice, the chief executive must instead issue a negative exemption notice to the person.

(6) This section applies despite section 51.

### 96 Person who holds negative exemption notice but no longer holds WWC positive notice

(1) This section applies if—

(a) a person was issued a negative exemption notice on the basis the person held a WWC positive notice; and

Not authorised—indicative only

Not authorised—indicative only



(b) the person no longer holds a WWC positive notice.

(2) The negative exemption notice continues in effect despite section 59(1).

*(3) If, after cancelling the negative exemption notice under section 82 or 84(4), the chief executive is required or permitted to issue a positive exemption notice to the person and the chief executive is aware the person does not hold a WWC positive notice, the chief executive must instead issue a positive notice to the person.*

## Division 10 Disqualified persons

### 97 Who is a *disqualified person*

(1) A person is a ***disqualified person*** if the person—

(a) has been or is convicted of a disqualifying offence; or

(b) is subject to—

(i) offender reporting obligations; or

(ii) an offender prohibition order; or

(iii) a disqualification order; or

(iv) a sexual offender order.

(2) However, a person to whom subsection (1)(a) applies is not a disqualified person if the chief executive issued an eligibility declaration to the person and the eligibility declaration has not expired.

*Notes—*

1 Under section 102, a person who is issued a positive notice, or whose negative notice or negative exemption notice is cancelled, is taken to be issued with an eligibility declaration.

2 See section 106 for when an eligibility declaration expires, including if the person is charged with a disqualifying offence or becomes a relevant disqualified person after the declaration was issued.

## 98 Offences for disqualified person

(1) A disqualified person must not—

(a) sign an application as an engaged person under section 52; or

(b) apply for, or start or continue in, regulated engagement.

Maximum penalty—500 penalty units or 5 years imprisonment.

(2) If the chief executive is satisfied a person who has signed an application as mentioned in subsection (1)(a) is a disqualified person, the chief executive must give a notice to the person stating the following—

(a) the chief executive is satisfied the person is a disqualified person;

(b) the application is invalid;

(c) the person must not apply for, or start or continue in, regulated engagement.

(3) Also, the chief executive must give a notice stating the following to the funded non-government service provider or NDIS non-government service provider who made the application—

(a) that the chief executive is satisfied that the person for whom the application has been made is a disqualified person;

(b) the service provider must not allow the person to start or continue in engagement by the service provider at a service outlet of the service provider.

*(4) Subsection (3) does not apply if the person is a sole trader.*

(5) Subsection (1)(b) applies even though it is not an offence for a funded non-government service provider or an NDIS non-government service provider to engage the disqualified person at a service outlet of the service provider.

Not authorised—indicative only

Not authorised—indicative only



### 99 Application for an eligibility declaration

(1) The purpose of this section is to allow a person who may be a disqualified person to apply to the chief executive for a declaration (***eligibility declaration***) that the person is not a disqualified person and is eligible to sign an application as an engaged person under section 52.

(2) A person may make an application (***eligibility application***) to the chief executive for an eligibility declaration.

(3) The person can not make an eligibility application less than 2 years after making a previous eligibility application that has been refused, unless—

(a) the decision to refuse the previous eligibility application was based on wrong or incomplete information; or

(b) the previous eligibility declaration was refused because the person was a relevant disqualified person and the person is no longer a relevant disqualified person.

(4) The eligibility application must be—

(a) in the approved form; and

(b) signed by the person; and

(c) accompanied by the prescribed fee.

(5) The approved form must include provision for—

(a) identifying information about the person; and

(b) certification by a prescribed person that the prescribed person has sighted the documents, relating to proof of the person's identity, prescribed under a regulation.

### 100 Notice of change of name and contact details in eligibility application

(1) This section applies if, after a person makes an eligibility application, the person's name or contact details, as stated in the application, change before the chief executive issues an eligibility declaration or a notice relating to the application under section 101.

(2) Within 14 days after the change happens, the person must give notice of it, in the approved form, to the chief executive.

Maximum penalty—10 penalty units.

## 101 Chief executive's decision on eligibility application

(1) The chief executive may issue an eligibility declaration to a person only if the person—

(a) has been convicted of a disqualifying offence; and

(b) is not a relevant disqualified person.

(2) The chief executive must decide the eligibility application as if it were a decision about an application for a prescribed notice and, for that purpose, sections 54, 55 and 57 apply to the decision.

(3) For subsection (2), sections 54, 55 and 57 apply as if—

(a) a reference in the sections to a prescribed notice application were a reference to an eligibility application; and

(b) a reference in the sections to issuing a positive notice were a reference to issuing an eligibility declaration; and

(c) a reference in the sections to issuing a negative notice were a reference to refusing to issue an eligibility declaration.

(4) If the eligibility application is granted, the chief executive must issue the eligibility declaration to the person.

(5) If the eligibility application is refused, the chief executive must give the person a notice stating—

(a) the reasons for the refusal; and

(b) if the reasons include investigative information—

(i) that, within 28 days after the person is given the notice, the person may appeal to a Magistrates Court about the police commissioner's decision

Not authorised—indicative only

Not authorised—indicative only



that the information is investigative information; and

(ii) how the person may appeal to the Magistrates Court.

(6) If the chief executive considers the person has not been convicted of a disqualifying offence, the chief executive must give notice to the person stating the following—

(a) the chief executive may only issue an eligibility declaration if the person has been convicted of a disqualifying offence;

(b) the chief executive does not consider the person has been convicted of a disqualifying offence and, for that reason, the chief executive can not issue an eligibility declaration to the person;

(c) if the person is not a disqualified person for another reason, a prescribed notice application may be made for the person;

(d) the eligibility application will not be further dealt with by the chief executive.

(7) There is no review or appeal under this Act in relation to a decision of the chief executive under this section to refuse an eligibility application.

## 102 Eligibility declaration taken to have been issued

The chief executive is taken to have issued an eligibility declaration to a disqualified person if the chief executive—

(a) issues a positive notice to the person; or

(b) cancels a negative notice or negative exemption notice issued to the person.

## 103 Withdrawing eligibility application generally

A person may withdraw the person's eligibility application at any time before the chief executive issues an eligibility

declaration or a notice relating to the application under section 101.

### 104 Deemed withdrawal of eligibility application if identity can not be established

A person is taken to have withdrawn the person's eligibility application if—

(a) the chief executive gives the person a notice—

(i) asking the person to provide, within a reasonable stated time, stated information that the chief executive reasonably needs to establish the person's identity; and

(ii) warning the person that, if the person does not comply with the request, the person's eligibility application may be taken to have been withdrawn; and

(b) the person does not comply with the request within the stated time; and

(c) the chief executive can not establish with certainty the person's identity; and

(d) the chief executive gives the person a notice stating that the person is taken to have withdrawn the eligibility application.

### 105 Deemed withdrawal of eligibility application if particular requests not complied with

A person is taken to have withdrawn the person's eligibility application if—

(a) the chief executive gives the person—

(i) a notice asking the person to provide, within a reasonable stated time, stated information, including by way of a submission, about a stated matter that the chief executive reasonably believes is relevant to the application; or

Not authorised—indicative only

Not authorised—indicative only



(ii) a notice under section 121; or

(iii) a notice asking the person to give the necessary consent for section 123 or 124; or

(iv) a notice asking the person to give the necessary consent for section 128 or 129; and

(b) the notice includes a warning that, if the person does not comply with the notice, the person's eligibility application may be taken to have been withdrawn; and

(c) the person does not comply with the notice; and

(d) the chief executive gives the person a notice stating that the person is taken to have withdrawn the eligibility application.

### 106 Expiry of eligibility declaration

An eligibility declaration issued to a person expires if, after it is issued—

(a) the person—

(i) is charged with a disqualifying offence; or

(ii) is convicted of a serious offence; or

(iii) becomes a relevant disqualified person; or

(iv) is issued with a negative notice or negative exemption notice; or

(b) any positive notice or positive exemption notice held by the person is cancelled.

### 107 Reversal of decision refusing an eligibility declaration

(1) The chief executive may revoke a decision to refuse an eligibility application and issue an eligibility declaration if the chief executive is satisfied—

(a) the decision on the application was based on wrong or incomplete information; and

(b) based on the correct or complete information, the chief executive decides under section 101 that the chief executive may issue the eligibility declaration.

(2) The chief executive may exercise the power under subsection (1) on the chief executive's own initiative or on application by the person whose eligibility application was refused.

## Division 11 Miscellaneous

## Subdivision 1 Reviews and appeals against particular decisions

### 108 Definitions for sdiv 1

In this subdivision—

***issue***—

(a) in relation to a negative notice—includes substitute a negative notice after cancelling a positive notice; and

(b) in relation to a negative exemption notice—includes substitute a negative exemption notice after cancelling a positive exemption notice.

***part 5 reviewable decision***, about a person, means—

(a) a decision of the chief executive as to whether or not there is an exceptional case for the person if, because of the decision, the chief executive—

(i) issued a negative notice or negative exemption notice to the person; or

(ii) refused to cancel a negative notice or negative exemption notice issued to the person; or

(b) a decision of the chief executive that the person has been charged with a disqualifying offence if—

Not authorised—indicative only

Not authorised—indicative only



(i) because of the decision, the positive notice held by the person was suspended under section 86; and

(ii) the person claims he or she has not been charged with the disqualifying offence; and

(iii) the person has applied for a cancellation of the suspension under section 87 and that application has been refused; or

(c) a decision of the chief executive that the person's WWC positive notice has been suspended under the Working with Children Act if—

(i) because of the decision, the positive exemption notice held by the person was suspended under section 88; and

(ii) the person claims his or her WWC positive notice has not been suspended under the Working with Children Act; and

(iii) the person has applied for a cancellation of the suspension under section 89 and that application has been refused; or

(d) a relevant disqualified person decision if—

(i) because of the decision, the chief executive issued a negative notice or negative exemption notice to the person; and

(ii) the person claims he or she is not the person to whom the conviction, reporting obligations or order in relation to which the decision was made relates; and

(iii) the person has applied for a cancellation of the negative notice or negative exemption notice under section 82, and that application has been refused.

***prescribed period***, for a review of a part 5 reviewable decision about a person, means 28 days after the person is given notice of the following—

(a) for a part 5 decision mentioned in definition *part 5 reviewable decision*, paragraph (a)—the decision;

(b) for a part 5 decision mentioned in definition *part 5 reviewable decision*, paragraph (b)—the decision on the application under section 87 about the suspension;

(c) for a part 5 decision mentioned in definition *part 5 reviewable decision*, paragraph (c)—the decision on the application under section 89 about the suspension;

(d) for a part 5 decision mentioned in definition *part 5 reviewable decision*, paragraph (d)—the decision on the application under section 82 about the negative notice or negative exemption notice.

***relevant disqualified person decision*** means—

(a) a decision of the chief executive that a person has been or is convicted of a disqualifying offence for which an imprisonment order was or is imposed;

(b) a decision of the chief executive that a person is subject to—

(i) offender reporting obligations; or

(ii) a final offender prohibition order; or

(iii) a disqualification order; or

(iv) a final sexual offender order.

## 109 Person may apply for review of part 5 reviewable decision

(1) A person who is not a disqualified person may apply, within the prescribed period and as otherwise provided under the QCAT Act, to the tribunal for a review of a part 5 reviewable decision about the person.

(2) If a person applies under subsection (1) to have a part 5 reviewable decision reviewed, the tribunal may not—

(a) stay the operation of the decision; or

(b) grant an injunction in the proceeding for the review.

Not authorised—indicative only

Not authorised—indicative only



(3) To remove any doubt, it is declared that there is no review or appeal under this Act in relation to a decision of the chief executive to issue, or refuse to cancel, a negative notice or negative exemption notice about a person other than because of a part 5 reviewable decision.

*Note—*

There is also no review or appeal under this Act in relation to a decision of the chief executive to refuse an eligibility application. See section 101(7).

(4) This section does not limit section 113.

### 110 Effect of applicant for a review becoming a disqualified person

(1) This section applies if a disqualified person made an application under section 109 before the person became a disqualified person.

(2) The application and any proceeding in relation to the application must be dismissed—

(a) if a proceeding in relation to the application 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.

(3) Any appeal by the person from a decision of the tribunal on the application must be dismissed.

## Subdivision 2 Provisions about investigative information

### 111 Police commissioner may decide that information about a person is investigative information

(1) The police commissioner may decide under this section that information about a person (the ***investigated person***) is ***investigative information*** if—

(a) there is or was evidence of acts or omissions that, at the time of the acts or omissions, constituted a schedule 6 or 7 offence (the ***alleged offence***) by the investigated person against a person (the ***complainant***); and

(b) the police investigated the alleged offence and the investigated person was formally notified about the investigation, including—

(i) by participating in an interview, or by 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 available that was capable of establishing each element of the alleged offence but a decision was made not to charge the investigated person because—

(i) the complainant died before the charge was brought; or

(ii) either or both of the following applied—

(A) the complainant was unwilling to proceed;

(B) an adult who, at the relevant time, was the complainant's parent or guardian decided that, in the interests of the complainant, the matter should not proceed.

(2) Evidence of acts or omissions includes information from a third party if the complainant did not make a formal complaint at or about the time of the investigation.

(3) For this section, a ***schedule 6 or 7 offence*** is—

(a) an offence against a provision of an Act mentioned in schedule 6 or 7, column 1, subject to any qualification relating to the provision mentioned opposite in column 3; or

(b) an offence of counselling or procuring the commission of an offence of a kind mentioned in paragraph (a); or

Not authorised—indicative only

Not authorised—indicative only



(c) an offence of attempting, or of conspiring, to commit an offence of a kind mentioned in paragraph (a); or

(d) an offence that has, as an element, intention to commit an offence of a kind mentioned in paragraph (a); or

(e) an offence that, at the time it was committed, was an offence of a kind mentioned in paragraph (a); or

(f) an offence under a law of another jurisdiction that, if it had been committed in Queensland, would have constituted an offence mentioned in paragraphs (a) to (e).

*Note—*

Column 2 in schedules 6 and 7 is included for information purposes only and states a section heading for the provision mentioned opposite in column 1.

(4) For subsection (3), it is immaterial if a provision mentioned in schedule 6 or 7, column 1, for an Act has been amended from time to time or that the provision was previously numbered with a different number.

## 112 Delegation by police commissioner of power under s 111 restricted

Despite the *Police Service Administration Act 1990*, section 4.10, the police commissioner may not delegate the police commissioner's powers under section 111 other than to a police officer of at least the rank of superintendent.

## 113 Decision by police commissioner that information is investigative information

(1) This section applies if—

(a) the police commissioner decides that information about a person is investigative information; and

(b) the investigative information is given, under section 117 or 130, to the chief executive; and

(c) after the investigative information is given to the chief executive, any of the following happens (***relevant event***)—

(i) a negative notice or negative exemption notice is issued to the person;

(ii) the person's positive notice is cancelled and a negative notice or negative exemption notice is substituted for it;

(iii) the person's positive exemption notice is cancelled and a negative exemption notice is substituted for it;

(iv) the person's eligibility application is refused.

(2) The person may appeal to a Magistrates Court about the decision that information, given to the chief executive as investigative information, is investigative information.

(3) However, an appeal under subsection (2) may only be made within 28 days after the person is given notice of the relevant event.

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

## 114 Court to decide matters afresh

(1) A Magistrates Court hearing an appeal under section 113 is to decide afresh whether information given to the chief executive as investigative information about a person is investigative information.

(2) A person who is the relevant complainant under section 111 must not be asked or called on by the investigated person under that section to give evidence in person before the court.

Not authorised—indicative only

Not authorised—indicative only



(3) Subsection (2) does not prevent documentary evidence being tendered and received in evidence by the court.

(4) After hearing an appeal under section 113, the court may confirm or set aside the decision and the clerk of the court is to give the appellant notice of the decision.

(5) For subsection (4), the court must have regard to the matters the police commissioner was required to have regard to under this Act when the police commissioner made the decision.

### 115 Consequence of decision on appeal

(1) This section applies if a Magistrates Court hears and decides an appeal against the police commissioner's decision under section 111 that information given to the chief executive about a person is investigative information.

(2) If the court sets aside the decision appealed against, the person may—

(a) if the person was issued a negative notice or negative exemption notice on the basis of the information—apply under section 82 to cancel the negative notice or negative exemption notice issued to the person on the grounds that the decision to issue the notice was based on wrong information; or

(b) if the person's eligibility application was refused on the basis of the information—apply under section 107 for the chief executive to revoke the refusal on the grounds the refusal was based on wrong information.

(3) If the court confirms the decision appealed against—

(a) the person who appealed the decision may apply, within 28 days after receiving the notice under section 114(4) and as otherwise provided under the QCAT Act, to the tribunal for a review of a decision of the chief executive if—

(i) the person is not a disqualified person; and

(ii) the decision is a part 5 reviewable decision as defined under section 108; and

(b) the notice under section 114(4) must state how, and the period within which, the person may apply for the review.

(4) If a person applies under subsection (3)(a) to have a decision reviewed, the tribunal may not—

(a) stay the operation of the decision; or

(b) grant an injunction in the proceeding for the review.

(5) In this section—

***issue***—

(a) in relation to a negative notice—includes substitute a negative notice after cancelling a positive notice; and

(b) in relation to a negative exemption notice—includes substitute a negative exemption notice after cancelling a positive exemption notice.

## Subdivision 3 Obtaining police information or information related to police information about a person

### 116 Persons to whom ss 117 and 118 applies

Sections 117 and 118 apply in relation to the following persons—

(a) a person who has a current positive notice or current positive exemption notice;

(b) a person about whom the chief executive has received a prescribed notice application or exemption notice application, if the application has not been withdrawn;

(c) a person who has applied to the chief executive to cancel a negative notice or negative exemption notice about the person;



Not authorised—indicative only

Not authorised—indicative only



(d) a person who has applied, under section 87, to the chief executive to cancel the person's positive notice that is suspended and issue a further positive notice to the person;

(e) a person who has applied, under section 89, to the chief executive to cancel the person's positive exemption notice that is suspended and issue a further positive exemption notice or a positive notice to the person;

(f) a person who has made an eligibility application if—

(i) the chief executive has not given the person written notice under section 101; and

(ii) the application has not been withdrawn;

(g) a person who has an eligibility declaration, if the eligibility declaration has not expired;

(h) a person who has a negative notice or negative exemption notice if—

(i) the person has made an application under section 109 or 115(3) that has not been decided; or

(ii) an appeal to an entity has been made in relation to an application under section 109 or 115(3), and the appeal has not been decided.

## 117 Chief executive may obtain information from police commissioner

(1) This section applies to a person mentioned in section 116.

(2) The chief executive may ask the police commissioner for information, or for access to the police commissioner's records, to enable the chief executive to learn what police information exists, if any, in relation to the person.

(3) For subsection (2), the chief executive's request may include the following information—

(a) the person's name and any other name that the chief executive believes the person may use or may have used;

(b) the person's gender and date and place of birth;

(c) the person's address;

(d) if the person is currently the holder of a prescribed notice—any number or date relevant to the prescribed notice or a positive notice card;

(e) if the person is currently the holder of an exemption notice—any number or date relevant to the exemption notice;

(f) whether or not the person is engaged, or to be engaged, as a volunteer;

(g) the basis on which the chief executive may request information about the person, including, for example, by referencing the relevant provision of subsection (1).

(4) If there is police information about the person, the chief executive may ask the police commissioner for a brief description of the circumstances of a conviction, charge or investigative information mentioned in the police information.

(5) The police commissioner must comply with a request under this section unless the police commissioner is, under subsection (11), told not to provide the information.

(6) However, the duty imposed on the police commissioner to comply with a request applies only to information in the police commissioner's possession or to which the police commissioner has access.

(7) If the police commissioner gives the chief executive information under this section about a person who is or has been a relevant disqualified person, the information must include the following information about the person—

(a) that the person is or has been a relevant disqualified person;

(b) if the person is or has been subject to a disqualification order—the duration and details of the disqualification order;

Not authorised—indicative only

Not authorised—indicative only



(c) if the person is or has been subject to an offender prohibition order—

(i) a brief description of the conduct that gave rise to the order; and

(ii) the duration and details of the order, including whether it is or was a temporary offender prohibition order or a final offender prohibition order.

(8) If the police commissioner gives the chief executive information under this section about a person who is or has been the subject of an application for a disqualification order or named as the respondent for an application for an offender prohibition order, and the order was not made, the information must include the following information about the person—

(a) that the person is or has been the subject of an application for a disqualification order or named as the respondent for an application for an offender prohibition order and the order was not made;

(b) the reasons why the application was made;

(c) the reasons why the order was not made;

(d) if the application was for an offender prohibition order and the magistrate or court hearing the application decided not to make an offender prohibition disqualification order for the person—the reasons why the offender prohibition disqualification order was not made.

(9) The police commissioner need not disclose investigative information about the person to the chief executive under this section if the police commissioner is reasonably satisfied 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) endanger a person's life or physical safety;

(d) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law.

(10) If the police commissioner gives investigative information about the person to the chief executive under this section, the police commissioner must give notice, in the approved form, to the person that—

(a) the police commissioner has decided that information about the person is investigative information; and

(b) investigative information has been given to the chief executive.

(11) If the chief executive decides that information requested under subsection (2) about the person is no longer required, the chief executive must tell the police commissioner not to provide the information.

(12) Information given to the police commissioner under this section must not be accessed or disclosed for any purpose except for a purpose under this part or any other purpose relevant to law enforcement.

(13) Information given to the police commissioner under this section must not be used for any purpose except for a purpose under this part.

(14) However, subsections (12) and (13) do not apply to information the police commissioner obtained before the chief executive gave the information to the police commissioner under this section.

(15) To remove any doubt, it is declared that, despite the *Youth Justice Act 1992*, part 9, the police commissioner may disclose information to which that part applies to the chief executive for complying with a request under subsection (2) or (4).

Not authorised—indicative only

Not authorised—indicative only



## 118 Obtaining information from director of public prosecutions

(1) This section applies to a person mentioned in section 116.

(2) If the chief executive becomes aware that the 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—

(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 why the charge was not proceeded with.

(3) The chief executive's request may include the following information—

(a) the person's name and any other name the chief executive believes the person may use or have used;

(b) the person's gender and date and place of birth.

(4) The director of public prosecutions may comply with a request under subsection (2) if the director reasonably believes the statement, copy or summary may help the chief executive in making a screening decision about the person.

(5) 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 person about whom the request is made.

*Example of evidential material for subsection (5)—*

a report by an expert about a person other than the person about whom the request is made

(6) The director of public prosecutions must not give information, or a document containing information, to the chief executive under this section if the director is reasonably satisfied 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) endanger a person's life or physical safety;

(d) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law;

(e) prejudice a prosecution or another matter before a court.

(7) The giving of information, or a document containing information, under this section by the director of public prosecutions is authorised 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.

(8) Without limiting subsection (7), this section applies despite the *Director of Public Prosecutions Act 1984*, section 24A.

(9) 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;

Not authorised—indicative only

Not authorised—indicative only



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

## 119 Obtaining information from chief executive (corrective services)

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

(2) The notice must state the following—

(a) the person's name;

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

(c) any other information the chief executive (corrective services) reasonably considers is necessary for the chief executive to perform a function or exercise a power under this part.

(3) The chief executive (corrective services) and the chief executive may enter into a written arrangement by which notices are given under subsection (1).

(4) Without limiting subsection (3), the arrangement may provide for giving the notices electronically.

(5) However, if notices under subsection (1) are to be given electronically and, under an Act, there is a limitation on who may access the information mentioned in the notices or the purposes for which that information may be used, the arrangement must provide for the limitation.

(6) The disclosure of information by the chief executive (corrective services) under this section is authorised 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.

(7) In this section—

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

## Subdivision 4 Obtaining report about person's mental health

### 120 Application of sdiv 4

(1) This subdivision applies if—

(a) the chief executive is deciding whether or not there is an exceptional case for a person who has been—

(i) charged with or convicted of a serious offence; or

(ii) charged with or convicted of an offence (other than a serious offence) relating to or involving a person with a disability; and

(b) the chief executive reasonably believes it is necessary to consider a report about the person's mental health prepared under this section for deciding whether or not there is an exceptional case for the person.

(2) For subsection (1)(b), the chief executive may form the reasonable belief only if—

(a) in relation to the charge or conviction mentioned in subsection (1)(a)—

(i) the matter of the person's mental state relating to the offence has been or was 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 person to undertake treatment of a psychiatric nature; or

(iii) a court has been given a report about the person's mental health prepared by a registered health practitioner; or

Not authorised—indicative only

Not authorised—indicative only



(b) the chief executive has, under this part, been given a report about the person's mental health prepared by a registered health practitioner.

### 121 Chief executive may request person to undergo examination by registered health practitioner etc.

(1) The chief executive may, by notice, ask the person—

(a) to undergo an examination by a registered health practitioner nominated by the chief executive, and any further examination required by the health practitioner, so that a report about the person's mental health can be given to the chief executive under this subdivision; and

(b) to give the chief executive consent to obtain a report about the person's mental health from the registered health practitioner who conducts the examination.

(2) The notice given under subsection (1) 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 conduct the examination;

(c) when and where the examination is to be conducted;

(d) that the registered health practitioner may require the person to undergo further examinations so that a report about the person's mental health can be prepared;

(e) that, under section 55(2)(c), the chief executive must have regard to the report about the person's mental health prepared under this subdivision in deciding whether or not there is an exceptional case for the person;

(f) that the person may withdraw the person's consent to employment screening under this part or, if the person is an applicant for an eligibility declaration, the person's eligibility application;

(g) that, if the person fails to undergo the examination, and any further examination required by the registered health practitioner, or to give the consent mentioned in subsection (1)(b), either—

(i) the person's consent to screening under this part may be withdrawn under section 132(4), or the person's eligibility application may be withdrawn under section 105, by the chief executive giving notice of the withdrawal under that section; or

(ii) the chief executive may decide whether or not there is an exceptional case for the person in the absence of a report about the person's mental health.

(3) If the person does not comply with the chief executive's request under subsection (1), the chief executive may decide whether or not there is an exceptional case for the person in the absence of a report about the person's mental health.

*Note—*

See also section 105 (in relation to the withdrawal of an eligibility application) and section 132(4) (in relation to the withdrawal of a prescribed notice application or exemption notice application).

## 122 Nominating registered health practitioner to conduct examination

The chief executive may nominate a registered health practitioner to conduct an examination under this subdivision only if the chief executive is reasonably satisfied the health practitioner has the necessary qualifications, expertise or experience to conduct the examination.

## 123 Registered health practitioner obtaining information from Mental Health Court

(1) This section applies if—

(a) the person (***charged person***) has been charged with, but not convicted of—



Not authorised—indicative only

Not authorised—indicative only



(i) a serious offence; or

(ii) an offence (other than a serious offence) relating to or involving a person with a disability; and

(b) the matter of the charged person's mental state relating to the offence has been referred to the Mental Health Court; and

(c) the chief executive is reasonably satisfied that it may be necessary or desirable for a registered health practitioner conducting an examination of the charged person under this subdivision to have regard to information mentioned in subsection (2) for preparing a report about the person's mental health.

(2) The chief executive may, by notice, ask the charged person to give the Mental Health Court consent to give the registered health practitioner the following information—

(a) the court's decision in relation to the reference;

(b) the court's reasons for its decision;

(c) a copy or written summary of any expert's report about the person received in evidence by the court, including, for example, a medical report, psychiatrist's report or expert report that accompanied the reference;

(d) transcripts of any hearing conducted for the reference that the court has directed may be given to a party to the hearing or another person.

(3) The notice must state the following—

(a) the reasons for the chief executive's request;

(b) that, if the charged person fails to give the consent, the person's consent to screening under this part may be withdrawn by the chief executive giving the person notice of the withdrawal.

(4) If the charged person gives the consent, the Mental Health Court may give the information mentioned in subsection (2) to the chief executive for giving it to the registered health practitioner.

(5) However, information or documents given under this section must not include—

(a) any record of material given to the court under the *Mental Health Act 2016*, section 163, or of how the material was taken into account; or

(b) the Mental Health Court's reasons 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 charged person; or

(d) information about a person other than the charged person the Mental Health Court reasonably considers is not relevant to the registered health practitioner preparing a report about the charged person's mental health.

(6) Also, the Mental Health Court must not give information, or a document containing information, under this section if the court is reasonably satisfied that giving the information may do any of the following—

(a) prejudice an investigation or a matter before the Mental Health Court;

(b) prejudice the investigation of a contravention or possible contravention of the law in a particular case;

(c) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained;

(d) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law;

(e) prejudice a prosecution or another matter before another court;

(f) endanger a person's life or physical safety;

(g) adversely affect a person's mental health.

Not authorised—indicative only

Not authorised—indicative only



(7) If the chief executive is given information under this section to give to the registered health practitioner, the chief executive—

(a) must give the information to the registered health practitioner as soon as possible; and

(b) must not use the information for any purpose other than giving it to the registered health practitioner.

(8) The giving of information under this section by the Mental Health Court is authorised despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.

*Note—*

See sections 125 and 227 for restrictions on disclosing or giving access to information or documents obtained under this section.

(9) Without limiting subsection (8)—

(a) information may be given under this section even if the information can not be disclosed to the charged person under a confidentiality order under the *Mental Health Act 2016*, section 696; and

(b) this section applies in relation to an expert's report despite the *Mental Health Act 2016*, section 160.

(10) A decision of the Mental Health Court not to give an expert report about the charged person under this section does not prevent the chief executive applying under the *Mental Health Act 2016*, section 160(2) for leave of the court to give the report to the registered health practitioner.

## 124 Registered health practitioner obtaining information from Mental Health Review Tribunal

(1) This section applies if—

(a) the person (***charged person***) has been charged with, but not convicted of—

(i) a serious offence; or

(ii) an offence (other than a serious offence) relating to or involving a person with a disability; and

(b) the Mental Health Review Tribunal has 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

(c) the chief executive is reasonably satisfied that it may be necessary or desirable for a registered health practitioner conducting an examination of the charged person under this subdivision to have regard to information mentioned in subsection (2) for preparing a report about the person's mental health.

