



# **National Disability Insurance Scheme (Practice Standards—Worker Screening) Rules 2018**

made under the

*National Disability Insurance Scheme Act 2013*

## **Compilation No. 3**

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Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *National Disability Insurance Scheme (Practice Standards—Worker Screening) Rules 2018* that shows the text of the law as amended and in force on 1 December 2020 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## Preamble

The National Disability Insurance Scheme (NDIS) represents a fundamental change to how supports for people with disability are funded and delivered across Australia. The NDIS is designed to produce major benefits for people with disability, their families and the broader community.

The NDIS Quality and Safeguards Commission is responsible for a range of functions under the National Quality and Safeguarding Framework aimed at protecting and preventing harm to people with disability in the NDIS market.

The NDIS Commission will build the capability of participants in the NDIS and NDIS providers to uphold the rights of people with disability and realise the benefits of the NDIS. The legislation underpinning the NDIS is intended to support participants to be informed purchasers and consumers of NDIS supports and services and to live free from abuse, neglect, violence and exploitation.

These rules set out requirements relating to worker screening. They are an important element of the NDIS practice standards that seek to minimise the risk of harm to people with disability from the people who work closely with them.

While the primary responsibility for recruiting appropriate staff and providing a safe environment for people with disability rests with employers, a worker screening outcome is one source of information that can support employers in fulfilling this responsibility. The national policy for NDIS worker screening will be brought into effect through relevant Commonwealth, State and Territory legislation and policy. The NDIS Commissioner is responsible for working with all Australian Governments to develop and oversee the broad policy design for a nationally consistent approach to NDIS worker screening.

Worker screening is only one of a range of strategies that operate together to reduce risk of harm to people with disability. Providers must also implement additional policies, procedures and practices that assist in identifying and minimising risk of harm to people with disability. This includes promoting positive organisational cultures that do not tolerate abuse, neglect or exploitation; ensuring quality recruitment, selection and screening; and maintaining a focus on education and training.

## Part 1—Preliminary

### 1 Name

This instrument is the *National Disability Insurance Scheme (Practice Standards—Worker Screening) Rules 2018*.

### 3 Authority

This instrument is made under the *National Disability Insurance Scheme Act 2013*.

### 4 Application

- (1) The NDIS Practice Standards for worker screening set out in Parts 2 and 4 apply to:
  - (a) a person or entity who is applying to become a registered NDIS provider;  
and
  - (b) all registered NDIS providers in participating jurisdictions (see section 9).
- (2) Part 3 (which sets out record keeping requirements in relation to worker screening) applies to all registered NDIS providers.
- (3) Part 4 (which provides for transitional and special arrangements) applies in relation to certain providers in a participating jurisdiction if the circumstances set out in Part 4 apply (see sections 14 and 14A and Part 4).

### 5 Definitions

Note: A number of expressions used in this instrument are defined in section 9 of the *National Disability Insurance Scheme Act 2013*, including the following:

- (b) key personnel;
- (c) NDIS Practice Standards;
- (ca) NDIS worker screening check;
- (cb) NDIS worker screening law;
- (d) participant;
- (e) participating jurisdiction;
- (f) registered NDIS provider;
- (g) reportable incident.

In this instrument:

***acceptable NSW check*** has the meaning given by subsections 23(5), (6) and (7).

***acceptable SA check*** has the meaning given by subsections 24(6), (6A) and (6B).

***acceptable WA check*** has the meaning given by subsections 29A(5) and (6).

***Act*** means the *National Disability Insurance Scheme Act 2013*.

**aged care provider check** has the meaning given by subsections 29B(5) and (6).

**Agreement** means the Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme made by the Commonwealth, the States, the Australian Capital Territory and the Northern Territory, commencing from 1 July 2018.

**applicant** means a person or entity who has made an application for registration under section 73C of the Act.

**appropriate contract** has the meaning given by section 5A.

**certification** has the meaning given in section 5 of the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*.

**clearance** means a decision made under the NDIS worker screening law of a participating jurisdiction:

- (a) in response to an application for an NDIS worker screening check;
- (b) having the effect that the person who made the application is cleared to work with people with disability in a risk assessed role;
- (c) irrespective of whether the making of the decision is described as an assessment, clearance, approval or otherwise;

being a decision which is current and operative.

**closed**, in relation to an NDIS worker screening check, means closed to further consideration at the instigation of an NDIS worker screening unit, including as a result of the failure of the worker or personnel to whom the check relates to progress the application.

**exclusion** means a decision under the NDIS worker screening law of a participating jurisdiction:

- (a) in response to an application for an NDIS worker screening check;
- (b) having the effect that the person who made the application is excluded from working with people with disability in a risk assessed role;
- (c) irrespective of whether the making of the decision is described as a negative assessment, refusal to grant a clearance, refusal to approve or otherwise.

**interim bar** means an interim decision made under the NDIS worker screening law of a participating jurisdiction, being a decision made:

- (a) after the person has made an application for an NDIS worker screening check to the NDIS worker screening unit in that participating jurisdiction; and
- (b) before a decision has been made to issue an exclusion or a clearance in response to that application;

having the effect that the person is barred from working with people with disability in a risk assessed role while the application is determined.

Note 1: An interim bar is used where records are identified which indicate that an applicant may pose a risk to people with disability. An interim bar is used to prevent that applicant from working with people with disability until a final decision is made. An interim bar stays in place until the NDIS worker screening unit removes it, or the application is finalised – see clause 53 of the Agreement.

Note 2: Under the national policy for NDIS worker screening, it is intended that internal review of interim bar decisions will be available, where the bar is not resolved (either by the bar being lifted, or a final decision being made on the application) within the period specified in the participating jurisdiction’s NDIS worker screening law – see clause 53 of the Agreement.

***more than incidental contact*** has the meaning given by section 6 of this instrument.

***national policy for NDIS worker screening*** means the policy contained in the Agreement, as amended from time to time.

Note: The Agreement is available on the Commission’s website.

***NDIS worker screening unit*** means the person or body which is responsible for conducting NDIS worker screening checks for a State or Territory under its NDIS worker screening law.

***personnel*** means individuals:

- (a) who are not workers or registered NDIS providers; but
- (b) whose services are made available by a personnel provider to perform work:
  - (i) at a registered NDIS provider’s premises; or
  - (ii) as part of the provision of supports or services to any person with a disability, by, or on behalf of, a registered NDIS provider.

***personnel provider*** means a person or entity that makes the services of personnel available to perform work for, or on behalf of, a registered NDIS provider.

***process of obtaining a clearance***: see section 15.

***rapport*** means a relationship or understanding, being more than merely polite and functional.

***risk assessed role*** means:

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

Note: For what constitutes “more than incidental contact” see section 6.

***specified service*** means a service that is included in the list (as in force or existing from time to time) published by the Commissioner pursuant to section 7.



Note: Pursuant to subsection 209(2) of the Act, this instrument may make provision for or in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

**specified support** means a support that is included in the list (as in force or existing from time to time) published by the Commissioner pursuant to section 7 of this instrument.

Note: Pursuant to subsection 209(2) of the Act, this instrument may make provision for or in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

**suspension** means a decision under the NDIS worker screening law of a participating jurisdiction to suspend the operation of a clearance.

**transitional arrangements** in relation to a participating jurisdiction means the measures which apply in that participating jurisdiction in accordance with sections 14 and 14A and Part 4 of this instrument.

Note: Section 121 of the Agreement provides for transition to full implementation to occur on a basis which ensures the safety of people with disability and a smooth transition for workers and providers, and with respect to the operational capacity of NDIS worker screening units.

