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

Explanatory Notes

Short title

The short title of the Bill is the Disability Services and Other Legislation (Worker Screening) Amendment Bill 2020.

Policy objectives and the reasons for them

The objectives of the Disability Services and Other Legislation (Worker Screening) Amendment Bill 2020 (the Bill) are to:

1. support nationally consistent worker screening for the National Disability Insurance Scheme (NDIS) and the *Intergovernmental Agreement on Nationally Consistent Worker Screening for the NDIS* (the IGA);
2. enable Queensland to operate a state disability worker screening system for certain disability services that it continues to fund, or deliver, outside of the jurisdiction of the NDIS Quality and Safeguards Commission (NDIS Commission);
3. streamline and strengthen the legislative framework for disability worker screening in Queensland; and
4. ensure the blue card system operates effectively and efficiently alongside the disability worker screening system and the strongest possible safeguards are maintained in relation to persons working with children with disability.

Implementation of nationally consistent NDIS worker screening will mean clearances and exclusions will be nationally portable across roles and employers within the NDIS in all states and territories. It will also strengthen safeguards for people with disability (for example, through ongoing monitoring of a screened worker's national criminal history).

Under the *National Disability Insurance Scheme Act 2013* (Cwth) (NDIS Act) and the *National Disability Insurance Scheme (Practice Standards – Worker Screening) Rules* (WS Rules), Rules, as in force from time to time under the NDIS Act, registered NDIS providers are required to meet worker screening requirements as a condition of registration. The WS Rules include specific transitional arrangements for Queensland to allow registered NDIS providers to meet their screening obligations under existing screening systems.

On 9 December 2016, the Council of Australian Governments agreed to the NDIS Quality and Safeguarding Framework (NDIS QSF). The NDIS QSF provides a nationally consistent approach to ensure NDIS participants receive high quality supports with appropriate safeguards in place. This includes the delivery of a nationally consistent worker screening framework, through a shared approach between the Commonwealth and the states and territories.

To support this shared approach to worker screening, the Commonwealth and the states and territories developed the IGA, which was signed by the Premier of Queensland on 3 May 2018. Under the IGA, all states and territories have agreed to implement nationally consistent NDIS worker screening through appropriate legislation.

The purpose of the IGA is to provide a framework for conducting nationally consistent NDIS worker screening and to provide assurance of the shared commitment of the Commonwealth, state and territory governments to deliver nationally consistent worker screening.

As noted in the IGA, while the primary responsibility for recruiting and providing a safe environment for people with disability rests with service providers, a worker screening outcome is one source of information that can support employers in fulfilling this responsibility.

The broad objective of nationally consistent NDIS worker screening is to protect people with disability who receive NDIS supports or services from risk of harm. The paramount consideration for worker screening is the right of people with disability to live their lives free from abuse, violence, neglect or exploitation (including financial abuse or exploitation). This is achieved by:

- demonstrating that the rights of people with disability to be safe and protected are a high community priority;
- reducing the potential for providers to employ or engage people who pose an unacceptable risk of harm to people with disability;
- prohibiting individuals who have serious concerning conduct from being engaged in 'risk-assessed' roles by registered NDIS providers; and
- deterring individuals who pose a high risk of harm from seeking to work in the NDIS sector.

The Bill implements the IGA to provide for nationally consistent NDIS worker screening. Key changes include:

- an online application process with strengthened identity requirements;
- expanded scope of screening (including screening of people working with children with disability and registered health practitioners engaged by registered NDIS providers in 'risk-assessed' roles);
- a strengthened disqualifying and decision-making framework (including: national consistency in the range of disqualifying offences; a new decision-making threshold of whether a person poses an unacceptable risk of harm to people with disability; and a broader range of information considered as part of a risk assessment);
- ongoing national monitoring of criminal history; and
- provision for NDIS clearances to be valid for five years.

The Bill also continues current state screening for disability services outside the NDIS.

Queensland has already progressed amendments as part of the *Disability Services and Other Legislation (NDIS) Amendment Act 2019* to enable registered NDIS providers to meet screening requirements under the WS Rules during the transition to NDIS worker screening. This included amendments to support the operation of the NDIS QSF and the NDIS Commission in Queensland, from 1 July 2019. The NDIS Commission is responsible for the oversight of registered NDIS providers, but Queensland remains responsible for facilitating the screening of workers engaged by registered NDIS providers.

Queensland will continue to operate a separate state disability worker screening system for disability services it continues to fund or deliver that are outside the jurisdiction of the NDIS Commission to maintains and strengthen existing safeguards. To ensure consistency across jurisdictions and between the national and state systems, the Bill will progress amendments to repeal and replace Part 5 of the *Disability Services Act 2006* (DSA), with a new legislative framework for both state disability worker screening and NDIS worker screening.

Amendments are also made to the legislative framework which governs the blue card system, the *Working with Children (Risk Management and Screening) Act 2000* (WWC Act), to ensure it operates effectively and efficiently alongside the disability worker screening system introduced by the Bill. This is because people engaged in certain roles under the NDIS or state disability framework will also require a blue card, if providing services to children with disability. The amendments are designed to provide a streamlined experience for applicants and achieve efficiencies, where possible, whilst ensuring the strongest possible safeguards are maintained in relation to persons working with children with disability.

The Disability Services and Other Legislation (Worker Screening) Amendment Bill 2020 amends the DSA, the WWC Act and other relevant statutes to ensure the objectives of the Bill are achieved.

Achievement of policy objectives

To achieve its objectives, the Bill will amend the *Disability Services Act 2006*, WWC Act, *Evidence Act 1977* and *Police Powers and Responsibilities Act 2000*, and will consequentially amend the *Guardianship and Administration Act 2000.*

Amendments to the *Disability Services Act 2006*

Queensland, along with all other states and territories, has agreed to establish a framework for NDIS worker screening, consistent with the national policy under the IGA. A nationally consistent NDIS worker screening system aims to assess risk of harm posed by workers to prevent people with disability from experiencing harm.

Queensland will continue to fund, or deliver, state disability services outside the jurisdiction of the NDIS Commission. To achieve as much consistency as possible across NDIS-funded and state-funded services, the policy positions agreed under the IGA for NDIS worker screening will be replicated for state disability worker screening, where appropriate.

Scope of screening
Under the WS Rules, registered NDIS service providers are required to screen people if they are in 'risk assessed roles'. A risk assessed role includes: a key personnel role; a role for which the normal duties include the direct delivery of specified supports or specified services to a person with disability; or a role for which the normal duties are likely to require more than incidental contact with a person with disability.

Amendments to the DSA were made in 2019 to provide a flexible approach to the transition to NDIS worker screening and to provide for the scope of screening to be amended by regulation. As such, amendments to the *Disability Services Regulation 2017* (DSR) and the *Working with Children (Risk Management and Screening) Regulation 2011* (WWC Regulation) were made

to give effect to the mandatory scope of screening, effective from 1 July 2019. The Bill proposes to bring the mandatory scope of screening into the DSA.

Under the IGA, states and territories retain discretion on whether to make screening mandatory for workers of unregistered NDIS providers and persons in non-risk assessed roles for registered NDIS providers. Queensland will allow, but not require, screening for these workers. This will provide adults who are self-managing their NDIS plans, with choice and control to manage their own risks. However, any workers that are screened and receive an exclusion will be prohibited from providing disability services for an NDIS provider, whether registered or unregistered. This does not prevent the worker from being engaged in a role that does not include the provision of disability services. Workers engaged in risk assessed roles with registered or unregistered NDIS providers who are providing services to children with disability will require a blue card.

NDIS worker screening will not recognise other pre-employment screening processes as no other system has national criminal history monitoring in place or considers the same range of information. This means existing exemptions for blue card holders and registered health practitioners under the yellow card system will not be replicated in the NDIS worker screening system. From commencement, people working with children with a disability (blue card holders) and registered health practitioners will be required to apply for an NDIS worker screening clearance if they work for a registered NDIS provider in a risk assessed role, subject to certain transitional arrangements. This ensures national consistency in safeguards under the NDIS.

State disability worker screening
The Bill proposes to retain a state screening system for disability services funded or provided by the Queensland Government that are outside the jurisdiction of the NDIS Commission, for example, Accommodation Support and Respite Services. State disability screening will leverage the national policy for NDIS worker screening, where possible; and an NDIS clearance issued in Queensland will be considered a valid clearance for providing state disability services.

Exemptions
The only exemption to NDIS worker screening is for secondary school students on formal work experience placement with a registered NDIS provider, who are directly supervised by another worker of the provider with a clearance. A person with an NDIS clearance, issued in Queensland, will not be required to obtain a state disability clearance.

People who work with children with disability will still require a blue card but will also require a clearance if working in a risk assessed role for a registered NDIS provider.

Application process
The Bill proposes a ‘no card, no start’ approach for workers required to be screened under the new NDIS worker screening system to ensure the strongest safeguards are in place and to achieve consistency with reforms to the blue card system. This means all applicants in a risk assessed role for a registered NDIS provider, must obtain a clearance before commencing work. This approach maximises participant protections by preventing people from working with people with disability while their applications are being assessed.

The 'no card, no start' approach will not apply to applicants who are workers of unregistered NDIS providers or who are in non-risk assessed roles with registered NDIS providers, and who are already providing services to a participant. This will enable workers in this situation to continue to work while their applications are being processed. This reflects the position that screening of workers in these roles is not mandatory.

However, the Bill also provides for a worker in this situation to be prevented from working with people with disability in appropriate circumstances. A worker who is subject to a charge for a disqualifying offence or a relevant banning order by the NDIS Commission, or who is reasonably suspected by the chief executive, in assessing their application, to pose an unacceptable risk of harm to people with disability, may be issued an interim bar. An interim bar will require the worker to cease work and not provide disability services or supports until they are issued with a relevant clearance. Interim bars are only used in the limited window between an application and decision. This is comparable to suspensions which are used over the complete validity period of a clearance. This provides an appropriate balance between the need for safeguards and the importance of ensuring participants can continue to access services while a worker is screened at their request.

Risk assessment and decision-making
States and territories have agreed to nationally consistent categorisation of serious and disqualifying offences for NDIS worker screening, as well as a revised decision-making framework, as set out under the IGA.

To implement this aspect of the IGA, the Bill provides that:
- a person whose screening check returns no relevant information will be issued with a clearance, while a person whose checks return relevant information will be risk assessed;
- a person with a conviction for a **disqualifying offence** will be automatically excluded;
- a person with a pending charge for a **serious** or a **disqualifying offence** or a conviction for a **serious offence** will be risk assessed, with a presumption of an exclusion unless there are exceptional circumstances; and
- where there is other relevant information that requires assessment, the chief executive must undertake a risk assessment and issue either a clearance or an exclusion if satisfied an applicant poses an unacceptable risk of harm to people with disability.

The Bill introduces a new threshold for risk assessments, namely whether a person poses an unacceptable risk of harm to person with disability. The Bill provides that the chief executive conducts a risk assessment of a person by considering information obtained about the person and deciding whether the person poses an unacceptable risk of harm to people with disability.

The chief executive's consideration will take into account a broader range of information than was previously taken into account under the state screening system. The chief executive may also consider any other information about the person that the chief executive considers relevant to whether the person poses an unacceptable risk of harm to people with disability. This means any information the chief executive considers relevant can trigger a risk assessment.

The Bill also introduces a new suspension and cancellation framework for disability screening in Queensland. A suspension must be put in place to prevent a person working if: the holder of a clearance is charged with a disqualifying offence or becomes subject to a banning order by the NDIS Commission; or if the chief executive is conducting a risk assessment and reasonably

suspects the assessment will demonstrate the person poses an unacceptable risk of harm to people with disability.

When a suspension is in place a service provider must not terminate a person's engagement, or continued engagement, solely or mainly because the service provider has been given a notice in relation to the suspension. This enables an employer to terminate on other grounds but not solely or mainly because of the notice. This is consistent with the current policy position under the DSA and the WWC Act. This is designed to strike an appropriate balance between the rights of the employer and the employee, given that loss of employment is a very serious consequence and the notice is issued in a circumstance where it is necessary to protect people with disability pending a final decision.

A person's clearance can be cancelled if:
- the person becomes a disqualified person, meaning they have been convicted of a disqualifying offence;
- the chief executive decides the person poses an unacceptable risk of harm to people with disability, including where the decision to issue the clearance was based on wrong or incomplete information; or
- the clearance holder requests it and the chief executive agrees to the cancellation.

The risk assessment and decision-making framework has also been replicated for state disability worker screening.

Offences and penalties
The IGA gives states and territories discretion to implement offences and penalties for breaches of NDIS worker screening legislation. While the NDIS Commission has regulatory powers in relation to NDIS providers, this does not include criminal offences for worker screening. Queensland will maintain existing offence provisions for individual workers and service providers (where appropriate) for the NDIS and state disability worker screening systems. The Bill also ensures offences and penalties for non-compliance are consistent (as far as possible) with offences under the WWC Act.

Offences and penalties will apply to individual workers and service providers that engage workers. This includes that offences and penalties will apply to roles that must undergo screening under the new NDIS or state disability worker screening systems, as well as roles in which individuals may be screened (but are not mandatorily required), such as workers of unregistered NDIS providers.

Information sharing
The Bill provides a revised information sharing framework to ensure the chief executive can request information from a range of prescribed entities for the purpose of disability worker screening, and builds on current processes in the DSA. This will ensure the chief executive can undertake comprehensive risk assessments for individuals working with people with disability (including individuals working with children with disability).

The revised information sharing framework will enhance consistency of information considered by both disability worker screening and working with children checks (noting both will screen children); support national commitments for information sharing under the IGA; and are consistent with state and national reforms to improve information sharing for vulnerable groups, such as children and people with disability.