(2) The chief executive may, by notice, ask the charged person to give the Mental Health Review Tribunal consent to give the registered health practitioner the following information—

(a) the tribunal's decision on the review;

(b) the tribunal's reasons for the decision;

(c) a copy or written summary of any expert's report about the charged person received by the tribunal in the proceeding for the review, including, for example, a report about an examination of the person by a psychiatrist or other person mentioned in the *Mental Health Act 2016*, section 454;

(d) 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.

(3) The notice must state the following—

(a) the reasons for the chief executive's request;

(b) that, if the charged person fails to give the consent, the person's consent to screening under this part may be withdrawn by the chief executive giving the person notice of the withdrawal.

(4) If the person gives the consent, the Mental Health Review Tribunal may give the information mentioned in subsection (2) to the chief executive for giving it to the registered health practitioner.

Not authorised—indicative only

Not authorised—indicative only



(5) However, information or documents given under this section must not include—

(a) any record of material given to the Mental Health Review Tribunal under the *Mental Health Act 2016*, section 155 or 742, or of how the material was taken into account; or

(b) the Mental Health Review Tribunal's reasons 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 charged person; or

(d) information about a person other than the charged person the Mental Health Review Tribunal reasonably considers is not relevant to the registered health practitioner preparing a report about the charged person's mental health.

(6) Also, the Mental Health Review Tribunal must not give information, or a document containing information, under this section if the tribunal is reasonably satisfied that giving the information may do any of the following—

(a) prejudice a matter before the tribunal;

(b) prejudice the investigation of a contravention or possible contravention of the law in a particular case;

(c) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained;

(d) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law;

(e) prejudice a prosecution or another matter before a court;

(f) endanger a person's life or physical safety;

(g) adversely affect a person's mental health.

(7) If the chief executive is given information under this section to give to the registered health practitioner, the chief executive—

(a) must give the information to the registered health practitioner as soon as possible; and

(b) must not use the information for any purpose other than giving it to the registered health practitioner.

(8) The giving of information under this section by the Mental Health Review Tribunal is authorised despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.

*Note—*

See sections 125 and 227 for restrictions on disclosing or giving access to information or documents obtained under this section.

(9) Without limiting subsection (8), information may be given under this section even if the information can not be disclosed to the charged person under a confidentiality order under the *Mental Health Act 2016*, section 722.

## 125 Use of information obtained from Mental Health Court or Mental Health Review Tribunal

(1) This section applies if the chief executive gives a registered health practitioner information or a document about a person given to the commissioner—

(a) by the Mental Health Court under section 123; or

(b) by the Mental Health Review Tribunal under section 124.

(2) The registered health practitioner must not—

(a) make a record of the information or information in the document; or

(b) disclose the information or information in the document to anyone; or

(c) give anyone access to the document; or

Not authorised—indicative only

Not authorised—indicative only



(d) include any details of the information, or information in the document, in the report about the person's mental health prepared under this subdivision.

Maximum penalty—100 penalty units.

## 126 Chief executive may obtain report about person's mental health from registered health practitioner

(1) This section applies if a person gives the chief executive consent as mentioned in section 121(1)(b) in relation to an examination of the person conducted under this subdivision.

(2) The chief executive may ask the registered health practitioner who conducts the examination to give a report about the person's mental health to the chief executive, and the registered health practitioner may give the report to the chief executive.

(3) The giving of a report under this section by a registered health practitioner is authorised despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the examination.

*Note—*

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

## 127 Chief executive to bear medical costs

(1) The chief executive must bear the medical costs for obtaining a report from a registered health practitioner under this subdivision.

(2) In this section—

***medical costs***, for obtaining a report from a registered health practitioner under this subdivision, means amounts charged by the health practitioner to—

(a) conduct an examination for preparing the report; or

(b) prepare the report.

## Subdivision 5 Obtaining other information about person's mental health

### 128 Chief executive may obtain particular information from Mental Health Court

(1) This section applies if—

(a) the chief executive is deciding whether or not there is an exceptional case for a person (***charged person***) who has been charged with, but not convicted of—

(i) a serious offence; or

(ii) an offence (other than a serious offence) relating to or involving a person with a disability; and

(b) the matter of the charged person's mental state relating to the offence has been referred to the Mental Health Court; and

(c) the chief executive has the charged person's consent to obtain information about the person from the Mental Health Court under this section.

(2) The chief executive may ask the Mental Health Court for the following (***requested information***)—

(a) the court's decision in relation to the reference;

(b) the court's reasons for its decision;

(c) a copy or written summary of any expert's report about the charged person received in evidence by the court, including, for example, a medical report, psychiatrist's report or expert report that accompanied the reference;

(d) transcripts of any hearing conducted for the reference that the court has directed may be given to a party to the hearing or another person.

(3) The Mental Health Court may comply with the request if the court reasonably considers the requested information may help the chief executive in deciding whether or not there is an exceptional case for the charged person.

Not authorised—indicative only

Not authorised—indicative only



(4) However, the information or documents given to the chief executive for complying with the request must not include—

(a) any record of material given to the court under the *Mental Health Act 2016*, section 163, or of how the material was taken into account; or

(b) the Mental Health Court's reasons for taking material mentioned in paragraph (a) into account or not taking the material into account; or

(c) information that can not be disclosed to the charged person under a confidentiality order under the *Mental Health Act 2016*, section 696; or

(d) the content of an expert report about a person other than the charged person; or

(e) information about a person other than the charged person that the Mental Health Court reasonably considers is not relevant to the chief executive deciding whether or not there is an exceptional case for the charged person.

(5) Also, the Mental Health Court must not give information, or a document containing information, to the chief executive under this section if the court is reasonably satisfied that giving the information may do any of the following—

(a) prejudice an investigation or a matter before the Mental Health Court;

(b) prejudice the investigation of a contravention or possible contravention of the law in a particular case;

(c) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained;

(d) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law;

(e) prejudice a prosecution or another matter before another court;

(f) endanger a person's life or physical safety;

(g) adversely affect a person's mental health.

(6) The giving of information under this section by the Mental Health Court is authorised 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.

(7) Without limiting subsection (6), this section applies in relation to an expert's report despite the *Mental Health Act 2016*, section 160.

(8) A decision of the Mental Health Court not to give the chief executive an expert report about the charged person under this section does not prevent the chief executive applying under the *Mental Health Act 2016*, section 160(2) for leave of the court to give the report to the chief executive.

## 129 Chief executive may obtain particular information from Mental Health Review Tribunal

(1) This section applies if—

(a) the chief executive is deciding whether or not there is an exceptional case for a person (***charged person***) who has been charged with, but not convicted of—

(i) a serious offence; or

(ii) an offence (other than a serious offence) relating to or involving a person with a disability; and

(b) the Mental Health Review Tribunal has 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

(c) the chief executive has the charged person's consent to obtain information about the person from the Mental Health Review Tribunal under this section.

Not authorised—indicative only

Not authorised—indicative only



(2) The chief executive may ask the Mental Health Review Tribunal for the following (***requested information***)—

(a) the tribunal's decision on the review;

(b) the tribunal's reasons for the decision;

(c) a copy or written summary of any expert's report about the charged person received by the tribunal in the proceeding for the review, including, for example, a report about an examination of the person by a psychiatrist or other person mentioned in the *Mental Health Act 2016*, section 454;

(d) 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.

(3) The Mental Health Review Tribunal may comply with the request if the tribunal reasonably considers the requested information may help the chief executive in deciding whether or not there is an exceptional case for the charged person.

(4) However, the information or documents given to the chief executive for complying with the request must not include—

(a) any record of material given to the Mental Health Review Tribunal under the *Mental Health Act 2016*, section 155 or 742, or of how the material was taken into account; or

(b) the tribunal's reasons for taking material mentioned in paragraph (a) into account or not taking the material into account; or

(c) information that can not be disclosed to the charged person under a confidentiality order under the *Mental Health Act 2016*, section 722; or

(d) the content of an expert report about a person other than the charged person; or

(e) information about a person other than the charged person that the Mental Health Review Tribunal reasonably considers is not relevant to the chief

executive deciding whether or not there is an exceptional case for the charged person.

(5) Also, the Mental Health Review Tribunal must not give information, or a document containing information, to the chief executive under this section if the tribunal is reasonably satisfied that giving the information may do any of the following—

(a) prejudice a matter before the tribunal;

(b) prejudice the investigation of a contravention or possible contravention of the law in a particular case;

(c) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained;

(d) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law;

(e) prejudice a prosecution or another matter before a court;

(f) endanger a person's life or physical safety;

(g) adversely affect a person's mental health.

(6) The giving of information under this section by the Mental Health Review Tribunal is authorised 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.

Not authorised—indicative only

Not authorised—indicative only



## Subdivision 6 Obtaining information about changes in police information

### 130 Notice of change in police information about a person

(1) This section applies if, for a person in relation to whom any of the following happens (the ***relevant event***), the police commissioner reasonably suspects the person is a person mentioned in section 116(a) to (h)—

(a) the person's criminal history changes;

(b) the police commissioner decides, under section 111, that information about the person is investigative information (regardless of when the act or omission relevant to the investigative information happened or is alleged to have happened);

(c) the person becomes, or is no longer, a relevant disqualified person;

(d) the person is named as the respondent for an application for an offender prohibition order.

(2) For a relevant event mentioned in subsection (1)(a) or (b), the police commissioner may notify the chief executive of the following—

(a) that the relevant event has happened;

(b) if subsection (1)(a) applies because the person has been charged with or convicted of an offence—

(i) the offence the person has been charged with or convicted of; and

(ii) the particulars of the offence; and

(iii) the date of the charge or conviction;

(c) if subsection (1)(b) applies—a brief description of the investigative information.

(3) For a relevant event mentioned in subsection (1)(c) or (d), the police commissioner must notify the chief executive of the following—

(a) that the relevant event has happened;

(b) if subsection (1)(c) applies because the person has become a relevant disqualified person—the information mentioned in section 117(7);

(c) if subsection (1)(d) applies—the information mentioned in section 117(8) in relation to the offender prohibition order.

(4) A notice given under subsection (2) or (3) must state the following—

(a) the person's name and any other name that the police commissioner believes the person may use or may have used;

(b) the person's gender and date and place of birth.

(5) The chief executive may confirm the police commissioner's suspicions under subsection (1).

(6) The duty imposed on the police commissioner to provide information to the chief executive under this section applies only to information in the police commissioner's possession or to which the police commissioner has access.

(7) If the person is a person to whom section 75(1) or 77(1) applies, the chief executive, on receiving notice under subsection (2) or (3), may write to the person to inform the person of the person's obligations under sections 75(2) and 77(2).

(8) If the police commissioner gives investigative information to the chief executive under this section, the police commissioner must give notice, in the approved form, to the person that investigative information has been given to the chief executive.

(9) For a person who does not have a criminal history, there is taken to be a change in the person's criminal history if the person acquires a criminal history.

(10) To remove any doubt, it is declared that, despite the *Youth Justice Act 1992*, part 9, the police commissioner may

Not authorised—indicative only

Not authorised—indicative only



disclose information to which that part applies to the chief executive under subsection (2) or (3).

## Subdivision 7 Other miscellaneous provisions

### 131 Chief executive to give notice to funded non-government service provider or NDIS non-government service provider about making screening decision about engaged person

(1) This section applies if—

(a) the police commissioner, an engaged person or another person gives notice to the chief executive that police information about the engaged person has changed; or

(b) the chief executive otherwise becomes aware that police information about the engaged person has changed.

(2) However, this section does not apply to a change in police information if—

(a) the change is that the engaged person—

(i) has been charged with or convicted of a disqualifying offence; or

(ii) has become a relevant disqualified person; or

(b) both of the following apply—

(i) the change is that the engaged person has been named as the respondent in an application for an offender prohibition order and the proceeding for the offender prohibition order has not ended;

(ii) an application for a prescribed notice or exemption notice about the engaged person has been made under this part and has not been decided.

(3) If the chief executive considers the change in police information may be relevant to the engagement of the engaged person by a funded non-government service provider or an NDIS non-government service provider, the chief executive

must give notice to the service provider stating the following—

(a) the engaged person's name and identifying details;

(b) the chief executive has received police information about the engaged person that the chief executive considers relevant to the engagement of the engaged person by the service provider;

(c) the chief executive is making a screening decision about the engaged person;

(d) a reminder of the risk management requirements under section 49;

(e) a funded non-government service provider or an NDIS non-government service provider may not terminate the engagement of the engaged person solely or mainly because the service provider is given a notice under this section;

(f) if the change in police information is a change in criminal history, whether it is a charge or conviction and whether or not the charge or conviction is for a serious offence;

(g) if the change in police information is a conviction for a serious offence—

(i) that under section 70, it is an offence for the service provider to engage, or continue to engage, the engaged person at a service outlet of the service provider; and

(ii) the effect of section 74.

(4) The funded non-government service provider or NDIS non-government service provider must not terminate the engaged person's engagement or continued engagement solely or mainly because the service provider is given the notice.

*(5) This section does not apply to a sole trader.*

(6) In this section—

Not authorised—indicative only

Not authorised—indicative only



***engaged person*** means—

(a) the holder of a positive notice, other than a positive notice that is suspended under section 86; or

(b) the holder of a positive exemption notice, other than a positive exemption notice that is suspended under section 88; or

(c) a person about whom a prescribed notice application or exemption notice application is made if the application has not been decided or withdrawn.

## 132 Withdrawal of engaged person's consent to screening

(1) This section applies if the chief executive—

(a) has received an application from a funded non-government service provider or an NDIS non-government service provider for a prescribed notice or exemption notice about a person (the ***engaged person***); and

(b) has not yet issued the prescribed notice or exemption notice.

(2) The engaged person may give a notice to the chief executive withdrawing the engaged person's consent to screening under this part.

(3) The engaged person is taken to have withdrawn his or her consent to screening under this part if—

(a) the chief executive gives the engaged person a notice—

(i) asking the engaged person to provide, within a reasonable stated time, stated information that the chief executive reasonably needs to establish the engaged person's identity; and

(ii) warning the engaged person that, if the engaged person does not comply with the request, the chief executive may give the engaged person a notice of deemed withdrawal; and

(b) the engaged person does not comply with the request within the stated time; and

(c) the chief executive can not establish with certainty the engaged person's identity; and

(d) the chief executive gives the engaged person and the funded non-government service provider or NDIS non-government service provider a notice of deemed withdrawal relating to the engaged person.

(4) Also, the engaged person is taken to have withdrawn his or her consent to screening under this part if—

(a) the chief executive gives the engaged person—

(i) a notice asking the person to provide, within a reasonable stated time, stated information, including by way of a submission, about a stated matter that the chief executive reasonably believes is relevant to the application; or

(ii) a notice under section 121; or

(iii) a notice asking the person to give the necessary consent for section 123 or 124; or

(iv) a notice asking the person to give the necessary consent for section 128 or 129; and

(b) the notice includes a warning that, if the engaged person does not comply with the notice, the chief executive may give the person a notice of deemed withdrawal; and

(c) the engaged person does not comply with the notice; and

(d) the chief executive gives the engaged person and the funded non-government service provider or NDIS non-government service provider a notice of deemed withdrawal.

(5) Further, the engaged person is taken to have withdrawn his or her consent to screening under this part if—

(a) the funded non-government service provider or NDIS non-government service provider has given the chief

Not authorised—indicative only

Not authorised—indicative only



executive notice that the person is no longer engaged by the service provider or the chief executive can not obtain information, in writing, from the service provider that the person is engaged by the service provider; and

(b) the engaged person has not given notice to the chief executive about the end of the engagement as required under section 53; and

(c) the chief executive gives the engaged person and the service provider a notice of deemed withdrawal relating to the engaged person.

(6) In addition, the engaged person is taken to have withdrawn his or her consent to screening under this part if—

(a) the engaged person gives the chief executive, or the chief executive gives the engaged person, notice that the engaged person is charged with a disqualifying offence, whether the charge was made before, when or after the application was made; and

(b) the chief executive gives the engaged person and the funded non-government service provider or NDIS non-government service provider a notice of deemed withdrawal under this subsection relating to the engaged person.

(7) Additionally for an exemption notice application, the engaged person is taken to have withdrawn his or her consent to screening under this part if—

(a) the engaged person gives the chief executive, or the chief executive gives the engaged person, notice that the engaged person's WWC positive notice is suspended under the Working with Children Act; and

(b) the chief executive gives the engaged person and the funded non-government service provider or NDIS non-government service provider a notice of deemed withdrawal.

(8) If the engaged person withdraws his or her consent to screening under this part before the chief executive issues a

prescribed notice or exemption notice about the engaged person—

(a) the chief executive must not issue the prescribed notice or exemption notice; and

*(b) if the engaged person withdraws consent by giving a notice to the chief executive and the engaged person is not a sole trader, the chief executive must give notice of the withdrawal to the funded non-government service provider or NDIS non-government service provider.*

(9) For subsection (5), a funded non-government service provider or an NDIS non-government service provider may give notice to the chief executive that a stated person—

(a) is engaged, or continues to be engaged, by the service provider; or

(b) is no longer engaged by the service provider.

*(10) If the engaged person is an NDIS non-government service provider who is a sole trader, a notice of deemed withdrawal given to the person under subsection (3)(d), (4)(d), (5)(c), (6)(b) or (7)(b) is taken to be given also to the NDIS non-government service provider.*

(11) In this section—

***notice of deemed withdrawal***, relating to the engaged person, means a notice stating that the engaged person is taken to have withdrawn his or her consent to screening under this part.

## 133 Compliance with requirement to end, or not start, a person's engagement

*(1) This section applies if it would be a contravention of a provision of this part for a funded non-government service provider or an NDIS non-government service provider to engage, or continue to engage, a person (the **engaged person**) at a service outlet of the service provider.*

(2) The funded non-government service provider or NDIS non-government service provider must comply with the



Not authorised—indicative only

Not authorised—indicative only



provision despite another Act or law or any industrial award or agreement.

(3) The funded non-government service provider or NDIS non-government service provider does not incur any liability because, in compliance with the provision, the service provider does not engage, or continue to engage, the engaged person at a service outlet of the service provider.

(4) A person whose positive notice is suspended under section 86, or whose positive exemption notice is suspended under section 88, may be engaged by the funded non-government service provider or NDIS non-government service provider other than at a service outlet of the service provider until the suspension ends.

### 134 Guidelines for dealing with information

(1) The chief executive must make guidelines, consistent with this Act, for dealing with information obtained by the chief executive under this part.

(2) The purpose of the guidelines is to ensure—

(a) natural justice is afforded to the persons about whom the information is obtained; and

(b) only relevant information is used in making screening decisions; and

(c) screening decisions, based on the information, are made consistently.

(3) The chief executive must give a copy of the guidelines to a person on request.

### 135 Use of information obtained under this part about a person

The chief executive must not use information obtained under this part about a person, other than for this part.

Not authorised—indicative only

### 136 Chief executive must give police commissioner a person's current address

(1) The chief executive must, on written application of the police commissioner, give the police commissioner information about an address for a person if—

(a) the chief executive has an address for the person that is different to the address stated by the police commissioner in the application; and

(b) the police commissioner is, under this part, required to give a notice to the person.

(2) Information given to the police commissioner under this section must not be used, disclosed or accessed for any purpose except to give a notice under this part to the person.

### 137 Disqualification order

(1) This section applies if a person is convicted of—

(a) a disqualifying offence and the court that convicts the person does not impose an imprisonment order for the offence; or

(b) another serious offence committed in relation to, or otherwise involving, a person with a disability.

(2) The court may, on application by the prosecutor or on its own initiative, make an order (***disqualification order***) in relation to the person stating that—

(a) the person may not hold a positive notice or positive exemption notice, or apply for a prescribed notice or exemption notice, for a stated period; or

(b) the person may never hold a positive notice or positive exemption notice or apply for a prescribed notice or exemption notice.

(3) However, the court may make the disqualification order only if the court considers it would not be in the interests of people with a disability for the chief executive to issue a positive notice or positive exemption notice to the person.

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(4) A person against whom the disqualification order is made may appeal against the court's decision under subsection (2) in the same way the person may appeal against the conviction.

(5) In this section—

***Crown prosecutor*** includes—

(a) the Attorney-General; and

(b) the director of public prosecutions; and

(c) another person, other than a police officer, appearing for the State.

***prosecutor*** means—

(a) in the context of a proceeding before, or an application to, a Magistrates Court—a police officer or Crown prosecutor; or

(b) otherwise—a Crown prosecutor.

## 138 Register of persons engaged by particular entities or for whom particular applications are made

(1) The chief executive must keep a register with up-to-date information for the following—

(a) each person engaged by the department at a service outlet of the department;

(b) each person for whom a prescribed notice application or exemption notice application is made.

(2) The register may include the matters decided by the chief executive but must include the following—

(a) the person's name;

(b) whether the person is engaged by the department or by a funded non-government service provider or an NDIS non-government service provider and, if the person is engaged by a funded non-government service provider, the service provider's name;

*(c) whether the person is a sole trader;*

(d) whether the person has been issued a positive notice, negative notice, positive exemption notice or negative exemption notice;

(e) the date of issue of the prescribed notice or exemption notice;

(f) if the person's consent to screening under part 10 is taken to have been withdrawn, the date of the withdrawal;

(g) if the person applies for a review of a decision of the chief executive relating to a prescribed notice or exemption notice, the details of the review and its outcome.

(3) If a funded non-government service provider or an NDIS non-government service provider proposes to start engaging a person at a service outlet of the service provider, the service provider may apply to the chief executive in the approved form for information contained in the register.

(4) If a funded non-government service provider or an NDIS non-government service provider asks the chief executive for information contained in the register, the chief executive must give the service provider the information.

# Part 6 Positive behaviour support and restrictive practices

## Division 1 Preliminary

### 139 Purpose of pt 6

The purpose of this part is to protect the rights of adults with an intellectual or cognitive disability by—

(a) stating principles to be taken into account by funded service providers in providing disability services to

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those adults with behaviour that causes harm to themselves or others; and

(b) regulating the use of restrictive practices by funded service providers in relation to those adults in a way that—

(i) has regard to the human rights of those adults; and

(ii) safeguards them and others from harm; and

(iii) maximises the opportunity for positive outcomes and aims to reduce or eliminate the need for use of the restrictive practices; and

(iv) ensures transparency and accountability in the use of the restrictive practices.

## 140 Service providers to which pt 6 applies

(1) This part applies to a funded service provider who provides disability services to an adult with an intellectual or cognitive disability (a ***relevant service provider***).

(2) Subsection (1) applies subject to the *Forensic Disability Act 2011*, section 47.

(3) To remove any doubt, this part applies to a funded service provider in relation to the provision of disability services to all adults with an intellectual or cognitive disability receiving disability services from the funded service provider even if the disability services are not provided with the funding received.

## 141 Principles for performing functions etc.

(1) This section applies to a person, including a relevant service provider, who performs a function, or exercises a power, under this part.

(2) Despite section 17, the person must have regard to the human rights principle in performing the function or exercising the power.

## 142 Principles for providing disability services to particular adults

(1) This section applies to an adult with an intellectual or cognitive disability if the adult's behaviour causes harm to the adult or others.

(2) A relevant service provider must provide disability services to the adult in a way that—

(a) promotes the adult's—

(i) development and physical, mental, social and vocational ability; and

(ii) opportunities for participation and inclusion in the community; and

(b) responds to the adult's needs and goals; and

(c) ensures the adult and their family and friends are given an opportunity to participate in the development of strategies for the care and support of the adult; and

(d) involves—

(i) positive behaviour support planning informed by evidence-based best practice; and

(ii) the implementation of strategies, to produce behavioural change, focussed on skills development and environmental design; and

(e) ensures transparency and accountability in the use of restrictive practices; and

(f) recognises that restrictive practices should only be used—

(i) when necessary to prevent harm to the adult or others; and

(ii) if the use is the least restrictive way of ensuring the safety of the adult or others; and

(g) recognises that restrictive practices should not be used punitively or in response to behaviour that does not cause harm to the adult or others; and

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(h) aims to reduce the intensity, frequency and duration of the adult's behaviour that causes harm to the adult or others; and

(i) aims to reduce or eliminate the need to use restrictive practices; and

(j) if there is a positive behaviour support plan for the adult—ensures restrictive practices are only used consistent with the plan.

*Note—*

Harm to a person includes physical harm to the person and a serious risk of physical harm to the person. See section 144, definition *harm*.

## 143 Explanation of operation of pt 6

(1) The purpose of this section is to explain generally the circumstances in which a relevant service provider may be authorised under this part to use a restrictive practice in relation to an adult with an intellectual or cognitive disability.

(2) Use of the restrictive practice may be authorised if the following are satisfied—

(a) for containment or seclusion, or an associated restrictive practice—

(i) a positive behaviour support plan is prepared for the adult by the chief executive; and

(ii) use of the restrictive practice is approved by the tribunal;

(b) for any other restrictive practice—

(i) a positive behaviour support plan is prepared for the adult by the relevant service provider; and

(ii) use of the restrictive practice is consented to by a guardian for a restrictive practice (general) matter for the adult or, in some cases, an informal decision-maker for the adult;

(c) for all restrictive practices, use of the restrictive practice—

(i) is necessary to prevent the adult's behaviour causing harm to the adult or others; and

(ii) is the least restrictive way of ensuring the safety of the adult or others; and

(iii) complies with the positive behaviour support plan for the adult.

*Note—*

Some other requirements must also be complied with for the relevant service provider to be authorised to use the restrictive practice. See section 151 (for containment or seclusion) or 166 (for use of other restrictive practices).

(3) Also, use of a restrictive practice may be authorised if—

(a) the restrictive practice is used in the course of providing respite services or community access services to the adult; or

(b) there is an immediate and serious risk of harm to the adult or others.

*Note—*

See—

- sections 152, 167 and 168 for use of restrictive practices in the course of providing respite services or community access services
- sections 153 and 170 for use of restrictive practices if there is an immediate and serious risk of harm to the adult or others.

(4) In this section—

***associated restrictive practice*** means a restrictive practice other than containment or seclusion, relating to the adult who is the subject of a containment or seclusion approval.

## 144 Definitions for pt 6

In this part—

***adult with an intellectual or cognitive disability*** means an adult with a disability who has a condition attributable to an intellectual or cognitive impairment, or a combination of the impairments.

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***appropriately qualified*** see section 149.

***assessment*** see section 148(3).

***authorised psychiatrist*** see the *Mental Health Act 2016*, schedule 3.

***chemical restraint*** see section 145.

***chemical restraint (fixed dose)*** means chemical restraint using medication that is administered at fixed intervals and times.

***chief psychiatrist*** see the *Mental Health Act 2016*, schedule 3.

***community access services*** means disability services that are—

(a) community access services provided to an adult with an intellectual or cognitive disability who does not receive disability services other than respite services or community access services from a relevant service provider; and

(b) funded as community access services by the department or the Commonwealth.

***contain*** see section 146.

***containment or seclusion approval*** means approval given by the tribunal under the GAA, chapter 5B, part 2 for a relevant service provider to contain or seclude, or use another restrictive practice in relation to, an adult with an intellectual or cognitive disability.

***decision notice***, for a decision of the chief executive, means a notice stating the following—

(a) the decision and the reasons for it;

(b) that the person to whom the notice is given may apply for review of the decision under section 187 within 28 days after the person receives the notice;

(c) how to apply for review of the decision.

***GAA*** means the *Guardianship and Administration Act 2000*.

***guardian for a restrictive practice (general) matter***, for an adult with an intellectual or cognitive disability, means a guardian for a restrictive practice (general) matter appointed for the adult under the GAA, chapter 5B.

***guardian for a restrictive practice matter***, for an adult with an intellectual or cognitive disability, means a guardian for a restrictive practice (general) matter, or a guardian for a restrictive practice (respite) matter, for the adult.

***guardian for a restrictive practice (respite) matter***, for an adult with an intellectual or cognitive disability, means a guardian for a restrictive practice (respite) matter appointed for the adult under the GAA, chapter 5B.

***harm*** to a person means—

(a) physical harm to the person; or

(b) a serious risk of physical harm to the person; or

(c) damage to property involving a serious risk of physical harm to the person.

***informal decision-maker***, for an adult with an intellectual or cognitive disability, means a member of the adult's support network, other than a paid carer for the adult within the meaning of the GAA.

***least restrictive***, for use of a restrictive practice in relation to an adult with an intellectual or cognitive disability, means use of the restrictive practice—

(a) ensures the safety of the adult or others; and

(b) having regard to paragraph (a), imposes the minimum limits on the freedom of the adult as is practicable in the circumstances.

***mechanical restraint*** see section 147.

***model positive behaviour support plan*** means a plan of that name prepared by the chief executive and published on the department's website.

***multidisciplinary assessment*** see section 148(4).

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***physical restraint***, of an adult with an intellectual or cognitive disability, means the use, for the primary purpose of controlling the adult's behaviour, of any part of another person's body to restrict the free movement of the adult in response to the adult's behaviour that causes harm to the adult or others.

*Note—*

Harm to a person includes physical harm to the person and a serious risk of physical harm to the person. See section 144, definition *harm*.

***positive behaviour support plan*** see section 150.

***relevant decision-maker (respite)***, for an adult with an intellectual or cognitive disability, means—

(a) a guardian for a restrictive practice (respite) matter for the adult; or

(b) for a restrictive practice other than chemical restraint used under section 167, if there is no guardian for a restrictive practice (respite) matter for the adult—an informal decision-maker for the adult.

***respite/community access plan*** see section 181(2).

***respite services*** means disability services that are—

(a) respite services provided to an adult with an intellectual or cognitive disability who does not receive disability services other than respite services or community access services from a relevant service provider; and

(b) funded as respite services by the department or the Commonwealth.

***restricting access***, of an adult with an intellectual or cognitive disability, means restricting the adult's access, at a place where the adult receives disability services, to an object in response to the adult's behaviour that causes harm to the adult or others to prevent the adult using the object to cause harm to the adult or others.

