



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

I, Graeme Head, as delegate of the Minister for Social Services, make the following rules.

Dated 26 June 2018

Graeme Head
Commissioner of the NDIS Quality and Safeguards Commission

Contents

Part 1—Preliminary	1
1 Name	1
2 Commencement	1
3 Authority.....	1
4 Application	1
5 Definitions	1
6 Definitions relating to more than incidental contact	5
7 Commissioner must publish lists	5
Part 2—Practice Standards relating to screening of workers and other personnel	6
Division 1 - Introduction.....	6
8 Purpose of this Part.....	6
Division 2 – NDIS Practice Standards – worker screening.....	6
9 Worker screening - class of supports, applicable standards and assessment process	6
10 Assessment by certification meets requirement to be assessed by verification	6
Division 3 – NDIS Practice Standards - screening of workers and other personnel – procedures and strategies	7
11 Assessment of risk assessed roles	7
12 Risk management plan to be maintained and given effect	7
Division 4 - Worker screening – workers and other personnel of a registered NDIS provider.....	7
13 Certain roles restricted to workers or other personnel with a clearance	7
14 Exceptions to the restriction of certain roles to cleared workers and other personnel.....	9
15 When a person is in the process of obtaining a clearance	9
Part 3—Record keeping requirements for worker screening	11
16 Purpose of this Part	11
17 Kinds of records which must be kept—records about risk assessed roles.....	11
18 Kinds of records which must be kept – records about workers.....	11
19 Kinds of records which must be kept – other personnel.....	12
20 The form in which records must be kept.....	13
21 The period for which records must be kept.....	13
Part 4—Special arrangements during the transition period	14
22 Purpose of this Part	14
23 Application - special arrangements NSW	14
24 Application - special arrangements SA.....	16

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*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2018.	1 July 2018

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

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

4 Application

- (1) This instrument applies in a host jurisdiction that is a participating jurisdiction, subject to the transitional arrangements in Part 4 of this instrument.
- (2) This instrument applies to a person or entity who is applying to become a registered NDIS provider and all registered NDIS providers.

5 Definitions

Note: A number of expressions used in this instrument are defined in section 9, 10, 10A, 11 and 11A of the *National Disability Insurance Scheme Act 2013*, including the following:

- (a) host jurisdiction;
- (b) key personnel;
- (c) NDIS Practice Standards;
- (d) participant;
- (e) participating jurisdiction;
- (f) registered NDIS provider.

In this instrument:

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

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 means:

- (a) a legally binding arrangement;
- (b) between a registered NDIS provider and a subcontractor;
- (c) which meets the requirements set out in subsection 13(4) of this instrument.

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 legislation of a 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 other personnel to progress the application.

exclusion means a decision under the NDIS worker screening legislation of a 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 legislation of a 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 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 jurisdiction's NDIS worker screening legislation – 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 check means the assessment of whether a person who works, or seeks to work, with a person with disability poses a risk to such a person.

NDIS worker screening legislation means legislation of a participating jurisdiction which gives effect to the undertaking of that State or Territory in subclause 20(a) of the Agreement.

Note: The undertaking in clause 20(a) of the Agreement is that, within their respective jurisdictions, each State and Territory Government will seek to introduce or amend legislation establishing a scheme for the screening of NDIS workers consistent with the national policy as outlined in the Agreement.

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 legislation.

other personnel in relation to a registered NDIS provider means an individual who:

- (a) is not employed or otherwise engaged by the registered NDIS provider; and
- (b) performs work at the premises of, or otherwise as part of the provision of supports and services to any person with disability by, the registered NDIS provider.

Example: A registered NDIS provider provides specialist accommodation to people with disability. It contracts cleaning of its accommodation premises to Company R. The employees and contractors of Company R who come onto the accommodation premises of the registered NDIS provider to clean are **other personnel** in relation to the provider,

because they perform work integral to the supports or services being provided to people with disability by the provider.

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.

subcontractor, in relation to a registered NDIS provider, means a person or entity that makes the services of other personnel available to the provider.

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

transitional arrangements in relation to a jurisdiction means the interim risk management measures which apply in that jurisdiction pursuant to 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 jurisdiction.

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

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

worker, means a person employed or otherwise engaged by a registered NDIS provider.

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—Practice Standards relating to screening of workers and other personnel

Division 1 - Introduction

8 Purpose of this Part

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

Note: Paragraph 73T(3)(d) of the Act allows the NDIS Practice Standards to deal with matters relating to worker screening. 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 workers and other personnel of 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 special rules that apply instead of, or as well as, some of the rules in this Part in certain circumstances.

Division 2 – NDIS Practice Standards – worker screening

9 Worker screening - class of supports, applicable standards and assessment process

- (1) To be registered to provide any class of support, an applicant for registration under section 73C of the Act must be assessed by an approved quality auditor as meeting the standards specified in this Part, using the verification method.
- (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.

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 – NDIS Practice Standards - screening of workers and other personnel – procedures and strategies

11 Assessment of risk assessed roles

- (1) Registered NDIS providers must assess all roles their workers and other personnel will engage in, and identify each one that is a risk assessed role.
- (2) A role is a role with a particular registered NDIS provider, whether the duties of the role are performed by a worker or other personnel.