The Bill will ensure the chief executive can access the same range of information available under the blue card system, for example, disciplinary information about registered teachers from the Queensland College of Teachers; disciplinary information about approved education and care services from the Department of Education; and disciplinary information related to foster and kinship carers from the chief executive responsible for child safety.

These powers will enable the chief executive to request information on a case-by-case basis where relevant information is required to ensure the chief executive has the most current and comprehensive information available to make a proper risk assessment. The chief executive may request further information from another agency to confirm the validity of information identified through a self-disclosure process or information that arises through other assessable information, for example domestic violence or child protection information.

The Bill will also enable the chief executive (disability services) to give information about a person to the chief executive (working with children) if the chief executive reasonably believes the information is relevant to the functions of the chief executive administering the blue card system. This will enable the chief executive (disability services) to share assessable information to reduce duplication of effort and enhance decision-making. This ability to share information will also ensure consistency of safeguards are maintained for children.

These amendments will ensure the chief executive has the most current and comprehensive information available to undertake a proper risk assessment. For example, applicants for an NDIS clearance will need to self-disclose particular information as part of their application, including disclosing any information regarding any child abuse or neglect allegations related to them. The information sharing framework enables the chief executive to seek child protection information from the chief executive responsible for child safety if a person self-discloses or it is evident there is child protection information based on a person's police record, consistent with the approach currently adopted under the blue card system.

Under the IGA, states and territories agreed to require applicants to self-disclose information about any domestic violence orders they have been subject to. As a result, the Bill also provides that DCDSS can access a person's domestic violence history where it is relevant to a risk assessment (for example, to provide further contextual information in relation to a breach of a domestic violence order or to verify information self-disclosed by an applicant).

The Bill maintains appropriate confidentiality provisions regarding the use and disclosure of information received under these new information sharing provisions. Assessable information (including criminal history) may be used or disclosed for the purpose of disability worker screening or if it is expressly permitted under part 5 of the DSA (for example, if the disclosure of information is to the chief executive (working with children). Information will also continue to be able to be shared with the NDIS Commission and other corresponding disability screening units in other jurisdictions.

To support the new information sharing regime between the disability worker screening and blue card systems, the Bill requires the chief executive (disability services) to enter into a written arrangement with the chief executive (working with children). More broadly, the Bill enables the chief executive (disability services) to enter into a written arrangement with the police commissioner or another entity, if required, in relation to asking for or giving information under the DSA.

Reviews and appeals
Under NDIS and state disability worker screening, an applicant may appeal certain worker screening decisions by seeking an internal review by the department, other than a decision to issue an exclusion based on a disqualifying offence. If the applicant is dissatisfied with the outcome of the internal review, they will be able to seek an external review of the matter by the Queensland Civil and Administrative Tribunal (QCAT). This approach is appropriate as it ensures disability worker screening processes and decisions provide natural justice. Requiring a person to apply for an internal review before they can seek an external review was agreed to under the IGA and will also ensure national consistency across NDIS worker screening.

Transitional arrangements for existing cardholders and applicants
The Bill includes transitional provisions to balance the maintenance of safeguards for people with disability with the importance of minimising adverse impacts on disability service provision.

A person with a pending application for a yellow card or yellow card exemption under the DSA, as at commencement of the Bill, can continue working unless they are notified by the chief executive that they must cease work due to an identified risk in accordance with the new decision-making framework. This allows pending applications to be finalised without impacting service provision. Any decisions made from commencement will be made under the new decision-making framework. For example, a person with a pending application for a yellow card that has not been withdrawn or decided at commencement will be treated like an application for an NDIS clearance. The transitioned application will have the same characteristics as an NDIS clearance application except will not be portable across other NDIS jurisdictions. A person with a transitioned application may be asked by the chief executive to provide further information to enable their application to be managed under the new framework. If this information is not provided, the chief executive will be able to withdraw the application.

Existing yellow card and yellow card exemption holders can continue working until expiry of their existing check, unless they have a change in their assessable information, which will require reassessment under the new disability screening framework. However, people who become disqualified, as a result of proposed changes to the disqualifying offences, will have their cards cancelled automatically from commencement; and people with a conviction for a new serious offence or pending charge for a new disqualifying or serious offence will have their eligibility reassessed under the new decision-making framework.

This approach is appropriate as it provides an equitable transition for workers to the new screening systems, and balances safeguards with minimising disruption to the delivery of disability services.

Interaction with the blue card system
The Bill also amends the DSA so that a person is able to combine their disability worker screening application with a working with children check application under the WWC Act (‘joint application process’). This means an applicant is only required to submit one application for both checks and provides a streamlined process, while retaining strong safeguards.

Interaction with the blue card system
The Bill also amends the DSA so that a person is able to combine their disability worker screening application with a working with children check application under the WWC Act

('joint application process'). This means an applicant is only required to submit one application for both checks to one chief executive and provides a streamlined process so that it is less burdensome on applicants, whilst retaining strong safeguards.

Amendments to the *Working with Children (Risk Management and Screening) Act 2000*

The Bill makes amendments to the WWC Act to:

- provide for a clear and consistent scope of blue card screening for persons performing disability-related work in relation to a child or children with disability (whether that work involves services or supports funded under the NDIS or otherwise);
- facilitate a joint application process so that a person is only required to make one application if a person is required to hold both a disability clearance and a working with children authority;
- enable the chief executive (working with children) to facilitate alignment of the period for which a working with children authority is issued under the WWC Act to the period for which a disability clearance under the DSA is granted to a person;
- facilitate information sharing between the chief executive (working with children) and the chief executive (disability services) to enable efficiencies in relation to the operation of the disability worker screening and blue card systems;
- make minor amendments to the blue card decision-making framework to ensure the chief executive (working with children) can consider any relevant information provided to the chief executive as part of a blue card eligibility assessment; and
- make other minor and consequential changes to the WWC Act to facilitate the effective operation of the blue card system.

Scope of blue card screening

The Bill inserts a new category of regulated employment and regulated business into the WWC Act which deals exclusively with disability work.

In particular, the Bill provides that the scope of blue card screening for the purposes of the NDIS includes the following:

- a person carrying out risk assessed NDIS work for an NDIS service provider in relation to a child or children with disability; and
- a person whose business involves providing NDIS supports or services to a child or children with disability, whether that business is registered or unregistered for the purposes of the NDIS.

Essentially, in order to provide the strongest possible safeguards, the Bill requires that a person who works or proposes to work in a National Disability Insurance Scheme (NDIS) risk assessed role with children with disability must hold a blue card, regardless of whether the person is employed by or operates as a registered NDIS provider or an unregistered NDIS provider.

With respect to disability services delivered to children outside the jurisdiction of the NDIS, the Bill provides that the following type of work requires a blue card:

- a person whose employment involves providing disability services (as defined under section 12 of the DSA, for example, accommodation services or community access) to a child or children with disability; and
- a person whose business involves providing disability services to a child or children with disability.

These amendments mean there no longer needs to be a funding nexus between the State and a non-government service provider in order for the services delivered by the provider to be within the scope of blue card screening. While it is noted disability services delivered without State funding would likely be caught by another category of regulated employment or regulated business under the WWC Act (for example, a counselling or support service), the amendments put this beyond doubt and align disability work with all other categories of child-related employment and business prescribed under the Act.

The Bill also maintains existing exemptions so that:

- an employee of a service provider who is also a person with a disability receiving services at the place; and
- a volunteer relative of a child receiving services who only helps with the care of that child are not required to hold a blue card.

In addition, consistent with the requirements of the NDIS IGA and the amendments to the DSA, a new exemption is included in the WWC Act to provide that a secondary school student undertaking a work experience placement with a NDIS service provider or other non-government service provider is not required to hold a blue card to carry out that work if the student is directly supervised by another person who holds a working with children authority.

Joint application process

Consistent with the amendments to the DSA, the Bill makes amendments to the WWC Act to facilitate the joint application process. The Bill provides that a person may combine:

- their working with children check application with a disability worker screening application under the DSA; and
- a notice withdrawing their working with children application with a request to withdraw their disability worker screening application.

Specific to the WWC Act, the Bill provides that the chief executive (working with children) has the ability to give an applicant who has made a combined application a notice asking whether the applicant wishes to proceed with the blue card component of their application if the applicant's disability worker screening application has been withdrawn or an exclusion has been issued under the DSA. Failure to respond to this request within a reasonable stated time will result in the applicant's working with children check application being deemed withdrawn under the WWC Act.

In addition, if the chief executive (working with children) becomes aware that the chief executive (disability services) has imposed an interim bar on a person who has made a working with children application, the chief executive is not required to decided the applicant's working with children application until there is a final outcome in relation to the interim bar (that is, the disability worker screening decision has been decided or withdrawn).

To ensure the strongest possible safeguards are maintained, the Bill includes amendments to the WWC Act so that if a person engages in child-related work without a blue card and is the holder of an exclusion issued under the DSA or an interstate NDIS exclusion, this is considered an aggravating circumstance to the 'no card, no start' offence under the blue card framework and the person is subject to a higher maximum penalty (500 penalty units or 5 years imprisonment). Equally, if an employer engages an employee in child-related work without a blue card and the employee holds an exclusion issued under the DSA or an interstate NDIS

exclusion and the employer ought reasonably to know this, the Bill amends the WWC Act to provide this is considered an aggravating circumstance.

Alignment of currency
The Bill further streamlines processes for individuals who require both a disability clearance and a working with children authority by enabling alignment of the expiry of the person's working with children authority to the expiry of their disability clearance.

The Bill amends the WWC Act to empower the chief executive (working with children) to decide that the term of a person's working with children authority is the same as the term of a disability clearance held by the person. This term may be greater or less than the three year duration of a working with children authority, and up to five years (to align with the duration of a person's NDIS clearance and facilitate the joint application process).

Notwithstanding this, the existing processes under the WWC Act with respect to the suspension of or cancellation of a person's blue card continue to apply so that if a person's assessable information changes and it is no longer in the best interests of children for that person to hold their working with children authority, the chief executive (working with children) may take decisive action.

Information sharing
Consistent with the amendments to the DSA, the Bill provides for a broad facilitative information sharing regime so that chief executive (working with children) may give information about a person to the chief executive (disability services) if the chief executive reasonably believes the information is relevant to the worker screening functions of the chief executive (disability services).

This will facilitate the sharing of a broad range of information to the chief executive (disability services), including assessable information (for example, police information and disciplinary information).

Decision-making reforms
The Bill makes consequential changes to the blue card decision-making framework as a result of the revised information sharing regime proposed by the Bill.

These changes ensure that the chief executive (working with children) has a clear legislative basis to consider other relevant information, such as the information provided to it by chief executive (disability services) through the revised information sharing provisions, when undertaking a blue card eligibility assessment.

For example, the chief executive (disability services) may source complaint information from the NDIS Commission which indicates a pattern of concerning behaviour. It is important that this can be actioned appropriately by the chief executive (working with children) if the person makes a working with children check application.

The amendments to the WWC Act clarify that the chief executive (working with children) can consider any information about the person that the chief executive reasonably believes is relevant to deciding whether it would be in the best interests of children for the chief executive

to issue a working with children authority to the person. In doing so, the chief executive is to have regard to the nature and gravity of the information as well as its relevance to a person's employment or carrying on of a business that involves children.

Amendments to the Evidence Act

A section 93A Evidence Act transcript is a witness statement made before a proceeding by a child or a person with an impairment of the mind. The Evidence Act (section 93AA) and WWC Act (sections 311 and 318) currently authorise the police commissioner or the director of public prosecutions to provide the chief executive (working with children) with a section 93A transcript for the purposes of making a blue card screening decision.

The Bill includes amendments to the Evidence Act to provide that:

- the police commissioner or director of public prosecutions is authorised to supply a copy of a section 93A transcript to the chief executive (disability services) and for the chief executive (disability services) and chief executive (working with children) to share transcripts with one another; and
- the chief executive (disability services) does not commit an offence by using a section 93A transcript for the purposes of making a disability worker screening decision.

Alternative ways of achieving policy objectives

The proposed Bill is essential to support nationally consistent NDIS worker screening, agreed to in the IGA and WS Rules. There is no alternative way of achieving the policy objectives.

Estimated cost for government implementation

The implementation of NDIS worker screening is expected to increase application volumes resulting in increased operating costs compared to the current yellow card screening system. In addition, there are costs associated with implementation, including the development of an ICT system to effectively interface with the Commonwealth National Worker Screening database.

The Queensland Government has provided funding as part of both the 2018-19 and 2019-20 budget processes to meet the costs of continuing to operate a disability worker screening system as well as prepare for implementation of NDIS worker screening, for example, in the 2018-19 budget $1.2 million was provided over three years to support nationally consistent NDIS worker screening by contributing towards the cost of developing and implementing the NDIS National Clearance Database to be managed by the NDIS Quality and Safeguards Commission.

The Queensland Government will invest further funding over the next two years to ensure the costs of operating the NDIS check and implementing a joint application process with the blue card system are met.

The setting of application fees will be subject to usual government approval processes but, as agreed under the IGA, fee structures will be designed to achieve cost recovery of the operational costs of NDIS worker screening, noting the validity period for the check will now be five years.

Fees for the state disability worker screening check will remain consistent with current fees (subject to ongoing application of the Queensland Government fees and charges indexation policy) as the validity period will continue to be three years.

Applications for volunteers will continue to be processed free of charge.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles (FLPs) under the *Legislative Standards Act 1992*. Aspects of the Bill that raise possible fundamental legislative principles issues, and justifications for any breaches, are outlined below.

Abrogation of rights under the *Criminal Law (Rehabilitation of Offenders) Act 1986*

Legislation has sufficient regard to the rights and liberties of individuals - Legislative Standards Act 1992, section 4(2)(a)

New section 42, as inserted by clause 11, provides that the DSA applies to a person despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986* (CLROA).