*Examples—*

- if an adult has a history of using knives to cause harm to others, locking a drawer in which knives are kept to prevent the adult using the knives to cause harm
- if an adult has Prader-Willi syndrome, restricting the adult's access to a particular cupboard or particular parts of the fridge to prevent the adult eating in a way that is likely to harm the adult

*Note—*

Harm to a person includes physical harm to the person and a serious risk of physical harm to the person. See section 144, definition *harm*.

***restrictive practice*** means any of the following practices used to respond to the behaviour of an adult with an intellectual or cognitive disability that causes harm to the adult or others—

(a) containing or secluding the adult;

(b) using chemical, mechanical or physical restraint on the adult;

(c) restricting access of the adult.

*Note—*

Harm to a person includes physical harm to the person and a serious risk of physical harm to the person. See section 144, definition *harm*.

***seclude*** an adult with an intellectual or cognitive disability means physically confine the adult alone, at any time of the day or night, in a room or area from which free exit is prevented in response to the adult's behaviour that causes harm to the adult or others.

*Note—*

Harm to a person includes physical harm to the person and a serious risk of physical harm to the person. See section 144, definition *harm*.

***short term approval*** means an approval given by—

(a) the public guardian under the GAA, chapter 5B, part 4; or

(b) the chief executive under section 178.

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## 145 Meaning of *chemical restraint*

(1) ***Chemical restraint***, of an adult with an intellectual or cognitive disability, means the use of medication for the primary purpose of controlling the adult's behaviour in response to the adult's behaviour that causes harm to the adult or others.

*Note—*

Harm to a person includes physical harm to the person and a serious risk of physical harm to the person. See section 144, definition *harm*.

(2) However, the following are not chemical restraint—

(a) using medication for the proper treatment of a diagnosed mental illness or physical condition;

(b) using medication, for example a sedative, prescribed by a medical practitioner to facilitate or enable the adult to receive a single instance of health care under the GAA.

*Example of when subsection (2)(b) applies—*

sedating an adult before attending a dentist appointment is not chemical restraint

(3) To remove any doubt, it is declared that an intellectual or cognitive disability is not a physical condition.

(4) In this section—

***diagnosed***, for a mental illness or physical condition, means a doctor confirms the adult has the illness or condition.

***mental illness*** see the *Mental Health Act 2016*, section 10.

## 146 Meaning of *contain*

(1) ***Contain*** an adult with an intellectual or cognitive disability means physically prevent the free exit of the adult from premises where the adult receives disability services, other than by secluding the adult, in response to the adult's behaviour that causes harm to the adult or others.

*Note—*

Harm to a person includes physical harm to the person and a serious risk of physical harm to the person. See section 144, definition *harm*.

(2) However, the adult is not contained if—

(a) the adult is an adult with a skills deficit under part 8, division 2; and

(b) the adult's free exit from the premises is prevented by the locking of gates, doors or windows under that part.

(3) In this section—

***premises*** includes the land around a building or other structure, but does not include a vehicle.

## 147 Meaning of *mechanical restraint*

(1) ***Mechanical restraint***, of an adult with an intellectual or cognitive disability, means the use, for the primary purpose of controlling the adult's behaviour, of a device in response to the adult's behaviour that causes harm to the adult or others to—

(a) restrict the free movement of the adult; or

(b) prevent or reduce self-injurious behaviour.

*Note—*

Harm to a person includes physical harm to the person and a serious risk of physical harm to the person. See section 144, definition *harm*.

(2) However, the following are not mechanical restraint—

(a) using a device to enable the safe transportation of the adult;

*Examples of devices used to enable safe transportation—*

- a cover over a seat belt buckle
- a harness or strap

(b) using a device for postural support;

(c) using a device to prevent injury from involuntary bodily movements, such as seizures;

(d) using a surgical or medical device for the proper treatment of a physical condition;

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(e) using bed rails or guards to prevent injury while the adult is asleep.

## Division 2 Important concepts for using restrictive practices

### 148 Assessment of an adult

(1) Before a restrictive practice can be used in relation to an adult with an intellectual or cognitive disability, the adult must be assessed.

(2) However, an assessment is not required if the restrictive practice is used—

(a) under a short term approval; or

(b) in the course of providing respite services or community access services to the adult.

*Note—*

Although an assessment is not required for using restrictive practices in the course of providing respite services or community access services, relevant service providers must comply with division 5.

(3) For this part, an ***assessment*** of an adult with an intellectual or cognitive disability is an assessment by 1 or more persons, as provided for under subsections (4) to (6), for the following purposes—

(a) making findings about the nature, intensity, frequency and duration of the behaviour of the adult that causes harm to the adult or others;

(b) developing theories about the factors that contribute to the adult's behaviour mentioned in paragraph (a);

*Examples of factors that might contribute to the behaviour—*

- biological factors, such as genetic predispositions
- psychological or cognitive factors, such as low communication skills
- social factors, such as the adult's surroundings

- medical conditions

(c) making recommendations about appropriate strategies for—

(i) meeting the adult's needs and improving the adult's capabilities and quality of life; and

(ii) reducing the intensity, frequency and duration of the adult's behaviour that causes harm to the adult or others; and

(iii) managing the adult's behaviour that causes harm to the adult or others to minimise the risk of harm.

(4) For containing or secluding an adult under section 151, the adult must be assessed by 2 or more appropriately qualified persons who have qualifications or experience in different disciplines (a ***multidisciplinary assessment***).

(5) For using chemical, mechanical or physical restraint under section 166 on an adult, the adult must be assessed by at least 1 appropriately qualified person.

(6) For restricting access of an adult under section 166, the adult must be assessed by the relevant service provider proposing to restrict the adult's access.

## 149 Who is *appropriately qualified* to assess an adult

For assessing an adult with an intellectual or cognitive disability, a person is ***appropriately qualified*** if the person has the qualifications or experience appropriate to conduct the assessment.

*Examples of who might be appropriately qualified persons—*

behaviour analysts, medical practitioners, psychologists, psychiatrists, speech and language pathologists, occupational therapists, registered nurses, social workers

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## 150 What is a *positive behaviour support plan*

(1) A ***positive behaviour support plan***, for an adult with an intellectual or cognitive disability, is a plan that describes the strategies to be used to—

(a) meet the adult's needs; and

(b) support the adult's development of skills; and

(c) maximise opportunities through which the adult can improve their quality of life; and

(d) reduce the intensity, frequency and duration of the adult's behaviour that causes harm to the adult or others.

(2) A positive behaviour support plan, for an adult with an intellectual or cognitive disability, must include at least each of the following—

(a) in relation to previous behaviour of the adult that has caused harm to the adult or others, a description of—

(i) the intensity, frequency and duration of the behaviour; and

(ii) the consequences of the behaviour; and

(iii) the early warning signs and triggers for the behaviour, if known;

(b) the positive strategies that must be attempted before using a restrictive practice, including the community access arrangements in place for the adult;

(c) for each restrictive practice proposed to be used in relation to the adult—

(i) the circumstances in which the restrictive practice is to be used; and

(ii) a demonstration of why use of the restrictive practice is the least restrictive way of ensuring the safety of the adult or others; and

(iii) the procedure for using the restrictive practice, including observations and monitoring, that must

happen while the restrictive practice is being used; and

(iv) any other measures that must happen while the restrictive practice is being used that are necessary to ensure—

(A) the adult's proper care and treatment; and

(B) the adult is safeguarded from abuse, neglect and exploitation; and

(v) a description of the anticipated positive and negative effects on the adult of using the restrictive practice; and

(vi) the intervals at which use of the restrictive practice will be reviewed by the relevant service provider using the restrictive practice;

(d) for seclusion—the maximum period for which seclusion may be used at any 1 time and the maximum frequency of the seclusion;

(e) for chemical restraint—

(i) the name of the medication to be used and any available information about the medication, including, for example, information about possible side effects; and

(ii) the dose, route and frequency of administration, including, for medication to be administered as and when needed, the circumstances in which the medication may be administered, as prescribed by the adult's treating doctor; and

(iii) if the adult's medication has previously been reviewed by the adult's treating doctor—the date of the most recent medication review; and

(iv) the name of the adult's treating doctor;

(f) for mechanical or physical restraint—the maximum period for which the restraint may be used at any 1 time.

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(3) For subsection (2)(c)(vi), use of a restrictive practice must be reviewed—

(a) for a restrictive practice not used under a containment or seclusion approval—at least once during each 12-month period; or

(b) for a restrictive practice used under a containment or seclusion approval—when required by the chief executive, and at least once during the period of the approval.

## Division 3 Containment and seclusion

## Subdivision 1 Requirements for containing or secluding an adult

### 151 Containing or secluding an adult under containment or seclusion approval

(1) A relevant service provider may contain or seclude an adult with an intellectual or cognitive disability if—

(a) the containment or seclusion is necessary to prevent the adult's behaviour causing harm to the adult or others; and

(b) the containment or seclusion is the least restrictive way of ensuring the safety of the adult or others; and

(c) the containment or seclusion complies with—

(i) a containment or seclusion approval; and

(ii) if the containment or seclusion approval is not given as an interim order under the GAA, section 80ZR—a positive behaviour support plan for the adult developed by the chief executive under this division; and

(d) the relevant service provider complies with section 165.

(2) For subsection (1)(c)(ii), the adult is not contained or secluded in compliance with the positive behaviour support plan if the relevant service provider does not implement the positive strategies stated in the plan.

(3) It is not necessary to obtain the adult's consent to the containment or seclusion of the adult under this section.

### 152 Containing or secluding an adult for respite services or community access services

(1) A relevant service provider may contain or seclude an adult with an intellectual or cognitive disability in the course of providing respite services or community access services to the adult if—

(a) the containment or seclusion is necessary to prevent the adult's behaviour causing harm to the adult or others; and

(b) the containment or seclusion is the least restrictive way of ensuring the safety of the adult or others; and

(c) before containing or secluding the adult, the relevant service provider complies with the requirements under division 5; and

(d) the containment or seclusion complies with—

(i) the consent of a guardian for a restrictive practice (respite) matter for the adult; and

(ii) a respite/community access plan for the adult; and

(e) the relevant service provider complies with section 165.

(2) For subsection (1)(d)(ii), the adult is taken not to be contained or secluded in compliance with the respite/community access plan if the relevant service provider does not implement the positive strategies stated in the plan.

(3) This section does not apply if the adult is the subject of a containment or seclusion approval.

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### 153 Containing or secluding an adult under short term approval

(1) A relevant service provider may contain or seclude an adult with an intellectual or cognitive disability if—

(a) there is an immediate and serious risk of harm to the adult or others; and

(b) the containment or seclusion is necessary to prevent the adult's behaviour causing harm to the adult or others; and

(c) the containment or seclusion is the least restrictive way of ensuring the safety of the adult or others; and

(d) the containment or seclusion complies with a short term approval given by the public guardian under the GAA, chapter 5B, part 4; and

(e) the relevant service provider complies with section 165.

(2) It is not necessary to obtain the adult's consent to the containment or seclusion of the adult under this section.

### 154 Containing or secluding an adult before decision on short term approval

(1) A relevant service provider may contain or seclude an adult with an intellectual or cognitive disability if—

(a) the relevant service provider has asked the public guardian, in writing, for an approval under the GAA, chapter 5B, part 4 to contain or seclude the adult and the request has not been decided; and

(b) the containment or seclusion—

(i) is necessary to prevent the adult's behaviour causing harm to the adult or others; and

(ii) is the least restrictive way of ensuring the safety of the adult or others; and

(c) a positive behaviour support plan or a respite/community access plan for the adult is being implemented; and

(d) the relevant service provider complies with section 165.

(2) However, the relevant service provider may only contain or seclude the adult until the earlier of the following—

(a) the relevant service provider is given notice about the public guardian's decision on the request;

(b) 30 days after the relevant service provider asks for the short term approval.

(3) It is not necessary to obtain the adult's consent to the containment or seclusion of the adult under this section.

## Subdivision 2 Multidisciplinary assessment and development of positive behaviour support plan

### 155 Application of sdiv 2

This subdivision applies if—

(a) a relevant service provider notifies the chief executive that the relevant service provider wishes to contain or seclude an adult with an intellectual or cognitive disability, other than in the course of providing respite services or community access services to the adult; and

(b) the adult is not the subject of a containment or seclusion approval.

*Notes—*

1 Under the GAA, chapter 5B, a relevant service provider other than the department must apply for a containment or seclusion approval jointly with the chief executive.

2 If the adult is the subject of an existing containment or seclusion approval, see subdivision 3 for changing the adult's positive behaviour support plan.

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### 156 Chief executive to decide whether multidisciplinary assessment of adult will be conducted

(1) The chief executive must decide whether a multidisciplinary assessment of the adult will be conducted.

(2) The chief executive may decide a multidisciplinary assessment of the adult will be conducted if the chief executive considers it may be necessary for the relevant service provider to contain or seclude the adult to safeguard the adult or others from harm.

(3) In deciding whether a multidisciplinary assessment of the adult will be conducted, the chief executive must consult with, and consider the views of, the following persons—

(a) the adult;

(b) if the adult has a guardian or informal decision-maker—the guardian or informal decision-maker;

(c) each relevant service provider providing disability services to the adult;

(d) if the chief executive is aware the adult is subject to a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016*—the authorised psychiatrist responsible for treating the adult under that Act;

(e) if the chief executive is aware the adult is a forensic disability client—a senior practitioner responsible for the care and support of the adult under the *Forensic Disability Act 2011*;

(f) any other person considered by the chief executive to be integral to the chief executive's decision.

*Example—*

a family member who is part of the adult's support network, a key health care provider or an advocate for the adult

(4) Despite subsection (3)(b), the chief executive is not required to consult with a person who is an informal decision-maker for the adult if—

(a) the chief executive is not, and could not reasonably be expected to be, aware the person is an informal decision-maker for the adult; or

(b) after taking all reasonable steps, the chief executive can not locate the person.

### 157 Notice of decision not to conduct assessment

If the chief executive decides a multidisciplinary assessment of the adult will not be conducted, the chief executive must give the following persons a decision notice about the decision—

(a) the relevant service provider;

(b) the adult;

(c) a guardian or informal decision-maker for the adult who was consulted by the chief executive under section 156(3).

### 158 Development of positive behaviour support plan following assessment

(1) This section applies if a multidisciplinary assessment of the adult is conducted.

(2) The chief executive must develop a positive behaviour support plan for the adult if, having regard to the findings, theories and recommendations of the persons who assessed the adult, the chief executive is satisfied—

(a) the adult's behaviour has previously resulted in harm to the adult or others; and

(b) it is necessary for the relevant service provider to contain or seclude the adult to safeguard the adult or others from harm; and

(c) containing or secluding the adult is the least restrictive way of ensuring the safety of the adult or others.

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(3) The positive behaviour support plan must provide for the use of any restrictive practice, including chemical, mechanical or physical restraint or restricting access, that is—

(a) when the plan is developed, proposed to be used in relation to the adult by any relevant service provider; and

(b) based on the recommendations of the persons who assessed the adult.

(4) In developing the positive behaviour support plan, the chief executive must—

(a) have regard to a model positive behaviour support plan; and

(b) consult with, and consider the views of, each person who was consulted under section 156(3).

(5) If the positive behaviour support plan provides for the use of chemical restraint, the chief executive must—

(a) consult the adult's treating doctor; and

(b) inform the adult's treating doctor about—

(i) the findings and theories of the persons who conducted the multidisciplinary assessment about the adult's behaviour that causes harm to the adult or others, including the factors contributing to the behaviour; and

(ii) the strategies, including other restrictive practices, proposed to be used for—

(A) meeting the adult's needs and improving the adult's capabilities and quality of life; and

(B) reducing the intensity, frequency and duration of the adult's behaviour that causes harm to the adult or others.

(6) If the chief executive is not required to develop a positive behaviour support plan for the adult under subsection (2), the chief executive must give the following persons a decision notice about the decision not to develop the plan—

(a) the relevant service provider;

(b) the adult;

(c) a guardian or informal decision-maker for the adult who was consulted under section 156(3).

### 159 Participation of psychiatrist or senior practitioner in development of plan

(1) This section applies if—

(a) the chief executive is aware the adult is—

(i) subject to a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016*; or

(ii) a forensic disability client; and

(b) the chief executive develops a positive behaviour support plan for the adult under this division.

(2) The chief executive must ensure a following person is given the opportunity to participate in the development of the positive behaviour support plan—

(a) for an adult mentioned in subsection (1)(a)(i)—the authorised psychiatrist responsible for treating the adult under the *Mental Health Act 2016*;

(b) for an adult mentioned in subsection (1)(a)(ii)—a senior practitioner responsible for the care and support of the adult under the *Forensic Disability Act 2011*.

## Subdivision 3 Changing a positive behaviour support plan

### 160 Application of sdiv 3

This subdivision applies if an adult with an intellectual or cognitive disability is the subject of a containment or seclusion approval.



Not authorised—indicative only

Not authorised—indicative only



### 161 Who may change positive behaviour support plan

The positive behaviour support plan for the adult may be changed only by the chief executive.

### 162 When chief executive must decide whether positive behaviour support plan should be changed

The chief executive must decide whether a change to the adult's positive behaviour support plan should be made if—

(a) a relevant service provider asks the chief executive, in writing, to make a change to the plan; or

(b) the chief executive becomes aware the adult is subject to a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016*.

*Examples of when a relevant service provider might ask for a change—*

- A new relevant service provider wants to use a restrictive practice in relation to the adult, including chemical, mechanical or physical restraint or restricting access.
- The relevant service provider to which the containment or seclusion approval applies wants to change a detail stated in the positive behaviour support plan for the adult.
- The containment or seclusion approval is about to expire and the relevant service provider to which the approval applies wishes to apply for a new approval.

### 163 Requirements for chief executive's decision about whether change should be made

(1) The chief executive may decide a change should be made to the adult's positive behaviour support plan only if satisfied the change would not—

(a) increase the risk of the adult's behaviour causing harm to the adult or others; or

(b) decrease the extent to which the adult's needs are met or the adult's capabilities and quality of life are improved.

(2) For deciding whether a change should be made, the chief executive may arrange for all or part of a multidisciplinary

assessment to be conducted, or consult any of the persons listed in section 156(3), as the chief executive considers appropriate in the circumstances.

(3) However, if the chief executive is deciding whether a change should be made because the adult is subject to a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016*, the chief executive must consult the authorised psychiatrist responsible for treating the adult under that Act.

(4) Also, if the chief executive is deciding whether a change should be made because the adult is a forensic disability client, the chief executive must consult a senior practitioner responsible for the care and support of the adult under the *Forensic Disability Act 2011*.

(5) Subsection (2) applies subject to any order or direction of the tribunal.

### 164 Action of chief executive after deciding whether change should be made

(1) If the chief executive decides a change to the adult's positive behaviour support plan should be made, the chief executive must decide whether the change requires a GAA application to be made.

(2) The change requires the making of a GAA application if it—

(a) is inconsistent with the terms of an existing containment or seclusion approval; or

*Examples—*

- The existing containment or seclusion approval approves seclusion for periods of not more than 15 minutes. The change is to increase the maximum period to 30 minutes.
- The existing containment or seclusion approval applies to relevant service provider A. The change is for relevant service provider B to use a restrictive practice in relation to the adult.

Not authorised—indicative only

Not authorised—indicative only



- The existing containment or seclusion approval is for seclusion. The change is for the additional use of mechanical restraint.

(b) is requested because an existing containment or seclusion approval is about to expire and the relevant service provider proposes to apply for a further approval.

(3) If the change does not require the making of a GAA application, the chief executive must make the change and give a copy of the amended plan to the following—

(a) the tribunal;

(b) the adult;

(c) if the adult has a guardian or informal decision-maker—the guardian or informal decision-maker;

(d) the relevant service provider to which an existing containment or seclusion approval applies.

(4) However, the chief executive is not required to give a copy of the amended plan to a person who is an informal decision-maker for the adult if—

(a) the chief executive is not, and could not reasonably be expected to be, aware the person is an informal decision-maker for the adult; or

(b) after taking all reasonable steps, the chief executive can not locate the person.

(5) As soon as practicable after making the decision mentioned in subsection (1), the chief executive must give a prescribed notice to—

(a) if the chief executive was required to decide whether a change should be made because of a request made by a relevant service provider—the relevant service provider; or

*Note—*

If the chief executive decides the change should not be made and the relevant service provider is dissatisfied with the decision, the relevant service provider could apply to the tribunal under the

GAA, section 80ZA for review of the existing containment or seclusion approval.

(b) if the chief executive was required to decide whether a change should be made because the adult is subject to a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016*, or is a forensic disability client—

(i) the relevant director; and

(ii) the relevant service provider to which an existing containment or seclusion approval applies.

(6) In this section—

***GAA application*** means an application to the tribunal for—

(a) the giving of a new containment or seclusion approval; or

(b) review of an existing containment or seclusion approval.

***prescribed notice*** means a notice stating the chief executive's decisions about—

(a) whether a change should be made to the positive behaviour support plan for the adult; and

(b) if the chief executive decides a change should be made—whether the change requires the making of a GAA application.

***relevant director*** means—

(a) if the adult is a forensic disability client—the director of forensic disability; or

(b) otherwise—the chief psychiatrist.

Not authorised—indicative only

Not authorised—indicative only



## Subdivision 4 General requirements for containment or seclusion

### 165 Relevant service provider to ensure adult's needs are met

A relevant service provider containing or secluding an adult with an intellectual or cognitive disability must ensure the adult is given each of the following—

(a) sufficient bedding and clothing;

(b) sufficient food and drink;

(c) access to adequate heating and cooling;

(d) access to toilet facilities;

(e) the adult's medication as prescribed by a doctor.

## Division 4 Use of restrictive practices other than containment or seclusion

## Subdivision 1 Requirements for using chemical, mechanical or physical restraint, or restricting access

### 166 Using chemical, mechanical or physical restraint, or restricting access, with consent of guardian etc.

(1) A relevant service provider may use chemical, mechanical or physical restraint on, or restrict access of, an adult with an intellectual or cognitive disability if—

(a) use of the restrictive practice is necessary to prevent the adult's behaviour causing harm to the adult or others; and

(b) use of the restrictive practice is the least restrictive way of ensuring the safety of the adult or others; and

(c) either—

(i) if the adult is the subject of a containment or seclusion approval—use of the restrictive practice complies with—

(A) the approval; and

(B) if the containment or seclusion approval is not given as an interim order under the GAA, section 80ZR—a positive behaviour support plan for the adult developed by the chief executive under division 3; or

(ii) otherwise—use of the restrictive practice complies with—

(A) a positive behaviour support plan for the adult developed by the relevant service provider under this division; and

(B) the consent of a relevant decision-maker for the adult.

(2) For subsection (1)(c), the restrictive practice is not used in compliance with a positive behaviour support plan if the relevant service provider does not implement the positive strategies stated in the plan.

(3) In this section—

***relevant decision-maker***, for an adult with an intellectual or cognitive disability, means—

(a) a guardian for a restrictive practice (general) matter for the adult; or

(b) for restricting access of the adult, if there is no guardian for a restrictive practice (general) matter for the adult—an informal decision-maker for the adult.

## 167 Using chemical, mechanical or physical restraint, or restricting access, for respite services or community access services

(1) A relevant service provider may use chemical, mechanical or physical restraint on, or restrict access of, an adult with an



Not authorised—indicative only

Not authorised—indicative only



intellectual or cognitive disability in the course of providing respite services or community access services to the adult if—

(a) use of the restrictive practice is necessary to prevent the adult's behaviour causing harm to the adult or others; and

(b) use of the restrictive practice is the least restrictive way of ensuring the safety of the adult or others; and

(c) before using the restrictive practice, the relevant service provider complies with the requirements under division 5; and

(d) use of the restrictive practice complies with—

(i) the consent of a relevant decision-maker (respite) for the adult; and

(ii) a respite/community access plan for the adult.

(2) For subsection (1)(d)(ii), the restrictive practice is not used in compliance with the respite/community access plan if the relevant service provider does not implement the positive strategies stated in the plan.

(3) This section does not apply if the adult is the subject of a containment or seclusion approval.

(4) This section does not apply to chemical restraint (fixed dose) used in the course of providing respite services to the adult.

## 168 Using chemical restraint (fixed dose) for respite services

(1) A relevant service provider may use chemical restraint (fixed dose) on an adult with an intellectual or cognitive disability in the course of providing respite services to the adult if use of the chemical restraint complies with the consent of a relevant decision-maker (respite) for the adult.

(2) This section does not apply if the adult is the subject of a containment or seclusion approval.

### 169 Using chemical, mechanical or physical restraint, or restricting access, if consent ended

(1) This section applies if—

(a) the guardian for a restrictive practice matter for an adult with an intellectual or cognitive disability is the public guardian; and

(b) the public guardian has given consent (the ***existing consent***) to the use of a restrictive practice, other than containment or seclusion, in relation to the adult.

(2) A relevant service provider may use the restrictive practice after the existing consent ends if—

(a) at least 30 days before the existing consent ends, the relevant service provider asks the public guardian, in writing, to consent to the use of the restrictive practice in relation to the adult; and

(b) at the time the existing consent ends, the public guardian has not decided whether to give the consent; and

(c) use of the restrictive practice—

(i) is necessary to prevent the adult's behaviour causing harm to the adult or others; and

(ii) is the least restrictive way of ensuring the safety of the adult or others; and

(iii) complies with the existing consent and the positive behaviour support plan or respite/community access plan for the adult.

(3) However, the relevant service provider may only use the restrictive practice under this section until the earlier of the following—

(a) the public guardian gives the relevant service provider notice about the public guardian's decision whether to give the consent;

(b) 30 days after the existing consent ends.

Not authorised—indicative only

Not authorised—indicative only



### 170 Using chemical, mechanical or physical restraint, or restricting access, under short term approval

(1) A relevant service provider may use chemical, mechanical or physical restraint on, or restrict access of, an adult with an intellectual or cognitive disability if—

(a) there is an immediate and serious risk of harm to the adult or others; and

(b) use of the restrictive practice—

(i) is necessary to prevent the adult's behaviour causing harm to the adult or others; and

(ii) is the least restrictive way of ensuring the safety of the adult or others; and

(iii) complies with a short term approval.

(2) It is not necessary to obtain the adult's consent to the use of a restrictive practice under this section.

### 171 Using chemical, mechanical or physical restraint, or restricting access, before decision on short term approval

(1) A relevant service provider may use chemical, mechanical or physical restraint on, or restrict access of, an adult with an intellectual or cognitive disability if—

(a) the relevant service provider has asked the chief executive, in writing, for an approval under section 178 to use the restrictive practice in relation to the adult and the request has not been decided; and

(b) use of the restrictive practice—

(i) is necessary to prevent the adult's behaviour causing harm to the adult or others; and

(ii) is the least restrictive way of ensuring the safety of the adult or others; and

(c) a positive behaviour support plan or a respite/community access plan for the adult is being implemented.

(2) However, the relevant service provider may only use the restrictive practice until the earlier of the following—

(a) the relevant service provider is given notice about the chief executive's decision on the request;

(b) 30 days after the relevant service provider asks for the short term approval.

(3) It is not necessary to obtain the adult's consent to the use of a restrictive practice under this section.

## Subdivision 2 Assessment of adult and positive behaviour support plan

### 172 Application of sdiv 2

This subdivision applies if—

(a) a relevant service provider proposes to use chemical, mechanical or physical restraint on, or restrict access of, an adult with an intellectual or cognitive disability, other than—

(i) under a short term approval; or

(ii) in the course of providing respite services or community access services to the adult; and

(b) the adult is not the subject of a containment or seclusion approval; and

*Note—*

If the adult is the subject of a containment or seclusion approval, and the adult's positive behaviour support plan does not provide for the relevant service provider's use of the restrictive practice mentioned in paragraph (a), the relevant service provider must—

(a) ask the chief executive to change the positive behaviour support plan to provide for the relevant service provider's



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use of the restrictive practice (see division 3, subdivision 3); and

(b) apply to the tribunal for the making or review of a containment or seclusion approval in relation to the relevant service provider's use of the restrictive practice.

(c) the relevant service provider does not propose to contain or seclude the adult in addition to using the restrictive practice mentioned in paragraph (a).

## 173 Requirements for development of positive behaviour support plan—assessment and consultation

(1) This section states the requirements with which the relevant service provider must comply in developing a positive behaviour support plan for the adult.

(2) The relevant service provider must—

(a) ensure the adult is assessed; and

*Note—*

See section 148 for requirements about the assessment of the adult.

(b) if the provider is aware the adult is subject to a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016*—ensure the authorised psychiatrist responsible for treating the adult under that Act is given the opportunity to participate in the development of the positive behaviour support plan; and

(c) if the provider is aware the adult is a forensic disability client—ensure a senior practitioner responsible for the care and support of the adult under the *Forensic Disability Act 2011* is given the opportunity to participate in the development of the positive behaviour support plan; and

(d) consult with, and consider the views of, the following—

(i) the adult;

(ii) any guardian or informal decision-maker for the adult;

(iii) any other relevant service provider providing disability services to the adult;

(iv) another person considered by the provider to be integral to the development of the plan; and

*Example—*

a family member who is part of the adult's support network, a key health care provider or an advocate for the adult

(e) have regard to a model positive behaviour support plan.

(3) Also, if the relevant service provider proposes to use chemical restraint, the relevant service provider must—

(a) consult the adult's treating doctor; and

(b) inform the adult's treating doctor about—

(i) the findings and theories of the person who assessed the adult about the adult's behaviour that causes harm to the adult or others, including the factors contributing to the behaviour; and

(ii) the strategies, including other restrictive practices, proposed to be used in conjunction with the use of the chemical restraint for—

(A) meeting the adult's needs and improving the adult's capabilities and quality of life; and

(B) reducing the intensity, frequency and duration of the adult's behaviour that causes harm to the adult or others.

(4) The positive behaviour support plan may provide for the use of mechanical or physical restraint only if the use is supported by the recommendations of the person who assessed the adult.

Not authorised—indicative only

Not authorised—indicative only



### 174 Changing a positive behaviour support plan

(1) A positive behaviour support plan that provides for use of chemical, mechanical or physical restraint may be changed by the relevant service provider only if—

(a) either—

(i) for a change relating to use of chemical restraint—the relevant service provider has consulted the adult's treating doctor; or

(ii) otherwise—the change is supported by the recommendations of an appropriately qualified person; and

(b) a guardian for a restrictive practice (general) matter for the adult consents to the change.