12 Risk management plan to be maintained and given effect

- (1) Registered NDIS providers must develop and maintain a satisfactory written risk management plan for protecting people with disability while a worker or any other personnel is in the process of obtaining a clearance.
- (2) Without limiting the obligation in (1), a registered NDIS provider must review the risk management plan if:
 - (a) the Commissioner requests the registered NDIS provider to do so; or
 - (b) there is a reportable incident within the meaning of subsections 73Z(4) and (5) of the Act which involves a worker or other personnel of the provider.
- (3) A registered NDIS provider must implement the risk management plan, unless otherwise agreed by the Commissioner.

Division 4 - Worker screening – workers and other personnel of a registered NDIS provider

13 Certain roles restricted to workers or other personnel with a clearance

- (1) This section applies if:
 - (a) a State or Territory is a participating jurisdiction; and
 - (b) a registered NDIS provider provides supports or services to a person with disability in the State or Territory.
- (2) Subject to the exceptions contained in this Division, a registered NDIS provider must only allow a worker to engage in a risk assessed role, if the worker has a clearance.
- (3) Subject to the exceptions contained in this Division, a registered NDIS provider must only allow a member of other personnel to engage in a risk assessed role, if the registered NDIS provider has:
 - (a) identified to the relevant subcontractor each risk assessed role that the member of other personnel engages in;
 - (b) entered into an appropriate contract with the subcontractor; and

- (c) taken reasonable steps to satisfy itself that the member of other personnel has a clearance.
- (4) For the purposes of (3)(b), an *appropriate contract* must impose the following obligations on the subcontractor who makes the services of the other personnel available to the registered NDIS provider:
 - (a) subject to the exceptions in this Division, the subcontractor must only allow a member of other personnel to engage in a risk assessed role with the provider, if he or she has a clearance; and
 - (b) the subcontractor must only allow a member of other personnel to engage in a risk assessed role with the provider, if the subcontractor may disclose information to the provider about any matter relating to whether the member of other personnel may engage in a risk assessed role, including but not limited to information about:
 - (i) the making of an application for an NDIS worker screening check;
 - (ii) an interim bar;
 - (iii) a suspension;
 - (iv) an exclusion;
 - (v) the closure of an application for a worker screening clearance;
 - (vi) the revocation of a clearance;
 - (vii) the expiry date of a clearance; and
 - (c) the subcontractor must cooperate with any reasonable request from the registered NDIS provider for information relating to whether a member of other personnel has a clearance, or is subject to an exception in this Division; and
 - (d) the subcontractor must cooperate with any reasonable request from the registered NDIS provider for assistance to investigate any complaint made to the NDIS provider about the conduct of, or any reportable incident involving, any member of other personnel engaged in a risk assessed role; and
 - (e) the subcontractor must cooperate with any reasonable request from the registered NDIS provider for information relating to whether and how it is complying with its obligations under the appropriate contract; and
 - (f) the subcontractor must impose the obligations in (a), (b), (c), (d) and (e) on any other party with whom the subcontractor enters into an arrangement, which involves or allows for the provision of services by the other personnel to the NDIS provider.

Note: The NDIS worker screening legislation of a 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.

14 Exceptions to the restriction of certain roles to cleared workers and other personnel

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

- (a) the person:
 - (i) is in the process of obtaining a clearance; and
 - (ii) is appropriately supervised by a person with a clearance; and
 - (iii) the provider is implementing the risk management plan in accordance with Division 3 of this instrument; and
 - (iv) the law of the participating jurisdiction in which the person provides services to a participant allows the person to engage in a risk assessed role, while that person is in the process of obtaining a clearance; or
- (b) the registered NDIS provider:
 - (i) is subject to transitional arrangements; and

Note: For when transitional arrangements apply in a participating jurisdiction, see Part 4.

- (ii) the registered NDIS provider is complying with the transitional arrangements; 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 another worker of the provider who has a clearance.

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

- (1) Subject to (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 legislation of a 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;
- 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 e-mail or an SMS message – are capable of constituting a notice in writing.
- (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.

Part 3—Record keeping requirements for worker screening

16 Purpose of this Part

- (1) This Part is made for the purposes of paragraph 73Q of the Act.

Note: Paragraph 73Q of the Act provides for the making of Rules about record keeping by registered NDIS providers.

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

- (1) A registered NDIS provider must have a written list of all roles with the provider which are risk assessed roles.

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

- (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 instrument 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 all workers who engage in risk assessed roles.

- (2) A registered NDIS provider must keep the written list of all workers who engage in a risk assessed roles up to date.

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. This means that the list required by subsection 18(2) may be kept in an electronic form.