Clause 11 inserts new part 5 into the DSA to establish the NDIS and state disability worker screening framework. This framework includes assessment of a person's criminal history information to enable the chief executive to decide whether the person poses an unacceptable risk of harm to people with disability.

This is a potential departure from the FLP under section 4(2)(a) of the LSA that sufficient regard should be given to the rights and liberties of individuals.

This potential breach is justified on the ground it is necessary to enable the chief executive to assess whether a person poses an unacceptable risk of harm to people with disability. This is also consistent with the existing disability screening system under the DSA, as well as the blue card system under the WWC Act. The paramount consideration in making a decision is to ensure the right of people with disability to live lives free from abuse, violence, neglect or exploitation, including financial abuse or exploitation.

There are also appropriate safeguards in place, including processes that incorporate natural justice. This includes:

- a show cause process where a person has the opportunity to make a submission to the chief executive when there is an intention to make an adverse decision against their application, in certain circumstances;
- the opportunity to seek internal review of the chief executive's decision, in certain circumstances; and
- the opportunity to seek an external review of the outcome of an internal review, in certain circumstances.

In addition, there are strict controls on the use of, and access to information, including police information, gained by a person conducting disability worker screening. Clauses 19 and 20 amend the confidentiality protections under section 227 (Confidentiality of police, disciplinary, mental health and other protected information) and section 228 (Confidentiality of other

information) of the DSA to ensure they apply to information disclosed in the course of worker screening. These provisions provide for specific protections in relation to the confidentiality of police, disciplinary, mental health and other protected information. It is an offence not to comply with these obligations, which are supported by appropriate penalties for non-compliance. The maximum penalty for failing to comply with section 227 is 100 penalty units or 2 years imprisonment and 100 penalty units for failure to comply with section 228.

Offences and penalties

Legislation has sufficient regard to the rights and liberties of individuals, including that the penalty imposed by regulation should be proportionate and relevant – Legislative Standards Act 1992 section 4(2)(a)

Clause 11 inserts sections 53 – 57 and 58 – 61 to amend former offences under Part 5 of the DSA, including modifying penalties to ensure consistency with offences and penalties under the blue card system. These offences will now apply to a broader cohort of persons and providers in certain circumstances For example, certain offences and penalties will apply to an NDIS provider and a person they engage, depending on whether the provider is registered, unregistered and whether the person is engaged in a risk-assessed role.

This includes offences that apply to registered NDIS providers, and to persons they engage in a risk assessed role who work without an NDIS or State clearance, including relevant sole traders (Queensland's no card, no start approach). The maximum penalty for a worker is 100 penalty units for, if an aggravating circumstance applies, 500 penalty units or 5 years imprisonment. The maximum penalty for a provider is 100 penalty units or, if an aggravating circumstance applies, 200 penalty units or 2 years imprisonment. These penalties do not apply to workers of unregistered NDIS providers and workers in non-risk assessed roles of registered NDIS providers and sole traders who do not elect to be screened.

Clause 11 inserts new sections 81 – 84 to provide it is an offence for certain applicants and service providers to continue to engage, or be engaged in carrying out disability work, following an interim bar being imposed. It is an offence for an applicant who has been notified that an interim bar has been imposed to continue to carry out disability work. Interim bars are only used in the limited window between an application and decision. A notifiable person commits an offence if they allow an applicant to work once notified that an interim bar has been imposed.

A service provider must not terminate a person's engagement solely or mainly because they have received a notice under 83. This is consistent with the current policy position under the DSA as well as the blue card system under the WWC Act and is designed to strike an appropriate balance between the rights of the employer and the employee, given that loss of employment is a very serious consequence and notices are issued in circumstance where it is necessary to protect people with disability pending a final decision about whether a person is cleared to work or not.

The maximum penalty for an applicant, NDIS sole trader or State sole trader is 500 penalty units or 5 years imprisonment, and 200 penalty units or 2 years imprisonment for a notifiable person who is given notice and allows the applicant to carry out disability work.

Expanding the application of these existing offences to unregistered providers that opt into screening may be considered justified by the need to ensure there are appropriate safeguards in place to protect participants from harm or unsafe supports under the state or NDIS disability system, and to ensure the state has the appropriate regulatory levers in place to enforce compliance with the legislation. This in turn ensures the quality of services and supports that are provided to people with disability.

Increased penalties for individuals for certain offences is reflective of the increased personal responsibility on individuals to comply with strict requirements under worker screening legislation, noting applications will also be made by individuals.

Clause 71 amends the *Police Powers and Responsibilities Act 2000* (PPRA) to insert new section 789B to provide that a police officer has the power to require the production of a disability worker screening clearance card if the police officer reasonably suspects the person has been charged with a disqualifying offence or is a disqualified person. The maximum penalty for failing to comply with this requirement is 100 penalty units.

This is a potential departure from the FLP under section 4(2)(a) of the LSA that sufficient regard be given to the rights and liberties of individuals and that the penalty imposed should be proportionate and relevant to the offence.

However, giving a police officer the power to require the production of a disability worker screening clearance card is justified by the need to protect people with disability from the risk of harm. The purpose is to ensure there is no misuse of a card that is no longer valid. The power is also supported by appropriate safeguards. A police officer can only require production when the police officer reasonably suspects the person has been charged with a disqualifying offence or is a disqualified person. A person does not have to comply with this requirement if they have a reasonable excuse. This is also consistent with the similar power that applies under section 789A of the PPRA, which requires the production of an employment-screening document under the WWC Act.

Exclusions and suspensions

Legislation should have sufficient regard to the rights and liberties of individuals, and makes rights or liberties dependent on administrative power only if the power is sufficiently defined and subject to appropriate review – Legislative Standards Act 1992 section 4(3)(a)

Clause 11 inserts new section 90 to provide that if the chief executive is aware a person is a disqualified person, the chief executive must issue the person an exclusion. A person is a disqualified person if they are convicted of a disqualifying offence, and was an adult when the offence was committed. This means the person is excluded and cannot work with people with disability without the right of review, except on the basis of mistaken identity.

Clause 11 inserts new section 92 which provides the chief executive must issue an exclusion to a person if satisfied the person poses an unacceptable risk of harm to people with disability.

Clause 11 inserts new sections 110 and 111 which provide the chief executive must suspend a clearance if:

- a person is charged with a disqualifying offence that has not been dealt with; or

- the person is subject to a relevant banning order made by the NDIS Commission; or
- the chief executive is conducting a risk assessment of the person and reasonably suspects the assessment will demonstrate that the person poses an unacceptable risk of harm to people with disability.

This is a potential departure from the principle under section 4(3)(a) of the LSA that sufficient regard should be given to the rights and liberties of individuals and makes rights and liberties dependent on administrative power only if the power is sufficiently defined and subject to appropriate review. The potential departure is due to the fact that a person is automatically and permanently excluded, without any right to appeal or review, if the person has been convicted of a disqualifying offence. Further, a person may be suspended in the circumstances outlined above without first being afforded the opportunity to contest the suspension.

This is also a potential departure from the FLP under section 4(2)(a) of the LSA that legislation should have sufficient regard to the rights and liberties of individuals, including the right to obtain and keep employment and the right to conduct business without interference.

The provisions are considered proportionate and justified to ensure the quality and consistency of safeguards under the NDIS and state disability frameworks. The purpose of these provisions is to prevent people who pose an unacceptable risk of harm from working with people with disability. The paramount consideration is to ensure the right of people with disability to live lives free from abuse, violence, neglect or exploitation, including financial abuse or exploitation.

The categorisation of offences that may exclude a person from working with people with disability under the NDIS, and the criteria for assessing risk, were agreed nationally and are reflected in the IGA. It was considered by all states and territories that these offences present such a level of offending behaviour that indicate an unacceptable risk of harm to people with disability. By adopting the nationally agreed categorisation and criteria, the Bill supports national consistency of safeguards under NDIS worker screening, as equivalent offences in other states and territories will (generally) be assessed on the same basis as those in Queensland.

The suspension powers will only apply in certain circumstances and a person will also be able to apply to the chief executive to end the suspension if the clearance has been suspended for a period of six months. However, the chief executive is not required to decide the application if the charge has not been dealt with or if an incident, allegation or complaint about the person's conduct, relevant to a risk assessment, is under investigation.

The power to issue exclusions is also supported by a natural justice process (except in those cases where a person has been convicted of a disqualifying offence). This includes requiring the chief executive to issue a show cause notice prior to making an adverse decision. The chief executive must consider any submissions made in response to the show cause notice prior to making a decision.

If the chief executive decides to issue an exclusion, the chief executive must give the person notice of the decision that includes the reasons for the decision and the relevant review and appeal information. For example, if a person is afforded review and appeals options (i.e. they are not a disqualified person), the notice will explain their right to internal and external review.

No card, no start

Legislation should have sufficient regard to the rights and liberties of individuals, including the right to employment and to conduct business without interference – Legislative Standards Act 1992 section 4(2)(a)

Clause 11 inserts new sections 53, 54, 59 and 61 which provide that certain persons must not carry out, or continue to carry out, disability work until they have an NDIS or a state disability worker screening clearance. This is supported by appropriate penalties for non-compliance and equivalent offences for certain service providers that engage these persons.

This is a potential breach of the FLP under section 4(2)(a) of the LSA that legislation should have sufficient regard to the rights and liberties of individuals and, in particular, the right to obtain and keep employment and the right to conduct business without interference.

This potential breach is justified to ensure the quality of safeguards for disability worker screening under the legislative framework. This approach minimises the risk of harm and is consistent with the paramount consideration in risk assessment and decision-making for worker screening, which is the right of people with a disability to live lives free from abuse, violence, neglect or exploitation (including financial abuse and exploitation).

This approach reduces risks to the safety and wellbeing of people with disability as it prevents people working in roles which have been assessed as posing a higher risk to people with disability until they have been issued a relevant clearance. This also ensures consistency between state disability worker screening, NDIS worker screening and the blue card system.

Limited existing exemptions

Legislation has sufficient regard to the rights and liberties of individuals including the right to keep employment and to conduct business without interference – Legislative Standards Act 1992, section 4(2)(a)

Clause 11 of the Bill repeals former Part 5 to remove the current exemptions, under NDIS and State disability worker screening, for blue card holders and registered health practitioners.

This is a potential departure from the principle under section 4(2)(a) of the LSA that sufficient regard be given to the rights and liberties of individuals and, in particular, the right to obtain and keep employment and the right to conduct business without interference.

This potential departure is justified given the national policy for worker screening provides for an expanded scope which promotes greater consistency of safeguards for people with disability regardless of who they receive NDIS disability supports and services from.

NDIS worker screening will be a more comprehensive check as it will consider a broader range of assessable information, implement a strengthened disqualification framework and cardholders will be subject to ongoing national criminal history monitoring. This will enhance the quality of services and supports provided to people with disability.

Limitation on review and appeal rights

Legislation has sufficient regard to the rights and liberties of individuals, including the right to that administrative power should be sufficiently defined and subject to appropriate review - Legislative Standards Act 1992, section 4(2)(a) and section 4(3)(a)

Clause 11 inserts new sections 90 – 92 to provide the chief executive must issue an exclusion in certain circumstances. This includes: if a person has been convicted of a disqualifying offence; if a person is convicted of a serious offence, or charged with a serious or disqualifying offence, and no exceptional circumstances apply; and if a person has been assessed as posing an unacceptable risk of harm to people with disability.

Clause 11 inserts new sections 138ZR – 138ZY to provide for a review and appeal process for reviewable decisions, which includes an internal review process, followed by an external review process.

Reviewable decisions include:

- a decision to issue an exclusion to a person;
- a decision on the application of a person not to end the interim bar imposed; and
- a decision on the application of a person not to end a suspension of the person's clearance.

Clause 11 inserts new section 138ZT to provide for who may apply for an internal review. Specifically, this provides that an affected person for a reviewable decision may apply to the chief executive for a review of the decision. However, if the chief executive made the decision because the affected person is a disqualified person, the affected person may only apply for internal review on the grounds of mistaken identity.

Clause 11 inserts new section 116 to provide that if the person's clearance has been suspended for at least 6 months, the person may apply to the chief executive to end the suspension of the clearance. Clause 24 inserts new section 370 to provide for specific transitional provisions in relation to existing suspensions on commencement, including that the person may not apply under new section 116 to end the suspension until 6 months after commencement of the Bill.

These review provisions potentially depart from the FLPs under sections 4(2)(a) and 4(3)(a) of the LSA that sufficient regard be given to the rights and liberties of individuals including that administrative power should be sufficiently defined and subject to appropriate review, given certain decisions are only reviewable on limited grounds. For example, the only ground a disqualified person has for an internal review under section 138ZT is for mistaken identity.

This potential breach is justified to ensure people who pose an unacceptable risk of harm are excluded from working with people with disability. The objective is to ensure the right of people with disability to live lives free from abuse, violence, neglect or exploitation, including financial abuse or exploitation.

This position is consistent with agreement under the IGA that provides for the limitation on internal and external review rights, if a person is convicted of a disqualifying offence, except on the basis of mistaken identity. This reflects the serious nature of these types of offences and ensures people who pose an unacceptable risk of harm to people with disability are excluded from carrying out disability work, and is consistent with the current policy under the DSA.

In addition, in circumstances where the exclusion is overturned on grounds of mistaken identity, or the conviction is quashed, set aside or otherwise ceases to have effect, excluded persons will be able to reapply for a clearance.

Information sharing and disclosure

Legislation has sufficient regard to the rights and liberties of individuals, including confidentiality, privacy and administrative power should be sufficiently defined and subject to appropriate review – Legislative Standards Act 1992 sections 4(2)(a) and 4(3)(a)

The Bill provides for a revised information sharing framework for disability worker screening and associated powers to enable information sharing under the DSA and WWC Act. This includes:

- provisions about obtaining, giving and dealing with information;
- the exchange of information between the disability worker screening and blue card systems; and
- sharing information with Blue Card Services, interstate worker screening units and the NDIS Commission for prescribed purposes.