(2) A positive behaviour support plan that provides only for restricting access of the adult may be changed by the relevant service provider only if a following person consents to the change—

(a) a guardian for a restrictive practice (general) matter for the adult;

(b) if there is no guardian for a restrictive practice (general) matter for the adult—an informal decision-maker for the adult.

### 175 Requirement for relevant service provider to consider whether plan should be changed

(1) This section applies if—

(a) a positive behaviour support plan is developed for an adult under this division; and

(b) the relevant service provider becomes aware the adult is subject to a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016*, or is a forensic disability client.

(2) The relevant service provider must consider whether the positive behaviour support plan should be changed.

(3) In deciding whether the positive behaviour support plan should be changed, the relevant service provider must—

(a) consult the authorised psychiatrist responsible for treating the adult under the *Mental Health Act 2016*, or senior practitioner responsible for the care and support of the adult under the *Forensic Disability Act 2011*; and

(b) consider the psychiatrist's, or senior practitioner's, views about the use of any restrictive practice provided for in the plan.

## Subdivision 3 Requirements if adult subject to forensic order, treatment support order or treatment authority

*Note—*

Under the *Community Services Act 2007*, section 19, a funded non-government service provider may be given a compliance notice requiring the provider to remedy a contravention of a requirement under this subdivision.

### 176 Requirement for relevant service provider to notify guardian

(1) This section applies if—

(a) a relevant service provider is required under section173(2) or 175(3) to consult the authorised psychiatrist responsible for treating the adult under the *Mental Health Act 2016*, or senior practitioner responsible for the care and support of the adult under the *Forensic Disability Act 2011*; and

(b) the psychiatrist, or senior practitioner, does not agree with the use of a restrictive practice provided for in the positive behaviour support plan for the adult.

(2) As soon as practicable after consulting the authorised psychiatrist or senior practitioner, the relevant service provider must notify a relevant decision-maker for the adult

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Not authorised—indicative only



about the psychiatrist's or senior practitioner's views regarding use of the restrictive practice.

(3) In this section—

***consult***, the authorised psychiatrist responsible for treating the adult under the *Mental Health Act 2016*, or senior practitioner responsible for the care and support of the adult under the *Forensic Disability Act 2011*, includes give the psychiatrist, or senior practitioner, an opportunity to participate in the development of a positive behaviour support plan.

***relevant decision-maker***, for the adult, means—

(a) a guardian for a restrictive practice (general) matter for the adult; or

(b) if the only restrictive practice provided for in the positive behaviour support plan for the adult is restricting access and there is no guardian for a restrictive practice (general) matter for the adult—an informal decision-maker for the adult.

## 177 Requirement for relevant service provider to notify relevant director

(1) This section applies if—

(a) a relevant service provider develops or changes a positive behaviour support plan for an adult under this division; and

(b) a guardian for a restrictive practice (general) matter, or an informal decision-maker, for the adult consents to the use of a restrictive practice by the relevant service provider in relation to the adult; and

(c) the relevant service provider is or becomes aware the adult is subject to a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016*, or is a forensic disability client.

(2) The relevant service provider must—

(a) give notice to the relevant director of the terms of the consent given by the guardian or informal decision-maker as soon as practicable after the later of—

(i) the consent being given; or

(ii) the relevant service provider becoming aware as mentioned in subsection (1)(c); and

(b) if asked by the relevant director, give the director a copy of the positive behaviour support plan for the adult.

(3) In this section—

***relevant director*** means—

(a) if the adult is a forensic disability client—the director of forensic disability; or

(b) otherwise—the chief psychiatrist.

## Subdivision 4 Short term approvals given by chief executive

### 178 Short term approval for use of restrictive practices other than containment or seclusion

(1) This section applies if a relevant service provider asks the chief executive for approval to use a restrictive practice, other than containment or seclusion, in relation to an adult with an intellectual or cognitive disability.

(2) The chief executive may give the approval only if the chief executive is satisfied—

(a) the adult is not the subject of a containment or seclusion approval; and

(b) the adult has impaired capacity for making decisions about the use of restrictive practices in relation to the adult; and

(c) either—

Not authorised—indicative only

Not authorised—indicative only



(i) there is no guardian for a restrictive practice (general) matter for the adult; or

(ii) there is a guardian for a restrictive practice (general) matter for the adult but the guardian has neither given, nor refused to give, consent to the relevant service provider to use the restrictive practice in relation to the adult; and

*Note—*

It is not necessary to obtain the adult's consent to the use of a restrictive practice under a short term approval. See section 170.

(d) there is an immediate and serious risk that, if the approval is not given, the adult's behaviour will cause harm to the adult or others; and

(e) use of the restrictive practice is the least restrictive way of ensuring the safety of the adult or others; and

(f) if the restrictive practice is chemical restraint—the relevant service provider has consulted with, and considered the views of, the adult's treating doctor.

(3) If the chief executive has previously given an approval under this section in relation to the adult, the chief executive may give the approval only if satisfied exceptional circumstances justify giving a subsequent approval under this section.

(4) In deciding whether to give the approval, the chief executive must, unless it is not practicable in the circumstances, consult with and consider the views of the following persons about the proposed use of the restrictive practice—

(a) the adult, or a guardian or informal decision-maker for the adult;

(b) if the chief executive is aware the adult is subject to a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016*—the authorised psychiatrist responsible for treating the adult under that Act;

(c) if the chief executive is aware the adult is a forensic disability client—a senior practitioner responsible for the care and support of the adult under the *Forensic Disability Act 2011*.

(5) The chief executive must, as soon as practicable after deciding whether to give the approval, give the relevant service provider notice of the decision, including, if the approval is given—

(a) the conditions to which it is subject; and

(b) the period for which it has effect.

(6) The chief executive may give the approval subject to the conditions the chief executive considers appropriate.

(7) Also, the chief executive must, within 7 days after deciding whether to give the approval, give notice of the decision to the following persons—

(a) the public guardian;

(b) any person consulted by the chief executive under subsection (4).

(8) A notice for subsection (5) must state each of the following—

(a) the name of the adult;

(b) the name of the relevant service provider;

(c) the chief executive's decision, including, if the approval is given—

(i) the terms of the approval; and

(ii) the chief executive's reasons for giving the approval.

(9) A person given notice under subsection (5) or (7) of a decision of the chief executive to give, or refuse to give, the approval may apply, as provided under the QCAT Act, to the tribunal for a review of the decision.

(10) In this section—

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Not authorised—indicative only



***impaired capacity*** see the *Guardianship and Administration Act 2000*, schedule 4.

### 179 Period for which short term approval has effect

(1) An approval given by the chief executive under section 178 has effect for the period stated in the notice given to the relevant service provider under section 178(5).

(2) However, the period must not be more than 6 months.

(3) The approval ends if—

(a) a guardian for a restrictive practice (general) matter for the adult gives, or refuses to give, consent to the relevant service provider to use the restrictive practice in relation to the adult; or

(b) the tribunal gives a containment or seclusion approval for the adult.

## Division 5 Use of restrictive practices for respite services or community access services

### 180 Purpose of div 5

(1) This division prescribes the requirements that a relevant service provider must comply with before using a restrictive practice in the course of providing respite services or community access services to an adult with an intellectual or cognitive disability.

(2) This division does not apply for the use of chemical restraint (fixed dose) under section 168.

### 181 Requirement to develop respite/community access plan

(1) The relevant service provider must develop a respite/community access plan for the adult.

(2) A ***respite/community access plan***, for an adult with an intellectual or cognitive disability, is a plan stating at least each of the following—

(a) the adult's name;

(b) a description of the behaviour of the adult that causes harm to the adult or others, including the consequences of the behaviour;

(c) a description of the restrictive practices used in relation to the adult;

(d) the reasons for using the restrictive practices;

(e) any strategies that must be attempted before using the restrictive practices;

(f) the procedure for using the restrictive practices, including observations and monitoring, and any other measures necessary to ensure the adult's proper care and treatment, that must take place while the restrictive practices are being used;

(g) a demonstration of why the restrictive practices are the least restrictive way of ensuring the safety of the adult or others;

(h) a description of the positive strategies that will be used to—

(i) meet the adult's needs and improve the adult's capabilities and quality of life; and

(ii) reduce the intensity, frequency and duration of the adult's behaviour that causes harm to the adult or others;

(i) for containment—a description of the place where the adult will be contained;

(j) for seclusion—

(i) a description of the place where the adult will be secluded; and

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Not authorised—indicative only



(ii) the maximum period for which seclusion may be used at any 1 time and the maximum frequency of the seclusion;

(k) for chemical restraint—

(i) the name of the medication to be used and any available information about the medication, including, for example, information about possible side effects; and

(ii) the dose, route and frequency of administration, including, for medication to be administered as and when needed, the circumstances in which the medication may be administered, as prescribed by the adult's treating doctor; and

(iii) the name of the adult's treating doctor;

(l) for mechanical or physical restraint—the maximum period for which the restraint may be used at any 1 time.

## 182 Obtaining information about the adult

In developing a respite/community access plan, the relevant service provider must obtain, from the persons consulted under section 183, any information available and relevant for identifying the following—

(a) the adult's needs;

(b) the behaviour of the adult that causes harm to the adult or others, including the consequences of the behaviour;

(c) the factors contributing to the behaviour mentioned in paragraph (b).

## 183 Consultation

In developing a respite/community access plan for an adult, the relevant service provider must consult with, and consider the views of, the following persons—

(a) the adult;

(b) if the adult has a guardian or informal decision-maker—the guardian or informal decision-maker;

(c) any other relevant service provider providing disability services to the adult;

(d) any other person considered by the relevant service provider to be integral to the development of the plan.

*Example—*

a family member who is part of the adult's support network, a key health care provider or an advocate for the adult

### 184 Risk assessment

The relevant service provider must identify, and keep a record of—

(a) the risks associated with the provision of respite services or community access services to the adult by the relevant service provider; and

*Examples of possible risks—*

- the adult's behaviour causing harm to another client of the relevant service provider
- the staff of the relevant service provider not being adequately trained to manage the behaviour of the adult
- the physical environment in which the services are provided not being adequate to accommodate the needs of the adult

(b) the procedures the relevant service provider will implement to mitigate those risks.

## Division 6 Review of particular chief executive decisions

### 185 Application of div 6

This division applies if the chief executive makes a decision (a ***relevant decision***) about which the chief executive is required under this part to give a decision notice.

Not authorised—indicative only

Not authorised—indicative only



*Note—*

See sections 157 (a decision that a multidisciplinary assessment will not be conducted) and 158(6) (a decision not to develop a positive behaviour support plan under division 3).

## 186 Definitions for div 6

In this division—

***interested person***, for a relevant decision, means a person to whom the chief executive is required under this part to give a decision notice about the decision.

***relevant decision*** see section 185.

## 187 Application for review by chief executive

(1) An interested person for a relevant decision may apply to the chief executive, within 28 days after receiving a decision notice about the decision, to review the decision.

(2) The chief executive may extend the time for applying for the review.

(3) Also, an interested person for a relevant decision may apply to the chief executive to review the decision if the chief executive has not given the interested person a decision notice about the decision.

(4) The application must be in the approved form and accompanied by enough information to enable the chief executive to decide the application.

## 188 Review of relevant decision

(1) This section applies to an application under section 187 for review of a relevant decision.

(2) Unless the chief executive made the relevant decision personally, the chief executive must ensure the application is not dealt with by—

(a) the person who made the relevant decision; or

(b) a person in a less senior office than the person who made the relevant decision.

(3) Within 28 days after receiving the application, the chief executive must review the relevant decision and make a decision (the ***review decision***)—

(a) confirming the relevant decision; or

(b) amending the relevant decision; or

(c) substituting another decision for the relevant decision.

(4) Immediately after deciding the application, the chief executive must give the interested person a notice stating—

(a) the review decision; and

(b) the reasons for the review decision.

## Division 7 Miscellaneous provisions

## Subdivision 1 Immunity for use of restrictive practices

### 189 Immunity from liability—relevant service provider

A relevant service provider is not criminally or civilly liable if the relevant service provider, acting honestly and without negligence, uses a restrictive practice under this part.

### 190 Immunity from liability—individual acting for relevant service provider

(1) This section applies to an individual who, acting for a relevant service provider, uses a restrictive practice in relation to an adult with an intellectual or cognitive disability.

(2) The individual is not criminally or civilly liable for using the restrictive practice if the individual acts honestly and without negligence in compliance with—

Not authorised—indicative only

Not authorised—indicative only



(a) if the restrictive practice is used under section 151—

(i) the containment or seclusion approval for the adult; and

(ii) either—

(A) if the containment or seclusion for the adult is given as an interim order under the GAA, section 80ZR—the terms of the order; or

(B) otherwise—the positive behaviour support plan for the adult; or

(b) if the restrictive practice is used under section 152—

(i) the consent of a guardian for a restrictive practice (respite) matter for the adult; and

(ii) the respite/community access plan for the adult; or

(c) if the restrictive practice is used under section 153 or 170—the relevant short term approval; or

(d) if the restrictive practice is used under section 154 or 171—the positive behaviour support plan or respite/community access plan for the adult; or

(e) if the restrictive practice is used under section 166—

(i) the positive behaviour support plan for the adult; and

(ii) either—

(A) a containment or seclusion approval for the adult; or

(B) the consent of a relevant decision-maker for the adult within the meaning of section 166; or

(f) if the restrictive practice is used under section 167—

(i) the respite/community access plan for the adult; and

(ii) the consent of a relevant decision-maker (respite) for the adult; or

(g) if the restrictive practice is used under section 168—the consent of a relevant decision-maker (respite) for the adult; and

(h) if the restrictive practice is used under section 169—

(i) the existing consent for the adult under that section; and

(ii) the positive behaviour support plan or respite/community access plan for the adult.

(3) For subsection (2), the individual is taken to be acting in compliance with an approval, consent or plan mentioned in the subsection if the individual reasonably believes he or she is acting in compliance with the approval, consent or plan.

## Subdivision 2 Requirements for relevant service providers

*Note—*

Under the *Community Services Act 2007*, section 19, a funded non-government service provider may be given a compliance notice requiring the provider to remedy a contravention of a requirement under this subdivision.

### 191 Requirement to give statement about use of restrictive practices

(1) This section applies if a relevant service provider providing disability services to an adult with an intellectual or cognitive disability is considering using restrictive practices in relation to the adult.

(2) The relevant service provider must give a statement in the approved form to the following persons about the use of restrictive practices generally—

(a) the adult;

(b) a person with a sufficient and continuing interest in the adult (an ***interested person***).

Not authorised—indicative only

Not authorised—indicative only



(3) The statement must state—

(a) why the relevant service provider is considering using restrictive practices in relation to the adult; and

(b) how the adult and the interested person can be involved and express their views in relation to the use of restrictive practices; and

(c) who decides whether restrictive practices will be used in relation to the adult; and

(d) how the adult and the interested person can make a complaint about, or seek review of, the use of restrictive practices.

(4) Also, the relevant service provider must explain the statement to the adult—

(a) in the language or way the adult is most likely to understand; and

(b) in a way that has appropriate regard to the adult's age, culture, disability and communication ability.

*Example of a way for paragraph (a) or (b)—*

by using visual or other aids

## 192 Requirement to give information to guardian or informal decision-maker

(1) This section applies if—

(a) a relevant service provider seeks consent from a substitute decision-maker for an adult to use a restrictive practice in relation to the adult; and

(b) the restrictive practice is not chemical restraint (fixed dose) used under section 168 in the course of providing respite services to the adult.

(2) To enable the substitute decision-maker to make an informed decision about the use of a restrictive practice other than in the course of providing respite services or community access services to the adult, the relevant service provider must give the substitute decision-maker each of the following—

(a) the positive behaviour support plan for the adult;

(b) any assessment or other information used to develop or change the plan;

(c) if the relevant service provider is aware the adult is subject to a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016*—the terms of the order or authority.

(3) To enable the substitute decision-maker to make an informed decision about the use of a restrictive practice in the course of providing respite services or community access services to the adult, the relevant service provider must give the substitute decision-maker—

(a) the respite/community access plan for the adult; and

(b) any information used to develop the plan.

(4) If the relevant service provider, acting honestly and without negligence, gives the information to the substitute decision-maker, the relevant service provider is not liable, civilly, criminally or under an administrative process, for giving the information.

(5) Also, merely because the relevant service provider gives the information, the relevant service provider can not be held to have—

(a) breached any code of professional etiquette or ethics; or

(b) departed from accepted standards of professional conduct.

(6) Without limiting subsections (4) and (5)—

(a) in a proceeding for defamation, the relevant service provider has a defence of absolute privilege for publishing the information; and

(b) if the relevant service provider would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the relevant service provider—

Not authorised—indicative only

Not authorised—indicative only



(i) does not contravene the Act, oath or rule of law or practice by giving the information; and

(ii) is not liable to disciplinary action for giving the information.

(7) This section does not limit the GAA, section 44.

*Note—*

The GAA, section 44 enables a guardian to obtain all information the adult would have been entitled to if the adult had capacity and that is necessary for the guardian to make informed decisions.

(8) In this section—

***information*** includes a document.

***substitute decision-maker***, for an adult, means a guardian for a restrictive practice matter, or an informal decision-maker, for the adult.

*Note—*

A guardian or informal decision-maker who gains confidential information is subject to confidentiality requirements under the GAA. See the GAA, section 249 for guardians and section 80ZT for informal decision-makers.

## 193 Requirement to keep and implement procedure

(1) This section applies to a relevant service provider who uses a restrictive practice in relation to an adult with an intellectual or cognitive disability.

(2) The relevant service provider must keep and implement procedures that ensure an individual acting for the relevant service provider who uses the restrictive practice in relation to the adult—

(a) has sufficient knowledge of the requirements for lawful use of the restrictive practice; and

(b) has the skills and knowledge required to use the restrictive practice appropriately.

(3) In this section—

***keep and implement***, for a procedure, means—

(a) prepare the procedure and keep it up to date; and

(b) implement and comply with the procedures; and

(c) keep a copy of the up-to-date procedure at premises where the restrictive practice is used.

## 194 Requirement to keep records and other documents

(1) This section applies to a relevant service provider using a restrictive practice in relation to an adult with an intellectual or cognitive disability.

(2) The relevant service provider must make, and keep for the time prescribed under a regulation, the records prescribed under a regulation.

(3) Also, the relevant service provider must keep, at premises where disability services are provided to the adult, a copy of—

(a) if the restrictive practice is used under section 151 or 166—the positive behaviour support plan for the adult; or

(b) if the restrictive practice is used under section 152 or 167—the respite/community access plan for the adult; or

(c) if the restrictive practice is used under section 153 or 170—the short term approval for the adult.

(4) If the restrictive practice is used under a containment or seclusion approval given as an interim order under the GAA, section 80ZR—

(a) subsection (3)(a) does not apply; and

(b) the relevant service provider must keep, at premises where disability services are provided to the adult, a copy of the interim order.

Not authorised—indicative only

Not authorised—indicative only



### 195 Notification requirements about approvals given for use of restrictive practices

(1) If—

(a) a relevant service provider is given a limited restrictive practice approval authorising the provider to use a restrictive practice at a service outlet; and

(b) there is no other limited restrictive practice approval in effect relating to the service outlet;

the relevant service provider must, within the required period, give notice in the approved form to the chief executive.

(2) A relevant service provider who has given a notice under subsection (1) must, within the period mentioned in subsection (6), give notice in the approved form to the chief executive if all limited restrictive practice approvals relating to the service outlet stop having effect.

(3) If—

(a) a relevant service provider is given a restrictive practice approval authorising the provider to use a restrictive practice at a visitable site as defined under the *Public Guardian Act 2014*, section 39; and

(b) there is no other restrictive practice approval in effect relating to the visitable site;

the relevant service provider must, within the required period, give notice to the public guardian.

(4) For subsection (3), the notice must state—

(a) the name and address of the visitable site; and

(b) that a restrictive practice approval has been given in relation to the visitable site.

(5) A relevant service provider who has given a notice under subsection (3) must, within the period mentioned in subsection (6), give notice to the public guardian if all restrictive practice approvals relating to the visitable site stop having effect.

(6) For subsections (2) and (5), the notice must be given within 21 days after the event mentioned in the subsection happens.

(7) In this section—

***limited restrictive practice approval*** means a restrictive practice approval other than—

(a) a containment or seclusion approval; or

(b) a short term approval given by the public guardian under the GAA, chapter 5B, part 4.

***required period*** means—

(a) if the restrictive practice approval is a short term approval—14 days after the approval is given; or

(b) otherwise—21 days after the restrictive practice approval is given.

***restrictive practice approval*** means—

(a) a containment or seclusion approval; or

(b) consent to use of a restrictive practice given by—

(i) a guardian for a restrictive practice matter; or

(ii) an informal decision-maker; or

(c) a short term approval.

## Subdivision 3 Confidentiality provisions

### 196 Definitions for sdiv 3

In this subdivision—

***chief executive (health)*** means the chief executive of the department in which the *Hospital and Health Boards Act 2011* is administered.

***health professional*** means a person engaged in delivering a private sector health service, including the following—

(a) a registered health practitioner;

Not authorised—indicative only

Not authorised—indicative only



(b) any other person, including, for example, an audiologist, dietician, social worker or speech pathologist.

***health service chief executive*** means a health service chief executive under the *Hospital and Health Boards Act 2011*.

***private sector health service*** means a service for maintaining, improving or restoring people's health and wellbeing, other than a service provided by the State.

### 197 Relevant service provider may request confidential information from health professional, chief executive (health) or health service chief executive

(1) This section applies if a relevant service provider considers a health professional, the chief executive (health), or a health service chief executive, may hold confidential information about an adult with an intellectual or cognitive disability that is relevant to any of the following being done by the provider—

(a) the assessment of the adult, including the making of a decision about whether to assess the adult;

(b) the development or changing of a positive behaviour support plan for the adult;

(c) the development of a respite/community access plan for the adult.

(2) The relevant service provider may ask the health professional or chief executive (health) for the confidential information.

(3) A health professional or the chief executive (health) who gives confidential information requested under this section and who would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice—

(a) does not contravene the Act, oath or rule of law or practice by giving the information; and

(b) is not liable to disciplinary action for giving the information.

(4) Also, merely because the health professional or the chief executive (health) gives the confidential information, the person can not be held to have—

(a) breached any code of professional etiquette or ethics; or

(b) departed from accepted standards of professional conduct.

## 198 Relevant service providers must maintain confidentiality

(1) This section applies if a relevant service provider—

(a) gains confidential information under section 197; or

(b) otherwise gains confidential information in the course of—

(i) assessing an adult with an intellectual or cognitive disability or developing a positive behaviour support plan for the adult; or

(ii) developing a respite/community access plan for an adult with an intellectual or cognitive disability.

(2) The relevant service provider, or an individual acting for the relevant service provider, must not disclose the information to anyone other than under subsection (3).

Maximum penalty—100 penalty units.

(3) The relevant service provider, or an individual acting for the relevant service provider, may disclose the information to someone else—

(a) for this Act; or

(b) to discharge a function under another law; or

(c) for a proceeding in a court or tribunal; or

(d) if authorised under another law or a regulation made under this Act; or

(e) if authorised in writing by the adult with an intellectual or cognitive disability to whom the information relates; or

Not authorised—indicative only

Not authorised—indicative only



(f) to protect a person with a disability from abuse, neglect or exploitation.

## Subdivision 4 Reporting and provision of particular information

### 199 Requirement to give information about use of restrictive practice to chief executive

(1) This section applies to a relevant service provider using a restrictive practice in relation to an adult with an intellectual or cognitive disability.

(2) The relevant service provider must give to the chief executive, in the way and at the times prescribed under a regulation, information about the use of the restrictive practice prescribed under a regulation.

### 200 Chief executive may give information about use of restrictive practice

(1) This section applies to information given to the chief executive by a relevant service provider under section 199.

(2) The chief executive may give the information to any or all of the following—

(a) QCAT;

(b) the public guardian;

(c) the public advocate under the GAA;

(d) the relevant service provider.

# Part 6A Investigation, monitoring and enforcement

## Division 1 Preliminary

### 200A Purpose of part

The purpose of this part is to prescribe particular functions and powers of authorised officers appointed under the *Community Services Act 2007*.

### 200B References to exercise of powers

If—

(a) a provision of this part refers to the exercise of a power by an authorised officer; and

(b) there is no reference to a specific power;

the reference is to the exercise of all or any authorised officer's powers under this part or a warrant, to the extent the powers are relevant.

### 200C Reference to document includes reference to reproductions from electronic document

A reference in this part to a document includes a reference to an image or writing—

(a) produced from an electronic document; or

(b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

Not authorised—indicative only

Not authorised—indicative only



## Division 2 Functions of authorised officers

### 200D Existing functions of authorised officers in relation to funding

For this Act and the *Community Services Act 2007*, section 24(d), the functions of an authorised officer, to the extent the *Community Services Act 2007* applies in relation to funding because of section 10 of that Act, include the following—

(a) investigating, monitoring and ensuring compliance with this Act;

(b) investigating or monitoring whether an occasion has arisen for the exercise of powers under the *Community Services Act 2007*;

(c) facilitating the exercise of powers under the *Community Services Act 2007*.

*Note—*

See the *Community Services Act 2007*, part 4, divisions 3 and 4 for powers an authorised officer may exercise under that Act for the performance of the authorised officer's functions under this section.

### 200E Additional functions of authorised officers in relation to NDIS non-government service providers

Without limiting section 200D, for this Act and the *Community Services Act 2007*, section 24(d), an authorised officer also has the functions of—

(a) investigating, monitoring and ensuring compliance of NDIS non-government service providers with this Act; and;

(b) for the purposes of paragraph (a)—

(i) investigating or monitoring whether an occasion has arisen for the exercise of powers under this Act; and

(ii) facilitating the exercise of powers under this Act.

# Division 3 Powers of authorised officers for particular functions

## Subdivision 1 Preliminary

### 200F Application of division for particular functions

This division applies for the performance of the functions of an authorised officer mentioned in section 200E.

## Subdivision 2 General power of entry

### 200G General power to enter places

(1) An authorised officer may enter a place if—

(a) an occupier of the place consents under subdivision 3 to the entry and section 200J has been complied with for the occupier; or

(b) it is a public place and the entry is made when it is open to the public; or

(c) the entry is authorised under a warrant and, if there is an occupier of the place, section 200Q has been complied with for the occupier; or

(d) it is the place of business of an NDIS non-government service provider and is—

(i) open for carrying on the business; or

(ii) otherwise open for entry.

(2) For subsection (1)(d), a ***place of business*** does not include a part of the place where a person resides.

(3) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.

Not authorised—indicative only

Not authorised—indicative only



(4) If the power to enter is under a warrant, the power is subject to the terms of the warrant.

(5) In this section—

***public place*** means a place, or part of the place—

(a) the public is entitled to use, that is open to members of the public or that is used by the public, whether or not on payment of money; or

*Examples of a place that may be a public place under paragraph (a)—*

a beach, a park, a road

(b) the occupier of which allows, whether or not on payment of money, members of the public to enter.

*Examples of a place that may be a public place under paragraph (b)—*

a saleyard, a showground

## Subdivision 3 Entry by consent

### 200H Application of subdivision

This subdivision applies if an authorised officer intends to ask an occupier of a place to consent to the authorised officer or another authorised officer entering the place under section 200G(1)(a).

### 200I Incidental entry to ask for access

For the purpose of asking the occupier for the consent, an authorised officer may, without the occupier's consent or a warrant—

(a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or

(b) enter part of the place the authorised officer reasonably considers members of the public ordinarily are allowed

to enter when they wish to contact an occupier of the place.

### 200J Matters authorised officer must tell occupier

Before asking for the consent, the authorised officer must give a reasonable explanation to the occupier—

(a) about the purpose of the entry, including the powers intended to be exercised; and

(b) that the occupier is not required to consent; and

(c) that the consent may be given subject to conditions and may be withdrawn at any time.

### 200K Consent acknowledgement

(1) If the consent is given, the authorised officer may ask the occupier to sign an acknowledgement of the consent.

(2) The acknowledgement must state—

(a) the purpose of the entry, including the powers to be exercised; and

(b) the following has been explained to the occupier—

(i) the purpose of the entry, including the powers intended to be exercised;

(ii) that the occupier is not required to consent;

(iii) that the consent may be given subject to conditions and may be withdrawn at any time; and

(c) the occupier gives the authorised officer or another authorised officer consent to enter the place and exercise the powers; and

(d) the time and day the consent was given; and

(e) any conditions of the consent.

(3) If the occupier signs the acknowledgement, the authorised officer must immediately give a copy to the occupier.

Not authorised—indicative only

Not authorised—indicative only



(4) If—

(a) an issue arises in a proceeding about whether the occupier consented to the entry; and

(b) a signed acknowledgement complying with subsection (2) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

## Subdivision 4 Entry under warrant

### 200L Application for warrant

(1) An authorised officer may apply to a magistrate for a warrant for a place.

(2) The authorised officer must prepare a written application that states the grounds on which the warrant is sought.

(3) The written application must be sworn.

(4) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

### 200M Issue of warrant

(1) A magistrate may issue a warrant for a place only if the magistrate is satisfied there are reasonable grounds for suspecting that it is necessary to enter the place—

(a) to protect a person who is a participant receiving services, under the person's participant's plan, from an NDIS non-government service provider at the place from risk of harm because of abuse, neglect or exploitation; or

(b) to check whether an NDIS non-government service provider has complied with, or is complying with, this Act.

(2) However, the magistrate may issue a warrant under subsection (1)(b) only if the magistrate is satisfied noncompliance may significantly affect the delivery of a service to a participant.

(3) The warrant must state—

(a) the place to which the warrant applies; and

(b) that a stated authorised officer may, with necessary and reasonable help and force—

(i) enter the place and any other place necessary for the entry; and

(ii) exercise the officer's powers; and

(c) particulars of the reason it is necessary to enter the place that the magistrate considers appropriate;

(d) the hours of the day or night when the place may be entered; and

(e) the evidence that may be seized under the warrant; and

(f) the magistrate's name; and

(g) the day and time of the warrant's issue; and

(h) the day, within 14 days after the warrant's issue, the warrant ends.