**verification** means an assessment by an approved quality auditor of an applicant, or of a registered NDIS provider, against an applicable standard by conducting a desk audit of the applicant or provider, including reviewing the applicant's or provider's relevant documentation, in relation to the standard.

**withdrawn**, in relation to an application for an NDIS worker screening check, means withdrawn by the person who made the application, subject to any restrictions on withdrawal imposed by the relevant participating jurisdiction.

Note: Section 55 of the Agreement addresses the kinds of restrictions on withdrawal which have been flagged by participating jurisdictions.

**work** has the same meaning as in section 85ZZGM of the *Crimes Act 1914*.

**worker** means any of the following:

- (a) an individual employed or otherwise engaged by a registered NDIS provider;
- (b) each of the key personnel of a registered NDIS provider;
- (c) a partner of a partnership that is a registered NDIS provider;
- (d) an individual who is a registered NDIS provider.

## 5A Definition of *appropriate contract*

- (1) An **appropriate contract** is a legally binding arrangement that:
  - (a) is between a registered NDIS provider and a personnel provider in relation to an individual or individuals who will be personnel; and
  - (b) imposes the obligations set out in subsection (2) on the personnel provider.
- (2) The obligations are as follows:

- (a) the personnel provider must only make available the services of an individual to engage in a risk assessed role with the registered NDIS provider if:
    - (i) the individual has a clearance or is subject to an exception under Division 4 of Part 2; and
    - (ii) the personnel provider discloses to the registered NDIS provider before the individual is engaged in that role all information relating to the individual's clearance or the exception the individual is subject to under that Division; and
    - (iii) the personnel provider continues to disclose to the registered NDIS provider all information relating to the individual's clearance or the exception the individual is subject to during the period the individual is engaged in that role;
  - (b) the personnel provider must comply with any reasonable request from the registered NDIS provider:
    - (i) for information relating to whether an individual made available by the personnel provider has a clearance, or is subject to an exception under Division 4 of Part 2; and
    - (ii) for assistance to investigate any complaint made to the registered NDIS provider about the conduct of, or any reportable incident involving, an individual made available by the personnel provider; and
    - (iii) for information relating to whether and how the personnel provider is complying with its obligations under the appropriate contract;
  - (c) the personnel provider must impose the obligations referred to in paragraphs (a) and (b) on any other party with whom the personnel provider enters into an arrangement, which involves or allows for the provision of services by the individual to the registered NDIS provider.
- (3) For the purposes of subparagraph (2)(a)(ii), without limiting that subparagraph, information relating to the individual's clearance includes information about the following:
- (a) the clearance and the day the clearance expires or ceases to be in force;
  - (b) any applications made for an NDIS worker screening check in relation to the individual;
  - (c) any interim bar, suspension or exclusion the individual has been, or is, subject to;
  - (d) the refusal or closure of an application for worker screening clearance;
  - (e) the revocation (however described in the NDIS worker screening law of the relevant participating jurisdiction) of a clearance.
- (4) If a registered NDIS provider and a personnel provider enter into a legally binding arrangement before 1 February 2021, the arrangement is also an **appropriate contract** if it imposes the obligations required by subsection 13(4) of this instrument as in force immediately before the commencement of the *National Disability Insurance Scheme (Practice Standards—Worker Screening) Amendment (Miscellaneous Measures) Rules 2020*.

## 6 Definitions relating to more than incidental contact

- (1) For the purposes of this instrument:

**contact** includes physical contact, face-to-face contact, oral communication, written communication and electronic communication.

- (2) Without limiting what may constitute more than incidental contact, the normal duties of a role are likely to require more than incidental contact with a person with a disability if those duties include:

- (a) physically touching a person with disability; or
- (b) building a rapport with a person with disability as an integral and ordinary part of the performance of those duties; or

Example 1: The role of a worker involves the delivery of mobility equipment to the homes of people with disability. As a standard part of that role, he provides training and instructions to the customer about how to use the equipment safely and makes adjustments to the equipment to make it suitable for the customer. This role is likely to require **more than incidental contact**. This is because there is ‘contact’ with a person with disability, and the ordinary content of that contact (testing the person’s needs and preferences with them, talking about and responding to the nature of their disability) means that there is a level openness and trust required on the part of the person with disability which would routinely involve the worker building a level of rapport with them.

Example 2: An accountant works for a business that supplies custom prosthetics to people with a disability, and performs only “back office” duties. The accountant has coincidental contact with people with disability many work days, when moving through public areas of the business, at which time the accountant nods and says hello to the customers. The accountant’s role does not involve **more than incidental contact** with people with disability. This is because the duties of the role do not require the accountant to have more than polite, functional contact with people with disability, or get to know them in any way.

- (c) having contact with multiple people with disability:
  - (i) as part of the direct delivery of a specialist disability support or service; or
  - (ii) in a specialist disability accommodation setting.

## 7 Commissioner must publish lists

The Commissioner must publish the list of specified supports and services as soon as practicable after it is made or amended.

## **Part 2—NDIS Practice Standards relating to worker screening**

### **Division 1—Purpose of this Part**

#### **8 Purpose of this Part**

- (1) This Part is made for the purposes of subsection 73T(1) of the Act.

Note: The NDIS Practice Standards in this instrument are in addition to those contained in the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*.

- (2) It specifies the standards concerning the screening of individuals who engage in risk assessed roles in the provision of supports or services by registered NDIS providers.

Note 1: Applicants must be assessed by an approved quality auditor as meeting the applicable standards and other requirements prescribed by the NDIS Practice Standards in order to be registered as a registered NDIS provider (see paragraph 73E(1)(c) of the Act).

Note 2: Non-compliance with the NDIS Practice Standards by a registered NDIS provider constitutes a breach of a condition of registration (see paragraph 73F(2)(c) and section 73J of the Act).

Note 3: Part 4 of this instrument contains transitional and special arrangements that apply instead of, or as well as, some of the rules in this Part in certain circumstances: see sections 14 and 14A.

## **Division 2—Applicable standards and assessment process**

### **9 Applicable standards, requirements and assessment processes**

- (1) To be registered to provide any class of support, an applicant must be assessed by an approved quality auditor, by verification, as meeting the standards and requirements specified in this Part (and Part 4 (if applicable)) as if any reference in those Parts to “registered NDIS provider” were a reference to “applicant”.
- (2) To remain registered to provide any class of support, a registered NDIS provider must continue to comply with the standards specified in this Part (and Part 4 (if applicable)).

### **10 Assessment by certification meets requirement to be assessed by verification**

For the purposes of this Part, if compliance with an applicable standard must be assessed using verification, the requirement is met if compliance with the standard is assessed using certification.

## **Division 3—Risk assessment and management**

### **11 Identification of risk assessed roles**

A registered NDIS provider must:

- (a) assess all roles that will be undertaken with the registered NDIS provider in relation to the provision of supports or services to any person with disability by the following persons:
  - (i) workers;
  - (ii) personnel; and
- (b) identify each role assessed under paragraph (a) that is a risk assessed role.

Note: A registered NDIS provider who is an individual is a worker: see the definition of *worker* in section 5.

### **12 Risk management plan**

- (1) A registered NDIS provider must develop and maintain a written risk management plan for protecting people with disability while any workers or personnel are:
  - (a) engaged in a risk assessed role with the registered NDIS provider; and
  - (b) in the process of obtaining a clearance.

Note: A registered NDIS provider who is an individual is a worker: see the definition of *worker* in section 5.

- (2) The risk management plan must:
  - (a) identify and describe each risk to a person with disability for whom the registered NDIS provider provides supports or services; and
  - (b) explain how each risk will be managed.
- (3) A registered NDIS provider must review the risk management plan if:
  - (a) the Commissioner requires the registered NDIS provider to do so; or
  - (b) there is a reportable incident involving a worker or any personnel.
- (4) A registered NDIS provider must implement the risk management plan, unless otherwise agreed by the Commissioner.