This includes enabling provisions to allow the chief executive to request information from the police commissioner and other state entities for disability worker screening purposes and provisions to enable information sharing for the purposes of disability worker screening.

In particular, the Bill contains broad facilitative powers for the chief executive (disability services) and the chief executive (working with children) to disclose a range of information to one another where it is relevant to the other screening system's functions. This will mean each agency is able to share assessable information (including criminal history and disciplinary information) and circumstances information (for example, QP9s, which are written summaries prepared by the Queensland Police Service when someone is charged with an offence and the matter is to be heard in a court); and applicant submissions) with each other.

The Bill also provides for the chief executive to disclose information about a person who makes an NDIS worker screening application for a number of purposes. These purposes are for entry in the NDIS worker screening database, for performance of the NDIS Commission's functions under the NDIS Act, or for provision to an interstate NDIS or working with children worker screening unit under a corresponding law. The chief executive will be permitted to give certain types of information (including police information, investigative information, mental health information and disciplinary information) to an interstate worker screening unit if requested. However, mental health information about a person may only be given to another worker screening unit if the chief executive already has that information in its possession. The chief executive can only request mental health information about a person for the purposes of disability worker screening under the DSA, and this does not extend to the ability for the chief executive to request mental health information does not extend to requesting it on behalf of another worker screening unit.

The information sharing framework is a potential departure from the FLP under section 4(2)(a) of the LSA that sufficient regard be given to the rights and liberties of individuals, specifically the right to an individual's information being kept private and confidential, as confidential information obtained by the chief executive may be disclosed to other prescribed entities in some circumstances.

This potential departure is justified given these provisions enable the chief executive to obtain the most current, relevant and comprehensive information about a person when risk assessing a person. By being able to make an informed decision, the risk of harm to people with disability is minimised. Similarly, the power to provide information to another entity, such as another worker screening unit will ensure the relevant decision maker in that jurisdiction has the information they require to undertake their corresponding functions. Further, all jurisdictions are required to have appropriate safeguards in place to protect confidential information obtained.

The ability to share information also raises the FLP under section 4(3)(a) of the LSA that the legislation should make rights and liberties or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review. However, this is justified on the grounds that, through the application process, applicants consent to their information being obtained and used for the information sharing purposes in the Bill. Further, applicants and workers are afforded appropriate review and appeal rights that they may rely on if a decision is based on wrong information, for instance.

Enabling the sharing of information is critical to the effective operation of the new NDIS and state disability worker screening systems, as it enables the chief executive (and their counterparts in other jurisdictions) to undertake comprehensive screening of applicants and minimise the risk of harm to people with disability.

Strengthening the information sharing framework for the purposes of the disability worker screening and blue card systems increases safeguards for children and people with disability in Queensland by ensuring the same information is assessed under both systems.

This new information sharing regime is supported by appropriate safeguards to protect the confidentiality of information.

Clauses 19 and 20 amend the confidentiality protections under section 227 (Confidentiality of police, disciplinary, mental health and other protected information) and section 228 (Confidentiality of other information) of the DSA to ensure they apply fully to the information disclosed under the expanded information sharing framework.

These provisions provide specific protections in relation to the confidentiality of police, disciplinary, mental health and other protected information. It is an offence to fail to comply with these provisions, supported by appropriate penalties for non-compliance. The maximum penalty for failing to comply with section 227 is 100 penalty units or 2 years imprisonment, and 100 penalty units for failure to comply with section 228.

Legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) Legislative Standards Act 1992) – blue card screening requirements - clauses 63 and 64 of the Bill

The amendments to Schedule 1 of the WWC Act contained in the Bill clarify the blue card screening requirements for persons:

- carrying out or providing risk assessed NDIS work for an NDIS service provider in relation to a child or children with disability; and
- carrying out or providing disability services to a child or children with disability.

The amendments in the Bill import from regulation to the WWC Act the changes and expansion to the scope of screening that were put in place from 1 July 2019 following the commencement of the Disability Services and Other Legislation (NDIS) Amendment Regulation 2019.

The provisions impose additional obligations which impact on a person's ability to seek employment in specified environments. For example, workers of registered NDIS providers in risk assessed roles who work with children with a disability will need to be screened under both the NDIS worker screening and the blue card system. Workers in risk assessed roles for unregistered providers will be required to hold a blue card to provide services to children with a disability.

This is a potential departure from the principle that sufficient regard be given to the rights and liberties of individuals and, in particular, the right to obtain and keep employment and the right to conduct business without interference.

The screening requirements reduce risks to the safety and wellbeing of children by preventing persons with concerning histories from being able to work with children and is consistent with the principles for administering the WWC Act, that the welfare and best interests of the child are paramount and that every child is entitled to be cared for in a way that protects the child from harm and promotes the child's wellbeing (section 6).

Legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) Legislative Standards Act 1992) – blue card notifications to a child, a person with parental responsibility for the child or the child's plan manager – clause 54 of the Bill

The Bill inserts new section 344C into the WWC Act which authorises the chief executive (working with children) to provide notifications to a child, a person with parental responsibility for the child or the child's plan manager about the blue card status of a person who is providing the child with NDIS supports or services in the capacity of a NDIS regulated business. The notifications include if the business operator has been issued with a negative notice or had their working with children authority suspended or cancelled.

These amendments may be considered to have insufficient regard to the right and liberties of individuals as the amendment will enable the chief executive to share confidential information with other parties.

However, the Bill includes appropriate safeguards by providing that notifications will only be provided if either the child, the person with parental responsibility for the child, the child's plan manager or the business operator notifies the chief executive (working with children) of the service delivery relationship. Further, it is important that information about the suspension or cancellation of a person's working with children authority is provided to a self-managing child participant or the child's plan manager so that they can appropriately exercise their choice and control under the NDIS system and risk manage the situation.

Written notice to notifiable persons

Legislation has sufficient regard to the rights and liberties of individuals including, privacy and confidentiality – Legislative Standards Act 1992, section 4(2)(a)

Clause 11 inserts new section 100 to provide that the chief executive must give each notifiable person a notice stating whether a person was issued with a clearance or an exclusion. Clause 11 inserts new sections 73, 83, 112, 117, 118, 123 and 127 to provide the chief executive must also give each notifiable person a notice when an interim bar is imposed on an application, the person's clearance is suspended or cancelled, or their application is withdrawn.

Clause 11 inserts new section 52 to define a 'notifiable person', in relation to a clearance holder or applicant, as meaning:

- an NDIS service provider who engages or proposes to engage the person to carry out NDIS disability work or State disability work;
- a funded service provider, if the service provider engages, or proposes to engage, the person to carry out State disability work; and
- another entity prescribed by regulation.

This is a potential departure from the FLP under section 4(2)(a) of the LSA that legislation should have sufficient regard to the rights and liberties of individuals, specifically the right to an individual's information being kept private and confidential. In particular, the broad meaning of 'notifiable person' will allow information about an applicant, including that their application has been the subject of an adverse decision, being shared with third parties.

This potential breach is justified to ensure that relevant service providers who engage persons to provide disability supports or services are notified when a person's clearance is suspended, cancelled or withdrawn.

This will ensure these service providers are aware when a person they engage, as an employee, volunteer, contractor or otherwise, does not have the required clearance to work with people with disability, which minimises the risk of harm that may be caused by poor quality or unsafe supports or services.

It is important that information about the suspension or cancellation of a person's clearance is provided to a potential employer so the employer can appropriately risk manage the situation and ensure the person does not engage in a role which requires the person to hold an appropriate clearance.

Disqualifying offences framework and transitional arrangements

Legislation has sufficient regard to the rights and liberties of individuals, is consistent with the principles of natural justice and does not impose obligations retrospectively – Legislative Standards Act 1992, sections 4(2)(a), 4(3)(b) and 4(3)(g)

The Bill amends the categorisation of serious and disqualifying offences prescribed under schedules 2 and 4 of the DSA. These offences will apply to both NDIS and state disability worker screening frameworks.

Clause 24 inserts new section 377 to provide for specific transitional arrangements for new serious and disqualifying offences. New section 377 provides that the DSA applies in relation to a person who is charged with a new disqualifying or serious offence even if the charge, or the acts or omissions constituting the alleged offence, happened before commencement. New section 377 further provides that a conviction or charge for a new serious or disqualifying offence will be taken to be a conviction or a charge on commencement. The intention of these provisions is to ensure the new risk assessment framework will apply to these types of offences on commencement, regardless of when an offence was committed.

Clause 24 inserts new sections 379 – 385 to provide transitional arrangements for the application of the amended Act to a review or appeal process which had not been decided or withdrawn in certain circumstances. However, if the applicant for an undecided review or appeal is a disqualified person under the DSA as amended by the Bill, the application must be dismissed.

This may be a potential breach of the FLPs under sections 4(2)(a), 4(3)(b) and 4(3)(g) of the LSA, that legislation should not adversely affect the rights and liberties of individuals, including by not affording procedural fairness and natural justice and that legislation should not adversely affect rights and liberties or impose obligations retrospectively. Specifically, the transitional arrangements under new section 379 – 385 may seem to limit a person's procedural fairness by having their undecided review or appeal returned to the chief executive to be reviewed under the new decision making framework in the Bill (as an internal review) rather than being reviewed under previous decision making framework that applied when the original reviewable decision was made.

This potential breach is justified as the amendment strengthens the assessment process and enables the chief executive to assess whether a person poses an unacceptable risk of harm to people with disability and to minimise the risk of harm caused by unsafe supports or services under the NDIS or State disability worker screening framework. The paramount consideration in undertaking worker screening is to ensure the right of people with disability to live lives free from abuse, violence, neglect or exploitation, including financial abuse or exploitation.

Clause 24 inserts new section 370 to provide transitional arrangements for existing suspension of positive notices (yellow cards) or positive exemption notices (yellow card exemptions). Under section 370, for positive notices or positive exemption notices that have been suspended prior to commencement, an application to end the suspension cannot be made for an additional 6 months after commencement. This may be considered a breach of the FLPs under sections 4(2)(a), 4(2)(b), 4(3)(b) and 4(3)(g) of the LSA, that legislation has sufficient regard to the rights and liberties of individuals, is consistent with principles of natural justice and the institution of Parliament and should not impose obligations retrospectively. By requiring this time before a person may apply to cancel their suspension, potentially extends the period before a person may re-enter the workforce if their suspension is cancelled.

The proposed transitional approach will provide an appropriate balance of safeguards and an equitable transition to the new worker screening system. It is also considered justified to ensure that persons who are assessed under the new framework to determine whether they present a risk of harm to people with a disability.

These provisions give effect to the policy positions under the IGA in relation to the risk assessment framework including disqualifying offences framework, automatic clearances and exclusions, presumed exclusions and reviews and appeals process.

Transitional regulation-making power

Legislation has sufficient regard to the institution of Parliament and does not impose obligations retrospectively – Legislative Standards Act 1992 sections 4(2)(b) and 4(3)(g)

The Bill provides for a transitional regulation making power in the DSA to ensure that matters may be dealt with in the transition to the new framework by regulation.

The transitional regulation making power may be considered a breach of the fundamental legislative principle under section 4(2)(b) of the LSA, that legislation should have sufficient regard to the institution of Parliament and should not impose obligations retrospectively. In particular, this transition regulation making power is limited to matters necessary to make provision to facilitate smooth transition from the previous Act to the new Act and for matters that the new Act does not make sufficient provision for. The could be an infringement given it may allow a regulation to transition matters with obligations being impose obligations retrospectively. Any transitions made under this transition-regulation making power may also been seen as not having sufficient for the institute of Parliament given any matters will be prescribed by regulation.

This potential breach is justified and is an important safeguard to provide for flexibility to rectify any gaps in transitional arrangements and ensure individuals who are assessed as presenting an unacceptable risk of harm to people with disability are prevented from working with people with disability.

Whilst the Bill attempts to address all situations that may arise, the inclusion of the regulation-making power is considered pertinent given the complex regulatory environment.

The transition regulation making power is also strictly limited to matters necessary to achieve a smooth transition. Any provisions made under this power is subject to tabling and disallowance by Parliament, it is retrospective only until commencement of this Bill and the power is only available for two years after commencement, and any exercise of this power ceases to have effect after three years. This reflects the validity period of a yellow card, yellow card exemption or blue card.

Other regulation making powers

Legislation has sufficient regard to the institution of Parliament – Legislative Standards Act 1992 section 4(2)(b)

Clauses 9, 11, 13, 17,23, 24, 31, 58 and 60 provide for certain regulation making powers under the DSA. These powers generally provide flexibility to deal with a range of operational matters, including fees, fee waivers and, where necessary, other matters necessary to implement nationally consistent NDIS worker screening. Regulations made under these heads of power will subject to tabling in Parliament and disallowance.

The Bill also provides a regulation making head of power to prescribe other supports, services or organisations which will be eligible to apply for an NDIS or state disability worker screening clearance. This raises the fundamental legislative principle under section 4(2)(b) of the LSA of whether the legislation has sufficient regard to the institution of Parliament, as it will enable the scope of NDIS and state disability screening requirements to be expanded by regulation.

This power is considered necessary to ensure fidelity with obligations under the IGA and consistency with screening requirements across jurisdictions. It also ensures risk is able to be appropriately managed by providing flexibility to bring other entities within the scope of screening, where appropriate. As with other regulations, regulations made under this power will need to be tabled in the parliamentary legislative assembly, subject to parliamentary committee scrutiny and to disallowance by Parliament.

The Bill also provides a regulation making head of power to prescribe Commonwealth offences by regulation. This will enable the flexibility to prescribe offences by subordinate legislation in conjunction with nationally consistent offences prescribed in the Bill.