## 200N Electronic application

(1) An application under section 200L may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the authorised officer reasonably considers it necessary because of—

(a) urgent circumstances; or

(b) other special circumstances, including, for example, the authorised officer's remote location.

(2) The application—

Not authorised—indicative only

Not authorised—indicative only



(a) may not be made before the authorised officer prepares the written application under section 200L(2); but

(b) may be made before the written application is sworn.

### 200O Additional procedure if electronic application

(1) For an application under section 200N, the magistrate may issue the warrant (the ***original warrant***) only if the magistrate is satisfied—

(a) it was necessary to make the application under section 200N; and

(b) the way the application was made under section 200N was appropriate.

(2) After the magistrate issues the original warrant—

(a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised officer, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised officer; or

(b) otherwise—

(i) the magistrate must tell the authorised officer the information mentioned in section 200M(3); and

(ii) the authorised officer must complete a form of warrant, including by writing on it the information mentioned in section 200M(3) provided by the magistrate.

(3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the ***duplicate warrant***), is a duplicate of, and as effectual as, the original warrant.

(4) The authorised officer must, at the first reasonable opportunity, send to the magistrate—

(a) the written application complying with section 200L(2) and (3); and

(b) if the authorised officer completed a form of warrant under subsection (2)(b)—the completed form of warrant.

(5) The magistrate must keep the original warrant and, on receiving the documents under subsection (4)—

(a) attach the documents to the original warrant; and

(b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.

(6) Despite subsection (3), if—

(a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and

(b) the original warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.

(7) This section does not limit section 200L.

(8) In this section—

***relevant magistrates court***, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

## 200P Defect in relation to a warrant

(1) A warrant is not invalidated by a defect in—

(a) the warrant; or

(b) compliance with section 200L, 200M or 200N;

unless the defect affects the substance of the warrant in a material particular.

(2) In this section—

***warrant*** includes a duplicate warrant mentioned in section 200O(3).

Not authorised—indicative only

Not authorised—indicative only



### 200Q Entry procedure

(1) This section applies if an authorised officer named in a warrant issued under this subdivision for a place is intending to enter the place under the warrant.

(2) Before entering the place, the authorised officer must do or make a reasonable attempt to do the following things—

(a) identify himself or herself to a person who is an occupier of the place and is present by producing a copy of the authorised officer's identity card or another document evidencing the authorised officer's appointment;

(b) give the person a copy of the warrant;

(c) tell the person the authorised officer is permitted by the warrant to enter the place;

(d) give the person an opportunity to allow the authorised officer immediate entry to the place without using force.

(3) However, the authorised officer need not comply with subsection (2) if the authorised officer believes on reasonable grounds that entry to the place without compliance is required to ensure the effective execution of the warrant is not frustrated.

(4) In this section—

***warrant*** includes a duplicate warrant mentioned in section 200O(3).

## Subdivision 5 General powers of authorised officer after entering place

### 200R Application of subdivision

(1) The powers under this subdivision may be exercised if an authorised officer enters a place under section 200G(1)(a), (c) or (d).

(2) However, if the authorised officer enters under section 200G(1)(a) or (c), the powers under this subdivision are subject to any conditions of the consent or terms of the warrant.

## 200S General powers

(1) The authorised officer may do any of the following (each a ***general power***)—

(a) search any part of the place;

(b) inspect, examine or film any part of the place or anything at the place;

(c) take for examination a thing, or a sample of or from a thing, at the place;

(d) place an identifying mark in or on anything at the place;

(e) take an extract from, or copy, a document at the place or take the document to another place to copy;

(f) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;

(g) take to, into or onto the place and use any person, equipment and materials the authorised officer reasonably requires for exercising the officer's powers under this subdivision;

(h) confer alone with a person at the place;

(i) require a person at the place to answer questions by the authorised officer to help the authorised officer ascertain whether this Act is being or has been complied with;

(j) remain at the place for the time necessary to achieve the purpose of the entry.

(2) The authorised officer may take a necessary step to allow the exercise of a general power.

Not authorised—indicative only

Not authorised—indicative only



(3) If the authorised officer takes a document from the place to copy it, the authorised officer must copy the document and return it to the place as soon as practicable.

(4) If the authorised officer takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the authorised officer must produce the document and return the article or device to the place as soon as practicable.

(5) In this section—

***examine*** includes analyse, test, account, measure, weigh, grade, gauge and identify.

### 200T Power to require reasonable help

(1) The authorised officer may make a requirement (a ***help requirement***) of an occupier of the place or a person at the place to give the authorised officer reasonable help to exercise a general power, including, for example, to produce a document or to give information.

(2) When making the help requirement, the authorised officer must warn the person it is an offence not to comply with the requirement unless the person has a reasonable excuse.

### 200U Offence to contravene help requirement

(1) A person of whom a help requirement is made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(2) It is a reasonable excuse for an individual to not comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.

### 200V Failure to answer questions

(1) A person of whom a requirement is made under section 200S(1)(i) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(2) It is a reasonable excuse for the person to not comply with the requirement if complying with the requirement might tend to incriminate the person.

## Subdivision 6 Additional information-obtaining power

### 200W Power to require information

(1) This section applies if an authorised officer reasonably believes—

(a) an offence against this Act has been committed by an NDIS non-government service provider; or

(b) there has been a service delivery failure by an NDIS non-government service provider and the service provider may be able to give information about the failure; or

(c) a person who is a participant receiving services, under the person's participant's plan, from an NDIS non-government service provider may be at risk of harm because of abuse, neglect or exploitation by the service provider.

(2) The authorised officer may, by notice given to the NDIS non-government service provider, require the service provider to give the authorised officer information related to the offence or matter mentioned in subsection (1) within a stated reasonable time and in a stated way.

(3) A requirement under subsection (2) is an ***information requirement***.

Not authorised—indicative only

Not authorised—indicative only



(4) For information that is an electronic document, compliance with the information requirement requires the giving of a clear image or written version of the electronic document.

(5) The authorised officer may keep information that is a document to copy it.

(6) If the authorised officer copies the document, or an entry in the document, the authorised officer may require the NDIS non-government service provider who has possession or control of the document to certify the copy as a true copy of the document or entry.

(7) A requirement under subsection (6) is a ***document certification requirement***.

(8) The authorised officer must return the document to the NDIS non-government service provider as soon as practicable after copying it.

(9) However, if a document certification requirement is made of a person, the authorised officer may keep the document until the person complies with the requirement.

(10) When making an information requirement or document certification requirement, the authorised officer must warn the NDIS non-government service provider it is an offence not to comply with the requirement unless the service provider has a reasonable excuse.

(11) In this section—

***service delivery failure*** means a significant failure to deliver a service to a participant who is paying for the service wholly or partly under the participant's plan.

## 200X Offence to contravene information requirement

(1) An NDIS non-government service provider of whom an information requirement is made must comply with the requirement unless the service provider has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) It is a reasonable excuse for an individual to not comply with the information requirement if complying with the requirement might tend to incriminate the individual or expose the individual to a penalty.

(3) If a court convicts a person of an offence against subsection (1), the court may also order the person to give to a stated authorised officer, within a stated time and in a stated way, the information to which the information requirement related.

# Part 7 Legal proceedings

## Division 1 Application

### 201 Application of pt 7

This part applies to a proceeding under this Act.

## Division 2 Evidence

### 202 Appointments and authority

The following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—

(a) the chief executive's appointment;

(b) the authority of the chief executive to do anything under this Act.

### 203 Signatures

A signature purporting to be the signature of the chief executive is evidence of the signature it purports to be.

Not authorised—indicative only

Not authorised—indicative only



### 204 Evidentiary provisions

(1) A certificate purporting to be signed by the chief executive and stating any of the following matters is evidence of the matter—

(a) a stated document is 1 of the following things made, given, issued or kept under this Act—

(i) an appointment, approval or decision;

(ii) a notice or requirement;

(iii) a record, or an extract from a record;

(b) a stated document is another document kept under this Act;

(c) a stated document is a copy of a thing mentioned in paragraph (a) or (b);

(d) on a stated day, a stated person was given a stated notice under this Act;

(e) on a stated day, a stated requirement was made of a stated person.

(2) In a complaint starting a proceeding, a statement that the matter of complaint came to the complainant's knowledge on a stated day is evidence of when the matter came to the complainant's knowledge.

### 205 Positive notice card is evidence of holding positive notice

If a person holds a current positive notice card, the card is evidence of the person holding a current positive notice.

## Division 3 Proceedings

### 206 Indictable and summary offences

(1) An offence against section 71(1) or 74 is an indictable offence that is a crime.

(2) Otherwise, an offence against this Act is a summary offence.

## 207 Proceedings for indictable offences

(1) A proceeding for an indictable offence against this Act may be taken, at the election of the prosecution—

(a) by way of summary proceedings under the *Justices Act 1886*; or

(b) on indictment.

(2) A magistrate must not hear an indictable offence summarily if—

(a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or

(b) the magistrate considers the charge should be prosecuted on indictment.

(3) If subsection (2) applies—

(a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and

(b) a plea of the person charged at the start of the proceeding must be disregarded; and

(c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and

(d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).

(4) The maximum penalty that may be summarily imposed for an indictable offence is 150 penalty units or 2 years imprisonment.

Not authorised—indicative only

Not authorised—indicative only



### 208 Limitation on who may summarily hear indictable offence proceedings

(1) A proceeding must be before a magistrate if it is a proceeding—

(a) for the summary conviction of a person on a charge for an indictable offence; or

(b) for an examination of witnesses for a charge for an indictable offence.

(2) However, if a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

### 209 Proceeding for offences

A proceeding for an offence against this Act, other than an indictable offence, must be taken in a summary way under the *Justices Act 1886*.

### 210 When proceeding may start

A proceeding for a summary offence against this Act must start within the later of the following periods to end—

(a) 1 year after the commission of the offence;

(b) 6 months after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

### 211 Allegations of false or misleading information or document

In any proceeding for an offence against this Act defined as involving false or misleading information, or a false or misleading document, it is enough for a charge to state that the information or document was, without specifying which, 'false or misleading'.

### 212 Forfeiture on conviction

(1) On conviction of a person for an offence against this Act, a court may order the forfeiture to the State of—

(a) anything used to commit the offence; or

(b) anything else the subject of the offence.

(2) The court may make the order—

(a) whether or not the thing has been seized; and

(b) if the thing has been seized, whether or not the thing has been returned to its owner.

(3) The court may make any order to enforce the forfeiture it considers appropriate.

(4) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

### 213 Dealing with forfeited thing

(1) On the forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the State as the State considers appropriate.

(2) Without limiting subsection (1), the State may destroy the thing.

### 214 Responsibility for acts or omissions of representative

(1) This section applies in a proceeding for an offence against this Act.

(2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—

(a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and

(b) the representative had the state of mind.

Not authorised—indicative only

Not authorised—indicative only



(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

(4) In this section—

***representative*** means—

(a) for a corporation—an executive officer, employee or agent of the corporation; or

(b) for an individual—an employee or agent of the individual.

***state of mind*** of a person includes—

(a) the person's knowledge, intention, opinion, belief or purpose; and

(b) the person's reasons for the intention, opinion, belief or purpose.

# Part 8 Miscellaneous

## Division 1 Records

### 215 Funded non-government service provider or NDIS non-government service provider must keep records

A funded non-government service provider or an NDIS non-government service provider must make, and keep for the time prescribed under a regulation, the records prescribed under a regulation.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence—20 penalty units; or

(b) for a funded non-government service provider—100 penalty units.

## Division 2 Locking of gates, doors and windows

### 216 Application of div 2

This division applies if—

(a) a relevant service provider locks gates, doors or windows at premises where disability services are provided to adults with an intellectual or cognitive disability; and

(b) the only reason the gates, doors or windows are locked is to prevent physical harm being caused to an adult with a skills deficit.

### 217 Definitions for div 2

In this division—

***adult with an intellectual or cognitive disability*** see section 144.

***adult with a skills deficit*** means an adult with an intellectual or cognitive disability who can not safely exit premises where disability services are provided to the adult without supervision, if the only reason the adult can not safely exit the premises without supervision is—

(a) the adult lacks road safety skills; or

(b) the adult is vulnerable to abuse or exploitation by others; or

(c) the adult is unable to find his or her way back to the premises; or

(d) another reason prescribed under a regulation.

***relevant service provider*** see section 140.

Not authorised—indicative only

Not authorised—indicative only



## 218 Immunity from liability—relevant service provider

(1) The relevant service provider is not civilly or criminally liable for locking gates, doors or windows if—

(a) the relevant service provider acts honestly and without negligence; and

(b) the relevant service provider keeps and implements a policy about the locking of gates, doors and windows that is consistent with the department's policy about the locking of gates, doors and windows; and

(c) the gates, doors or windows are locked in compliance with the policy; and

(d) the relevant service provider takes reasonable steps to minimise the impact of locking the gates, doors or windows on a person living at the premises who is not an adult with a skills deficit.

(2) Subsection (1) applies to the extent the locking of the gates, doors or windows prevents the free exit from the premises of—

(a) an adult with a skills deficit; or

(b) any other person living at the premises, other than an adult with an intellectual or cognitive disability who is contained within the meaning of part 6.

(3) In this section—

***keep and implement***, for a policy, means—

(a) prepare the policy and keep it up to date; and

(b) when providing disability services, implement and comply with the procedures and other matters stated in the policy; and

(c) keep a copy of the up-to-date policy at the premises.

### 219 Immunity from liability—individual acting for relevant service provider

An individual, acting for a relevant service provider, is not civilly or criminally liable for locking gates, doors or windows if the individual acts in compliance with, or reasonably believes he or she is acting in compliance with, the provider's policy about the locking of gates, doors and windows.

### 220 Department's policy about locking of gates, doors and windows

(1) The department must have a policy about the locking of gates, doors and windows under this division.

(2) The policy must outline the procedures a relevant service provider will use to ensure gates, doors and windows are locked only if it is—

(a) necessary to prevent physical harm to an adult with a skills deficit; and

(b) the least restrictive way of ensuring the adult's safety as is practicable in the circumstances.

(3) Also, the policy must ensure appropriate regard is had to linguistic and cultural diversity and Aboriginal tradition and Island custom.

*Editor's note—*

For definitions *Aboriginal tradition* and *Island custom*, see the *Acts Interpretation Act 1954*, section 36.

(4) The chief executive must keep a copy of the policy available for inspection free of charge by relevant service providers at—

(a) the department's head office and regional offices; and

(b) other places the chief executive considers appropriate.

(5) Also, the chief executive must publish the policy on the department's website on the internet.

Not authorised—indicative only

Not authorised—indicative only



## Division 3 Other matters

### 221 Disability service plans for departments

(1) The chief executive of a department must develop and implement disability service plans for the chief executive's department.

(2) The first plan must be developed and implemented within 1 year after the commencement of this section.

(3) A further plan must be developed and implemented at least once every 3 years.

(4) The purpose of a plan is to ensure each department has regard to the following to the extent they reasonably apply to the department's operations—

(a) the human rights principle;

(b) the service delivery principles;

(c) the government's policies for people with a disability.

(5) In developing a disability service plan, the chief executive of a department must consult with the following to ensure the chief executive's plan forms part of a coordinated whole-of-government approach for service delivery to people with a disability—

(a) the chief executive of the department in which this Act is administered;

(b) the chief executives of other departments.

(6) The plan must, for the period of the plan—

(a) identify the issues relating to service delivery to people with a disability by the department; and

(b) state the way the issues will be addressed; and

(c) state the way the chief executive of a department is to consult with other chief executives to achieve the whole-of-government approach mentioned in subsection (5).

(7) The chief executive of a department must publish the current disability service plan for the department on the department's website on the internet.

(8) Despite the *Public Service Act 2008*, section 22, this section does not apply to a public service office.

## 222 Establishment of Ministerial advisory committees

The Minister may establish—

(a) a committee to advise on the system that deals with complaints received from the following—

(i) consumers;

(ii) family members, carers or advocates of consumers; and

(b) as many other committees to advise on disability issues and disability services as the Minister considers appropriate.

## 223 Membership of advisory committee

(1) An advisory committee has the membership decided by the Minister.

(2) The Minister may appoint the following persons to an advisory committee—

(a) a person with a disability;

(b) a family member or carer of a person with a disability;

(c) another person the Minister considers has expertise or experience relevant to people with a disability.

## 224 Dissolution

The Minister may dissolve an advisory committee at any time.

Not authorised—indicative only

Not authorised—indicative only



### 225 Other matters

The Minister may decide matters about an advisory committee that are not provided for under this Act, including, for example, the way a committee must conduct meetings or report to the Minister.

### 226 Person with a disability must advise chief executive about compensation

(1) This section applies to a person with a disability who, in relation to the disability—

(a) is applying for, or is receiving—

(i) funding for disability services from the department; or

(ii) disability services from another entity the person knows is a funded service provider; and

(b) has received, or may receive, an amount relating to the disability.

(2) The person must notify the chief executive in the approved form—

(a) if action has been taken to claim an amount relating to the disability—of the type of action taken; and

(b) if an amount has been paid—of the date it was paid and the amount; and

(c) if part or all of the amount relates to future care—of the amount that relates to future care.

Maximum penalty—200 penalty units.

(3) Subsection (4) applies to a person who, on behalf of a person with a disability, applies for—

(a) funding for disability services from the department; or

(b) disability services from another entity the person applying knows is a funded service provider.

(4) The person who applies for funding on behalf of a person with a disability must notify the chief executive in the approved form of the matters mentioned in subsection (2).

Maximum penalty—200 penalty units.

(5) In this section—

***an amount relating to the disability*** includes an amount relating to the disability resulting from any of the following—

(a) a proceeding in a court;

(b) action taken for compensation under the *Workers' Compensation and Rehabilitation Act 2003* or an Act or law of another State, a Territory or the Commonwealth corresponding to that Act;

(c) an insurance claim;

(d) any other action taken under the common law or under an Act or law of a State or Territory or the Commonwealth.

## 227 Confidentiality of information about criminal history and related information

(1) This section applies to a person who—

(a) is, or has been, the chief executive, a public service employee, or a selection panel member; and

(b) in that capacity acquired information, or gained access to a document, under previous part 9 about another person's criminal history or about an investigation relating to the possible commission of a serious offence by another person.

(2) This section also applies to a person who—

(a) is, or has been, the chief executive, a public service employee or a selection panel member; and

(b) in that capacity acquired information, or gained access to a document, under part 5 about—

(i) another person's police information; or

Not authorised—indicative only

Not authorised—indicative only



(ii) another person's mental health, including information, or a document, about a proceeding in the Mental Health Court or the Mental Health Review Tribunal.

(3) The person must not disclose the information, or give access to the document, to anyone else.

Maximum penalty—100 penalty units or 2 years imprisonment.

(4) Subsection (3) does not apply to the disclosure of information, or giving of access to a document, about a person—

(a) if subsection (1) applies—to the chief executive, a public service employee or selection panel member for the purpose of assessing the person's suitability to be, or continue to be, a public service employee; or

(b) if subsection (2) applies—

(i) to the chief executive or a public service employee for the purpose of a screening decision; or

(ii) for information or a document about a person engaged or to be engaged by the department—to the chief executive, a public service employee or selection panel member for the purpose of assessing the person's suitability to be, or continue to be, engaged by the department at a service outlet; or

(c) if the person is an adult—with the person's consent; or

(d) if the disclosure or giving of access is otherwise required under an Act.

(5) In this section—

***previous part 9*** means part 9 of this Act as in force from time to time before the commencement of this definition.

***selection panel member*** means a member of a panel formed to make a recommendation to the chief executive about a person's employment as a public service employee.

## 228 Confidentiality of other information

(1) This section applies to confidential information other than information mentioned in section 227(1)(b) or (2)(b).

(2) If a person gains confidential information through involvement in this Act's administration, the person must not disclose the information to anyone, other than under subsection (4) or (5).

Maximum penalty—100 penalty units.

(3) A person gains information through involvement in this Act's administration if the person gains the information because of being, or an opportunity given by being—

(a) the chief executive; or

(b) an employee in the department; or

(c) a person contracted by the chief executive to provide disability services for the department; or

(d) a person contracted by the department for the purpose of conducting a multidisciplinary assessment, or developing a positive behaviour support plan, under part 6, division 3; or

(e) a person authorised by the chief executive to carry out research related to the objects of this Act; or

(f) a member of a Ministerial advisory committee.

(4) A person may disclose information to someone else—

(a) for administering, monitoring or enforcing compliance with, this Act; or

(b) to discharge a function under another law; or

(c) for a proceeding in a court or tribunal; or

(d) if authorised under another law or a regulation made under this Act; or

(e) if—

(i) the person is authorised in writing by the person to whom the information relates; and

Not authorised—indicative only

Not authorised—indicative only



(ii) the person to whom the information relates is an adult when the authorisation is given; or

(f) to protect a person with a disability from abuse, neglect or exploitation.

(5) Also, a person may disclose information to—

(a) another department, a funded non-government service provider, an NDIS non-government service provider or another entity to enable the department, service provider or entity to provide for the needs of a person with a disability; or

(b) the Commonwealth or another entity for the purposes of an agreement with the Commonwealth.

## 229 Power to require information or documents

(1) The chief executive may give notice to a funded non-government service provider or an NDIS non-government service provider requiring the service provider to give the chief executive, within a stated reasonable time, information or a document relating to the provision of disability services to consumers of the service provider.

(2) The funded non-government service provider or NDIS non-government service provider must comply with the notice.

(3) For a requirement to give a document, the funded non-government service provider or NDIS non-government service provider may comply with the requirement by giving a copy of the document certified as a true copy of the document.

## 230 Protection from liability for giving information

(1) This section applies to the giving of information to the chief executive, by a funded non-government service provider or an NDIS non-government service provider under this Act.

(2) A funded non-government service provider or an NDIS non-government service provider, or a person on behalf of the

service provider, may give the information despite any other law that would otherwise prohibit or restrict the giving of the information.

(3) If a person, acting honestly on reasonable grounds, gives the information to the chief executive, the person is not liable, civilly, criminally or under an administrative process, for giving the information.

(4) Also, merely because the person gives the information, the person can not be held to have—

(a) breached any code of professional etiquette or ethics; or

(b) departed from accepted standards of professional conduct.

(5) Without limiting subsections (3) and (4)—

(a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and

(b) if the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the person—

(i) does not contravene the Act, oath or rule of law or practice by giving the information; and

(ii) is not liable to disciplinary action for giving the information.

(6) In this section—

***information*** includes a document.

## 231 Chief executive to advise on-disclosure

(1) This section applies to information or a document that the chief executive has obtained from a funded non-government service provider or an NDIS non-government service provider under section 229.

(2) The chief executive must advise the funded non-government service provider or NDIS non-government service provider before giving the information or document to another entity,

Not authorised—indicative only

Not authorised—indicative only



unless the chief executive considers that doing so would not be in the best interests of a consumer to whom the information or document relates.

### 232 Chief executive may enter into arrangement about giving and receiving information with police commissioner

(1) This section applies only to the extent that another provision under this Act allows the chief executive to give information to the police commissioner or the police commissioner to give information to the chief executive.

(2) The chief executive and the police commissioner may enter into a written arrangement by which the information is given or received.

(3) Without limiting subsection (2), the arrangement may provide for the electronic transfer of information, including on a daily basis.

(4) However, if information is to be electronically transferred and, under this Act, there is a limitation on who may access the information or the purposes for which the information may be used, the arrangement must provide for the limitation.

### 233 Chief executive may enter into arrangements about giving and receiving information about eligible persons

(1) The purpose of this section is to facilitate the monitoring and reconciliation of funding under this Act and other Acts and the NDIS Act by sharing information about persons who may be eligible persons.

(2) If the chief executive requests auditing information about persons who may be eligible persons from the chief executive of another department, the other chief executive must comply with the request.

(3) To facilitate the giving of auditing information about persons who may be eligible persons, the chief executive and the chief executive of the other department may enter into a written

arrangement by which the auditing information is given or received.

(4) Without limiting subsection (3), the arrangement may provide for the electronic transfer of auditing information about persons who may be eligible persons.

(5) However, if auditing information about persons who may be eligible persons is to be electronically transferred and, under this Act, there is a limitation on who may access the information or the purposes for which the information may be used, the arrangement must provide for the limitation.

(6) Without limiting section 228(5), the chief executive may disclose to the chief executive of another department under the arrangement mentioned in subsection (3) the fact that an eligible person has become, or will not become, a participant.

(7) In this section—

***auditing information***, about a person who may be an eligible person, means each of the following—

(a) the person's full name;

(b) the person's unique agency client identifier, if any;

(c) the person's date of birth;

(d) the person's gender;

(e) the person's residential address;

(f) the name and full contact details of the person's carer or guardian and details of any relationship between the person and the person's carer or guardian.

***eligible person*** means a person receiving services funded or delivered by a department who may meet the access criteria under the NDIS Act, section 21.

## 234 Delegation by Minister

(1) The Minister may delegate the Minister's powers under this Act to an appropriately qualified person who is a public service employee.

Not authorised—indicative only

Not authorised—indicative only



(2) However, the Minister must not delegate the review of the Act under section 240.

### 235 Delegation by chief executive

The chief executive may delegate the chief executive's powers under this Act to an appropriately qualified person who is a public service employee.

### 236 Protecting officials from liability

(1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.

(3) In this section—

***official*** means—

(a) the Minister; or

(b) the chief executive; or

(c) a public service employee; or

(d) a member of a Ministerial advisory committee; or

(e) a person acting under the direction of an official.

### 237 Approval of forms

The chief executive may approve forms for use under this Act.

### 238 Service of documents

(1) If a document is required or permitted under this Act to be given to a person, the document may be given to the person by fax transmission directed and sent to—

(a) the last fax number given to the giver of the document by the person as the facsimile transmission number for service of documents on the person; or

(b) the fax transmission number operated—

(i) at the address of the person last known to the giver of the document; or

(ii) if the person is a corporation, at the corporation's registered office under the Corporations Act.

(2) A document given under subsection (1) is taken to have been given on the day the document is transmitted.

## 239 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) A regulation made under this Act may—

(a) impose a penalty of not more than 20 penalty units for a contravention of a provision of a regulation; and

(b) prescribe fees payable under this Act and the matters for which fees are payable.

## 240 Review of Act

The Minister must review the efficacy and efficiency of this Act as soon as practicable after the end of 5 years after the commencement of this section.

## 241 Review of Guardianship and Administration Act 2000, ch 5B

When the Minister conducts the review required under section 240, the Minister and the Minister responsible for administering the *Guardianship and Administration Act 2000*, acting jointly, must review the efficacy and efficiency of chapter 5B of that Act.

Not authorised—indicative only

Not authorised—indicative only



### 241A Review of impact of NDIS on Act

(1) The Minister must review the efficacy and efficiency of this Act in the light of amendments of the Act made by the *Disability Services and Other Legislation Amendment Act 2016*.

(2) The review must be completed by 30 June 2019.

### 241B Expiry of pt 6A

Part 6A expires on 30 June 2019.

# Part 9 Repeal and transitional provisions

## Division 1 Repeal

### 242 Repeal of Disability Services Act 1992

The Disability Services Act 1992 No. 24 is repealed.

## Division 2 Transitional provisions for Act No. 12 of 2006

### 243 Definitions for div 2

In this division—

***commencement*** means the commencement of this part.

***repealed Act*** means the *Disability Services Act 1992*.

### 244 Screening of persons engaged by funded non-government service providers at the commencement

(1) This section applies to a funded non-government service provider who is engaging a person at a service outlet of the service provider at the commencement.

(2) Section 65 does not apply to the continued engagement of the person until the earliest of the following—

(a) the end of the period after the commencement prescribed under a regulation;

(b) if an application for a prescribed notice about the person is made within that period and is not withdrawn—the day a prescribed notice is issued to the person;

(c) if an application for a prescribed notice about a person is made within that period and is withdrawn—the day of the withdrawal.

(3) For subsection (2)(a), a regulation must—

(a) name each funded non-government service provider; and

(b) assign a category to the service provider; and

(c) state the period after the commencement, not exceeding 6 months, that applies to the category.

(4) The category must relate to the type of disability services provided by the service provider and is for the purposes of this section only.

(5) A particular category may be assigned to a funded non-government service provider even though the service provider also falls within another category.

### 245 Certain non-government service providers taken to be approved under part 6 and to be funded non-government service providers

(1) This section applies to a non-government service provider that, at the commencement, is receiving financial assistance under the repealed Act that is recurrent funding.



Not authorised—indicative only

Not authorised—indicative only



(2) The service provider is, from the commencement, taken to be—

(a) an approved non-government service provider for this Act; and

(b) a funded non-government service provider for this Act.

*Note—*

The definition *approved non-government service provider* and part 6 were omitted from this Act by the *Communities Legislation (Funding Red Tape Reduction) Amendment Act 2014*.

## 246 When grants of financial assistance under the repealed Act continue

(1) This section applies to a non-government service provider that, at the commencement, is receiving financial assistance under the repealed Act that is recurrent funding.

(2) Subject to subsection (4), the service provider may continue to receive recurrent funding under this Act.

(3) If the service provider has, before the commencement, signed an agreement under the repealed Act known as a general service agreement, that agreement is taken to be a funding agreement under this Act.

*Note—*

The definition *funding agreement* was omitted from this Act by the *Communities Legislation (Funding Red Tape Reduction) Amendment Act 2014*.

(4) If the service provider has not signed a general service agreement before the commencement, funding must stop 3 months after the commencement unless—

(a) the Minister approves funding under this Act; and

(b) a funding agreement is signed by the service provider.

(5) No compensation is payable to a service provider if funding to the service provider stops under subsection (4).

## 247 Queensland disability service standards to continue in force

(1) The prescribed standards are taken to be service standards made and notified under this Act and take effect for this Act from the commencement.

*Note—*

The definition *service standards* was omitted from this Act by the *Communities Legislation (Funding Red Tape Reduction) Amendment Act 2014*.