## **Division 4—Worker screening clearance**

### **13 Risk assessed roles restricted to workers or personnel with clearance**

Subject to the exceptions contained in this Division, a registered NDIS provider that provides supports or services to a person with disability in a participating jurisdiction:

- (a) must only allow a worker to engage in a risk assessed role, if the worker has a clearance; and
- (b) must only allow an individual who is personnel to engage in a risk assessed role, if the registered NDIS provider has:
  - (i) identified to the relevant personnel provider each risk assessed role that the individual will engage in; and
  - (ii) entered into an appropriate contract with the personnel provider for the individual; and
  - (iii) taken reasonable steps to satisfy itself that the individual has a clearance; and
- (c) if the registered NDIS provider is an individual—must only engage in a risk assessed role if the registered NDIS provider has a clearance.

### **14 Exceptions in relation to clearance**

- (1) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if:
  - (a) all of the following apply:
    - (i) the person is in the process of obtaining a clearance;
    - (ii) the person is appropriately supervised by a person with a clearance;
    - (iii) the registered NDIS provider is implementing a risk management plan developed and maintained in accordance with Division 3;
    - (iv) the law of the participating jurisdiction in which the person provides supports or services to a person with disability allows the person to engage in a risk assessed role while that person is in the process of obtaining a clearance; or
  - (b) all of the following apply:
    - (i) the registered NDIS provider is complying with the transitional arrangements set out in Part 4 that apply in relation to the person in the participating jurisdiction in which supports or services are provided to a person with disability;
    - (ii) the person has not been issued with an interim bar that is in force and is not subject to an exclusion in relation to an application for an NDIS worker screening check;
    - (iii) the person is not subject to a suspension that is in force in relation to a clearance and has not had a clearance cancelled; or
  - (c) the person is:

- (i) a secondary school student on a formal work experience placement with the registered NDIS provider; and
  - (ii) directly supervised by a worker of the provider who has a clearance.
- (2) A registered NDIS provider who is an individual may engage in a risk assessed role when the registered NDIS provider does not have a clearance at a time when:
  - (a) all of the following apply:
    - (i) the registered NDIS provider is in the process of obtaining a clearance;
    - (ii) the registered NDIS provider is appropriately supervised by a person with a clearance;
    - (iii) the registered NDIS provider is implementing a risk management plan developed and maintained in accordance with Division 3;
    - (iv) the law of the participating jurisdiction in which the person provides services to a person with disability allows the registered NDIS provider to engage in a risk assessed role while the registered NDIS provider is in the process of obtaining a clearance; or
  - (b) all of the following apply:
    - (i) the registered NDIS provider is complying with the transitional arrangements set out in Part 4 that apply in relation to the person in the participating jurisdiction in which supports or services are provided to a person with disability;
    - (ii) the registered NDIS provider has not been issued with an interim bar that is in force and is not subject to an exclusion in relation to an application for an NDIS worker screening check;
    - (iii) the registered NDIS provider is not subject to a suspension that is in force in relation to a clearance and has not had a clearance cancelled.

#### **14A Circumstances in which exception does not apply in “no card, no start” participating jurisdictions**

- (1) Paragraphs 14(1)(a) and 14(2)(a) do not apply to a person if:
    - (a) the person has submitted an application for a clearance to an NDIS worker screening unit; and
    - (b) the law of the participating jurisdiction in which the application is submitted prohibits a person from engaging in a risk assessed role while the person is in the process of obtaining a clearance; and
    - (c) the person does not have an acceptable check that applies in that participating jurisdiction; and
    - (d) a decision has not been made on the application.
  - (2) For the purposes of paragraph (1)(c), a person has an acceptable check that applies in a participating jurisdiction if:
    - (a) if the person is providing services to a participant in New South Wales—the person has an acceptable NSW check or an acceptable aged care provider check; or
-



- (b) if the person is providing services to a participant in South Australia—the person has an acceptable SA check or an acceptable aged care provider check; or
- (c) if the person is providing services to a participant in Victoria—the person is allowed to engage in a risk assessed role because of subsection 25(3) or an acceptable aged care check; or
- (d) if the person is providing services to a participant in Queensland—the person is allowed to engage in a risk assessed role because of subsection 26(3) or an acceptable aged care check; or
- (e) if the person is providing services to a participant in Tasmania—the person is allowed to engage in a risk assessed role because of subsection 27(3) or an acceptable aged care check; or
- (f) if the person is providing services to a participant in the Australian Capital Territory—the person is allowed to engage in a risk assessed role because of subsection 28(3) or an acceptable aged care check; or
- (g) if the person is providing services to a participant in the Northern Territory—the person is allowed to engage in a risk assessed role because of subsection 29(3) or an acceptable aged care check; or
- (h) if the person is providing services to a participant in Western Australia—the person has an acceptable WA check or an acceptable aged care check.

## **15 When a person is in the process of obtaining a clearance**

- (1) Subject to subsection (2), a person is in the *process of obtaining a clearance* during the period starting on the day on which the person submits a complete application for a clearance to the relevant NDIS worker screening unit, and ending on the day on which a clearance or exclusion is made.
- (2) A person is not in the *process of obtaining a clearance*:
  - (a) if the person has applied for an NDIS worker screening check on at least one prior occasion, and on the most recent prior occasion the person was subject to an exclusion;
  - (b) if the person has had a clearance on at least one prior occasion, and on the most recent prior occasion the clearance was revoked;

Note: The NDIS worker screening law of a participating jurisdiction may refer to a revocation using a different term. It may be referred to, for example, as an exclusion, because it has the effect of excluding a person from working with people with disability.

- (c) on any day after the application for an NDIS worker screening check is withdrawn by the person;
- (d) on any day after the application for an NDIS worker screening check is closed;

- (e) on any day when an interim bar is in force in relation to the person;
  - (f) at any time the person is not being supervised in accordance with the requirements of section 14 of this instrument, as applicable; or
  - (g) at any time a risk management plan required under this instrument is not being implemented.
- (3) For the purpose of this section, a person has submitted a complete application to the relevant NDIS worker screening unit if:
- (a) that unit has issued a notice in writing to the person confirming that the application has been made; and
  - (aa) a registered NDIS provider has confirmed to that unit that:
    - (i) the person is, or intends to be, a worker; or
    - (ii) if the registered NDIS provider is an individual—the person is the registered NDIS provider; and
  - (b) if the person is a worker - the registered NDIS provider with whom the person engages in a risk assessed role has seen that notice; and
  - (c) if the person is a worker - the registered NDIS provider has made a record of the worker screening application number on that notice as required by section 18.
- Note: Section 2B of the *Acts Interpretation Act 1901* provides that “writing” includes any mode of representing or reproducing words, figures, drawing or symbols in a visible form. As a result, electronic communications, such as an email or an SMS message, are capable of constituting a notice in writing.
- (4) For the purposes of paragraph 15(3)(aa), confirmation must be given in accordance with any applicable requirements of the NDIS worker screening law of the participating jurisdiction in which the application has been submitted.

## **Part 3—Record keeping requirements for worker screening**

### **16 Purpose of this Part**

- (1) This Part is made for the purposes of section 73Q of the Act.
- (2) It prescribes requirements in relation to records that a registered NDIS provider must keep in relation to the screening of individuals who engage in risk assessed roles with registered NDIS providers.

Note: Compliance with section 73Q and this Part is a condition of registration (see paragraph 73F(2)(d) of the Act), breach of which is a civil penalty provision (see section 73J of the Act).