This raises the fundamental legislative principle under section 4(2)(b) of the LSA of whether the legislation has sufficient regard to the institution of Parliament, as it will allow certain offences to be prescribed by regulation rather than in the primary legislation which is subject to Parliament scrutiny. Any regulation made under this power will be subject to Parliamentary Committee scrutiny and to disallowance by Parliament.

It will ensure appropriate flexibility under the DSA, to prescribe the nationally consistent Commonwealth offences by regulation. Flexibility enables the proper administration of a nationally consistent system and ensures consistency with other jurisdictions.

Clause 60 of the Bill amends the current regulation making power under the WWC Act (section 401) so that a regulation, if required, may provide for arrangements between the chief executive (working with children) and the chief executive (disability services) in relation to receiving, withdrawing, dealing with and deciding combined applications, including sharing information related to combined applications.

This may be considered a breach of the fundamental legislative principle under section 4(2)(b) of the LSA, that legislation should have sufficient regard to the institution of Parliament.

The inclusion of this power is considered justified to address any specific arrangements which may need to be put in place to support the joint application process which may arise following commencement.

Consultation

The Commonwealth Government undertook extensive consultation between 16 February 2015 to 30 April 2015 to assess regulatory impacts on participants, suppliers and specific stakeholder groups of the NDIS QSF. The Commonwealth Government also undertook extensive targeted consultation during development of the WS Rules and IGA from 2017. The Department of Social Services prepared a Decision Regulation Impact Statement (RIS) that was provided to COAG Disability Reform Council.

During the period from October to November 2018, DCDSS conducted a public consultation process which canvassed community views in relation to proposed legislative reforms for NDIS worker screening. Views were sought regarding the screening of unregistered NDIS providers, 'no card, no start' and whether screening systems should interact with each other. Results of consultation informed the development of policy positions for NDIS worker screening.

In February 2020, the Department of Communities, Disability Services and Seniors (DCDSS) undertook further targeted consultation that informed key stakeholders about the proposed legislative amendments related to NDIS worker screening and sought stakeholders' perspectives on operational implementation. This included the Queensland Advocacy Incorporated, Queenslanders with Disability Network, other non-government organisations and peak bodies within the disability services and community sector and people with disability. Results of consultation informed the implementation of policy issues on which Queensland has discretion, including technical and operational impacts.

In addition, legal stakeholders (including the DPP, Legal Aid Queensland and the Queensland Law Society) were consulted in relation to the proposal to amend the Evidence Act to enable the chief executive (disability services) access to section 93A transcripts and did not express any objections, based on the precedent that has been set in relation to the blue card system.

Consistency with legislation of other jurisdictions

The IGA provides that each state and territory government will introduce or amend legislation to establish a scheme for the screening of NDIS workers consistent with the national policy outlined under the IGA. This Bill replaces Part 5 of the DSA to align with the nationally agreed policy outlined in the IGA. This will ensure Queensland can support, and participate in, nationally consistent NDIS worker screening.

The states' and territories' legislative frameworks may differ from each other in relation to a range of matters, as the IGA provided for states and territories to retain discretion when operationalising certain aspects of the NDIS screening framework. These aspects include, for example, the implementation of a 'no card, no start' requirement, allowing discretion for screening of workers of unregistered NDIS providers, requiring applicants to have a connection to Queensland, and inclusion of state penalties and offences for breaches of NDIS worker screening requirements. These differences across states and territories do not affect the consistency of safeguards or the portability of checks.

Notes on provisions

Part 1 Preliminary

Clause 1 provides that the Bill, when enacted, may be cited as the *Disability Services and Other Legislation (Worker Screening) Amendment Act 2020*.

Clause 2 provides the *Disability Services and Other Legislation (Worker Screening) Amendment Act 2020* will commence by Proclamation.

Part 2 Amendment of the *Disability Services Act 2006*

Clause 3 provides that Part 2 (Amendment of the Disability Services Act 2006) amends the *Disability Services Act 2006* (DSA). Schedule 1 also contains minor or consequential amendments to reflect changes made because of this Part.

Clause 4 amends section 6 (Objects of the Act) by removing the reference to *disability services* and inserting the term *NDIS supports and services* in subsection 6(1) (c) (defined in new section 12A) and relocates the definition for '*national disability insurance scheme* from subsection 6(2) to schedule 8 in the DSA.

Clause 5 amends section 7 (How objects are mainly achieved) to omit subsection 7(d) and insert a new subsection 7(d) to provide that the objects are mainly achieved by regulating particular aspects of the provision of NDIS supports or services by particular NDIS service providers under the *National Disability Insurance Scheme Act 2013 (*Cwth*)* (NDIS Act) to ensure the quality and safety of the supports or services.

Clause 6 amends section 12 (What are *disability services*) to insert subsection 12(2), which provides that ***disability services*** do not include NDIS support or services. This clarifies that disability services are separate from NDIS supports or services.

Clause 7 inserts new section 12A (What are *NDIS supports or services*) and provides NDIS supports or services are supports or services provided to a person with disability under the national disability insurance scheme, to the extent that providing the supports or services is funded by the payment of an NDIS amount under the NDIS Act.

The policy intent is to define ***NDIS supports and services*** as being linked to the funding of an NDIS amount under the NDIS Act.

Clause 8 consequentially amends section 13 (Meaning of *service provider*) to insert before 'services' the terms 'supports or.'

Clause 9 omits sections 15 – 16A and inserts new sections 14 – 16 and defines the following terms: ***funded service provider; NDIS service provider; NDIS sole trader***; and ***State sole trader.***

Section 14 defines ***funded service provider*** as a service provider, other than the State, receiving recurrent or one-off funds from the department, or ***another department*** prescribed by regulation, to provide disability services. The section clarifies that it does not matter whether

or not the service provider uses other funds or resources to provide the disability services and that a funded service provider may be a local government.

Section 15 defines an ***NDIS service provider*** and provides that a registered NDIS provider and an unregistered NDIS provider are each an ***NDIS service provider***. A ***registered NDIS provider*** is a registered NDIS provider under the NDIS Act and an ***unregistered NDIS provider*** is an entity that delivers NDIS supports or services to people with disability, other than a registered NDIS provider.

Section 16 defines an ***NDIS sole trader*** and ***State sole trader.*** An individual is an ***NDIS sole trader*** if the individual is an NDIS service provider, meaning either a registered or unregistered NDIS provider, and as a provider, the individual personally provides NDIS supports or services to a person with disability. A ***State sole trader*** is an individual who is a funded service provider and as a funded service provider, personally provides disability services to people with disability.

Clause 10 amends section 18 (Principle that people with disability have the same human rights as others) to insert the term 'or NDIS supports or services' after 'disability services' in subsection 18(3) and to insert the term 'supports or' before 'services' in subsections 18(3)(a) – (f) and 18(4).

Clause 11 repeals and replaces Part 5 of the DSA (Screening of particular persons engaged by department or particular service providers) with a new Part 5 (Disability worker screening and related requirements). The new Part 5 includes the following components as detailed below.

Part 5 Disability worker screening and related requirements

Division 1 Preliminary

Subdivision 1 General

Section 40 provides that the main purposes of part 5 are to establish a scheme for screening persons, require a person who carries out or is proposing to carry out particular work with people with disability to be screened before they start work, and to prohibit persons from carrying out particular work with people with disability if the chief executive decides they pose an unacceptable risk of harm to the people with disability.

This reflects the objectives for nationally consistent NDIS worker screening under the IGA to protect and prevent people with disability receiving NDIS supports or services from experiencing harm, and also applies that to Queensland's state disability worker screening framework.

Section 41 provides that the paramount consideration in making a decision under part 5 is the right of people with disability to live lives free from abuse, violence, neglect or exploitation, including financial abuse or exploitation.

Section 42 provides that part 5 applies despite the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

Section 43 provides for an exemption from the screening requirements under Part 5 for secondary school students on work experience. This section applies if a secondary school student on work experience carries out disability work for a service provider (the work experience provider), and another provision of this part requires a person who is engaged to carry out the disability work to hold a clearance or interstate NDIS clearance.

This implements the policy in subsection 14(c) of the WS Rules, which clarifies that secondary school students on formal work experience placement, who are directly supervised by another worker with a clearance, are the only exception from the requirement to have a clearance before working in a risk-assessed role for a registered NDIS provider.

The work experience provider does not commit an offence against the conflicting provision (such as the obligation for a service provider to not engage a person unless they have a valid clearance) in relation to the student carrying out the disability work if the student carries out the work under the direct supervision of a person who holds an NDIS clearance or interstate NDIS clearance for NDIS disability work, or a person who holds a clearance for State disability work. However, this does not mean that the rest of the obligations required of service provider do not apply. For example, if a person is issued in an exclusion under part 5, there a no circumstances where a person is allowed to work with people with disability.

Subdivision 2 Interpretation

Section 44 provides for when a person is ***engaged*** to carry out work for an entity. A person is engaged to carry out work for an entity if the person has an agreement with the entity to work as an employee, volunteer or is working as a contractor for a third party who has a contract (or sub-contract) for services with the entity.

Section 45 provides for the meaning of ***NDIS disability work*** and ***risk-assessed NDIS work***. Subsection 45(1) provides that ***NDIS disability work*** is work that includes the delivery of NDIS supports or services to a person with disability.

Subsection 45(2) provides that ***Risk-assessed NDIS work*** is NDIS disability work carried out in a role for which the normal duties include: the direct delivery of specified NDIS supports or services or is likely to require more than incidental contact with a person with disability. Subsection 45(3) provides for circumstances where, for risk-assessed NDIS work, normal duties of a person's role are likely to require more than incidental contact with a person with disability. This definition reflects part of the mandatory scope of screening under the NDIS, agreed to under the IGA and the WS Rules. The definitions under subsection 45(4) reflect the equivalent definitions under the WS Rules.

For example, under the IGA, normal duties of a role are likely to require more than incidental contact with a person with a disability if those duties include physically touching a person with disability or building a rapport with a person with disability as an integral and ordinary part of the performance of those duties.

Section 46 provides that ***key personnel*** of NDIS service providers are also taken to be engaged in risk-assessed NDIS work, for that service provider. ***Key personnel*** is defined in the NDIS Act.

Section 47 provides for the meaning of ***State disability work***. State disability work includes the provision of disability services that is carried out for the department or a funded service

provider. State disability work does not capture work carried out by persons under subsection 47(2). The definition outlines the scope of worker screening requirements for State disability work.

Section 48 provides for when a person is taken to be ***engaged*** to carry out State disability work. A person is engaged to carry out State disability work for the department if the person is engaged to carry out the work at a place at which the department provides disability services, or is a public service employee employed at the place, or is a member of a ministerial advisory committee established under section 222.

A person is ***engaged*** to carry out State disability work for a funded service provider if the person is engaged to carry out the work at a place at which the service provider provides disability services. Subsection 48(3) outlines the minimum period, of 7 days in a calendar day, for a person to be considered engaged to carry out State disability work. Section 48 does not limit the operation of section 44, in defining how a person can be engaged.

Section 49 provides a person is also taken to be engaged to carry out State disability work for a funded service provider if they are a member of a board, management committee or other governing body or if the service provider is a corporation and the person is an executive officer of that service provider.

Section 50 provides for the meaning of ***clearance*** and types of clearances. A clearance is a declaration, issued by the chief executive, to a person that has been screened under this part and is permitted to carry out disability work. The term ***disability work*** means both NDIS disability work and State disability work. An ***NDIS clearance*** is a clearance issued to a person who made an NDIS worker screening application. An ***interstate NDIS clearance*** is a declaration, however named, issued under a corresponding law that corresponds to an NDIS clearance. A ***State clearance*** is a clearance issued to a person who made a State disability worker screening application.

Section 51 provides for the meaning of ***exclusion*** and types of exclusions. An exclusion is a declaration, issued by the chief executive, to a person that they have been screened under this part of the Act and are excluded from carrying out disability work. ***An NDIS exclusion*** is an exclusion issued to a person who made an NDIS worker screening application. An ***interstate NDIS exclusion*** is a declaration, however named, issued under a corresponding law that corresponds to an NDIS exclusion. A ***State exclusion*** is an exclusion issued to a person who made a State disability worker screening application.

Section 52 provides for the meaning of ***notifiable person***. A notifiable person includes any NDIS service provider or funded service provider that the chief executive is aware of, that has engaged or proposes to engage, the person to carry out NDIS or state disability work. Also, a self-managed NDIS participant and a recognised representative are each a notifiable person, if they give the chief executive notice or the chief executive becomes aware, that the person delivering NDIS supports or services to the participant is either an NDIS sole trader or a person engaged by an NDIS service provider. Subsection (3) defines a ***self-managed NDIS participant*** and ***recognised representative***. The definition of ***recognised representative*** is intended to capture representatives acting on behalf of a person with disability or participant. A recognised representative could also be a parent of child or another person with general responsibility for the child within the meaning of the NDIS Act.

Division 2 Requirements related to persons carrying out disability work

Subdivision 1 NDIS disability work

Subdivision 1 sets out mandatory worker screening requirements for registered NDIS providers, and certain persons engaged by registered NDIS providers, carrying out NDIS disability work.

The offences under sections 53 and 54 implement Queensland's 'no card, no start' policy and are consistent with the equivalent offences and penalties framework under the *Working with Children (Risk Management and Screening) Act 2000* (WWC Act). This ensures Queensland has a strong quality and safeguards framework in place which is consistent, to the extent possible, across both the working with children card check and the disability worker screening framework. Relevant offences and penalties will apply for both service providers and individual workers.