(2) The prescribed standards may be amended and repealed under this Act.

(3) In this section—

***prescribed standards*** means the standards called the Queensland disability service standards that were approved by the Minister administering the *Disability Services Act 1992* in December, 2003.

## 248 Disability sector quality system to continue in force

(1) The prescribed system is taken to be the disability sector quality system approved under this Act and takes effect for this Act from the commencement.

*Note—*

The definition *disability sector quality system* was omitted from this Act by the *Communities Legislation (Funding Red Tape Reduction) Amendment Act 2014*.

(2) The Minister may approve an amendment of, or the repeal of, the prescribed system under this Act.

(3) Subsection (4) applies if—

(a) the Minister administering the *Disability Services Act 1992* has approved an entity as being suitable to accredit another entity for the purpose of the other entity deciding whether a service provider has met the service standards for the prescribed system; and

(b) the approval is in force immediately before the commencement.

Not authorised—indicative only

Not authorised—indicative only



(4) The entity is taken to be an entity approved under section 38.

(5) The Minister may revoke the approval of the entity.

(6) In this section—

***prescribed system*** means the process called the disability sector quality system that was approved by the Minister administering the *Disability Services Act 1992* in June, 2004.

## Division 3 Transitional provisions for Disability Services and Other Legislation Amendment Act 2008 and Justice and Other Legislation Amendment Act 2010

## Subdivision 1 Preliminary

### 249 Interpretation

(1) In this division—

***authorised guardian***, for an adult with an intellectual or cognitive disability in relation to a restrictive practice, means a guardian for the adult—

(a) appointed before the commencement under the *Guardianship and Administration Act 2000*; and

(b) who is authorised under that Act, in accordance with the terms of the guardian's appointment, to make decisions about the use of the restrictive practice in relation to the adult.

*Note—*

See also the GAA, section 265.

***commencement*** means the commencement of this division.

***compliance period*** means—

(a) if the restrictive practice used is containment or seclusion or restricting access—6 months from the day the relevant service provider first uses the restrictive practice in relation to the adult on or after the commencement; or

(b) if the restrictive practice used is chemical, mechanical or physical restraint—9 months from the day the relevant service provider first uses the restrictive practice in relation to the adult on or after the commencement.

***previous service provider*** means—

(a) the State, to the extent the State provided disability services for adults with an intellectual or cognitive disability before the commencement; or

(b) a person other than the State who provided disability services funded by the State for adults with an intellectual or cognitive disability before the commencement.

***transitional period*** means the period starting on the commencement and ending 33 months after the commencement.

(2) If the context permits, terms used in this division that are defined for part 6 have the meanings given for part 6.

## 250 Declaration about transitional period

To remove doubt, it is declared that for all purposes, including for anything done in relation to the transitional period, the transitional period includes, and is taken to have always included, the period from after 30 September 2010 until the commencement of this section.

Not authorised—indicative only

Not authorised—indicative only



## Subdivision 2 Immunity from liability for use of restrictive practices before commencement

### 251 Immunity of previous service provider

A previous service provider is not criminally or civilly liable for using a restrictive practice before the commencement in relation to an adult with an intellectual or cognitive disability if—

(a) the previous service provider acted honestly and without negligence; and

(b) using the restrictive practice was—

(i) necessary to prevent the adult's behaviour causing harm to the adult or others; and

(ii) the least restrictive way of ensuring the safety of the adult or others; and

(c) within a reasonable time before using the restrictive practice, the previous service provider assessed the adult to identify—

(i) the nature and causes of the adult's behaviour that caused harm to the adult or others; and

(ii) strategies for managing the adult's behaviour that caused harm to the adult or others, and for meeting the adult's needs; and

(d) the previous service provider carried out monitoring in relation to use of the restrictive practice to ensure the safety of the adult.

### 252 Immunity of individual acting for previous service provider

(1) This section applies to an individual who, acting for a previous service provider before the commencement, used a

restrictive practice in relation to an adult with an intellectual or cognitive disability.

(2) The individual is not criminally or civilly liable for using the restrictive practice if—

(a) the individual acted honestly and without negligence; and

(b) use of the restrictive practice was necessary, or the individual reasonably believed use of the restrictive practice was necessary, to prevent the adult's behaviour causing harm to the adult or others.

## Subdivision 3 Immunity from liability for use of restrictive practices during transitional period

### 253 Immunity of relevant service provider

(1) A relevant service provider is not criminally or civilly liable for using a restrictive practice during the transitional period in relation to an adult with an intellectual or cognitive disability if—

(a) the relevant service provider acts honestly and without negligence; and

(b) use of the restrictive practice is—

(i) necessary to prevent the adult's behaviour causing harm to the adult or others; and

(ii) the least restrictive way of ensuring the safety of the adult or others; and

(c) either—

(i) if there is an authorised guardian for the adult in relation to the restrictive practice—the restrictive practice is used in compliance with the consent of the authorised guardian; or

Not authorised—indicative only

Not authorised—indicative only



(ii) otherwise—the relevant service provider complies with section 254; and

(d) the relevant service provider carries out monitoring in relation to use of the restrictive practice to ensure the safety of the adult; and

(e) for containment or seclusion—within 60 days after first containing or secluding the adult on or after the commencement, the relevant service provider gives notice to the chief executive in the approved form of the containment or seclusion of the adult; and

(f) from the first day after the end of the compliance period until the last day of the transitional period—the relevant service provider keeps and implements a policy about use of the restrictive practice during the transitional period that is consistent with the department's policy about use of the restrictive practice mentioned in section 258.

(2) Subsection (1)(b) to (d) does not apply if the restrictive practice is chemical restraint (fixed dose) used in the course of providing respite services to the adult.

(3) This section is subject to section 257.

### 254 Requirement to assess adult if no authorised guardian

For section 253(1)(c)(ii), the requirements are that the relevant service provider must, during the compliance period, assess the adult to identify—

(a) the nature and causes of the adult's behaviour that causes harm to the adult or others; and

(b) strategies for managing the adult's behaviour that causes harm to the adult or others, and for meeting the adult's needs.

### 255 Immunity for individual acting for relevant service provider

(1) This section applies to an individual who, acting for a relevant service provider during the transitional period, uses a restrictive practice in relation to an adult with an intellectual or cognitive disability.

(2) The individual is not criminally or civilly liable for using the restrictive practice if—

(a) the individual acts honestly and without negligence; and

(b) use of the restrictive practice is necessary, or the individual reasonably believes use of the restrictive practice is necessary, to prevent the adult's behaviour causing harm to the adult or others.

(3) Subsection (2)(b) does not apply if the restrictive practice is chemical restraint (fixed dose) used in the course of providing respite services to the adult.

(4) This section is subject to section 257.

### 256 Relationship of subdivision with pt 6

This subdivision does not limit part 6.

### 257 Circumstances in which subdivision stops applying

(1) This section provides for the circumstances in which this subdivision stops applying to the use of a restrictive practice by a relevant service provider in relation to an adult with an intellectual or cognitive disability.

(2) If the restrictive practice is not used in the course of providing respite services or community access services to the adult, the circumstances are—

(a) for a restrictive practice considered by the tribunal—the tribunal gives, or refuses to give, an approval under the *Guardianship and Administration Act 2000*, section 80V or 80X authorising the relevant service

Not authorised—indicative only

Not authorised—indicative only



provider to use the restrictive practice in relation to the adult; or

(b) for chemical, mechanical or physical restraint—a guardian for a restrictive practice (general) matter for the adult gives, or refuses to give, consent to use of the restrictive practice by the relevant service provider; or

(c) for restricting access—a guardian for a restrictive practice (general) matter, or an informal decision-maker, for the adult gives, or refuses to give, consent to use of the restrictive practice by the relevant service provider.

(3) If the restrictive practice is used in the course of providing respite services or community access services to the adult, the circumstances are a guardian for a restrictive practice (respite) matter, or an informal decision-maker, for the adult gives, or refuses to give, consent to use of the restrictive practice by the relevant service provider.

## Subdivision 4 Other provisions

### 258 Requirements for department's policy about use of restrictive practices during transitional period

(1) The department must have a policy about use of each type of restrictive practice during the transitional period.

(2) The policy must outline the procedures a relevant service provider must use to—

(a) if the relevant service provider is required to comply with section 254—assess an adult with an intellectual or cognitive disability; and

(b) ensure an individual acting for the relevant service provider who uses the restrictive practice in relation to the adult—

(i) has sufficient knowledge of the requirements for lawful use of the restrictive practice; and

(ii) has the skills and knowledge required to use the restrictive practice appropriately; and

(c) monitor use of the restrictive practice to safeguard against abuse, neglect or exploitation; and

(d) review use of the restrictive practice at least once every 9 months; and

(e) if the policy is about restricting access—minimise the impact on other persons living at the premises.

(3) Subsection (2) does not limit the matters that may be stated in the policy.

(4) The policy must ensure appropriate regard is had to linguistic and cultural diversity and Aboriginal tradition and Island custom.

*Editor's note—*

For definitions *Aboriginal tradition* and *Island custom*, see the *Acts Interpretation Act 1954*, section 36.

(5) The chief executive must keep a copy of the policy available for inspection free of charge by relevant service providers at—

(a) the department's head office and regional offices; and

(b) other places the chief executive considers appropriate.

(6) Also, the chief executive must publish the policy on the department's website on the internet.

(7) This section stops applying on the day after the transitional period ends.

## 259 Short term approvals not to be given during transitional period

(1) Sections 153 and 170 and part 6, division 4, subdivision 4 do not apply during the transitional period.

(2) In this section—

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Not authorised—indicative only

***transitional period*** means the period starting on the commencement and ending on the date of assent of the *Criminal History Screening Legislation Amendment Act 2010*.

## Division 4 Transitional provision for Criminal Code and Other Acts Amendment Act 2008

### 260 References in schs 2 and 4 to Criminal Code offence

Schedules 2 and 4 apply as if a reference to the Criminal Code, section 208 included a reference to the Criminal Code, section 209 as in force at any time before its repeal by the *Criminal Code and Other Acts Amendment Act 2008*.

## Division 5 Transitional provisions for Criminal History Screening Legislation Amendment Act 2010

## Subdivision 1 Preliminary

### 261 Definition for div 5

In this division—

***amending Act*** means the *Criminal History Screening Legislation Amendment Act 2010*.

## Subdivision 2 Transitional provisions relating to previous part 9

### 262 Definitions for sdiv 2

In this subdivision—

***commencement*** means the commencement of this section.

***engaged by the department*** means engaged by the department as defined under section 63 of the unamended Act.

***prescribed police information*** means a report or other information mentioned in section 70(2) of the unamended Act.

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

### 263 Notice about change in criminal history not given at the commencement

(1) This section applies if—

(a) before the commencement, there is a change in the criminal history of a person engaged by the department; and

(b) at the commencement, the person has not disclosed the details of the change to the chief executive as required by section 67 of the unamended Act; and

(c) the person is engaged by the department at a service outlet of the department.

(2) Section 76 applies in relation to the change in the person's criminal history.

*Note—*

See also the *Public Service Act 2008*, sections 155B and 257.

### 264 Request for prescribed police information not complied with at the commencement

(1) This section applies if—

(a) the chief executive has, under section 70 of the unamended Act, asked the police commissioner for prescribed police information about a person; and

Not authorised—indicative only

Not authorised—indicative only



(b) at the commencement, the police commissioner has not given the prescribed police information to the chief executive.

(2) Despite section 70(3) of the unamended Act, the police commissioner is no longer required to comply with the chief executive's request.

### 265 Particular prescribed police information obtained but not used before commencement

(1) This section applies if—

(a) before the commencement, the police commissioner gave the chief executive a person's prescribed police information under section 70 of the unamended Act; and

(b) at the commencement, the chief executive has not, in relation to the prescribed police information, made an assessment about the person's suitability for engagement, or continued engagement, by the department under section 72 of the unamended Act.

(2) The chief executive must immediately—

(a) destroy the prescribed police information; and

(b) stop making the assessment.

*Note—*

Now see the following in relation to the engagement, or continued engagement, of the person by the department—

(a) if the person is engaged or to be engaged at a service outlet of the department—part 5;

(b) if the person is engaged or to be engaged in regulated employment—the Working with Children Act, chapter 8 and the *Public Service Act 2008*, chapter 5, part 6, division 3A;

(c) in any other case—the *Public Service Act 2008*, chapter 5, part 6.

### 266 Notice not given by prosecuting authority at the commencement

(1) This section applies if—

(a) before the commencement, a person engaged by the department is charged with an indictable offence; and

(b) at the commencement, the police commissioner or director of public prosecutions (a ***prosecuting authority***) has not given information about the charge to the chief executive as required by section 71 of the unamended Act.

(2) Despite section 71 of the unamended Act, the prosecuting authority is no longer required to give the information to the chief executive.

### 267 Use of particular information obtained before commencement

Section 72(2) of the unamended Act continues to apply in relation to information about a person received by the chief executive under part 9 of the unamended Act as if the amending Act had not been enacted.

## Subdivision 3 Transitional provisions relating to particular amendments of part 5

### 268 Explanation of sdiv 3

(1) The amendments of provisions of part 5 of this Act by the amending Act are to commence in 2 stages.

(2) This subdivision provides for particular transitional arrangements for amendments of provisions of part 5 that are to commence in the first of the 2 stages.

### 269 Definitions for sdiv 3

In this subdivision—

***commencement*** means the commencement of this section.

***stage 2 commencement date*** means the day subdivision 4 commences.

Not authorised—indicative only

Not authorised—indicative only



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

## 270 New serious offences

(1) The amendment of section 47 by the amending Act does not affect a positive notice that is in force at the commencement.

(2) Without limiting subsection (1), the chief executive may not cancel a person's positive notice on the basis the person would not have been issued a positive notice under this Act because the person was charged with or convicted of a new serious offence before the commencement.

(3) However, subsections (1) and (2) do not prevent the chief executive having regard to a charge or conviction of a person for a new serious offence happening before the commencement in making a decision about the person if—

(a) the decision is being made under this Act after the commencement—

(i) because there has been a change in the person's criminal history; or

(ii) because the chief executive has become aware of the charge or conviction (but was not aware of it at the time the positive notice was issued); or

(b) the decision relates to a prescribed notice application about the person—

(i) to which section 271 applies; or

(ii) made after the commencement.

(4) In this section—

***new serious offence*** means an offence that—

(a) is a serious offence under this Act; but

(b) was not a serious offence under section 47 as in force immediately before the commencement.

### 271 Existing applications for prescribed notice

(1) This section applies if—

(a) a prescribed notice application has been made about a person; and

(b) the application has not been decided or withdrawn at the commencement.

(2) This Act applies to the application and, if the application complies with the requirements of the unamended Act, the application is not invalid only because it does not comply with this Act as in force immediately after the commencement.

### 272 Continuation if chief executive acting on own initiative

(1) This section applies if—

(a) before the commencement, the chief executive had started on the chief executive's own initiative to exercise a power in relation to a person or a prescribed notice; and

(b) the chief executive may, immediately after the commencement, exercise the power under this Act.

(2) The chief executive may continue to exercise the power under this Act in relation to the person or prescribed notice.

### 273 Replacement of positive notice or positive notice card

(1) This section applies if—

(a) a person's current positive notice or current positive notice card is lost or stolen 14 days or less before the commencement; and

(b) at the commencement, the person has not applied for a replacement notice or card as required under section 106 of the unamended Act.

(2) Section 106 of the unamended Act does not apply to the person.

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Not authorised—indicative only



(3) Section 106 as in force after the commencement applies to the person as if the reference to 14 days after the loss or theft were a reference to the later of the following—

(a) 14 days after the loss or theft;

(b) 7 days after the commencement.

## 274 Existing reviews and appeals

(1) This section applies if—

(a) before the commencement, a person—

(i) applied for a review of a decision of the chief executive under section 108 or 113(2)(a) of the unamended Act; or

(ii) appealed under the QCAT Act against a decision of the tribunal relating to a review under section 108 or 113(2)(a) of the unamended Act; and

(b) the review or appeal has not been decided at the commencement.

(2) The entity hearing the review or appeal must apply this Act in relation to the matter the subject of the review or appeal.

(3) Without limiting subsection (2), the entity may exercise a power of the chief executive under part 5 for deciding a review of a decision of the chief executive, or an appeal against a decision of the tribunal, as to whether or not there is an exceptional case for a person.

## 275 Police commissioner's decision that information is investigative information

(1) This section applies in relation to an offence (***new investigative information offence***) that—

(a) is a schedule 6 offence; but

(b) was not a serious sexual or violent offence within the meaning of that term under the unamended Act.

(2) Section 111 applies in relation to a positive notice holder's acts or omissions constituting a new investigative information offence even if the acts were committed or omissions were made before the commencement of this section.

(3) In this section—

***schedule 6 offence*** see section 111 as in force before the commencement of the *Criminal Law (Child Exploitation and Dangerous Drugs) Amendment Act 2013*, section 29.

## 276 References to exemption notices etc.

(1) The purpose of this section is to explain references to any of the following in a provision of this Act as in force immediately after the commencement—

(a) an exemption notice application;

(b) an exemption notice;

(c) a positive exemption notice or negative exemption notice;

(d) a provision of proposed part 5, division 6.

(2) Proposed part 5, division 6 provides for the making of an exemption notice application and the issue of an exemption notice to a person who holds a CCYPCG positive notice.

(3) An exemption notice issued under proposed part 5, division 6 may be a positive exemption notice or negative exemption notice.

(4) Proposed part 5, division 6 is to commence at the stage 2 commencement date, which is after the commencement.

(5) A reference in part 5 to a thing mentioned in subsection (1)(a) to (d) does not have any effect until the stage 2 commencement date.

(6) In this section—

***proposed part 5, division 6*** means part 5, division 6 of this Act to be inserted by the amending Act.

Not authorised—indicative only

Not authorised—indicative only



### 277 References to eligibility declarations etc.

(1) The purpose of this section is to explain references to any of the following in a provision of this Act as in force immediately after the commencement—

(a) an eligibility application;

(b) an eligibility declaration;

(c) a provision of proposed part 5, division 10.

(2) Proposed part 5, division 10 provides for the making of an eligibility application and the issue of an eligibility declaration to a person.

(3) Proposed part 5, division 10 is to commence at the stage 2 commencement date, which is after the commencement.

(4) A reference in part 5 to a thing mentioned in subsection (1)(a) to (c) does not have any effect until the stage 2 commencement date.

(5) In this section—

***proposed part 5, division 10*** means part 5, division 10 of this Act to be inserted by the amending Act.

## Subdivision 4 Transitional provisions relating to other amendments of part 5

### 278 Explanation of sdiv 4

(1) The amendments of provisions of part 5 of this Act by the amending Act are to commence in 2 stages.

(2) This subdivision provides for particular transitional arrangements for amendments of provisions of part 5 that are to commence in the second of the 2 stages.

### 279 Definitions for sdiv 4

In this subdivision—

***commencement*** means the commencement of this section.

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

### 280 Obtaining particular information from police commissioner about particular persons

(1) This section applies in relation to a person if—

(a) the person—

(i) has a current positive notice; or

(ii) is the subject of an application for a prescribed notice that has not been decided or withdrawn at the commencement; or

(iii) has made an application for the cancellation of the person's negative notice, or the cancellation of the suspension of the person's positive notice, that has not been decided or withdrawn at the commencement; and

(b) under section 117, the chief executive requested information from the police commissioner, or access to the police commissioner's records, about the person before the commencement.

(2) If, at the commencement, the police commissioner has complied with the request, the chief executive may ask the police commissioner for information, or access to the police commissioner's records, to enable the chief executive to learn whether there is any new police information about the person.

(3) Section 117 applies in relation to the chief executive's request under subsection (2) as if it were made under section 117(2) in relation to only new police information.

(4) If, at the commencement, the police commissioner has not complied with the request, section 117 as in force from the commencement applies in relation to the request.

(5) In this section—

Not authorised—indicative only

Not authorised—indicative only



***new police information*** means information mentioned in section 117(7) or (8).

## 281 Existing applications for prescribed notice about a disqualified person who is not a relevant disqualified person

(1) This section applies to a prescribed notice application made before the commencement if the application—

(a) has not been decided or withdrawn at the commencement; and

(b) relates to a person who is a disqualified person but not a relevant disqualified person.

(2) If, at the time of the application, the person did not hold a positive notice or held a positive notice that was suspended under section 86—

(a) the application is taken to have been withdrawn; and

(b) the chief executive must give notice of the withdrawal to the person and the funded non-government service provider who made the application.

(3) If, at the time of the application, the person held a positive notice that was not suspended under section 86—

(a) the person is taken to have been issued with an eligibility declaration other than for section 54(6)(b); and

(b) the chief executive must decide the application under this Act.

(4) Subject to subsection (5), this Act applies to an application mentioned in subsection (3)(b) and, if the application complies with the requirements of the unamended Act, the application is not invalid only because it does not comply with this Act as in force immediately after the commencement.

(5) Despite section 58(2), a prescribed notice issued under subsection (3)(b) in relation to a prescribed notice application made before the commencement remains current for 2 years

after it is issued, unless it is earlier cancelled under part 5, division 8.

### 282 Existing applications for prescribed notice about a relevant disqualified person

(1) This section applies to a prescribed notice application made before the commencement if the application—

(a) has not been decided or withdrawn at the commencement; and

(b) relates to a person who is a relevant disqualified person.

(2) The application is taken to have been withdrawn.

(3) The chief executive must give notice of the withdrawal to the person and the funded non-government service provider who made the application.

### 283 Other existing applications for prescribed notice

(1) This section applies if—

(a) a prescribed notice application has been made about a person; and

(b) the application has not been decided or withdrawn at the commencement; and

(c) neither section 281 nor section 282 applies to the application.

(2) Subject to subsection (3), this Act applies to the application and, if the application complies with the requirements of the unamended Act, the application is not invalid only because it does not comply with this Act as in force immediately after the commencement.

(3) Despite section 58(2), a prescribed notice issued under subsection (2) in relation to a prescribed notice application made before the commencement remains current for 2 years after it is issued, unless it is earlier cancelled under part 5, division 8.

Not authorised—indicative only

Not authorised—indicative only



### 284 Existing positive notices held by disqualified persons who are not relevant disqualified persons

(1) This section applies in relation to a positive notice issued under section 54(2)(a) before the commencement to a person who is a disqualified person but who is not—

(a) a relevant disqualified person; or

(b) a person in relation to whom the chief executive has started, before the commencement, to exercise a power under section 83.

(2) If, at the commencement, the positive notice is not suspended under section 86, the person is taken to have been issued with an eligibility declaration.

(3) If, at the commencement, the positive notice is suspended under section 86, this Act continues to apply in relation to the positive notice.

(4) If, after the commencement, the chief executive is to make a decision about the person under section 54, and it is the first time the chief executive is to make a decision under that section about the person after the commencement, section 54(6)(b) does not apply to the chief executive making the decision.

(5) Without limiting subsection (3), the chief executive may have regard to a charge or conviction of a person for a new disqualifying offence happening before the commencement in making a decision about the person or the person's positive notice under this Act.

(6) In this section—

***new disqualifying offence*** means an offence that—

(a) is a disqualifying offence under this Act; but

(b) was not an excluding offence under section 81 as in force immediately before the commencement.

### 285 Existing positive notices held by relevant disqualified person because of temporary or interim order

(1) This section applies in relation to a positive notice issued under section 54(2) before the commencement (including a positive notice that is suspended under section 86 at the commencement) to a person who is a relevant disqualified person only because the person is subject to either or both of the following—

(a) a temporary offender prohibition order;

(b) an interim sexual offender order.

(2) If the positive notice is not suspended under section 86 at the commencement, the chief executive must, by notice given to the person, suspend the person's positive notice.

(3) The notice must state the matters mentioned in section 86(2).

(4) If the positive notice is suspended under section 86 at the commencement, the suspension continues subject to subsection (5).

(5) Sections 86 and 87 apply to the suspended positive notice as if the notice were suspended under section 86(1) as in force immediately after the commencement.

### 286 Existing positive notices held by other relevant disqualified person

(1) This section applies in relation to a positive notice issued under section 54(2) before the commencement (including a positive notice that is suspended under section 86 at the commencement) to a person who is a relevant disqualified person other than a relevant disqualified person mentioned in section 285(1).

(2) The positive notice is cancelled.

(3) If the positive notice is suspended under section 86 at the commencement, any application for the cancellation of the suspension under section 87 that has not been decided or withdrawn at the commencement is taken to have been withdrawn.

Not authorised—indicative only

Not authorised—indicative only



(4) The chief executive must give notice of the cancellation of the positive notice to—

(a) the person; and

(b) the funded non-government service provider who—

(i) is engaging the person at a service outlet of the service provider; or

(ii) if the positive notice is suspended under section 86 at the commencement—was engaging the person at a service outlet of the service provider immediately before the positive notice was suspended.

(5) A notice mentioned in subsection (4)—

(a) must state that the positive notice is cancelled and the date the positive notice is cancelled; and

(b) is taken, for sections 70 and 71, to be a notice that a negative notice has been issued to the person on the date the positive notice is cancelled.

### 287 Currency of existing prescribed notices

(1) A positive notice in force at the commencement remains current for 2 years after it was issued under the unamended Act, unless it is earlier cancelled under part 5, division 8.

(2) Subsection (1) applies despite section 58(2).

### 288 Existing applications to cancel negative notice by relevant disqualified person

(1) This section applies if—

(a) a person who is a relevant disqualified person has applied to the chief executive to cancel the person's negative notice under section 82 or 83(3); and

(b) the application has not been decided or withdrawn at the commencement.

(2) The application is taken to have been withdrawn.

(3) The chief executive must give notice of the withdrawal to the person.

### 289 Other existing applications to cancel a negative notice

(1) This section applies if—

(a) a person has applied to the chief executive to cancel the person's negative notice under section 82 or 83(3); and

(b) the application has not been decided or withdrawn at the commencement; and

(c) section 288 does not apply to the application.

(2) This chief executive must decide the application under this Act.

(3) For subsection (2), an application made under section 101(3) of the unamended Act is taken to have been made under section 82.

### 290 Continuation if chief executive acting on own initiative

(1) This section applies if—

(a) before the commencement, the chief executive had started on the chief executive's own initiative to exercise a power in relation to a person or a prescribed notice; and

(b) the chief executive may, immediately after the commencement, exercise the power under this Act.

(2) The chief executive may continue to exercise the power under this Act in relation to the person or prescribed notice.

(3) For subsection (1)(b), the chief executive's power under section 103 of the unamended Act is taken to be exercisable, immediately after the commencement, under section 83(1)(b)(ii).

Not authorised—indicative only

Not authorised—indicative only



### 291 Application of s 97 and sch 8, definition *relevant disqualified person*

For section 97(1)(a) and schedule 8, definition *relevant disqualified person*, paragraph (a), it is immaterial as to when the offence mentioned in the provision was committed or when the person to whom the provision applies was convicted.

*Example—*

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

### 292 Application of s 98

(1) This section applies in relation to a person who—

(a) is a disqualified person; and

(b) at the commencement, is engaged by a funded non-government service provider at a service outlet of the service provider; and

(c) is not a person in relation to whom section 281(3) or 284(2) applies.

(2) To remove any doubt, it is declared that section 98(1)(b) applies to the person even if it is not an offence for a funded non-government service provider to engage the person at a service outlet of the service provider.

### 293 Existing reviews and appeals by disqualified person

(1) This section applies if—

(a) before the commencement, a person—

(i) applied for a review of a decision of the chief executive under section 108 or 113(2)(a) of the unamended Act; or

(ii) appealed under the QCAT Act against a decision of the tribunal relating to a review under section 108 or 113(2)(a) of the unamended Act; and

(b) the review or appeal has not been decided at the commencement; and

(c) the person is a disqualified person.

(2) The entity hearing the review or appeal must dismiss the review or appeal.

## 294 Other existing reviews and appeals

(1) This section applies if—

(a) before the commencement, a person—

(i) applied for a review of a decision of the chief executive under section 108 or 113(2)(a) of the unamended Act; or

(ii) appealed under the QCAT Act against a decision of the tribunal relating to a review under section 108 or 113(2)(a) of the unamended Act; and

(b) the review or appeal has not been decided at the commencement; and

(c) the person is not a disqualified person.

(2) The entity hearing the review or appeal must apply this Act in relation to the matter the subject of the review or appeal.

(3) For subsection (2), a review under section 108 of the unamended Act is taken to be a review under section 109.

(4) Without limiting subsection (2), the entity may exercise a power of the chief executive under part 10 for deciding a review of a decision of the chief executive, or an appeal against a decision of the tribunal, as to whether or not there is an exceptional case for a person.

## 295 Disqualification orders for acts done or omissions made before commencement

A court may make a disqualification order under section 137 in relation to a person convicted of an offence after the

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Not authorised—indicative only



commencement arising out of an act done or omission made before the commencement.

### 296 Continuing engagement of volunteers

(1) This section applies if—

(a) immediately before the commencement, a person was engaged by a funded non-government service provider at a service outlet of the service provider as a volunteer; and

(b) at the commencement—

(i) the person does not have a current positive notice; and

(ii) there is a current prescribed notice application about the person.

(2) The funded non-government service provider—

(a) may continue to engage the person in the regulated engagement even though the person does not have a current positive notice; and

(b) does not commit an offence against section 68 for the continued engagement.

(3) Subsection (2) applies until the earlier of the following—

(a) 12 months after the commencement;

(b) the funded non-government service provider is given a notice by the chief executive that a negative notice has been issued to the person or the application is withdrawn.

### 297 Provision about persons engaged to provide disability services only to children

(1) Sections 281 to 283 apply in relation to a prescribed notice application about a person engaged, or to be engaged, by a funded non-government service provider to provide disability services only to children.

(2) Sections 284 to 287 apply in relation to a current positive notice held by a person engaged by a funded non-government service provider to provide disability services only to children.

(3) A current positive notice card or current negative notice held by a person engaged by a funded non-government service provider to provide disability services only to children continues subject to section 58.

(4) This section applies despite section 42.

(5) In this section—

***current***, for a prescribed notice or positive notice card, means current under section 58 at the commencement.

*Note—*

See the CCYPCG Act, chapter 8 for obligations relating to children disability services.