- (3) A list created or maintained for the purposes of this instrument must include, in respect of each worker:
- (a) the full name, date of birth and address of the person;
 - (b) the risk assessed role or roles in which the person engages;
 - (c) if the worker may engage in a risk engaged role without an NDIS worker screening check clearance:
 - (i) the basis in accordance with section 14 on which they may do so;
 - (ii) the start and end date of the period in which the exemption under section 14 applies; and
 - (iii) the name of the person who supervises the worker during this period;
 - (d) the worker's NDIS worker screening check application number;
 - (e) the worker's NDIS worker screening check number;
 - (f) the worker's NDIS worker screening check outcome expiry date;
- Note: NDIS worker screening check outcomes include clearance and exclusion. Both of these may have an expiry date under the NDIS worker screening legislation of a jurisdiction.
- (g) whether the worker's clearance is subject to any decision which has the effect that the registered NDIS provider may not allow the worker to engage in a risk assessed role;
- Note: Decisions which affect a clearance include a decision to suspend or revoke a clearance.
- (h) the nature of any decision within the meaning of (g).
- (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 (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 (a).

19 Kinds of records which must be kept – other personnel

- (1) 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 term required by subsection 13(4);
- (c) any record of information provided to the NDIS provider about a member of other personnel pursuant to the appropriate contract;
- (d) any record relating to its performance of paragraph 13(3)(c);
- (e) any record about an allegation of any misconduct against any member of other 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—Special arrangements during the transition period

22 Purpose of this Part

- (1) This Part is made for the purpose of section 73T of the Act.
- (2) This Part 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; 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 (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 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 (11) has not yet come into effect.

Acceptable NSW checks – recognition of NSW checks

- (5) For the purposes of this section an acceptable NSW check is a check described at (6), (7) or (8).
- (6) A person has an acceptable NSW check if:
 - (a) the person does not meet the requirements of paragraph (8)(a);
 - (b) prior to 1 July 2018, and within the last 4 years the person was subject to a criminal record check;

Note: A criminal record check is the same kind of check as that required under section 32 of the *Disability Inclusion Act 2014 (NSW)*.

- (c) that criminal record check showed that the person had no conviction for a **prescribed criminal offence**, within the meaning of the *Disability Inclusion Act 2014 (NSW)*; and

Note: For the meaning of **prescribed criminal offence** see Schedule 2 to the *Disability Inclusion Act 2014 (NSW)*.

- (d) the person has not subsequently had a further criminal record check which did not meet subsection (c).

- (7) A person has an acceptable NSW check if:

- (a) the person does not meet the requirements of paragraph (8)(a);
 (b) between 1 July 2018 and 30 June 2019, and within the last 2 years, the person was subject to a criminal record check;

Note: A criminal record check is the same kind of check as that required under section 32 of the *Disability Inclusion Act 2014 (NSW)*

- (c) that criminal record check showed that the person had no conviction for a **prescribed criminal offence**, within the meaning of the *Disability Inclusion Act 2014 (NSW)*; and

Note: For the meaning of **prescribed criminal offence** see Schedule 2 to the *Disability Inclusion Act 2014 (NSW)*.

- (d) the person has not subsequently had a further criminal record check which did not meet subsection (c).

- (8) A person has an acceptable NSW check if:

- (a) the risk assessed role involves a person engaging in **child related work** within the meaning of the *Child Protection (Working With Children) Act 2012 (NSW)*; and
 (b) prior to 1 July 2019 that person was issued a **working with children check clearance** or a **clearance** within the meaning of the *Child Protection (Working With Children) Act 2012 (NSW)*; and
 (c) that working with children check clearance or clearance is current and operative.

- (9) The transition time for a person is the later of:

- (a) 1 July 2019; or
 (b) the expiry of an acceptable NSW check which applied to that person on 1 July 2019.

- (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 subsection 14(b) of this instrument 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).

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.

Recognition of relevant assessments under South Australian law

- (5) For the purposes of this section an acceptable SA check is a check described at (6).
- (6) A person has an acceptable SA check if the person
- (a) has been subject to an assessment:
 - (i) within the meaning of section 5B of the *Disability Services Act 1993* (SA), at which time the authorised screening unit made a finding to the effect that the person was cleared for disability services employment ; or

Note: “Authorised screening unit” and “disability services” are terms defined under the *Disability Services Act 1993 (SA)*

- (ii) within the meaning of section 8B of the *Children's Protection Act 1993* (SA)), at which time the authorised screening unit made a finding to the effect that the person was cleared for child-related employment;

Note: "Authorised screening unit" and "child-related employment screening" are terms defined under the *Children's Protection Act 1993* (SA)

- (b) an authorised screening unit has not subsequently made a contrary finding in relation to the person, in response to an assessment under either the *Disability Services Act 1993* (SA) or the *Children's Protection Act 1993* (SA); and
- (c) it is not more than three years since the authorised screening unit made the finding referred to in subparagraph 24(6)(a)(i) or (ii).

Transition time

- (7) The transition time for a person is the later of:
 - (a) 1 July 2019; or
 - (b) the expiry of an acceptable SA check which applied to that person on 1 July 2019.
- (8) An acceptable SA check expires at the end of the last day that it meets paragraph (6)(c).

Notice

- (9) The Commissioner may give a written notice to a registered NDIS provider that subsection 14(b) of this instrument 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).