### **17 Kinds of records which must be kept—records about risk assessed roles**

- (1) A registered NDIS provider must keep a written list of all roles with the registered NDIS provider which are risk assessed roles that are engaged in by a person.

Note: Each risk assessed role with the registered NDIS provider must be included in the record, irrespective of whether the person who engages in the role is a worker, is personnel or is a registered NDIS provider who is an individual.

- (2) A registered NDIS provider must update the written list of roles which are risk assessed roles:
  - (a) if a new risk assessed role is identified or an existing role is reclassified as a risk assessed role following a review;
  - (b) within 20 business days of the new risk assessed role being identified, or the existing role being reclassified, as the case may be.
- (3) A list created or maintained for the purposes of this section must include:
  - (a) the title or other organisational identifier for the role;
  - (b) which paragraph or paragraphs of the definition of risk assessed role applies to the role;
  - (c) a description of the role;
  - (d) the date on which the role was assessed as being a risk assessed role;
  - (e) the name and title of the person who assessed the role as being a risk assessed role.

### **18 Kinds of records which must be kept – records about workers**

- (1) A registered NDIS provider must keep a written list of:
    - (a) each worker who engages in a risk assessed role; and
    - (b) the information mentioned in subsection (3) in relation to each worker.
-

- (2) The registered NDIS provider must keep the written list up-to-date.
- (3) For the purposes of paragraph (1)(b), the written list must include the following information:
- (a) the worker's full name, date of birth and address;
  - (b) the risk assessed role or roles in which the worker engages;
  - (c) if a registered NDIS provider may allow the worker to engage in a risk assessed role without a clearance:
    - (i) the exception under section 14 that applies in relation to the worker; and
    - (ii) the start and end date of the period in which the exception under section 14 applies; and
    - (iii) if the exception under section 14 requires the worker to be supervised—the name of the person who supervises the worker during this period;
  - (d) if a registered NDIS provider may only allow the worker to engage in a risk assessed role with a clearance:
    - (i) the worker's NDIS worker screening check application number; and
    - (ii) the worker's NDIS worker screening check number; and
    - (iii) the worker's NDIS worker screening check outcome and any expiry date for that outcome; and
    - (iv) whether the worker's clearance is subject to a decision to suspend or revoke a clearance, or any other decision which has the effect that the registered NDIS provider may not allow the worker to engage in a risk assessed role; and
    - (v) the nature of any decision mentioned in subparagraph (iv).
- (4) A registered NDIS provider must keep a copy of any record relating to:
- (a) an interim bar;
  - (b) a suspension;
  - (c) an exclusion; or
  - (d) action taken by the provider in relation to paragraph (a), (b) or (c);  
in relation to any worker.
- (5) A registered NDIS provider must keep a copy of any record relating to:
- (a) allegations of any misconduct against any worker with an NDIS worker screening check clearance; and
  - (b) action taken, including any investigation, in response to paragraph (a).

**19 Kinds of records which must be kept—personnel**

A registered NDIS provider must keep a copy of:

- (a) any appropriate contract;
- (b) any record relating to the administration of the appropriate contract, including the enforcement of any obligation mentioned in subsection 5A(2);
- (c) any record of information provided to the NDIS provider about an individual who is personnel pursuant to the appropriate contract;
- (d) any record relating to its performance of subparagraph 13(b)(iii);
- (e) any record about an allegation of any misconduct against any individual who is personnel with an NDIS worker screening check clearance.

**20 The form in which records must be kept**

A registered NDIS provider must keep the list required by subsection 18(1) in a form which would allow an auditor to determine which workers were engaged in risk assessed roles with the provider on any given day in the seven years prior to the day the auditor examines the list.

**21 The period for which records must be kept**

A record subject to this Part must be kept for 7 years from the date the record is made.

## **Part 4—NDIS Practice Standards relating to transitional and special arrangements for worker screening**

### **22 Purpose of this Part**

- (1) This Part is made for the purposes of subsection 73T(1) of the Act and sections 14 and 14A of this instrument.
- (2) It specifies the standards concerning the screening of workers and personnel when transitional arrangements apply in relation to a participating jurisdiction.
- (3) It also gives effect to the staged implementation of the national policy for NDIS worker screening, described in Part 12 (Transfer) of the Agreement.

### **23 Application - special arrangements New South Wales**

- (1) This section applies to a person or entity that has applied to be, or is, registered as a registered NDIS provider to deliver any class of support or service to a participant residing in New South Wales.
- (2) A registered NDIS provider is complying with the transitional arrangements when delivering services or supports in New South Wales if that provider complies with this section.

#### *Transitional arrangements*

- (3) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if:
  - (a) the person has an acceptable NSW check at that time; and
  - (c) a notice (if any) issued to the provider by the Commissioner pursuant to subsection (11) has not come into effect.
- (4) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if:
  - (a) at that time, the person is:
    - (i) a secondary school student on a formal work experience placement with the registered NDIS provider; and
    - (ii) directly supervised by a person who has an acceptable NSW check at that time; and
  - (b) a notice (if any) issued to the provider by the Commissioner pursuant to subsection (11) has not yet come into effect.
- (5) A person has an **acceptable NSW check** at a time if:
  - (a) at that time, the person is not engaging in child-related work in the risk assessed role; and
  - (b) a criminal record check in relation to the person was obtained:
    - (i) no more than 4 years before that time; and

- (ii) on or before 30 June 2018; and
  - (c) that criminal record check showed that the person had no conviction for a prescribed criminal offence; and
  - (d) the person has not subsequently been subject to a criminal record check that showed that the person had a conviction for a prescribed criminal offence.
- (6) A person has an **acceptable NSW check** at a time if:
  - (a) at that time, the person is not engaging in child-related work in the risk assessed role; and
  - (b) a criminal record check in relation to the person was obtained:
    - (i) no more than 2 years before that time; and
    - (ii) during the transition period; and
  - (c) that criminal record check showed that the person had no conviction for a prescribed criminal offence; and
  - (d) the person has not subsequently been subject to a criminal record check that showed that the person had a conviction for a prescribed criminal offence.
- (7) A person has an **acceptable NSW check** at a time if:
  - (a) at that time, the person is engaging in child-related work in the risk assessed role; and
  - (b) at that time, a working with children check clearance (within the meaning of the *Child Protection (Working With Children) Act 2012* (NSW) as in force from time to time) issued to the person is in force; and
  - (c) that clearance was issued to the person on a day that is no later than the last day of the transition period.
- (9) The transition time for a person is the later of:
  - (a) 1 February 2021; or
  - (b) the expiry of an acceptable NSW check which applied to that person on 1 February 2021.
- (10) An acceptable NSW check expires at the end of the last day that it meets the requirements of paragraph (6)(b), (7)(b) or (8)(c), as applicable.

#### *Notice*

- (11) The Commissioner may give a written notice to a registered NDIS provider that paragraph 14(1)(b) or (2)(b) no longer applies to the provider from the day specified in the notice (which must be at least 14 days after the notice is given).

#### *Definitions*

- (12) In this section:

**child-related work** has the same meaning as in the *Child Protection (Working With Children) Act 2012* (NSW) as in force from time to time.

***criminal record check*** means a check of the same kind as that required for the purposes of section 32 of the *Disability Inclusion Act 2014* (NSW) as in force from time to time.

***prescribed criminal offence*** has the same meaning as in the *Disability Inclusion Act 2014* (NSW) as in force from time to time.

***transition period*** means the period:

- (a) starting on 1 July 2018; and
- (b) ending on the earlier of:
  - (i) 31 January 2021; and
  - (ii) the day notice is given under section 30 that the NDIS worker screening unit is operational in New South Wales.