Section 53 provides that a registered NDIS provider must not engage, or continue to engage, a person to carry out risk-assessed NDIS work unless the person holds an NDIS clearance or an interstate NDIS clearance. It is an offence if a registered NDIS provider breaches this provision. The maximum penalty if an ***aggravating circumstance*** applies to the offence is 200 penalty units or 2 years imprisonment or otherwise 100 penalty units. It is an ***aggravating circumstance*** for this offence if any of the matters at subsection 53(2) apply.

However, this section provides a registered NDIS provider does not commit an offence if a subcontractor is engaged to carry out the risk-assessed NDIS work under a contract for services between the service provider and another person; and the service provider has complied with the NDIS (Worker Screening) Practice Standards in relation to the subcontractor being engaged to carry out the risk-assessed NDIS work for the service provider. This reflects that a service provider does not have the direct oversight or control for a subcontractor that the service provider would otherwise have if they directly engaged the person.

This section implements the policy intent under the IGA that people working for registered NDIS providers in risk-assessed roles must have an NDIS clearance or an interstate NDIS clearance to work. This is also reflected in section 13 of the WS Rules. This section also provides that registered NDIS providers are responsible for ensuring they only engage a person to carry out risk-assessed NDIS work, if the person has an NDIS clearance or interstate NDIS clearance. This safeguard ensures people with a concerning history are prevented from working with people with disability before their clearance is granted.

Section 54 provides that a person must not start, or continue, an engagement to carry out risk-assessed NDIS work for a registered NDIS provider unless the person holds an NDIS clearance or interstate NDIS clearance. This also applies to a person who is a registered NDIS provider, carrying out risk-assessed NDIS work as an NDIS sole trader. It is an offence if a person breaches this provision. The maximum penalty is 500 penalty units or 5 years imprisonment, if an ***aggravating circumstance*** applies to the offence, or otherwise 100 penalty units.

It is an ***aggravating circumstance*** for this offence if any of the matters at subsection 54(3) apply. The higher penalty for workers, compared to NDIS providers under section 53, reflects the increased personal responsibility and strict requirement on the individual to only engage in risk-assessed work for a registered NDIS provider, if the person has an appropriate clearance.

The higher penalties for individuals also reflect the fact under the IGA, states and territories are predominately responsible for regulating workers and the Commonwealth is predominately responsible for regulating the service providers/employers. This is also to reflect that service providers/employers are subject to civil penalties under the NDIS Act (such as de-registration for breach of certain offences).

The policy intent is to ensure workers in risk-assessed NDIS work cannot start or continue to be engaged to carry out disability work unless they hold an NDIS clearance. This safeguard ensures people with a concerning history are prevented from working with people with disability before their clearance is granted.

Section 55 provides an NDIS service provider must not engage, or continue to engage, a person to carry out NDIS disability work if the person holds an NDIS exclusion or an interstate NDIS exclusion and the service provider knows, or ought reasonably to know, the person holds an NDIS exclusion or interstate NDIS exclusion. It is an offence if an NDIS service provider does not comply with this obligation. This offence applies to both registered NDIS providers and unregistered NDIS providers. The maximum penalty for this offence is 200 penalty units or 2 years imprisonment. The policy intent is to prevent a person who has been issued with an exclusion and been deemed as posing an unacceptable risk of harm to people with disability from carrying out NDIS disability work for any NDIS service provider. The lower penalty for service provider compared to the similar provision for individuals reflects that under the IGA, states and territories are predominately responsible for regulating workers and the Commonwealth is predominately responsible for regulating the service providers/employers. Service providers/employers are also subject to civil penalties under the NDIS Act (such as de-registration for breach of certain offences).

Section 56 applies if: (a) a person holds a suspended NDIS clearance or suspended interstate NDIS clearance or if a person's NDIS disability worker screening application is subject to an interim bar; and (b) an NDIS service provider knows, or ought reasonably to know, the person's NDIS clearance or interstate NDIS clearance is suspended or the interim bar is in effect for the person. The NDIS service provider must not permit an engaged person to carry out NDIS disability work or otherwise start to engage a person to carry out NDIS disability work who has a suspended clearance or has an interim bar imposed on their application. This offence applies to both registered NDIS providers and unregistered NDIS providers. The maximum penalty for this offence is 200 penalty units or 2 yeas imprisonment. Sections 84(4) and 113(3) outlines the effect that the suspension of a person's NDIS clearance or interim bar has on the person's existing work engagement with an NDIS service provider.

The policy intent is to prevent a person whose NDIS clearance is suspended or who is subject to an interim bar from working with people with disability, to minimise the risk of harm to people with disability.

Section 57 provides that a person who holds an NDIS exclusion or an interstate NDIS exclusion must not start, or continue an engagement, to carry out NDIS disability work for an NDIS service provider or carry out NDIS disability work as an NDIS sole trader. This includes both registered and unregistered NDIS providers. It is an offence if a person does not comply with this obligation. The maximum penalty that may apply for this offence is 500 penalty units or 5 years imprisonment.

This higher penalty reflects the increased personal responsibility and strict requirement on individuals to not engage in NDIS disability work where they have been issued with an exclusion, as the person has been deemed to pose an unacceptable risk of harm to people with disability. The policy intent is to prevent a person who has been issued with an exclusion and poses a risk of harm to people with disability, from carrying out NDIS disability work.

Subdivision 2 State disability work

Subdivision 2 sets out mandatory worker screening requirements for funded service providers, and persons engaged by funded service providers and the department, carrying out State disability work.

Section 58 provides that funded service providers must prepare an annual risk management strategy that complies with this section. This reinforces that a worker screening check is only one safeguard to protect people with disability from abuse, neglect or exploitation. It is not a substitute for an appropriate range of risk management strategies to manage persons engaged, or proposed to be engaged, by a funded service provider. Registered NDIS providers are not required to prepare risk management strategies under this provision as registration requirements with the NDIS commission, and compliance with relevant Commonwealth legislation, imposes inherent risk management strategies. It is an offence if a funded service provider does not comply with this provision. The maximum penalty for this offence is 20 penalty units. A risk management strategy must include policies and practices for engaging persons who carry out State disability work for the service provider in ways that promote the wellbeing of people with disability and protects them from abuse, violence neglect or exploitation. A regulation may prescribe other matters to be included in a risk management strategy.

Section 59 provides that a funded service provider must not engage, or continue to engage, a person to carry out State disability work unless the person holds a clearance and the service provider has given the chief executive a notice (in the approved form and in an approved way) about engaging the person to carry out State disability work. A clearance is defined, under section 50, and can include an NDIS clearance or a State clearance. This section reflects the policy position that a person may also engage in State disability work if they hold an NDIS clearance. It is an offence if a funded service provider breaches this provision. The maximum penalty is 200 penalty units or 2 years imprisonment, if an ***aggravating circumstance*** applies to the offence, otherwise 100 penalty units.

It is an ***aggravating circumstance*** for this offence if the person holds an exclusion and the funded service provider knows, or ought reasonably to know, the person holds the exclusion. It is also an aggravating circumstance if the service provider is given notice that the person's clearance was cancelled on the person's request under division 6. These circumstances of aggravation are intended to ensure persons do not work unless they hold a clearance, to minimise the risk of harm to people with disability. An exclusion indicates the person has been deemed to pose an unacceptable risk of harm to people with disability.

Section 60 applies if a person holds a clearance that is suspended or is subject to an interim bar and a funded service provider knows, or ought reasonably to know, the person's clearance is suspended or the interim bar is in effect for the person. The funded service provider must not, if the service provider has engaged the person under an existing arrangement to carry out State disability work for the service provider, allow the person to carry out work that is State

disability work, or otherwise, start to engage a person to carry out State disability work. The maximum penalty for this offence is 200 penalty units or 2 years imprisonment. This offence is intended to prevent a funded service provider from engaging a person whose State clearance has been suspended or who is subject to an interim bar.

Subsection 113(3) sets out the effect that a suspension has on a person's existing engagement to carry out disability work for a funded service provider.

Section 61 provides that a person must not start, or continue, an engagement to carry out State disability work for the department or a funded service provider, unless the person holds a clearance. It is an offence if a person does not comply with this obligation. The maximum penalty for this offence, if an ***aggravating circumstance*** applies to this offence is 500 penalty units or 5 years imprisonment or otherwise 100 penalty units. In addition, a person must not carry out State disability work as a State sole trader unless the person holds a clearance. The maximum penalty for this offence is 500 penalty units or 5 years imprisonment.

It is an ***aggravating circumstance*** for an offence against subsection 61(1) if any of the matters at subsection 61(3) apply.

The policy intent is to prevent a person from working without a State clearance issued under the DSA, in these particular roles, and to prevent a person who has been issued an exclusion and deemed to pose an unacceptable risk of harm to people with disability, from carrying out State disability work.

Sections 59 to 61 applies Queensland's 'no card, no start' policy for State disability worker screening and prescribes offences that are equivalent to those under the NDIS disability work (subdivision 1) and equivalent to the same offences under the WWC Act. Section 59 outlines when it is an offence for a funded service provider to engage a person. Section 60 outlines when it is an offence for a funded service provider to engage a person to do State disability work if a person's clearance is suspended (or they subject to an interim bar). Section 61 outlines when it is offence for a person to do State disability work without a clearance. This ensures Queensland has a strong quality and safeguards framework in place that is consistent, to the extent possible, across both the working with children card check and the disability worker screening framework.

Subdivision 3 General

Section 62 provides there will be no contravention of particular requirements under part 5, in the absence of a notice. Section 63 clarifies the interaction between an NDIS service provider's or funded service provider's requirements under provisions of part 5 with other legislative or contractual requirements. Section 63 applies if it would be an offence against a provision of part 5 for an NDIS service provider or funded service provider to engage, or continue to engage a person (the ***engaged person***) to carry out disability work. The relevant service provider must comply with the provision despite another Act, law, any industrial award or agreement. The relevant service provider does not incur any liability under other legislation because they are complying with a provision to not engage a person under the DSA. Further, a person whose clearance is suspended under division 6, or whose interstate NDIS clearance is suspended under a corresponding law, may be engaged by the NDIS service provider or funded service provider other than to carry out disability work until the suspension ends.

Division 3 Disability worker screening applications

Subdivision 1 Prohibited disability worker screening applications

Section 64 provides that a person who holds an exclusion (which could be a NDIS exclusion or State exclusion) or an interstate NDIS exclusion must not make a disability worker screening application. It is an offence not to comply with this obligation. The maximum penalty for this offence is 500 penalty units or 5 years imprisonment. This maximum penalty is intended to deter people who have been assessed as posing an unacceptable risk of harm to people with disability from working. An application made in contravention of this section has no effect.

The policy intent is to prevent people who hold an exclusion from applying to carry out NDIS disability work or State disability work. This is consistent with the equivalent offence provisions under the WWC Act. This ensures Queensland has a strong quality and safeguards framework in place which is consistent, to the extent possible, across both the working with children card check and the NDIS or state disability worker screening framework.

Subdivision 2 Applications generally

Section 65 provides a person may apply for a clearance if the person is, or proposes to be engaged by an NDIS service provider to carry out NDIS disability work, is an NDIS sole trader or engaged by another entity prescribed by regulation for this section. The person must also comply with each other criterion prescribed by regulation. For example, a regulation could be made under subsection 65(b) that requires a person to satisfy certain matters in order to be eligible to apply.

This provision enables a person to apply for an NDIS clearance if they are engaged, or propose to be engaged:

- in risk-assessed NDIS work or non-risk assessed work for a registered NDIS provider;
- in any role to carry out NDIS disability work, by an unregistered NDIS provider;
- in any role to carry out NDIS disability work, as an NDIS sole trader.

This reflects the IGA by enabling, in addition to workers that must be screened, workers of unregistered NDIS providers and workers for registered NDIS providers carrying out non-risk assessed work, to apply for an NDIS clearance if they are delivering, or are planning to deliver, NDIS supports and services.

Section 66 provides who may apply for a clearance related to State disability work. A person may apply for a clearance if the person is, or proposes to be, engaged by the department or a funded service provider to carry out State disability work, is a State sole trader or is engaged by an entity prescribed by regulation for this section. This provision enables the person to apply for a clearance to carry out State disability work. However, a person who is applying to carry out NDIS disability work and State disability work must apply for an NDIS clearance under section 65.

Section 67 provides a person may combine an NDIS worker screening application or State disability worker screening application, under sections 65 or 66, with a working with children check (blue card) application. The blue card application process is administered under the WWC Act. This provision removes unnecessary administrative duplication, reducing the

regulatory burden on applicants by enabling combined disability worker screening applications with blue card applications.

Section 68 provides a disability worker screening application must be in the approved form, made in an approved way, signed by the applicant, and accompanied by the prescribed fee. The application fee is prescribed by regulation. The approved form must provide for the applicant to provide proof of the applicant's identity; consent to worker screening; and if the applicant is engaged or proposes to be engaged to carry out disability work, information about the entity that has engaged or proposes to engage the applicant to carry out the disability work. Also, for an NDIS worker screening application, the approved form will also require other necessary information to be self disclosed, as required by the IGA, such as international criminal history, domestic violence and child protection orders and/or information and relevant workplace misconduct findings. Due to section 14 of the *Electronic Transactions (Queensland) Act 2001*, a person's signature may be given electronically.

This provision implements clauses 42 – 45 of the IGA, which provide for applications to be made in the approved form and to be accompanied by certain information. This includes that applications must be verified by an employer or organisation delivering NDIS supports or services. Self managing participants and self-employed workers will be recognised as an employer for NDIS worker screening purposes.

Section 69 provides that the chief executive may give the applicant a notice requesting stated information, regarding a disability worker screening application. The request for information must state that if the applicant does not comply with the request within a reasonable stated time, the application may be withdrawn. This notice refers to a written notice under the DSA. This section does not prevent the chief executive from orally making a request for further information. However, the chief executive may not withdraw the application, only on the basis that the applicant failed to comply with the oral request. This section ensures procedural fairness is afforded to an applicant if the chief executive intends to withdraw the person's application.