## 298 Provision about holders of CCYPCG positive notice

(1) Sections 281 to 283 apply in relation to a prescribed notice application about the holder of a CCYPCG positive notice despite section 51.

(2) Sections 284 to 287 apply in relation to a current positive notice held by the holder of a CCYPCG positive notice at the commencement despite section 51.

(3) A current positive notice card or current negative notice held by the holder of a CCYPCG positive notice at the commencement continues in effect despite section 51 but subject to section 58.

(4) Section 95 applies to a current positive notice or current negative notice held by the holder of a CCYPCG positive notice at the commencement.

(5) A court may make an order under section 137 before the commencement stating that a person who holds a CCYPCG positive notice—

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(a) may not hold a positive exemption notice, or apply for an exemption notice, for a stated period; or

(b) may never hold a positive exemption notice or apply for an exemption notice.

## Subdivision 5 Other transitional provision

### 299 References to Youth Justice Act 1992

(1) This section applies to a reference to the *Youth Justice Act 1992* in a provision of this Act if the provision commences before the JJA short title amendment commences.

(2) Until the JJA short title amendment commences, the reference is taken to be a reference to the *Juvenile Justice Act 1992*.

(3) In this section—

***JJA short title amendment*** means the *Juvenile Justice and Other Acts Amendment Act 2009*, section 9.

## Division 6 Provision for the Health Practitioner Registration and Other Legislation Amendment Act 2013

### 300 Application of pt 5 to former registered speech pathologist

(1) Section 43 continues to apply to the engagement of a former registered speech pathologist to the extent mentioned in that section for a period of 3 months after the commencement.

(2) In this section—

***commencement*** means the commencement of this section.

***former registered speech pathologist*** means a person who, immediately before the commencement, was registered under the repealed *Speech Pathologists Registration Act 2001*.

# Division 7 Transitional provisions for Criminal Law (Child Exploitation and Dangerous Drugs) Amendment Act 2013

## Subdivision 1 Interpretation

### 301 Definitions for div 7

In this division—

***amended Act*** means this Act as amended by the *Criminal Law (Child Exploitation and Dangerous Drugs) Amendment Act 2013*.

***commencement*** means the commencement of this section.

***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 this 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 convicted or is convicted of a new disqualifying offence for which an imprisonment order has been or is imposed.

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

Not authorised—indicative only

Not authorised—indicative only



## Subdivision 2 Prescribed notice applications and prescribed notices

### 302 Existing prescribed notice application by new relevant disqualified person

(1) This section applies if—

(a) before the commencement a prescribed notice application had been made about a person; and

(b) immediately before the commencement the application had not been decided or withdrawn; and

(c) at the commencement the person is a new relevant disqualified person.

(2) The person's application is taken to be withdrawn.

(3) The chief executive must give written notice about the withdrawal of the application to the person and the funded non-government service provider who made the application.

### 303 Existing prescribed notice application if person charged with new disqualifying offence or is new disqualified person but not new relevant disqualified person

(1) This section applies if—

(a) before the commencement a prescribed notice application had been made about a person; and

(b) immediately before the commencement the application had not been decided or withdrawn; and

(c) at the commencement the person—

(i) is charged with a new disqualifying offence; or

(ii) is a new disqualified person but not a new relevant disqualified person.

*Note—*

If a person holds a positive notice, see also sections 306 and 307.

(2) Subsection (3) applies if—

(a) at the commencement the person is charged with a new disqualifying offence; or

(b) at the commencement the person is a new disqualified person but not a new relevant disqualified person and, at the time of making the application—

(i) was not issued, or not taken to have been issued, an eligibility declaration; and

(ii) did not hold a positive notice.

(3) At the commencement—

(a) the application is taken to be withdrawn; and

(b) the chief executive must give written notice about the withdrawal of the application to the person and the funded non-government service provider who made the application.

*Note—*

If a person charged with a new disqualifying offence also holds a positive notice, see also sections 307 and 86.

(4) Subsection (5) applies if the person is a new disqualified person but not a new relevant disqualified person and at the time of making the application the person—

(a) was not issued, or not taken to have been issued, an eligibility declaration; and

(b) held a positive notice that was not suspended.

(5) At the commencement—

(a) the person is taken to have been issued an eligibility declaration other than for section 54(6)(b); and

(b) the chief executive must decide the application under the amended Act.

(6) If the person is a new disqualified person but not a new relevant disqualified person and, at the time of the application the person was issued an eligibility declaration, at the commencement the chief executive must decide the

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Not authorised—indicative only



application under the amended Act but section 54(6)(b) does not apply to the chief executive making the decision.

(7) For subsections (3) and (6), if before the commencement the chief executive had, under section 82, cancelled a negative notice issued to the person, on the commencement section 54(6)(a) does not apply to the chief executive making the decision.

### 304 Other existing prescribed notice applications

(1) This section applies if—

(a) before the commencement a prescribed notice application had been made about a person; and

(b) immediately before the commencement the application had not been decided or withdrawn; and

(c) section 302 or 303 does not apply.

(2) At the commencement the chief executive must decide the application under the amended Act.

### 305 Current positive notice for new relevant disqualified person

(1) This section applies if—

(a) before the commencement a person held a positive notice; and

(b) immediately before the commencement the notice was current; and

(c) at the commencement the person is a new relevant disqualified person.

(2) At the commencement the amended Act applies and the chief executive must cancel the person's positive notice and substitute a negative notice under section 85.

*Note—*

Under section 80, a person must return their cancelled positive notice and any positive notice card issued to the person to the chief executive.

(3) Also, if the positive notice is suspended under section 86 at the commencement, any application for the cancellation of the suspension under section 87 that has not been decided or withdrawn at the commencement is taken to have been withdrawn.

(4) The chief executive must give written notice about the withdrawal of the application under subsection (3) to the person and the funded non-government service provider who made the application.

### 306 Current positive notice for new disqualified person other than new relevant disqualified person

(1) This section applies if—

(a) before the commencement a person held a positive notice; and

(b) immediately before the commencement the notice was current; and

(c) at the commencement the person is a new disqualified person but not a new relevant disqualified person.

(2) If, at the commencement, the person's positive notice is suspended under section 86, the amended Act applies in relation to the positive notice.

(3) If, at the commencement, the person is not issued, or not taken to have been issued, an eligibility declaration and the person's positive notice is not suspended under section 86—

(a) the person is taken to have been issued an eligibility declaration under section 101; and

(b) the amended Act applies in relation to the positive notice.

(4) If, at the commencement, the person is issued, or taken to have been issued, an eligibility declaration and the person's positive notice is not suspended under section 86, the amended Act applies in relation to the person's positive notice.

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(5) If, after the commencement, the chief executive is to make a decision about the person under section 54, and it is the first time the chief executive is to make a decision under that section about the person after the commencement, section 54(6)(b) does not apply to the chief executive making the decision.

### 307 Other current positive notices

(1) This section applies if—

(a) before the commencement a person held a positive notice; and

(b) immediately before the commencement the positive notice was current; and

(c) section 305 or 306 does not apply.

(2) The amended Act applies to the person's positive notice.

## Subdivision 3 Exemption notice applications and exemption notices

### 308 Existing exemption notice application by new relevant disqualified person or person charged with a new disqualifying offence

(1) This section applies if—

(a) before the commencement an exemption notice application was made about a person; and

(b) immediately before the commencement the application has not been decided or withdrawn; and

(c) at the commencement—

(i) the person is a new relevant disqualified person; or

(ii) the person is charged with a new disqualifying offence.

(2) The application is taken to be withdrawn.

(3) The chief executive must give written notice about the withdrawal of the application to the person and the funded non-government service provider who made the application.

### 309 Existing exemption notice application if person is new disqualified person but not new relevant disqualified person

(1) This section applies if—

(a) before the commencement an exemption notice application was made about a person; and

(b) immediately before the commencement the application had not been decided or withdrawn; and

(c) at the commencement the person is a new disqualified person but not a new relevant disqualified person.

(2) At the commencement the chief executive must decide the application under the amended Act.

(3) However, if before the commencement the chief executive had under section 82 cancelled a negative exemption notice issued to the person, on the commencement section 54(6)(a) does not apply to the chief executive making the decision.

(4) The chief executive may only act under section 61(3) if the chief executive has acted under section 62 after the commencement.

### 310 Other existing exemption notice applications

(1) This section applies if—

(a) before the commencement an exemption notice application was made about a person; and

(b) immediately before the commencement the application had not been decided or withdrawn; and

(c) section 308 or 309 does not apply.

(2) At the commencement the chief executive must decide the application under the amended Act.

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(3) Also, the chief executive may only act under section 61(3) if the chief executive has acted under section 62 after the commencement.

## 311 Current positive exemption notice for person whose CCYPCG positive notice is cancelled

(1) This section applies if—

(a) before the commencement a person held a positive exemption notice; and

(b) immediately before the commencement the notice was current; and

(c) at the commencement the person no longer holds a CCYPCG positive notice.

(2) At the commencement the person's positive exemption notice ceases to have effect under section 64.

(3) Section 90 applies in relation to the positive exemption notice.

*Note—*

1 Section 90(2) requires the chief executive to give notice to a person if the person's positive exemption notice has ceased to have effect under section 64.

2 Section 90(5) requires the person to return their positive exemption notice to the chief executive.

(4) Also, if the person's positive exemption notice was suspended under section 88 immediately before the commencement, any application for the cancellation of the suspension under section 89 that has not been decided or withdrawn at the commencement is taken to have been withdrawn.

(5) The chief executive must give written notice about the withdrawal of the application under subsection (4) to the person and the funded non-government service provider who made the application.

## 312 Other positive exemption notices

(1) This section applies if—

(a) before the commencement a person held a positive exemption notice; and

(b) immediately before the commencement the notice was current; and

(c) section 311 does not apply.

(2) At the commencement the amended Act applies to the positive exemption notice.

## Subdivision 4 Existing applications for cancellation or ending suspension of prescribed notices and exemption notices

### 313 Existing applications to cancel negative notice or negative exemption notice

(1) This section applies if—

(a) before the commencement a person had applied to the chief executive to cancel the person's negative notice or negative exemption notice under section 82; and

(b) immediately before the commencement, the application had not been decided.

(2) At the commencement—

(a) if the person is a new relevant disqualified person—

(i) the application is taken to be withdrawn; and

(ii) the chief executive must give written notice about the withdrawal of the application to the person; or

(b) if the person is not a new relevant disqualified person—the chief executive must decide the application under the amended Act.

Not authorised—indicative only

Not authorised—indicative only



### 314 Existing application to end suspension of positive notice for person other than new relevant disqualified person

(1) This section applies if—

(a) before the commencement a person had applied to the chief executive to cancel the person's suspended positive notice under section 87; and

(b) immediately before the commencement the application had not been decided; and

(c) at the commencement the person is not a new relevant disqualified person.

(2) At the commencement the chief executive must decide the application under the amended Act.

### 315 Existing application to end suspension of positive exemption notice for person other than new relevant disqualified person

(1) This section applies if—

(a) before the commencement a person had applied to the chief executive to cancel the person's suspended positive exemption notice under section 89; and

(b) immediately before the commencement the application had not been decided; and

(c) at the commencement the person is not a new relevant disqualified person.

(2) At the commencement the chief executive must decide the application under the amended Act.

## Subdivision 5 Eligibility applications and eligibility declarations

### 316 Existing eligibility application

(1) This section applies if—

(a) before the commencement a person had made an eligibility application to the chief executive under section 99; and

(b) immediately before the commencement the person's eligibility application had not been decided or withdrawn.

(2) At the commencement the chief executive must decide the application under the amended Act.

*Note—*

The chief executive may issue an eligibility declaration if the person has been convicted of a disqualifying offence and is not a relevant disqualified person. See section 101(1).

### 317 Current eligibility declaration for new relevant disqualified person or person charged with new disqualifying offence

(1) This section applies to a person if—

(a) before the commencement the chief executive had issued, or was taken to have issued, the person an eligibility declaration; and

(b) immediately before the commencement the person's eligibility declaration had not expired; and

(c) at the commencement the person—

(i) is a new relevant disqualified person; or

(ii) is charged with a new disqualifying offence.

(2) At the commencement the person's eligibility declaration is taken to have expired.

*Note—*

If the person also holds a positive notice, see sections 305 and 307.

### 318 Current eligibility declaration for person convicted of new serious offence

(1) This section applies to a person if—



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Not authorised—indicative only



(a) before the commencement the chief executive had issued, or was taken to have issued, the person an eligibility declaration; and

(b) immediately before the commencement the person's eligibility declaration had not expired; and

(c) before the commencement the person was convicted of a new serious offence.

(2) At the commencement—

(a) the amended Act applies to the person's eligibility declaration; and

(b) the person's eligibility declaration is taken to have been issued on the commencement.

(3) If, after the commencement, the chief executive is to make a decision about the person under section 54, and it is the first time the chief executive is to make a decision under that section about the person after the commencement, section 54(6)(b) does not apply to the chief executive making the decision.

### 319 Other eligibility declarations

(1) This section applies to a person if—

(a) before the commencement the chief executive had issued, or was taken to have issued, the person an eligibility declaration; and

(b) immediately before the commencement the person's eligibility declaration had not expired; and

(c) at the commencement section 317 or 318 does not apply.

(2) At the commencement the amended Act applies to the person's eligibility declaration.

### 320 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.

(2) At the commencement the amended Act applies and the chief executive may decide the application under the amended Act.

## Subdivision 6 Reviews and appeals

### 321 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) at the commencement—

(i) the application or appeal has not been decided; and

(ii) 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.

Not authorised—indicative only

Not authorised—indicative only



### 322 Review of part 5 reviewable decision about new disqualified person

(1) This section applies if—

(a) before the commencement—

(i) the chief executive makes a part 5 reviewable decision about a person; and

(ii) the person has not applied for a review of the decision under section 109; and

(b) the person is a new disqualified person at the commencement.

(2) At the commencement, the amended Act applies.

*Note—*

Under section 109, only a person who is not a disqualified person may apply for a review of a part 5 reviewable decision.

### 323 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 appeal under the QCAT Act against a decision of the tribunal relating to a part 5 reviewable decision; and

(b) at 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 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.

### 324 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) at the commencement—

(i) the appeal has not been decided; and

(ii) 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.

### 325 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 appeal under the QCAT Act against a decision of the tribunal relating to a part 5 reviewable decision about a person; and

(b) at 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.

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Not authorised—indicative only



### 326 Existing reviews and appeals against part 5 reviewable decisions by persons other than new disqualified persons

(1) This section applies if—

(a) before the commencement—

(i) a person applied, under section 109, for a review of a part 5 reviewable decision; or

(ii) the chief executive or another person appealed, under the QCAT Act, against a decision of the tribunal relating to a part 5 reviewable decision; and

(b) at the commencement—

(i) the review or appeal has not been decided; and

(ii) the person about whom the part 5 reviewable decision was made is not a new disqualified person.

(2) The entity hearing the review or appeal must apply the amended Act in relation to the matter the subject of the review or appeal.

(3) To remove any doubt, it is declared that section 110 applies in relation to the application for the review.

### 327 Review of part 5 reviewable decision about person other than new disqualified person

(1) This section applies if—

(a) before the commencement—

(i) the chief executive makes a part 5 reviewable decision about a person; and

(ii) the person has not applied for a review of the decision under section 109; and

(b) at the commencement—

(i) the period within which the person could have applied for a review of the decision under section 109 (the ***review period***) has not passed; and

(ii) the person is not a new disqualified person.

(2) The person may apply for a review of the decision under section 109 within the review period.

## Subdivision 7 Miscellaneous

### 328 Chief executive acting on own initiative

(1) This section applies if—

(a) before the commencement the chief executive had started, on the chief executive's own initiative, to exercise a power in relation to the following—

(i) a person;

(ii) an eligibility application;

(iii) a prescribed notice;

(iv) an exemption notice; and

(b) on the commencement the chief executive may exercise the power under the amended Act in relation to the person, application or notice.

(2) The chief executive may exercise the power under the amended Act in relation to the person, application or notice.

### 329 Disqualification orders for acts done or omissions made before commencement

A court may make a disqualification order under section 137 in relation to a person convicted of an offence after the commencement arising out of an act done or omission made before the commencement.

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Not authorised—indicative only



### 330 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), it is immaterial when the offence mentioned in the provision was committed or when the person to whom the provision applies was convicted.

(2) Section 86 applies in relation to a person who holds a current positive notice who is charged with a new disqualifying offence even if the charge, or the acts or omissions constituting the alleged offence, happened before the commencement.

(3) Section 88 applies in relation to a person who holds a current positive exemption notice who is charged with a new disqualifying offence even if the charge, or the acts or omissions constituting the alleged offence, happened before the commencement.

(4) Without limiting this division, in applying the amended Act on and from the commencement, it is immaterial—

(a) when a new disqualifying offence or new serious offence was committed; or

(b) when a person was convicted of a new disqualifying offence or new serious 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.

## Division 8 Transitional provision for Disability Services (Restrictive Practices) and Other Legislation Amendment Act 2014

### 331 Notice about use of restrictive practices

(1) This section applies if on the commencement of this section a relevant service provider is using restrictive practices in relation to an adult with an intellectual or cognitive disability.

(2) Section 191 applies to the relevant service provider as if the relevant service provider was considering using restrictive practices in relation to the adult on the commencement of this section.

## Division 9 Transitional provisions for Communities Legislation (Funding Red Tape Reduction) Amendment Act 2014

### 332 Definitions for div 9

In this division—

***amending Act*** means the *Communities Legislation (Funding Red Tape Reduction) Amendment Act 2014*.

***authorised officer*** means a person appointed immediately before the commencement as an authorised officer under previous section 125.

***commencement*** means the commencement of the provision in which the term is used.

***funding agreement*** see previous section 56(1).

***interim manager*** means a person appointed as interim manager under previous section 169.

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***previous***, for a provision of this Act, means the provision as in force immediately before the commencement of the amending Act, section 73.

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

### 333 Funding agreements continue in force

(1) This section applies if a funding agreement between the chief executive and a funded non-government service provider was in force immediately before the commencement.

(2) The funding agreement continues in force despite the repeal, under the amending Act, of provisions of this Act relating to funding agreements.

(3) However, if the funding agreement contains a term mentioned in previous section 58(1)(j), on and from the commencement—

(a) the term is of no effect; and

(b) the agreement is taken to provide that—

(i) the funded non-government service provider must comply with the Human Services Quality Standards; and

(ii) recurrent funding to the funded non-government service provider will stop if the service provider does not comply with the Human Services Quality Standards.

(4) Also, on and from the commencement, a term of the funding agreement requiring the funded non-government service provider to obtain or maintain approval as an approved non-government service provider is of no effect.

(5) In this section—

***approved non-government service provider*** see former section 16.

***Human Services Quality Standards*** means the standards stated in the document called 'Human Services Quality Standards' published on the department's website on the internet.

## 334 Obligation to enter agreement about assistance continues

(1) This section applies if, immediately before the commencement, a non-government service provider who received funding after giving the written agreement mentioned in previous section 56(4)(a) has not complied with previous section 56(4)(b).

(2) The chief executive must stop the funding if the non-government service provider does not enter into a funding agreement about the funding within the time stated in the written agreement given under previous section 56(4)(a).

## 335 Contraventions of funding agreement or Act before commencement

(1) This section applies if, before the commencement—

(a) a funding agreement between the chief executive and a funded non-government service provider was contravened; or

(b) a provision of the unamended Act related to the funding agreement mentioned in paragraph (a) was contravened.

(2) The unamended Act continues to apply for the contravention as if the amending Act had not been enacted.

(3) Without limiting subsection (2)—

(a) an authorised officer may exercise, or continue to exercise, powers under the unamended Act; and

(b) a magistrate may hear and decide, or continue to hear and decide, an application for a warrant for a place under previous part 11, division 2, subdivision 2; and

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(c) the chief executive may give the funded non-government service provider a compliance notice under previous section 161; and

(d) if the service provider contravenes a compliance notice—

(i) the service provider may be prosecuted for an offence against previous section 161(6); or

(ii) the chief executive may suspend or cancel funding to the service provider under previous section 161(8); and

(e) an interim manager may be appointed for the service provider under previous part 12.

(4) In this section—

***authorised officer*** means an authorised officer under the *Community Services Act 2007*.

## 336 Interim managers

(1) This section applies if—

(a) immediately before the commencement, a person was appointed as an interim manager for a funded non-government service provider; or

(b) an interim manager is appointed for a funded non-government service provider under section 335.

(2) The interim manager may exercise, or continue to exercise, a power under the unamended Act in relation to the service provider.

(3) For the purposes of subsection (2), the unamended Act continues to apply to the interim manager's appointment as if the amending Act had not been enacted.

### 337 Confidentiality obligation continues to apply to authorised officers and interim managers

(1) This section applies to a person who is or has been either of the following under the unamended Act—

(a) an authorised officer;

(b) an interim manager.

(2) Previous section 222 continues to apply to the person as if the amending Act had not been enacted.

### 338 Reviews

(1) This section applies to a decision of the chief executive under this Act if, before the commencement, the decision was a reviewable decision.

(2) The unamended Act continues to apply to the decision despite the enactment of the amending Act.

(3) Without limiting subsection (2)—

(a) an interested person for the review decision made by the chief executive under previous section 211 may apply to QCAT for a review of the decision under previous section 212; and

(b) QCAT may hear and decide, or continue to hear and decide, an application for a review of the review decision under previous section 212.

(4) In this section—

***reviewable decision*** means a decision stated in previous schedule 2.

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## Division 10 Transitional provisions for Disability Services and Other Legislation Amendment Act 2016

### 339 Warrant may be executed

(1) This section applies if, before 1 July 2019, a warrant is issued under section 200M and in force but not executed before that date.

(2) The warrant continues in force according to its terms and may be executed after 30 June 2019.

(3) Part 6A continues to have effect for all matters relating to the execution and enforcement of the warrant.

### 340 Offences against pt 6A may continue to be prosecuted

(1) This section applies if a person contravened—

(a) a provision of part 6A before 1 July 2019; or

(b) a provision of part 6A as it continued to have effect under section 339 after 30 June 2019.

(2) The person may be prosecuted and punished for the contravention despite the expiry of part 6A and, for the purpose of the prosecution and punishment, part 6A continues to have effect despite its expiry.

## *Division 11 Transitional provisions for Disability Services and Other Legislation (Worker Screening) Amendment Act 2018*

### *341 Definitions for division*

*In this division—*

***amending Act*** *means the Disability Services and Other Legislation (Worker Screening) Amendment Act 2018.*

***unamended Act*** *means this Act as in force immediately before the commencement.*

### *342 Prescribed notices or exemption notices issued to sole traders before commencement*

*(1) This section applies if, before the commencement, the chief executive issued a prescribed notice or an exemption notice to a sole trader.*

*(2) The prescribed notice or exemption notice is taken to be, and always to have been, as valid as if part 5, as in force immediately after the commencement, had been in force on the day the notice was given.*

### *343 Certification by prescribed persons before commencement*

*(1) This section applies if, before the commencement—*

*(a) a sole trader applied under the unamended Act, section 52 or 59 for a prescribed notice or an exemption notice; and*

*(b) a prescribed person certified that the prescribed person had sighted documents, relating to proof of the sole trader's identity, prescribed by regulation.*

*(2) Despite the unamended Act—*

*(a) the chief executive may, whether before of after the commencement, accept the certification by the prescribed person instead of by the NDIS non-government service provider as proof of the sole trader's identity; and*

*(b) the application, or prescribed notice or exemption notice issued by the chief executive as a result of the application (whether issued before or after the*

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*commencement), is not affected only because of a change to the entity certifying the documents.*

### *344 Delayed application of particular provisions*

*(1) This section applies to a person who is a sole trader if, before the commencement—*

*(a) the person was providing disability services as an NDIS non-government service provider at a service outlet of the service provider; and*

*(b) the person had applied for—*

*(i) a prescribed notice under the unamended Act, section 52; or*

*(ii) a prescribed notice under the Working with Children Act, section 199; and*

*(c) the application had not been decided.*

*(2) Sections 67A and 67B do not apply to the person until the day that is 4 months after the commencement.*

# Schedule 2 Current serious offences

section 79

1 *Classification of Computer Games and Images Act 1995*

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 23 | Demonstration of an objectionable computer game before a minor | |
| 26(3) | Possession of objectionable computer game | |
| 27(3) and (4) | Making objectionable computer game | |
| 28 | Obtaining minor for objectionable computer game | |

2 *Classification of Films Act 1991*

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 41(3) | Possession of objectionable film | |
| 42(3) and (4) | Making objectionable film | |
| 43 | Procurement of minor for objectionable film | |

3 *Classification of Publications Act 1991*

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| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 12 | Sale etc. of prohibited publication | only if an offender was or could have been liable as mentioned in section 12, penalty, paragraph (c) |
| 13 | Possession of prohibited publication | only if an offender was or could have been liable as mentioned in section 13, penalty, paragraph (c) |
| 14 | Possession of child abuse publication | |
| 15 | Exhibition or display of prohibited publication | |
| 16 | Leaving prohibited publication in or on public place | only if an offender was or could have been liable as mentioned in section 16, penalty, paragraph (c) |
| 17(1) | Producing prohibited publication | only if an offender was or could have been liable as mentioned in section 17(1), penalty, paragraph (c) |
| 17(2) | Producing prohibited publication | only if an offender was or could have been liable as mentioned in section 17(2), penalty, paragraph (c) |
| 17(3) and (4) | Producing prohibited publication | |

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 18 | Procurement of minor for RC publication | |
| 20 | Leaving prohibited publication in or on private premises | only if an offender was or could have been liable as mentioned in section 20, penalty, paragraph (c) |

4 Criminal Code

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 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 | |
| 216 | Abuse of persons with an impairment of the mind | |
| 217 | Procuring young person etc. for carnal knowledge | |
| 218 | Procuring sexual acts by coercion etc. | |
| 218A | Using internet etc. to procure children under 16 | |
| 218B | Grooming children under 16 | |

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Not authorised—indicative only



| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 219 | Taking child for immoral purposes | |
| 221 | Conspiracy to defile | |
| 222 | Incest | |
| 228 | Obscene publications and exhibitions | only if an offender was or could have been liable as mentioned in section 228(2) or (3) |
| 228A | Involving child in making child exploitation material | |
| 228B | Making child exploitation material | |
| 228C | Distributing child exploitation material | |
| 228D | Possessing child exploitation material | |
| 228DA | Administering child exploitation material website | |
| 228DB | Encouraging use of child exploitation material website | |
| 228DC | Distributing information about avoiding detection | |
| 229B | Maintaining a sexual relationship with a child | |

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 229G | Procuring engagement in prostitution | only if an offender was or could have been liable as mentioned in section 229G(2) |
| 229H | Knowingly participating in provision of prostitution | only if an offender was or could have been liable as mentioned in section 229H(2) |
| 229I | Persons found in places reasonably suspected of being used for prostitution etc. | only if an offender was or could have been liable as mentioned in section 229I(2) |
| 229L | Permitting young person etc. to be at place used for prostitution | |
| 300 | Unlawful homicide | only if the unlawful killing is murder under section 302 |
| 306 | Attempt to murder | |
| 309 | Conspiring to murder | |
| 313 | Killing unborn child | |
| 315 | Disabling in order to commit indictable offence | |
| 316 | Stupefying in order to commit indictable offence | |
| 317 | Acts intended to cause grievous bodily harm and other malicious acts | |
| 320A | Torture | |

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| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 322 | Administering poison with intent to harm | only if an offender was or could have been liable for a penalty as mentioned in section 322, penalty, paragraph (a) |
| 323A | Female genital mutilation | |
| 323B | Removal of child from State for female genital mutilation | |
| 324 | Failure to supply necessaries | |
| 326 | Endangering life of children by exposure | |
| 349 | Rape | |
| 350 | Attempt to commit rape | |
| 351 | Assault with intent to commit rape | |
| 352 | Sexual assaults | |
| 354 | Kidnapping | |
| 354A | Kidnapping for ransom | |
| 363 | Child-stealing | |
| 363A | Abduction of child under 16 | |
| 364 | Cruelty to children under 16 | |

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 409 | Definition of *robbery* | only if an offender was or could have been liable as mentioned in section 411(2) |
| 419 | Burglary | only if an offender was or could have been liable as mentioned in section 419(3)(b)(i) or (ii) |
| 427 | Unlawful entry of vehicle for committing indictable offence | only if an offender was or could have been liable as mentioned in section 427(2)(b)(i) or (ii) |

5 *Drugs Misuse Act 1986*

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 5 | Trafficking in dangerous drugs | |
| 6 | Supplying dangerous drugs | only if the offence is one of aggravated supply as mentioned in section 6(2) |
| 8 | Producing dangerous drugs | only if an offender was or could have been liable for a penalty as mentioned in section 8, penalty, paragraph (a) or (b) |
| 9D | Trafficking in relevant substances or things | |

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| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|

6 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 |
| 270.7 | Deceptive recruiting for sexual services | only if an offender was or could have been liable as mentioned in section 270.8 |
| 272.8 | Sexual intercourse with child outside Australia | |
| 272.9 | Sexual activity (other than sexual intercourse) with child outside Australia | |
| 272.10 | Aggravated offence—child with mental impairment or under care, supervision or authority of defendant | |
| 272.11 | Persistent sexual abuse of child outside Australia | |
| 272.12 | Sexual intercourse with young person outside Australia—defendant in position of trust or authority | |

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 272.13 | Sexual activity (other than sexual intercourse) with young person outside Australia—defendant in position of trust or authority | |
| 272.14 | Procuring child to engage in sexual activity outside Australia | |
| 272.15 | "Grooming" child to engage in sexual activity outside Australia | |
| 272.18 | Benefiting from offence against this Division | |
| 272.19 | Encouraging offence against this Division | |
| 272.20 | Preparing for or planning offence against this Division | |
| 273.5 | Possessing, controlling, producing, distributing or obtaining child pornography material outside Australia | |
| 273.6 | Possessing, controlling, producing, distributing or obtaining child abuse material outside Australia | |

Not authorised—indicative only

Not authorised—indicative only



| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 273.7 | Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people | |
| 471.16 | Using a postal or similar service for child pornography material | |
| 471.17 | Possessing, controlling, producing, supplying or obtaining child pornography material for use through a postal or similar service | |
| 471.19 | Using a postal or similar service for child abuse material | |
| 471.20 | Possessing, controlling, producing, supplying or obtaining child abuse material for use through a postal or similar service | |
| 471.22 | Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people | |
| 471.24 | Using a postal or similar service to procure persons under 16 | |
| 471.25 | Using a postal or similar service to "groom" persons under 16 | |

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 471.26 | Using a postal or similar service to send indecent material to person under 16 | |
| 474.19 | Using a carriage service for child pornography material | |
| 474.20 | Possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service | |
| 474.22 | Using a carriage service for child abuse material | |
| 474.23 | Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service | |
| 474.24A | Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people | |
| 474.25A | Using a carriage service for sexual activity with person under 16years of age | |
| 474.25B | Aggravated offence—child with mental impairment or under care, supervision or authority of defendant | |

Not authorised—indicative only

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 474.26 | Using a carriage service to procure persons under 16 years of age | |
| 474.27 | Using a carriage service to "groom" persons under 16 years of age | |
| 474.27A | Using a carriage service to transmit indecent communication to person under 16 years of age | |

7 *Customs Act 1901* (Cwlth)

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 233BAB | Special offence relating to tier 2 goods | if the offence involved child pornography or child abuse material |

Not authorised—indicative only

# Schedule 3 Repealed or expired serious offences

section 79

1 Criminal Code

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 208 | Unlawful sodomy | as the provision was in force from time to time before its repeal by the *Health and Other Legislation Amendment Act 2016* |
| 212 | Defilement of Girls under Twelve | as the provision was in force from time to time before its repeal by the *Criminal Code, Evidence Act and Other Acts Amendment Act 1989* |
| 214 | Attempt to Abuse Girls under Ten | as the provision was in force from time to time before its repeal by the *Criminal Code, Evidence Act and Other Acts Amendment Act 1989* |
| 218A | Using internet etc. to procure children under 16 | as the provision was in force from time to time before its repeal by the *Criminal Law (Child Exploitation and Dangerous Drugs) Amendment Act 2013* |

Not authorised—indicative only

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 220 | Unlawful Detention with Intent to Defile or in a Brothel | as the provision was in force from time to time before its repeal by the *Criminal Code, Evidence Act and Other Acts Amendment Act 1989* |
| 223 | Incest by adult female | as the provision was in force from time to time before its repeal by the *Criminal Law Amendment Act 1997* |
| 325 | Endangering life or health of apprentices or servants | as the provision was in force from time to time before its repeal by the *Training and Employment Act 2000* |
| 344 | Aggravated assaults | as the provision was in force from 20 December 1946 to 30 June 1997 if the circumstance of aggravation was that the unlawful assault was an offence of a sexual nature as defined in the *Criminal Law Amendment Act 1945*, section 2A[a] |

a *Criminal Law Amendment Act 1945*, section 2A was inserted into the *Criminal Law Amendment Act 1945* by the *Criminal Law Amendment Act 1946*.