## **24 Application - special arrangements South Australia**

- (1) This section applies to a person or entity that has applied to be, or is, registered as a registered NDIS provider to deliver any class of support or service to a participant residing in South Australia.
- (2) A registered NDIS provider is complying with the transitional arrangements when delivering services or supports in South Australia if that provider complies with this section.

### *Transitional arrangements*

- (3) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if:
  - (a) the person has an acceptable SA check; and
  - (b) it is before the transition time for the person; and
  - (c) a notice (if any) issued to the provider by the Commissioner pursuant to subsection (9) has not come into effect.
- (4) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if the person is:
  - (a) a secondary school student on a formal work experience placement with the registered NDIS provider; and
  - (b) directly supervised by a person who meets the requirements of (3)(a) and (b); and
  - (c) a notice (if any) issued to the provider by the Commissioner pursuant to subsection (9) has not yet come into effect.

### *Acceptable SA checks—recognition of South Australian checks*

- (6) A person has an ***acceptable SA check*** if:



- (a) the risk assessed role does not involve the person engaging in child-related work; and
  - (b) before or during the transition period, or within 2 months after the end of the transition period:
    - (i) the person has been subject to an assessment (within the meaning of section 5B of the *Disability Services Act 1993* (SA) as in force from time to time); and
    - (ii) an authorised screening unit has made a finding, in relation to that assessment, to the effect that the person is cleared for disability services employment; and
  - (c) an authorised screening unit has not subsequently made a contrary finding in relation to another assessment the person has been subject to under that Act; and
  - (d) it is not more than 3 years since the finding referred to in subparagraph (b)(ii).
- (6A) A person has an **acceptable SA check** if:
- (a) before or during the transition period:
    - (i) the person has been subject to an assessment (within the meaning of section 8B of the *Children's Protection Act 1993* (SA) as in force immediately before it was repealed or section 8 of the *Children's Protection Law Reform (Transitional Arrangements and Related Amendments) Act 2017* (SA) as in force from time to time); and
    - (ii) an authorised screening unit has made a finding, in relation to that assessment, to the effect that the person is cleared for child-related employment; and
  - (b) an authorised screening unit has not:
    - (i) made a finding under an Act mentioned in subparagraph (a)(i) to the effect that the person is not cleared for child-related employment; or
    - (ii) made a finding under the *Disability Services Act 1993* (SA), as in force from time to time, to the effect that the person is not cleared for disability services employment; and
  - (c) the person is not a prohibited person; and
  - (d) it is not more than 3 years since the finding referred to in subparagraph (a)(ii).
- (6B) A person has an **acceptable SA check** if:
- (a) during the transition period:
    - (i) the person has been subject to a working with children check conducted by the central assessment unit in accordance with the *Child Safety (Prohibited Persons) Act 2016* (SA) as in force from time to time; and
    - (ii) the central assessment unit has determined under that Act that the person is not prohibited from working with children; and

- (b) an authorised screening unit has not made a finding under the Disability Services Act 1993 (SA), as in force from time to time, to the effect that the person is not cleared for disability services employment; and
- (c) the person is not a prohibited person; and
- (d) it is not more than 5 years since the determination referred to in subparagraph (a)(ii).

*Transition time*

- (7) The transition time for a person is the later of:
  - (a) 1 February 2021; or
  - (b) the expiry of an acceptable SA check which applied to that person on 1 February 2021.
- (8) An acceptable SA check expires at the end of the last day that it meets the requirements of paragraph (6)(d), (6A)(d) or (6B)(d), as applicable.

*Notice*

- (9) The Commissioner may give a written notice to a registered NDIS provider that paragraph 14(1)(b) or (2)(b) no longer applies to the provider from the day specified in the notice (which must be at least 14 days after the notice is given).

*Definitions*

- (10) In this section:

***child-related work*** has the same meaning as in section 6 of the *Child Safety (Prohibited Persons) Act 2016* (SA) as in force from time to time.

***prohibited person*** has the same meaning as in section 15 of the *Child Safety (Prohibited Persons) Act 2016* (SA) as in force from time to time.

***transition period*** means the period:

- (a) starting on 1 July 2018; and
- (b) ending on the earlier of:
  - (i) 31 January 2021; and
  - (ii) the day notice is given under section 30 that the NDIS worker screening unit is operational in South Australia.

## **25 Application—special arrangements for Victoria**

- (1) This section applies to a person or entity that has applied to be, or is, registered as a registered NDIS provider to deliver any class of support or service to a participant residing in Victoria.

- (2) A registered NDIS provider is complying with the transitional arrangements when delivering services or supports in Victoria if that provider complies with this section.

*Special arrangements during the transition period*

- (3) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if:
- (a) it is during the transition period; and
  - (b) the provider is compliant with the safety screening requirements in relation to the person in accordance with the safety screening policy issued by the Victorian Department of Health and Human Services and as in force from time to time; and
  - (c) the person's safety screening is current in accordance with the requirements; and
  - (d) a notice (if any) issued to the provider by the Commissioner pursuant to subsection (7) has not come into effect.

- (4) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if:

- (a) it is during the transition period; and
- (b) the person is a secondary school student on a formal work experience placement with the provider; and
- (c) the person is directly supervised by a person who meets the requirements of paragraphs (3)(b) and (c); and
- (d) a notice (if any) issued to the provider by the Commissioner pursuant to subsection (7) has not yet come into effect.

*Special arrangements after the end of the transition period*

- (5) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if:

- (a) it is after the end of the transition period; and
- (b) before the end of the transition period, the provider was compliant with the safety screening requirements in relation to the person in accordance with the safety screening policy issued by the Victorian Department of Health and Human Services and as in force from time to time; and
- (c) the person's safety screening is current in accordance with the requirements; and
- (d) any of the following apply:

- (i) the person has a current working with children check (within the meaning of the *Working with Children Act 2005* (Vic.) as in force from time to time) that was issued to the person before the end of the transition period;
  - (ii) less than 6 months have elapsed since the end of the transition period;
  - (iii) 6 months or more have elapsed since the end of the transition period and the person is in the process of obtaining a clearance; and
  - (e) a notice (if any) issued to the provider by the Commissioner pursuant to subsection (7) has not come into effect.
- (6) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if:
- (a) it is after the end of the transition period; and
  - (b) the person is a secondary school student on a formal work experience placement with the provider; and
  - (c) the person is directly supervised by a person who meets the requirements of paragraphs (5)(b), (c) and (d); and
  - (d) a notice (if any) issued to the provider by the Commissioner pursuant to subsection (7) has not yet come into effect.

*Notice*

- (7) The Commissioner may give a written notice to a registered NDIS provider that paragraph 14(1)(b) or (2)(b) no longer applies to the provider from the day specified in the notice (which must be at least 14 days after the notice is given).

*Meaning of transition period*

- (8) In this section:

***transition period*** means the period:

- (a) starting on 1 July 2019; and
- (b) ending on the earlier of:
  - (i) 31 January 2021; and
  - (ii) the day notice is given under section 30 that the NDIS worker screening unit is operational in Victoria.

## **26 Application—special arrangements for Queensland**

- (1) This section applies to a person or entity that has applied to be, or is, registered as a registered NDIS provider to deliver any class of support or service to a participant residing in Queensland.

- (2) A registered NDIS provider is complying with the transitional arrangements when delivering services or supports in Queensland if that provider complies with this section.