Section 70 applies if before the chief executive decides a worker screening application, any of the information listed in subsection 70(1), provided in the original application, has changed. The applicant must give a notice about the change to the chief executive, in the approved form and way, within 7 days after the change happens. It is an offence if a person does not comply with this obligation. The maximum penalty for this offence is 10 penalty units.

Section 71 applies if an applicant becomes aware that police information or other information (risk assessment matter) about them has changed. The applicant must immediately give the chief executive a notice about the change in the approved form and in an approved way. A maximum penalty of 100 penalty unit applies for this offence.

Section 72 applies to an applicant holding an NDIS clearance or State clearance that, but for this section, would end under section 101(2) and clarifies a clearance continues to remain in force until such time an event listed in subsection 72(2) occurs.

Section 73 applies if an applicant holds an interstate NDIS clearance that ends under a corresponding law because the term of the clearance has ended. The section provides the applicant is taken to hold an NDIS clearance until such time as an event in subsection (2) occurs.

Section 72 and 73 provide for the circumstances when a person (including a person who holds an interstate NDIS clearance) can continue working and when they must stop working. For example, a person may continue working if they have applied for a clearance (reapplication) and their existing clearance expires before a decision is made on the new application, however the person must still cease working when any of the events in subsection 72(2)(b) occur.

Subdivision 3 Withdrawal of application

Section 74 provides the process for when the chief executive can withdraw a disability worker screening application.

Section 75 provides an applicant may withdraw a worker screening application at any time before it is decided by the chief executive. The request may be made orally or in writing. The chief executive must withdraw the application unless the chief executive refuses to withdraw the application under section 76.

Section 76 provides the chief executive may refuse to withdraw an applicant's disability worker screening application if any of the circumstances in subsection (1) apply. For example, the chief executive may refuse to withdraw an application if the applicant has an interstate NDIS clearance that has been suspended in another jurisdiction. If the chief executive refuses to withdraw the application, the chief executive must give the applicant a notice stating the reasons for the refusal.

Section 77 provides for a request to withdraw a combined application. The applicant may combine a request to withdraw the applicant's disability worker screening application under section 75 with a notice withdrawing the applicant's working with children application. If a combined withdrawal request is made to the chief executive, the chief executive must give a notice about the combined withdrawal request to the chief executive responsible for the WWC Act. This removes unnecessary duplication by enabling applicants to make a combined request to withdraw both applications.

Section 78 provides the chief executive must withdraw a person's disability worker screening application if the applicant's identity cannot be established with certainty. However, the chief executive must have given the applicant a notice under section 69 requesting information to establish their identity and given a reasonable time to respond before the person's application is withdrawn.

Section 79 provides the chief executive may withdraw an application if an applicant does not comply with a notice under sections 69, 138U or 138X. However, the notice must include a warning that if the applicant does not comply with the notice, the application may be withdrawn.

Section 80 provides the chief executive must withdraw an NDIS worker screening application if satisfied the applicant has already applied for an NDIS clearance under a corresponding law and that application has not been decided or withdrawn. An application may also be withdrawn if the applicant holds an interstate NDIS exclusion.

Subdivision 4 Interim bar for particular applicants

Section 81 provides when subdivision 4 will apply. If section 81 applies, the rest of subdivision 4 applies. The effect of section 81(1) is that 82(1) applies when 81 applies.

Sections 82 provides the chief executive imposes an interim bar on an applicant by giving them a notice about the interim bar. Subsection 82(2) provides the matters that must be included in the notice.

Section 83 provides the chief executive must give each notifiable person for the applicant notice of the interim bar. Certain information must also be included in the notice as listed in subsection 83(1), including that an interim bar has been imposed on the applicant. The chief executive may also give a notice to a potential employer of the applicant. A potential employer is an entity that may be or is likely to engage the relevant person in the near future.

Section 84 provides for the effect of an interim bar. This section applies if the chief executive imposes an interim bar on an applicant under section 82. However, an applicant's employer who is given a notice under section 83 must not terminate the applicant's employment solely or mainly because the interim bar is in effect for the applicant. An employer may still terminate on other grounds but not solely or mainly because of the notice. The policy intent is to prevent a person who has been issued with an interim bar notice from carrying out disability work, to prevent the risk of harm to people with disability. This also balances the rights of the applicant, by providing that the employer must not terminate the person's engagement solely or mainly because of the interim bar. This is consistent with the current policy position under the DSA and the WWC Act. The person will continue to be allowed to carry out work for the service provider, as long as it is not disability work as defined under this new part.

Section 85 provides for when an interim bar imposed on an applicant ends. This section reflects the policy intent that an interim bar may be imposed for as long as necessary for the chief executive to undertake an assessment of the person's application.

Division 4 Dealing with and deciding application

Subdivision 1 Preliminary

Section 86 provides that this division applies if a person made a disability worker screening application and the application has not been withdrawn.

Section 87 provides the chief executive must comply with subsection 87(1) when dealing with an application, which includes considering the person's application and information available about the applicant. Subsections (1)(b) and (c) reflect the decision-making framework under clauses 61 and 63 of the IGA, resulting in an automatic clearance, automatic exclusion, presumed exclusion or risk assessment. Subsection 87(2) provides the chief executive is not required to decide the person's application where an interim bar is in effect. See section 80 when an interim bar is imposed.

Section 88 details the types of information the chief executive must consider, in response to a disability worker screening application if the chief executive is aware under this part. This includes police information, disciplinary information, domestic violence information, NDIS disciplinary or misconduct information, and information about whether the person holds or has

previously held a relevant clearance or exclusion, including if it has been suspended at any time or cancelled.

Subsection (2) enables the chief executive to consider any other information about the person if it is relevant to whether the person poses a risk of harm to people with disability. For example, other information may include, but is not limited to, child protection information.

This section implements clauses 56 – 58 of the IGA, which provides for the types of information to be considered as part of an NDIS worker screening application.

Subdivision 2 Deciding application

Section 89 provides a person must be issued a clearance if the chief executive is not aware of any information listed in section 88 about the person. This section implements clause 61(a) of the IGA regarding the automatic issue of an NDIS clearance and is replicated for State clearances.

Section 90 provides if the chief executive is aware the person is a disqualified person, the chief executive must issue an exclusion to the person. This implements clause 61(b) of the IGA regarding the automatic issue of an NDIS exclusion on the basis that an applicant is a disqualified person. A ***disqualified person*** is defined as a person who has a conviction for a disqualifying offence and was an adult when the offence was committed. This reflects the policy intent that individuals who have a conviction for a disqualifying offence are deemed as posing an unacceptable risk of harm to people with disability and should be automatically excluded from working with people with disability.

Section 91 provides the chief executive must issue an exclusion if aware the person has a conviction for a serious offence and was an adult when the offence was committed. An exclusion must also be issued if the person has been charged with a disqualifying or serious offence that has not been dealt with and the person was an adult when the offence is alleged to have been committed. The show cause notice process under section 95 applies.

The chief executive may issue the person a clearance if satisfied there are exceptional circumstances such that the person does not pose an unacceptable risk of harm to people with disability. This applies clause 61(c) of the IGA. The policy intent is to ensure individuals who are presumed to pose an unacceptable risk of harm to people with disability are excluded from providing NDIS disability work, unless exceptional circumstances apply.

Section 92 provides for the general risk assessment process in circumstances where the presumptions under sections 89, 90 and 91 do not apply to an applicant. The chief executive must issue a clearance to a person if satisfied the person does not pose unacceptable risk of harm to a person. The chief executive must issue an exclusion to the person if satisfied the person poses an unacceptable risk of harm to people with disability.

This section implements the requirements under clause 63 of the IGA.

Subdivision 3 Assessing risk person poses to people with disability

Section 93 outlines the process to conduct a risk assessment. The chief executive conducts a risk assessment of a person by considering the information about a person obtained under this

part and deciding whether the person poses an unacceptable risk of harm to people with disability.

In conducting the risk assessment, the chief executive must consider information as required under this division. The chief executive may decide a person poses an unacceptable risk of harm to people with disability if satisfied there is a real and appreciable risk the person might cause harm to people with disability. The chief executive does not need to be satisfied it is likely that the person will cause harm. Schedule 8 (Dictionary) defines ***harm*** to include any detrimental effect on a person's physical, psychological, emotional, sexual or financial wellbeing, however the detrimental effect is caused. This section implements the meaning of unacceptable risk of harm under clauses B11 – B13 of the IGA.

Section 94 outlines the matters the chief executive must consider about a person's ***offending conduct.*** This means conduct that involved the commission of an offence, was the subject of a complaint, allegation or investigation under law or is otherwise relevant to whether the person poses a risk of harm to people with disability. Subsection 94(2) outlines the matters the chief executive must consider in regards to the offending conduct, where applicable. This section implements the criteria for assessing risk to people with disability under clause 66 of the IGA.

Section 95 outlines the actions the chief executive must take before making an adverse decision on a person's application. This section applies if section 91 (deciding application – exceptional circumstances for adult offender) applies, or if the chief executive is otherwise proposing to decide the person poses an unacceptable risk of harm to people with disability. Before making a decision, the chief executive must give the person a notice (a ***show cause notice***) that complies with section 96 and consider any submissions made by the person in response.

Section 96 outlines the requirements for the show cause notice given to a person under section 95.

Sections 95 and 96 implement clause 70 of the IGA, regarding actions the chief executive is required to take where there is an intention to make an adverse decision, other than due to a conviction for a disqualifying offence. This provides the applicant with the right to natural justice and procedural fairness by ensuring the person is fully informed of the reason an adverse decision is being proposed, allows the person a reasonable opportunity be heard, and enables the person's response to be considered before finalising the decision.

Subdivision 4 Steps after application decided

Section 97 provides that subdivision 4 applies if the chief executive makes a decision about a person's disability worker screening application.

Section 98 provides if the chief executive decides to issue a person with a clearance, meaning either an NDIS clearance or State clearance, the chief executive must give the person a notice outlining the relevant decision and issue the person with a clearance card for the relevant clearance. Subsection 98(2) defines the term ***clearance card*** which is a document (in a form of a card) that evidences that the clearance has been issued to the person.

Section 99 provides if the chief executive has decided to issue the person an exclusion, the chief executive must give the person a notice outlining this decision, the reasons for the decision and the relevant review and appeal information. The notice must also state it is an

offence against this Act for a person who holds an exclusion to make a disability worker screening application, start or continue to be engaged in carrying out disability work, including as an NDIS sole trader or State sole trader.

Section 100 provides the chief executive must give each notifiable person for the applicant, a notice stating whether the person was issued a clearance or exclusion. The chief executive may also give notice of the outcome of an application to a potential employer of the person.

Sections 101 outlines the validity period for NDIS and State clearances. The validity of a clearance starts when the clearance is issued or, if the person holds another clearance with a term that ends on a later day, immediately after the existing clearance ends. The validity period of an NDIS clearance is 5 years after it starts under subsection (1). The validity period of a State clearance is 3 years after it starts under subsection (1). Both clearances may end earlier if cancelled under division 6 of this Act.

Section 102 provides an exclusion remains in force unless it is cancelled under division 7 of this Act.

Division 5 General provisions about clearances

Subdivision 1 Change in information

Section 103 provides that a clearance holder must notify the chief executive in the approved form and in an approved way, within 14 days of a change in engagement from carrying out disability work as a volunteer or sole trader on an unpaid basis, to carrying out disability work other than a volunteer or as a sole trader for financial reward. Financial reward is defined in Schedule 8 and does not include a payment that is a reimbursement for expenses. It is an offence for a person not to comply with these obligations. The maximum penalty for this offence is 10 penalty units.

The person may be required to pay the prescribed application fee under subsection 103(3) if the person's clearance was issued on the basis that the person was, or was proposing to, carry out disability work as a volunteer or sole trader on an unpaid basis. This reflects the requirement that a person who is engaged to carry out disability work, other than a volunteer or on an unpaid basis, must pay the prescribed application fee to be issued with a clearance.

Section 104 provides that a person who holds a clearance must immediately give the chief executive a notice, if the person becomes aware that police information or ***risk assessment matter*** about them has changed. The maximum penalty for this offence is 100 penalty units.

Subsection 104(3) lists the other information that a clearance holder must give the chief executive information in the approved way and approved form – for example, a person's name and contact details. The maximum penalty for this offence is 10 penalty units.

Subdivision 2 Replacement of clearance card

Section 105 applies if a person's clearance card is lost or stolen. The person must notify the chief executive within 14 days, in the approved form and in the approved way. The person must either apply for a replacement clearance card or ask the chief executive to cancel the clearance. A fee to obtain a replacement card will apply which will be prescribed by regulation.

It is an offence for a person not to comply with this obligation. The maximum penalty is 10 penalty units. The chief executive must cancel the lost or stolen card and, if the person applied for a replacement clearance card, issue the replacement card.

Section 106 provides that if a clearance holder notifies the chief executive that their name, contact details or volunteer or paid status changes, , the chief executive may issue a replacement clearance card if the chief executive considers it appropriate to do so because of the change. If a replacement clearance card is issued, the person's previous clearance card will be cancelled. This ensures a clearance card reflects the person's correct details and a person can be readily identified based on that clearance card.

Section 107 applies if the chief executive issues a replacement card. If a person is issued with a replacement clearance card, other than because the replaced card expired or was lost or stolen, they must return their original card to the chief executive. The person must give the original card to the chief executive within 14 days after the replacement clearance card is issued, unless the person has a reasonable excuse. The maximum penalty is 10 penalty units. If a person regains a card that was previously lost or stolen, the person must also return that original card within 7 days of repossessing it. The maximum penalty is 10 penalty units. This ensures replaced cards cannot be used illegitimately by a person who has not been issued with a clearance.