2 *Crimes Act 1914* (Cwlth)

Not authorised—indicative only

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 50BA | Sexual intercourse with child under 16 | as the provision was in force from time to time before its repeal by the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cwlth) |
| 50BB | Inducing child under 16 to engage in sexual intercourse | as the provision was in force from time to time before its repeal by the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cwlth) |
| 50BC | Sexual conduct involving child under 16 | as the provision was in force from time to time before its repeal by the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cwlth) |
| 50BD | Inducing child under 16 to be involved in sexual conduct | as the provision was in force from time to time before its repeal by the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cwlth) |
| 50DA | Benefiting from offence against this Part | as the provision was in force from time to time before its repeal by the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cwlth) |

Not authorised—indicative only

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 50DB | Encouraging offence against this Part | as the provision was in force from time to time before its repeal by the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cwlth) |

Not authorised—indicative only

# Schedule 4 Current disqualifying offences

section 81

1 *Classification of Computer Games and Images Act 1995*

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 23 | Demonstration of an objectionable computer game before a minor | |
| 26(3) | Possession of objectionable computer game | |
| 27(3) and (4) | Making objectionable computer game | |
| 28 | Obtaining minor for objectionable computer game | |

2 *Classification of Films Act 1991*

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 41(3) | Possession of objectionable film | |
| 42(3) and (4) | Making objectionable film | |
| 43 | Procurement of minor for objectionable film | |

3 *Classification of Publications Act 1991*

Not authorised—indicative only

Not authorised—indicative only



| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 12 | Sale etc. of prohibited publication | only if an offender was or could have been liable as mentioned in section 12, penalty, paragraph (c) |
| 13 | Possession of prohibited publication | only if an offender was or could have been liable as mentioned in section 13, penalty, paragraph (c) |
| 14 | Possession of child abuse publication | |
| 15 | Exhibition or display of prohibited publication | only if an offender was or could have been liable as mentioned in section 15, penalty, paragraph (c) |
| 16 | Leaving prohibited publication in or on public place | only if an offender was or could have been liable as mentioned in section 16, penalty, paragraph (c) |
| 17(1) | Producing prohibited publication | only if an offender was or could have been liable as mentioned in section 17(1), penalty, paragraph (c) |
| 17(2) | Producing prohibited publication | only if an offender was or could have been liable as mentioned in section 17(2), penalty, paragraph (c) |
| 17(3) and (4) | Producing prohibited publication | |
| 18 | Procurement of minor for RC publication | |

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 20 | Leaving prohibited publication in or on private premises | only if an offender was or could have been liable as mentioned in section 20, penalty, paragraph (c) |

4 Criminal Code

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 210 | Indecent treatment of children under 16 | |
| 213 | Owner etc. permitting abuse of children on premises | |
| 215 | Carnal knowledge with or of children under 16 | |
| 216 | Abuse of persons with an impairment of the mind | |
| 217 | Procuring young person etc. for carnal knowledge | |
| 218 | Procuring sexual acts by coercion etc. | if the offence was committed against a child |
| 218A | Using internet etc. to procure children under 16 | |
| 218B | Grooming children under 16 | |
| 219 | Taking child for immoral purposes | |
| 221 | Conspiracy to defile | if the offence was committed against a child |

Not authorised—indicative only

Not authorised—indicative only



| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 222 | Incest | if the offence was committed against a child |
| 228 | Obscene publications and exhibitions | only if an offender was or could have been liable as mentioned in section 228(2) or (3) |
| 228A | Involving child in making child exploitation material | |
| 228B | Making child exploitation material | |
| 228C | Distributing child exploitation material | |
| 228D | Possessing child exploitation material | |
| 228DA | Administering child exploitation material website | |
| 228DB | Encouraging use of child exploitation material website | |
| 228DC | Distributing information about avoiding detection | |
| 229B | Maintaining a sexual relationship with a child | |
| 229G | Procuring engagement in prostitution | only if an offender was or could have been liable as mentioned in section 229G(2) |

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 229H | Knowingly participating in provision of prostitution | only if an offender was or could have been liable as mentioned in section 229H(2) |
| 229I | Persons found in places reasonably suspected of being used for prostitution etc. | only if an offender was or could have been liable as mentioned in section 229I(2) |
| 229L | Permitting young person etc. to be at place used for prostitution | |
| 300 | Unlawful homicide | only if the unlawful killing is murder under section 302 and was committed against a child |
| 349 | Rape | if the offence was committed against a child |
| 350 | Attempt to commit rape | if the offence was committed against a child |
| 351 | Assault with intent to commit rape | if the offence was committed against a child |
| 352 | Sexual assaults | if the offence was committed against a child |

5 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 |

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Not authorised—indicative only



| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 270.7 | Deceptive recruiting for sexual services | only if an offender was or could have been liable as mentioned in section 270.8 |
| 272.8 | Sexual intercourse with child outside Australia | |
| 272.9 | Sexual activity (other than sexual intercourse) with child outside Australia | |
| 272.10 | Aggravated offence—child with mental impairment or under care, supervision or authority of defendant | |
| 272.11 | Persistent sexual abuse of child outside Australia | |
| 272.12 | Sexual intercourse with young person outside Australia— | |
| | defendant in position of trust or authority | |
| 272.13 | Sexual activity (other than sexual intercourse) with young person outside Australia— | |
| | defendant in position of trust or authority | |
| 272.14 | Procuring child to engage in sexual activity outside Australia | |

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 272.15 | "Grooming" child to engage in sexual activity outside Australia | |
| 272.18 | Benefiting from offence against this Division | |
| 272.19 | Encouraging offence against this Division | |
| 272.20 | Preparing for or planning offence against this Division | |
| 273.5 | Possessing, controlling, producing, distributing or obtaining child pornography material outside Australia | |
| 273.6 | Possessing, controlling, producing, distributing or obtaining child abuse material outside Australia | |
| 273.7 | Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people | |
| 471.16 | Using a postal or similar service for child pornography material | |
| 471.17 | Possessing, controlling, producing, supplying or obtaining child pornography material for use through a postal or similar service | |

Not authorised—indicative only

Not authorised—indicative only



| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 471.19 | Using a postal or similar service for child abuse material | |
| 471.20 | Possessing, controlling, producing, supplying or obtaining child abuse material for use through a postal or similar service | |
| 471.22 | Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people | |
| 471.24 | Using a postal or similar service to procure persons under 16 | |
| 471.25 | Using a postal or similar service to "groom" persons under 16 | |
| 471.26 | Using a postal or similar service to send indecent material to person under 16 | |
| 474.19 | Using a carriage service for child pornography material | |
| 474.20 | Possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service | |
| 474.22 | Using a carriage service for child abuse material | |

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 474.23 | Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service | |
| 474.24A | Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people | |
| 474.25A | Using a carriage service for sexual activity with person under 16 years of age | |
| 474.25B | Aggravated offence—child with mental impairment or under care, supervision or authority of defendant | |
| 474.26 | Using a carriage service to procure persons under 16 years of age | |
| 474.27 | Using a carriage service to "groom" persons under 16 years of age | |
| 474.27A | Using a carriage service to transmit indecent communication to person under 16 years of age | |

6 *Customs Act 1991* (Cwlth)

Not authorised—indicative only

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 233BAB | Special offence relating to tier 2 goods | if the offence involved a child pornography or child abuse material |

Not authorised—indicative only

# Schedule 5 Repealed or expired disqualifying offences

section 81

1 Criminal Code

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 208 | Unlawful sodomy | as the provision was in force from time to time before its repeal by the *Health and Other Legislation Amendment Act 2016* for an offence committed before 1 July 1997, only if committed against a child or a person with an impairment of the mind |
| 212 | Defilement of Girls under Twelve | as the provision was in force from time to time before its repeal by the *Criminal Code, Evidence Act and Other Acts Amendment Act 1989* |
| 214 | Attempt to Abuse Girls under Ten | as the provision was in force from time to time before its repeal by the *Criminal Code, Evidence Act and Other Acts Amendment Act 1989* |

Not authorised—indicative only

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 218A | Using internet etc. to procure children under 16 | as the provision was in force from time to time before its repeal by the *Criminal Law (Child Exploitation and Dangerous Drugs) Amendment Act 2013* |
| 220 | Unlawful Detention with Intent to Defile or in a Brothel | as the provision was in force from time to time before its repeal by the *Criminal Code, Evidence Act and Other Acts Amendment Act 1989* only if, at the time of the offence, the person in relation to whom the offence was committed was a child |
| 223 | Incest by adult female | as the provision was in force from time to time before its repeal by the *Criminal Law Amendment Act 1997* only if, at the time of the offence, the person in relation to whom the offence was committed was a child |

Not authorised—indicative only

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 344 | Aggravated assaults | as the provision was in force from 20 December 1946 to 30 June 1997 if—<br>(a) the circumstance of aggravation was that the unlawful assault was an offence of a sexual nature as defined in the *Criminal Law Amendment Act 1945*, section 2A; and<br>(b) at the time of the offence, the person in relation to whom the offence was committed was a child |

2 *Crimes Act 1914* (Cwlth)

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 50BA | Sexual intercourse with child under 16 | as the provision was in force from time to time before its repeal by the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cwlth) |
| 50BB | Inducing child under 16 to engage in sexual intercourse | as the provision was in force from time to time before its repeal by the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cwlth) |

Not authorised—indicative only

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 50BC | Sexual conduct involving child under 16 | as the provision was in force from time to time before its repeal by the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cwlth) |
| 50BD | Inducing child under 16 to be involved in sexual conduct | as the provision was in force from time to time before its repeal by the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cwlth) |
| 50DA | Benefiting from offence against this Part | as the provision was in force from time to time before its repeal by the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cwlth) |
| 50DB | Encouraging offence against this Part | as the provision was in force from time to time before its repeal by the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cwlth) |

Not authorised—indicative only

# Schedule 6 Offences that may form basis of investigative information

section 109

1 *Classification of Computer Games and Images Act 1995*

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 23 | Demonstration of an objectionable computer game before a minor | |
| 28 | Obtaining minor for objectionable computer game | |

2 *Classification of Films Act 1991*

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 43 | Procurement of minor for objectionable film | |

3 *Classification of Publications Act 1991*

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 18 | Procurement of minor for RC publication | |

4 Criminal Code

Not authorised—indicative only

Not authorised—indicative only



| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 210 | Indecent treatment of children under 16 | |
| 213 | Owner etc. permitting abuse of children on premises | |
| 215 | Carnal knowledge with or of children under 16 | |
| 216 | Abuse of persons with an impairment of the mind | |
| 217 | Procuring young person etc. for carnal knowledge | |
| 218 | Procuring sexual acts by coercion etc. | if the offence was committed against a child or a person with a disability |
| 218B | Grooming children under 16 | |
| 219 | Taking child for immoral purposes | |
| 221 | Conspiracy to defile | if the offence was committed against a child or a person with a disability |
| 222 | Incest | if the offence was committed against a child or a person with a disability |
| 228A | Involving child in making child exploitation material | |
| 229B | Maintaining a sexual relationship with a child | |

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 229G | Procuring engagement in prostitution | only if an offender was or could have been liable as mentioned in section 229G(2) |
| 229H | Knowingly participating in provision of prostitution | only if an offender was or could have been liable as mentioned in section 229H(2) |
| 229L | Permitting young person etc. to be at place used for prostitution | |
| 300 | Unlawful homicide | only if the unlawful killing is murder under section 302 and was committed against a child or a person with a disability |
| 349 | Rape | if the offence was committed against a child or person with a disability |
| 350 | Attempt to commit rape | if the offence was committed against a child or a person with a disability |
| 351 | Assault with intent to commit rape | if the offence was committed against a child or a person with a disability |
| 352 | Sexual assaults | if the offence was committed against a child or a person with a disability |

5 Criminal Code (Cwlth)

Not authorised—indicative only

Not authorised—indicative only



| 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 or if the offence is committed against a person with a disability |
| 270.7 | Deceptive recruiting for sexual services | only if an offender was or could have been liable as mentioned in section 270.8 or if the offence is committed against a person with a disability |
| 272.8 | Sexual intercourse with child outside Australia | |
| 272.9 | Sexual activity (other than sexual intercourse) with child outside Australia | |
| 272.10 | Aggravated offence—child with mental impairment or under care, supervision or authority of defendant | |
| 272.11 | Persistent sexual abuse of child outside Australia | |
| 272.12 | Sexual intercourse with young person outside Australia— | |
| | defendant in position of trust or authority | |

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 272.13 | Sexual activity (other than sexual intercourse) with young person outside Australia— | |
| | defendant in position of trust or authority | |
| 272.14 | Procuring child to engage in sexual activity outside Australia | |
| 272.15 | "Grooming" child to engage in sexual activity outside Australia | |

Not authorised—indicative only

# Schedule 7 Repealed or expired offences that may form basis of investigative information

section 109

***Crimes Act 1914* (Cwlth)**

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 50BA | Sexual intercourse with child under 16 | as the provision was in force from time to time before its repeal by the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cwlth) |
| 50BB | Inducing child under 16 to engage in sexual intercourse | as the provision was in force from time to time before its repeal by the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cwlth) |
| 50BC | Sexual conduct involving child under 16 | as the provision was in force from time to time before its repeal by the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cwlth) |
| 50BD | Inducing child under 16 to be involved in sexual conduct | as the provision was in force from time to time before its repeal by the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cwlth) |

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**Criminal Code**

| Provision of Code | Relevant heading | Qualification relating to the provision of the Act |
|---|---|---|
| 208 | Unlawful sodomy | as the provision was in force from time to time before its repeal by the *Health and Other Legislation Amendment Act 2016* for an offence committed before 1 July 1997, only if committed against a child or a person with an impairment of the mind |

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Not authorised—indicative only

# Schedule 8 Dictionary

section 9

***administrator*** means an administrator appointed under the *Guardianship and Administration Act 2000*.

***adult with an intellectual or cognitive disability***, for part 6 and part 8, division 2, see section 144.

***adult with a skills deficit***, for part 8, division 2, see section 217.

***amended Act***, for part 9, division 7, see section 301.

***amending Act***, for part 9, division 5, see section 261.

***appropriately qualified***, for part 6, see section 144.

***approved form*** means a form approved by the chief executive under section 237.

***assessment***, for part 6, see section 144.

***authorised guardian***, for part 9, division 3, see section 249(1).

***authorised officer*** means an authorised officer appointed under the *Community Services Act*, section 25.

***authorised psychiatrist***, for part 6, see section 144.

***carer*** means a person of any age, who, without being paid, cares for another person who needs ongoing support because of a disability, but does not include a volunteer for an organisation.

***chemical restraint***, for part 6, see section 144.

***chemical restraint (fixed dose)***, for part 6, see section 144.

***chief executive (health)***, for part 6, division 7, subdivision 3, see section 196.

***chief psychiatrist***, for part 6, see section 144.

***commencement—***

(a) for part 9, division 2—see section 243; or

(b) for part 9, division 3—see section 249(1); or

(c) for part 9, division 5, subdivision 2—see section 262; or

(d) for part 9, division 5, subdivision 3—see section 269; or

(e) for part 9, division 5, subdivision 4—see section 279; or

(f) for part 9, division 7—see section 301.

***community access services***, for part 6, see section 144.

***complaints agency*** means any of the following—

(a) the ombudsman under the *Ombudsman Act 2001*;

(b) the Crime and Corruption Commission;

(c) the Anti-Discrimination Commissioner under the *Anti-Discrimination Act 1991*;

(d) the health ombudsman under the *Health Ombudsman Act 2013*;

(e) the public guardian.

***compliance period***, for part 9, division 3, see section 249(1).

***confidential information*** includes information about a person's affairs but does not include—

(a) information already publicly disclosed unless further disclosure of the information is prohibited by law; or

(b) statistical or other information that could not reasonably be expected to result in the identification of the person to whom the information relates.

***consumer***, of a funded non-government service provider or an NDIS non-government service provider, means a person with a disability who is provided with disability services by the service provider.

***contain***, for part 6, see section 144.

***containment or seclusion approval***, for part 6, see section 144.

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***conviction*** means a finding of guilt or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded.

***criminal history***, of a person, means—

(a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act; and

(b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act.

***current***—

(a) for a prescribed notice—means current under section 58; or

(b) for an exemption notice—means current under section 64.

***decision notice***, for part 6, see section 144.

***director of forensic disability*** means the director under the *Forensic Disability Act 2011*.

***disability*** see section 11.

***disability services*** see section 12.

***disqualification order*** means—

(a) an order under section 137; or

(b) an offender prohibition disqualification order.

***disqualified person*** see section 97.

***disqualifying offence*** see section 48.

***electronic document*** means a document of a type under the *Acts Interpretation Act 1954*, schedule 1, definition *document*, paragraph (c).

***eligibility application*** see section 99(2).

***eligibility declaration*** see section 99(1).

***engaged***, by a funded non-government service provider or an NDIS non-government service provider, see section 46.

***engaged by the department***—

(a) generally—see section 45; or

(b) for part 9, division 5, subdivision 2—see section 262.

***engaged person***—

(a) for a prescribed notice application—see section 52(1); or

(b) for an exemption notice application—see section 59(1).

***exceptional case*** means exceptional case as mentioned in section 54(4) or (11).

***executive officer***, of a corporation, means any person, by whatever name called and whether or not the person is a director of the corporation, who is concerned or takes part in the management of the corporation.

***exemption notice*** means a notice issued under section 61.

***exemption notice application*** means an application for an exemption notice under section 59.

***final offender prohibition order*** means a final order under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*.

***final sexual offender order*** means a division 3 order under the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

***forensic disability client*** means a forensic disability client under the *Forensic Disability Act 2011*.

***funded non-government service provider*** see section 16.

***funded service provider*** see section 14.

***GAA***, for part 6, see section 144.

***general power***, see section 200S(1).

***guardian*** means a guardian appointed under the *Guardianship and Administration Act 2000*.

***guardian for a restrictive practice (general) matter***, for part 6, see section 144.

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***guardian for a restrictive practice matter***, for part 6, see section 144.

***guardian for a restrictive practice (respite) matter***, for part 6, see section 144.

***harm***, for part 6, see section 144.

***health professional***, for part 6, division 7, subdivision 3, see section 196.

***health service chief executive***, for part 6, division 7, subdivision 3, see section 196.

***help requirement*** see section 200T(1).

***human rights principle*** means the principle and rights stated in section 18.

***imprisonment order***—

(a) means either of the following orders—

(i) an order of a court that convicts a person for an offence, if the order includes a penalty that includes imprisonment for the offence, whether wholly or partially suspended;

(ii) an intensive correction order under the *Penalties and Sentences Act 1992* or an order of another jurisdiction that substantially corresponds to an intensive correction order; but

(b) does not include an order of imprisonment that is imposed as a consequence of a breach of a community service order or probation order within the meaning of the *Penalties and Sentences Act 1992*.

***indictable offence*** includes an indictable offence dealt with summarily, whether or not the Criminal Code, section 659 applies to the indictable offence.

***individual funding agreement*** see section 37.

***informal decision-maker***, for part 6, see section 144.

***information requirement*** see section 200W(3).

***interested person***, for a relevant decision for part 6, division 6, see section 186.

***interim sexual offender order*** means an interim detention order or interim supervision order under the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

***investigative information***, about a person, see section 111(1).

***issue***, for part 5, division 11, subdivision 1, see section 108.

***least restrictive***, for part 6, see section 144.

***mechanical restraint***, for part 6, see section 144.

***minimum frequency for regulated engagement*** means—

(a) at least 8 consecutive days; or

(b) at least once a week for each week during a period of 4 weeks; or

(c) at least once a fortnight for each fortnight during a period of 8 weeks; or

(d) at least once a month for each month during a period of 6 months.

***model positive behaviour support plan***, for part 6, see section 144.

***multidisciplinary assessment***, for part 6, see section 144.

***NDIS Act*** means *National Disability Insurance Scheme Act 2013* (Cwlth).

***NDIS non-government service provider*** see section 16A.

***negative exemption notice*** see section 61(2)(b).

***negative notice*** see section 54(2)(b).

***new disqualified person***, for part 9, division 7, see section 301.

***new disqualifying offence***, for part 9, division 7, see section 301.

***new relevant disqualified person***, for part 9, division 7, see section 301.

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***new serious offence***, for part 9, division 7, see section 301.

***non-government service provider*** see section 15.

***notice*** means a written notice.

***occupier***, of a place, includes the following—

(a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;

(b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;

(c) if no-one apparently occupies the place—any person who is an owner of the place.

***offender prohibition disqualification order*** means a disqualification order made under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*, section 13T.

***offender prohibition order*** means an offender prohibition order under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*.

***offender reporting obligations*** means reporting obligations under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*.

***parent***, for part 4, see section 37.

***part 5 reviewable decision***, for part 5, division 11, subdivision 1, see section 108.

***participant has the meaning given by the NDIS Act, section 9.***

***participant's plan means a plan for a participant that is in effect under the NDIS Act, section 37.***

***physical restraint***, for part 6, see section 144.

***place*** includes premises and vacant land.

***plan, for a participant, has the meaning given by the NDIS Act, section 9.***

***police commissioner*** means the commissioner of the police service.

***police information***, about a person, means the following—

(a) the person's criminal history;

(b) investigative information about the person;

(c) information as to whether the person is or has been—

(i) a relevant disqualified person; or

(ii) named as the respondent to an application for an offender prohibition order; or

(iii) the subject of an application for a disqualification order or offender prohibition disqualification order.

***police service*** means the Queensland Police Service.

***positive behaviour support plan***, for part 6, see section 144.

***positive exemption notice*** see section 61(2)(a).

***positive notice*** see section 54(2)(a).

***positive notice card*** means a document, in the form of a card, issued to a person who is the holder of a current positive notice at or about the time that the person is issued with the positive notice, that includes the following information—

(a) the name of the person who is the holder of the positive notice;

(b) the date of birth of the person;

(c) a registration number for the person;

(d) an expiry date for the positive notice;

(e) the signature, or an electronic version of the signature, of the person to whom the positive notice is issued.

***premises*** includes—

(a) a building or other structure; and

(b) a part of a building or other structure; and

(c) a vehicle; and

(d) a caravan.

***prescribed notice*** means a notice issued under section 54(2).

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***prescribed notice application*** means an application for a prescribed notice under section 52.

***prescribed period***, for part 5, division 11, subdivision 1, see section 108.

***prescribed person*** *means—*

*(a) a justice; or*

*(b) a commissioner for declarations under the Justices of the Peace and Commissioners for Declarations Act 1991; or*

*(c) a lawyer; or*

*(d) a police officer.*

***prescribed police information***, for part 9, division 5, subdivision 2, see section 262.

***previous service provider***, for part 9, division 3, see section 249(1).

***private sector health service***, for part 6, division 7, subdivision 3, see section 196.

***public guardian*** means the public guardian under the *Public Guardian Act 2014*.

***reasonably believes*** means believes on grounds that are reasonable in the circumstances.

***reasonably suspects*** means suspects on grounds that are reasonable in the circumstances.

***registered health practitioner*** means a person registered under the Health Practitioner Regulation National Law.

***regulated engagement*** means—

(a) engagement by the department at a service outlet of the department; or

(b) engagement by a funded non-government service provider or an NDIS non-government service provider at a service outlet of the service provider.

***relevant decision***, for part 6, division 6, see section 186.

***relevant decision-maker (respite)***, for part 6, see section 144.

***relevant disability services*** see section 37.

***relevant disqualified person*** means a person who—

(a) has been convicted of a disqualifying offence for which an imprisonment order was or is imposed; or

(b) is subject to—

(i) offender reporting obligations; or

(ii) an offender prohibition order; or

(iii) a disqualification order or offender prohibition disqualification order; or

(iv) a sexual offender order.

***relevant disqualified person decision***, for part 5, division 11, subdivision 1, see section 108.

***relevant person***, for part 4, see section 37.

***relevant review and appeal information***, for a decision about a person, means the following information—

(a) if the reasons for the decision do not include investigative information—the circumstances in which the person may apply to the tribunal for a review of the decision under part 5, division 11, subdivision 1;

(b) if the reasons for the decision include investigative information—

(i) the right of the person to appeal, under section 113, to a Magistrates Court about the police commissioner's decision that the information is investigative information; and

(ii) the circumstances in which the person may apply to the tribunal for a review of the decision under section 115;

(c) the period within which the person must apply to the tribunal for the review or appeal to a Magistrates Court;

(d) how the person may apply for the review to the tribunal or appeal to a Magistrates Court;

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(e) there is no review or appeal under this Act in relation to the decision other than as mentioned in paragraph (a) or (b).

***relevant service provider***, for part 6 and part 8, division 2, see section 140.

***repealed Act***, for part 9, division 2, see section 243.

***respite/community access plan***, for part 6, see section 144.

***respite services***, for part 6, see section 144.

***restricting access***, for part 6, see section 144.

***restrictive practice*** see section 144.

***screening decision***, in relation to a person, means a decision about—

(a) whether a positive notice or a negative notice should be issued to the person, including a decision about—

(i) whether a person's positive notice should be cancelled and substituted with a negative notice or negative exemption notice; and

(ii) whether a person's negative notice should be cancelled and, if so, whether a positive notice or positive exemption notice should be issued to the person; and

(iii) whether a person's negative notice should be cancelled and substituted with a positive notice or positive exemption notice; and

(iv) whether a person's suspended positive notice should be cancelled and a further prescribed notice or an exemption notice issued to the person; or

(b) whether a positive exemption notice or negative exemption notice should be issued to the person, including a decision about—

(i) whether a person's positive exemption notice should be cancelled and substituted with a negative exemption notice; and

(ii) whether a person's negative exemption notice should be cancelled and, if so, whether a positive exemption notice or positive notice should be issued to the person; and

(iii) whether a person's negative exemption notice should be cancelled and substituted with a positive exemption notice or positive notice; and

(iv) whether a person's suspended positive exemption notice should be cancelled and a further exemption notice or a prescribed notice issued to the person; or

(c) whether an eligibility declaration should be issued to the person.

***seclude***, for part 6, see section 144.

***serious offence*** see section 47.

***service delivery principles*** means the principles stated in part 2, division 2.

***service outlet*** means a place at which disability services are provided.

***service provider*** see section 13.

***sexual offender order*** means a division 3 order, interim detention order or interim supervision order under the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

***short term approval***, for part 6, see section 144.

***sole trader*** *see section 44A*.

***stage 2 commencement date***, for part 9, division 5, subdivision 3, see section 269.

***support network*** see the *Guardianship and Administration Act 2000*, schedule 4.

***temporary offender prohibition order*** means a temporary order under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*.

***transitional period***, for part 9, division 3, see section 249(1).

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***tribunal*** means QCAT.

***unamended Act*—**

(a) for part 9, division 5, subdivision 2—see section 262; or

(b) for part 9, division 5, subdivision 3—see section 269; or

(c) for part 9, division 5, subdivision 4—see section 279.

***Working with Children Act*** means the *Working with Children (Risk Management and Screening) Act 2000*.

***WWC positive notice*** means a positive notice issued under the *Working with Children Act*.

Not authorised—indicative only