*Special arrangements during the transition period*

- (3) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if:
- (a) it is during the transition period; and
  - (b) any of the following apply:
    - (i) the person meets the requirements specified in the *Disability Services Act 2006* (Qld), as in force from time to time, in relation to screening of persons engaged to provide services to people with disability;
    - (ii) the person meets the requirements specified in the *Working with Children (Risk Management and Screening) Act 2000* (Qld), as in force from time to time, in relation to screening for regulated employment or regulated businesses;
    - (iii) the person engages in the risk assessed role in the person's capacity as a registered health practitioner (within the meaning of the *Health Practitioner Regulation National Law 2009* (Qld) as in force from time to time) and the person has a certificate of registration (within the meaning of that Act); and
  - (c) a notice (if any) issued to the provider by the Commissioner pursuant to subsection (7) has not come into effect.

*Special arrangements after the transition period*

- (4) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if:
- (a) it is after the end of the transition period; and
  - (b) immediately before the end of the transition period:
    - (i) the person satisfied paragraph (3)(b); or
    - (ii) the person has made a valid application to seek to meet a requirement mentioned in subparagraph (3)(b)(i) or (ii) and that application has not been decided; and
  - (c) it is before the transition time for the person; and
  - (d) a notice (if any) issued to the provider by the Commissioner pursuant to subsection (7) has not yet come into effect.
- (5) For the purposes of paragraph (4)(c), the **transition time** for a person is the later of the following:

- (a) if the person meets subparagraph (4)(b)(i)—the day the relevant notice or certificate that the person held immediately before the end of the transition period expires;
  - (b) if the person meets subparagraph (4)(b)(ii)—the earlier of the following:
    - (i) if the person is granted a notice in relation to the valid application mentioned in that subparagraph—the day that notice expires;
    - (ii) if the person is not granted a notice in relation to that valid application—the day the person was notified of the decision not to grant the notice.
- (6) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if:
- (a) it is after the end of the transition period; and
  - (b) the person is a secondary school student on a formal work experience placement with the provider; and
  - (c) the person is directly supervised by a person who meets the requirements of paragraphs (4)(b) and (c); and
  - (d) a notice (if any) issued to the provider by the Commissioner pursuant to subsection (7) has not yet come into effect.

*Notice*

- (7) The Commissioner may give a written notice to a registered NDIS provider that paragraph 14(1)(b) or (2)(b) no longer applies to the provider from the day specified in the notice (which must be at least 14 days after the notice is given).

*Meaning of transition period*

- (8) In this section:

**regulated business** has the meaning given by the *Working with Children (Risk Management and Screening) Act 2000* (Qld) as in force from time to time.

**regulated employment** has the meaning given by the *Working with Children (Risk Management and Screening) Act 2000* (Qld) as in force from time to time.

**transition period** means the period:

- (a) starting on 1 July 2019; and
- (b) ending on the earlier of:
  - (i) 31 January 2021; and
  - (ii) the day notice is given under section 30 that the NDIS worker screening unit is operational in Queensland.

**27 Application—special arrangements for Tasmania**

- (1) This section applies to a person or entity that has applied to be, or is, registered as a registered NDIS provider to deliver any class of support or service to a participant residing in Tasmania.
- (2) A registered NDIS provider is complying with the transitional arrangements when delivering services or supports in Tasmania if that provider complies with this section.

*Special arrangements during the transition period*

- (3) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if:
  - (a) it is during the transition period; and
  - (b) the person is registered to engage in a regulated activity under the *Registration to Work with Vulnerable People Act 2013* (Tas.), as in force from time to time; and
  - (c) the registration is in terms that allow the person to engage in the role concerned; and
  - (d) a notice (if any) issued to the provider by the Commissioner pursuant to subsection (8) has not yet come into effect.
- (4) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if:
  - (a) it is during the transition period; and
  - (b) the person is a secondary school student on a formal work experience placement with the provider; and
  - (c) the person is directly supervised by a person who meets the requirements of paragraphs (3)(b) and (c); and
  - (d) a notice (if any) issued to the provider by the Commissioner pursuant to subsection (8) has not yet come into effect.

*Special arrangements after the transition period*

- (5) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if:
  - (a) it is after the end of the transition period; and
  - (b) immediately before the end of the transition period, the person met the requirements of paragraphs (3)(b) and (c); and
  - (c) it is before the transition time for the person; and

- (d) a notice (if any) issued to the provider by the Commissioner pursuant to subsection (8) has not yet come into effect.
- (6) For the purposes of paragraph (5)(c), the transition time for a person is the earlier of:
- (a) 3 years after the person was registered to engage in a regulated activity under the *Registration to Work with Vulnerable People Act 2013* (Tas.), as in force from time to time; and
  - (b) the expiry of the registration that the person held immediately before the end of the transition period.
- (7) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if:
- (a) it is after the end of the transition period; and
  - (b) the person is a secondary school student on a formal work experience placement with the provider; and
  - (c) the person is directly supervised by a person who meets the requirements of paragraphs (5)(b) and (c); and
  - (d) a notice (if any) issued to the provider by the Commissioner pursuant to subsection (8) has not yet come into effect.

*Notice*

- (8) The Commissioner may give a written notice to a registered NDIS provider that paragraph 14(1)(b) or (2)(b) no longer applies to the provider from the day specified in the notice (which must be at least 14 days after the notice is given).

*Meaning of transition period*

- (9) In this section:

***transition period*** means the period:

- (a) starting on 1 July 2019; and
- (b) ending on the earlier of:
  - (i) 31 January 2021; and
  - (ii) the day notice is given under section 30 that the NDIS worker screening unit is operational in Tasmania.

## **28 Application—special arrangements for ACT**

- (1) This section applies to a person or entity that has applied to be, or is, registered as a registered NDIS provider to deliver any class of support or service to a participant residing in the Australian Capital Territory.



- (2) A registered NDIS provider is complying with the transitional arrangements when delivering services or supports in the Australian Capital Territory if that provider complies with this section.

*Special arrangements during the transition period*

- (3) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if:
- (a) it is during the transition period; and
  - (b) the person is registered to engage in a regulated activity under the *Working with Vulnerable People (Background Checking) Act 2011* (ACT), as in force from time to time; and
  - (c) the registration is in terms that allow the person to engage in the role concerned; and
  - (d) a notice (if any) issued to the provider by the Commissioner pursuant to subsection (8) has not yet come into effect.

- (4) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if:

- (a) it is during the transition period; and
- (b) the person is a secondary school student on a formal work experience placement with the provider; and
- (c) the person is directly supervised by a person who meets the requirements of paragraphs (3)(b) and (c); and
- (d) a notice (if any) issued to the provider by the Commissioner pursuant to subsection (8) has not yet come into effect.

*Special arrangements after the transition period*

- (5) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if:

- (a) it is after the end of the transition period; and
- (b) immediately before the end of the transition period, the person met the requirements of paragraphs (3)(b) and (c); and
- (c) it is before the transition time for the person; and
- (d) a notice (if any) issued to the provider by the Commissioner pursuant to subsection (8) has not yet come into effect.

- (6) For the purposes of paragraph (5)(c), the transition time for a person is the earlier of:

- (a) 3 years after the person is registered under the *Working with Vulnerable People (Background Checking) Act 2011* (ACT), as in force from time to time; and
  - (b) the expiry of the registration that the person held immediately before the end of the transition period.
- (7) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if:
- (a) it is after the end of the transition period; and
  - (b) the person is a secondary school student on a formal work experience placement with the provider; and
  - (c) the person is directly supervised by a person who meets the requirements of paragraphs (5)(b) and (c); and
  - (d) a notice (if any) issued to the provider by the Commissioner pursuant to subsection (8) has not yet come into effect.

*Notice*

- (8) The Commissioner may give a written notice to a registered NDIS provider that paragraph 14(1)(b) or (2)(b) no longer applies to the provider from the day specified in the notice (which must be at least 14 days after the notice is given).

*Meaning of transition period*

- (9) In this section:
- transition period*** means the period:
- (a) starting on 1 July 2019; and
  - (b) ending on the earlier of:
    - (i) 31 January 2021; and
    - (ii) the day notice is given under section 30 that the NDIS worker screening unit is operational in the Australian Capital Territory.

## **29 Application—special arrangements for Northern Territory**

- (1) This section applies to a person or entity that has applied to be, or is, registered as a registered NDIS provider to deliver any class of support or service to a participant residing in the Northern Territory.
- (2) A registered NDIS provider is complying with the transitional arrangements when delivering services or supports in the Northern Territory if that provider complies with this section.

*Special arrangements during the transition period*

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- (3) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if:
- (a) it is during the transition period; and
  - (b) the person has a clearance notice granted under the *Care and Protection of Children Act 2007* (NT) (as in force from time to time) that is in force; and
  - (c) the clearance notice is in terms that allow the person to engage in the role concerned; and
  - (d) a notice (if any) issued to the provider by the Commissioner pursuant to subsection (8) has not yet come into effect.
- (4) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if:
- (a) it is during the transition period; and
  - (b) the person is a secondary school student on a formal work experience placement with the provider; and
  - (c) the person is directly supervised by a person who meets the requirements of paragraphs (3)(b) and (c); and
  - (d) a notice (if any) issued to the provider by the Commissioner pursuant to subsection (8) has not yet come into effect.

*Special arrangements after the transition period*

- (5) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if:
- (a) it is after the end of the transition period; and
  - (b) immediately before the end of the transition period, the person met the requirements of paragraphs (3)(b) and (c); and
  - (c) it is before the transition time for the person; and
  - (d) a notice (if any) issued to the provider by the Commissioner pursuant to subsection (8) has not yet come into effect.
- (6) For the purposes of paragraph (5)(c), the transition time for a person is the earlier of:
- (a) 2 years after the person was given a clearance notice under the *Care and Protection of Children Act 2007* (NT), as in force from time to time; and
  - (b) the expiry of the clearance notice that the person held immediately before the end of the transition period.
- (7) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if:

- (a) it is after the end of the transition period; and
- (b) the person is a secondary school student on a formal work experience placement with the provider; and
- (c) the person is directly supervised by a person who meets the requirements of paragraphs (5)(b) and (c); and
- (d) a notice (if any) issued to the provider by the Commissioner pursuant to subsection (8) has not yet come into effect.

*Notice*

- (8) The Commissioner may give a written notice to a registered NDIS provider that paragraph 14(1)(b) or (2)(b) no longer applies to the provider from the day specified in the notice (which must be at least 14 days after the notice is given).

*Meaning of transition period*

- (9) In this section:

***transition period*** means the period:

- (a) starting on 1 July 2019; and
- (b) ending on the earlier of:
  - (i) 30 June 2021; and
  - (ii) the day notice is given under section 30 that the NDIS worker screening unit is operational in the Northern Territory.

## **29A Application—special arrangements for Western Australia**

- (1) This section applies to a person or entity that has applied to be, or is, registered as a registered NDIS provider to deliver any class of support or service to a participant residing in Western Australia.
- (2) A registered NDIS provider is complying with the transitional arrangements when delivering services or supports in Western Australia if that registered NDIS provider complies with this section.

*Transitional arrangements*

- (3) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if:
  - (a) the person has an acceptable WA check at that time; and
  - (b) a notice (if any) issued to the registered NDIS provider by the Commissioner pursuant to subsection (7) has not yet come into effect.
- (4) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if:
  - (a) at that time, the person is a secondary school student on a formal work experience placement with the registered NDIS provider; and

- (b) the person is directly supervised by a person who has an acceptable WA check at that time; and
  - (c) a notice (if any) issued to the provider by the Commissioner pursuant to subsection (7) has not yet come into effect.
- (5) A person has an **acceptable WA check** at a time (the **relevant time**) before 1 February 2023, if:
- (a) at the relevant time, the person is engaged by the registered NDIS provider; and
  - (b) the person had been engaged by the registered NDIS provider on a day (the **engagement day**) before 1 December 2020 and has been continuously engaged with that provider since the engagement day; and
  - (c) a national police check in relation to the person had been obtained from a checking agency no more than 3 years before both:
    - (i) the relevant time; and
    - (ii) 1 February 2021; and
  - (d) the national police check showed that the person had no conviction for a relevant offence; and
  - (e) at the relevant time, the registered NDIS provider is not aware of the person being subsequently convicted of a relevant offence; and
  - (f) if the risk assessed role involves the person engaging in child-related work—on a day that is no later than the last day of the transition period:
    - (i) the person had been issued with an assessment notice, or a further assessment notice, and at the relevant time that assessment notice is in effect and has not expired or been cancelled; or
    - (ii) the person had made an application for an assessment notice, or a further assessment notice, and at the relevant time the person has been issued with an assessment notice in relation to that application and that assessment notice is in effect and has not expired or been cancelled; or
    - (iii) the person had made an application for an assessment notice, or a further assessment notice, and at the relevant time that application has not been decided or withdrawn and the person has not been issued with an interim negative notice in relation to that application.
- (6) A person has an **acceptable WA check** at a time (the **relevant time**) before 1 February 2023, if:
- (a) at the relevant time, the person is engaged by the registered NDIS provider; and
  - (b) the person had begun the engagement with the registered NDIS provider on or after 1 December 2020 and before 1 February 2021; and
  - (c) a national police check in relation to the person had been obtained from a checking agency no more than 12 months before both:
    - (i) the relevant time; and
    - (ii) the day the person began that engagement; and
  - (d) the national police check showed that the person had no conviction for a relevant offence; and
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- (e) at the relevant time, the registered NDIS provider is not aware of the person being subsequently convicted of a relevant offence; and
- (f) if the risk assessed role involves the person engaging in child-related work—on a day that is no later than the last day of the transition period:
  - (i) the person had been issued with an assessment notice, or a further assessment notice, and at the relevant time that assessment notice is in effect and has not expired or been cancelled; or
  - (ii) the person had made an application for an assessment notice, or a further assessment notice, and at the relevant time the person has been issued with an assessment notice in relation to that application and that assessment notice is in effect and has not expired or been cancelled; or
  - (iii) the person had made an application for an assessment notice, or a further assessment notice, and at the relevant time that application has not been decided or withdrawn and the person has not been issued with an interim negative notice in relation to that application.

#### *Notice*

- (7) The Commissioner may give a written notice to a registered NDIS provider that paragraph 14(1)(b) or (2)(b) no longer applies to the provider from the day specified in the notice (which must be at least 14 days after the notice is given).

#### *Definitions*

- (8) In this section:

**assessment notice** has the same meaning as in the *Working with Children (Criminal Record Checking) Act 2004* (WA), as in force from time to time.

**checking agency** means a State or Territory police service, or an agency accredited by the Australian Criminal Intelligence Commission in relation to the provision of a national police check.

**child-related work** has the same meaning as in the *Working with Children (Criminal Record Checking) Act 2004* (WA), as in force from time to time.

**further assessment notice** has the same meaning as in the *Working with Children (Criminal Record Checking) Act 2004* (WA), as in force from time to time.

**interim negative notice** has the same meaning as in the *Working with Children (Criminal Record Checking) Act 2004* (WA), as in force from time to time.

**relevant offence**: an offence committed by a person is a **relevant offence** if:

- (a) the person was at least 18 years old when the offence was committed; and
- (b) the offence involved, or related to, any of the following:
  - (i) an offence under section 192 of the *Children and Community Services Act 2004* (WA), as in force from time to time;
  - (ii) an offence under section 181, 186, 187, 279 or 283, subsection 306(4), section 320 or 322, subsection 329(2), (3), (4), (5)

- or (6) or section 330 of *The Criminal Code* (WA), as in force from time to time;
- (iii) an offence under section 16, 17 or 18 of the *Prostitution Act 2000* (WA), as in force from time to time;
- (iv) an offence under a law of another participating jurisdiction that is equivalent to an offence mentioned in subparagraph (i), (ii) or (iii);
- (v) a class 1 offence or a class 2 offence within the meaning given by the *National Disability Insurance Scheme (Worker Screening) Act 2020* (WA), as in force from time to time.

**transition period** means the period:

- (a) starting on 1 December 2020; and
- (b) ending on the earlier of:
  - (i) 31 January 2023; and
  - (ii) the day notice is given under section 30 that the NDIS worker screening unit is operational in Western Australia.

## **29B Application—special arrangement for residential aged care providers**

- (1) This section applies to a person or entity on a day if, on that day:
  - (a) the person or entity is an approved provider (within the meaning of the *Aged Care Quality and Safety Commission Act 2018*); and
  - (b) the person or entity is providing residential care (within the meaning of the *Aged Care Act 1997*) to a participant; and
  - (c) the participant is a resident of the person or entity's residential facility; and
  - (d) the person or entity is a registered NDIS provider; and
  - (e) the person or entity is providing supports or services to the participant in a participating jurisdiction.
- (2) A registered NDIS provider is complying with the transitional arrangements when delivering supports or services in a participating jurisdiction if that provider complies with this section.

### *Transitional arrangements*

- (3) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if:
  - (a) the registered NDIS provider is an approved provider (within the meaning of the *Aged Care Quality and Safety Commission Act 2018*); and
  - (b) the person is:
    - (i) a staff member of the approved provider; or
    - (ii) a volunteer for the approved provider; or
    - (iii) one of the approved provider's key personnel (within the meaning of the *Aged Care Quality and Safety Commission Act 2018*); and
  - (c) the person has an acceptable aged care provider check; and
  - (d) a notice (if any) issued to the provider by the Commissioner pursuant to subsection (7) has not come into effect.

- (4) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if the person is:
- (a) a secondary school student on a formal work experience placement with the registered NDIS provider; and
  - (b) directly supervised by a person who meets the requirements of paragraphs (3)(b) and (c); and
  - (c) a notice (if any) issued to the provider by the Commissioner pursuant to subsection (7) has not yet come into effect.

*Acceptable aged care provider checks—recognition of checks under the Accountability Principles 2014*

- (5) A person has an **acceptable aged care provider check** if:
- (a) the person is either:
    - (i) a staff member of the approved provider; or
    - (ii) a volunteer for the approved provider; and
  - (b) the requirements under Part 6 of the *Accountability Principles 2014* have been complied with in relation to the person, including the requirement that the person has been issued with a police certificate (within the meaning of those Principles) within the last 3 years; and
  - (c) the police certificate is issued before 1 February 2021.
- (6) A person has an **acceptable aged care provider check** if:
- (a) the person is one of the approved provider’s key personnel (within the meaning of the *Aged Care Quality and Safety Commission Act 2018*); and
  - (b) the person is not covered by subsection (5); and
  - (c) the requirements under Part 7A of the *Accountability Principles 2014* have been complied with in relation to the person, including the requirement that the provider has obtained a police certificate (within the meaning of those Principles) for the person; and
  - (d) the police certificate is issued before 1 February 2021.

*Notice*

- (7) The Commissioner may give a written notice to a registered NDIS provider that paragraph 14(1)(b) or (2)(b) no longer applies to the provider from the day specified in the notice (which must be at least 14 days after the notice is given).

*Concurrent operation*

- (8) To avoid doubt, this section is intended to operate concurrently with sections 23 to 29A.

*Definitions*

- (9) In this section:

**staff member**, of an approved provider, has the same meaning as in the *Accountability Principles 2014*.



*volunteer*, for an approved provider, has the same meaning as in the *Accountability Principles 2014*.

*Sunset*

(10) This section ceases to have effect at the end of 1 February 2024.

**30 Notice that NDIS worker screening unit is operational in a participating jurisdiction**

The Minister may, by notifiable instrument, give notice that the NDIS worker screening unit for a State or Territory is operational in that State or Territory, with the agreement of that State or Territory.

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

**Endnote 3—Legislation history**

<b>Name</b>	<b>Registration</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
National Disability Insurance Scheme (Practice Standards—Worker Screening) Rules 2018	26 June 2018 (F2018L00887)	1 July 2018 (s 2(1) item 1)	
National Disability Insurance Scheme (Practice Standards—Worker Screening) Amendment Rules 2019	28 June 2019 (F2019L00937)	1 July 2019 (s 2(1) item 1)	—
National Disability Insurance Scheme (Practice Standards—Worker Screening) Amendment Rules 2020	29 June 2020 (F2020L00839)	30 June 2020 (s 2(1) item 1)	—
National Disability Insurance Scheme (Practice Standards—Worker Screening) Amendment (Miscellaneous Measures) Rules 2020	30 Nov 2020 (F2020L01508)	1 Dec 2020 (s 2(1) item 1)	—
National Disability Insurance Scheme Legislation Amendment (Transitioning Aged Care Providers) Rules 2020	30 Nov 2020 (F2020L01512)	Sch 1 (items 3–7): 1 Dec 2020 (s 2(1) item 1)	—

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**Endnote 4—Amendment history**

<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
s 2 .....	rep LA s 48D
s 4 .....	am F2020L01508
s 5 .....	am F2020L00839; F2020L01508; F2020L01512
s 5A .....	ad F2020L01508
<b>Part 2</b>	
Part 2 heading.....	rs F2020L01508
<b>Division 1</b>	
Division 1 .....	rs F2020L01508
s 8 .....	rs F2020L01508
<b>Division 2</b>	
Division 2 heading.....	rs F2020L01508
s 9 .....	rs F2020L01508
<b>Division 3</b>	
Division 3 .....	rs F2020L01508
s 11 .....	rs F2020L01508
s 12 .....	rs F2020L01508
<b>Division 4</b>	
Division 4 heading.....	rs F2020L01508
s 13 .....	am F2020L00839
	rs F2020L01508
s 14 .....	rs F2020L01508
s 14A .....	ad F2019L00937
	am F2020L00839; F2020L01508; F2020L01512
s 15 .....	am F2019L00937; F2020L00839; F2020L01508
<b>Part 3</b>	
s 16 .....	rs F2020L01508
s 17 .....	am F2020L01508
s 18 .....	am F2020L00839; F2020L01508
s 19 .....	am F2020L01508
<b>Part 4</b>	
Part 4 heading.....	am F2020L00839
	rs F2020L01508
s 22 .....	rs F2020L01508
s 23 .....	am F2019L00937; F2020L00839; F2020L01508
s 24 .....	am F2019L00937; F2020L00839; F2020L01508
s 25 .....	ad F2019L00937; F2020L00839

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## Endnote 4—Amendment history

Provision affected	How affected
	am F2020L01508
s 26 .....	ad F2019L00937; F2020L00839
	am F2020L01508
s 27 .....	ad F2019L00937; F2020L00839
	am F2020L01508
s 28 .....	ad F2019L00937; F2020L00839
	am F2020L01508
s 29 .....	ad F2019L00937; F2020L00839
	am F2020L01508
s 29A .....	ad F2020L01508
s 29B .....	ad F2020L01512
	exp end of 1 Feb 2024 (s 29B(10))
s 30 .....	ad F2019L00937
	am F2020L01508