These measures ensure Queensland has a strong quality and safeguards framework in place which is consistent, to the extent possible, across both the working with children check and the disability worker screening framework.

Division 6 Reassessment, suspension or cancellation of clearance

Subdivision 1 Reassessment of risk of harm to people with disability

Section 108 provides the chief executive may reassess a clearance holder if the chief executive becomes aware of information about the person that was not known to the chief executive when the decision to issue a clearance was made, and in the chief executive's opinion, the information is relevant to whether the person poses a risk of harm to people with disability. The chief executive must conduct a risk assessment of the person, under subsection (1) or otherwise, before the chief executive makes a decision under this division about whether the person poses an unacceptable risk of harm to people with disability. This ensures clearance holders are subject to ongoing monitoring of their risk of harm to people with disability, and may be reassessed where new information arises.

Section 109 clarifies division 4, subdivision 3, applies with necessary changes for conducting a risk assessment of a person under section 108, and the show cause process under section 95 also applies if the chief executive is proposing to decide the person poses an unacceptable risk of harm to people with disability.

Subdivision 2 Suspension of clearance

Section 110 provides that subdivision 2 applies to a clearance holder, if:

- the person is charged with a disqualifying offence that has not been dealt with and was an adult when the alleged offence occurred;

- the person becomes subject to a banning order made for a reason that, in the chief executive's opinion, is relevant to whether the person poses a risk of harm to people with disability; or
- the chief executive is conducting a risk assessment of the person under subdivision 1, and reasonably suspects the assessment will demonstrate the person poses an unacceptable risk of harm to people with disability.

This implements the agreed scenarios under clauses B19 and B20 of the IGA, when a suspension must be imposed to prevent a clearance holder from working until a decision is made, and is replicated for State disability worker screening.

Sections 111 provides the chief executive must suspend a person's clearance by giving the person a ***suspension notice***. Subsection 111(2) outlines the information that the suspension notice must include.

Section 112 provides the chief executive must give each notifiable person for the person a notice that the person's clearance is suspended. Subsection 112(1) outlines the information this notice must state, including that it is an offence for an NDIS service provider or funded service provider to allow the person to carry out disability work while the clearance is suspended.

Section 113 provides for the effect of suspension of clearance. While a person's clearance is suspended, it is an offence for the person to start or continue to engage in carrying out disability work or carry out disability work as an NDIS sole trader or State sole trader. The maximum penalty for this offence is 500 penalty units or 5 years imprisonment. The higher penalty for workers, compared to NDIS providers, reflects the increased personal responsibility and strict requirement on the individual.

Subsection 113(3) provides that the person's employer who is given a notice about the suspension of the person's clearance must not terminate the person's employment solely or mainly because of their suspension. This enables an employer to terminate on other grounds but not solely or mainly because of the notice. The policy intent is to prevent a person who has been issued with a suspension from carrying out disability work, to prevent the risk of harm to people with disability. However, this is also balances the rights of the person, by providing that the employer must not terminate the person's engagement solely or mainly based on a notice being issued about the suspension being issued. This is consistent with the current policy position under the DSA and the WWC Act. The person will continue to be allowed to carry out work for the service provider, as long as it is not disability work.

Section 114 provides the suspension of the person's clearance ends if the chief executive decides to cancel the clearance under section 115, the suspension ends under section 118 or the clearance is otherwise cancelled under this division.

Section 115 provides the chief executive may decide whether or not to cancel the person's suspended clearance on the chief executive's initiative or the person's application under section 116. If the chief executive decides the person poses an unacceptable risk of harm to people with disability, the chief executive must cancel the person's clearance. Otherwise, the chief executive may decide to end the person's suspension and not cancel their clearance.

Section 116 provides if the person's clearance has been suspended for at least 6 months, the person may apply to the chief executive to end the suspension. The chief executive is not

required to decide the application if the reasons set out under subsection 116(2) apply. This implements clauses 80 and 84 of the IGA. If the chief executive decides to not make a decision under section 115 and continue the suspension, the chief executive must give the person a notice under subsection 116(4). This reflects the policy intent that a suspension may be imposed for as long as necessary for the chief executive to undertake a reassessment of the person's clearance.

Section 117 outlines the actions the chief executive must take if the chief executive decides to cancel a person's clearance under section 115. This includes issuing an exclusion and providing a notice to the person that states the information under subsection 117(1)(c). The chief executive must also give a notice to each notifiable person, and each potential employer, that states the information under subsection 117(1)(d). This includes that it is an offence for an NDIS service provider or funded service provider to engage, or continue to engage the person to carry out disability work. This refers to the offences under sections 55 and 59(2)(a).

Section 118 clarifies if the chief executive decides, under section 115, to not cancel the person's clearance and end the suspension of the clearance, then the suspension of the clearance ends. The chief executive must give a notice that states the suspension of the person's clearance has ended to the person, each notifiable person for the person, and each potential employer that was given notice about the suspension under section 112(2). If applicable, the chief executive must also return the person's original clearance card to the person. This is to avoid having to create a new clearance card for a person.

Subdivision 3 Cancelling clearance by chief executive

Section 119 provides the chief executive must cancel a person's clearance if the person becomes a disqualified person. This reflects the presumptions regarding a person's risk of harm to people with disability under clauses B4 and B9 of the IGA.

Section 120 provides the chief executive must cancel a person's clearance if the chief executive becomes aware the decision to issue the clearance was based on information that was wrong or incomplete and decides the person poses an unacceptable risk of harm to people with disability. A risk assessment of the person conducted before the chief executive makes a decision mentioned in subsection 120(1)(b) must include consideration of the correct or complete information.

Section 121 provides that the chief executive must cancel a person's clearance if the chief executive becomes aware of information that was not known at the time of when the person's clearance was issued and in the chief executive's opinion, that information is relevant to whether the person poses a risk of harm to people with disability. If based on this information the chief executive decides the person poses an unacceptable risk of harm to people with disability, they must cancel the person's clearance. This section does not apply if the person's clearance is suspended under section 111.

Section 122 outlines the actions the chief executive must take, if the chief executive is required or decides to cancel a person's clearance under subdivision 3. This includes cancelling the person's clearance, issuing an exclusion to the person and giving the person a notice that states the information under subsection 122(c).

Section 123 requires the chief executive to give a notice to each notifiable person, that the person's clearance has been cancelled, the person has been issued an exclusion and it is an offence for an NDIS service provider or funded service provider to engage or to continue to engage the person to carry out disability work. This refers to the offences under sections 55 and 59(2)(a). A notice may also be given to a potential employer.

Subdivision 4 Cancelling clearance on holder's request

Section 124 provides a person may ask the chief executive to cancel the person's clearance and the request must be made in the approved form and the approved way.

Section 125 provides the chief executive must refuse a request under section 124, to cancel a person's clearance, if the person's clearance is suspended; the chief executive is conducting, or proposing to conduct a risk assessment of the person under subdivision 1; or the chief executive is aware the person has become a disqualified person. The chief executive must give the person a notice that states matters listed in subsection 125(2).

Section 126 provides if a person's request under section 124 to cancel is not refused by the chief executive under section 125, the chief executive must cancel the person's clearance and give the person a notice that states the information under subsection 126(2)(b). This includes that the person must return their clearance card to the chief executive immediately after the notice is given, unless the person has a reasonable excuse and it is an offence for the person to be engaged in, or to carry out disability work or carry out disability work as an NDIS or State sole trader, other than allowed under division 2.

Section 127 provides if the chief executive cancels a person's clearance under section 126, the chief executive must give a notice to each notifiable person that states the information outlined under subsection 127(1). A notice may also be given to a potential employer for the person.

Subdivision 5 Return of clearance card

Section 128 applies to a person if the chief executive gives the person a notice that states the person's clearance is suspended or cancelled. The person must return the person's clearance card for the clearance to the chief executive immediately after the notice is given, unless the person has a reasonable excuse. It is an offence for a person not to comply with this obligation. The maximum penalty that may apply for this offence is 100 penalty units.

The intent of this provision to minimise the risk caused by persons who have had their clearance cancelled or suspended from continuing to possess a valid clearance card.

This is consistent with the offence provisions that are provided for under the WWC Act. This ensures Queensland has a strong quality and safeguards framework in place which is consistent, to the extent possible, across both the working with children card check and the NDIS and state disability worker screening framework.

Division 7 Cancellation of exclusion

Section 129 provides the chief executive must conduct a risk assessment of a person before making a decision under this division about whether the person poses an unacceptable risk of

harm to people with disability. Division 4, subdivision 3 applies for conducting the risk assessment with necessary changes.

Section 130 outlines when a person who holds an exclusion, other than a disqualified person, may apply to the chief executive to cancel the exclusion. This includes if the application is made more than 5 years after the exclusion was issued and, if the person has previously applied to cancel the exclusion under this section – the most recent previous application was decided. Alternately, a person may also apply to the chief executive to cancel the exclusion if, a court decides an appeal under section 138K, and sets aside a decision that information is investigative information about the person, or, there has been a significant or exceptional change in the person's circumstances since the exclusion was issued. This implements the period of duration required to elapse before being able to apply to cancel an exclusion, as specified under clause 77 of the IGA.

Section 131 provides that an application to cancel an exclusion must be in the approved form, made in the approved way, signed and accompanied by the fee prescribed by regulation. The person may also state anything in the application considered relevant to the chief executive's decision to cancel the exclusion.

Section 132 provides if a person made an application under section 130, the chief executive may cancel the person's exclusion if the chief executive is satisfied the person does not pose an unacceptable risk of harm to people with disability. The chief executive must undertake a risk assessment, under section 129, before making this decision.

Section 133 provides the chief executive may cancel the person's exclusion if satisfied the person does not pose an unacceptable risk of harm to people with disability and any of the scenarios under subsection 133(2) apply. The chief executive may act under this section whether or not a person made an application under section 130.

This includes when an exclusion was issued because the person was a disqualified person and is no longer a disqualified person, the chief executive is satisfied the decision to issue an exclusion was based on wrong or incomplete information, or the chief executive becomes aware of information that was not known or available to the chief executive when the exclusion was made and, in the chief executive's opinion, is relevant to whether the person poses a risk of harm to people with disability. This provides the chief executive with the necessary flexibility when considering whether to cancel an exclusion.

Subsection 133(3) clarifies that a risk assessment of the person conducted before the chief executive makes a decision due to a reason under subsection 133(2)(b) or (c) must include conside ration of the correct and complete information or the further information.

Section 134 outlines the actions the chief executive must take if a decision is made to cancel an exclusion under this division. This provision permits (not requires) the chief executive to issue the per son with a clearance, but only if the chief executive is satisfied the person is a person who may apply for a clearance under s 65 or 66. It is not intended that a person will be automatically be issued a clearance under subsection (2) because the exclusion was cancelled under subsection (1). A new application will be required by the relevant person in order to comply with the necessary application requirements, including requiring an employer link and satisfying the criteria on application. Subsection 134(2) provides that the chief executive may decide a disability worker screening application after the exclusion is cancelled without

conducting a risk assessment, if the chief executive is not aware of the existence of information when the decision to cancel the exclusion was made.

Section 135 provides that if a person made an application under section 130 to cancel their exclusion, and the chief executive has decided to refuse the application, the chief executive must give the person a notice stating certain particulars listed in subsection 135(2).

Division 8 Provisions about obtaining, giving and dealing with information

Subdivision 1 Preliminary

Section 136 outlines who is *a **relevant person***. The aim of this division is to outline the circumstances in which relevant information can obtained, used and/or disclosed.

Section 137 provides where the chief executive may ask an entity for information about a relevant person. The chief executive may include information that is reasonably necessary to identify a person. This includes, for example, but is not limited to, the person's name, address, sex, date and place of birth and information about the person's clearance. The chief executive may also disclose this information to an entity that is authorised under this division or another law to give information about relevant persons to the chief executive under subsection 137(3).

Section 138 outlines the circumstances when an authorised entity is not required to give, or disclose the existence of, the requested information to the chief executive under this division. Subsection 138(1) lists the circumstances where it may be reasonable for an entity not to provide the information requested. For example, this includes if the giving of information would prejudice an investigation, contravene a law or enable the existence or identity of a confidential source of information to be ascertained.

Subdivision 2 Obtaining police information and related information from the police commissioner

Section 138A provides a requirement under this subdivision for the police commissioner to give the chief executive information about a relevant person applies only to information in the commissioner's possession or to which the commissioner has access, and despite the *Youth Justice Act 1992*, part 9.

Section 138B defines the meaning of ***criminal history event.***

Sections 138C provides that the chief executive may ask the police commissioner for police information about a relevant person. The police commissioner must comply with a request under subsection 138C(1) by giving the chief executive the police information that exists about the relevant person or telling the chief executive there is no police information about the relevant person. If there is police information about a relevant person the chief executive may then ask the police commissioner for certain information listed in subsection 138C(3) including, for example, a brief description of the circumstance of a conviction, charge or investigative information and a section 93A transcript (as defined in the *Evidence Act 1977 (Qld))* relating to an offence mentioned in the police information. Subsections 138C(5) provides that it is the chief executive's responsibility to inform the police commissioner if the information requested is no longer needed.

Section 138D provides the chief executive may request domestic violence information from the police commissioner if the chief executive reasonably believes a domestic violence order may have been made against a relevant person. The definition of domestic violence information is defined (schedule 8) and means information about the history of domestic violence orders made against the person (domestic violence orders means a protection order or a temporary protection order). The police commissioner must comply with a request under subsection 138D(2) by giving the chief executive domestic violence information that exists about the person or tells the chief executive there is no domestic violence information about that person. If there is domestic violence information about the person, the chief executive may then ask for a brief description of the circumstances such as the history mentioned in the domestic violence information. The police commissioner must comply. This section gives effect to clause 58(c) of the IGA that NDIS worker screening units may consider domestic violence orders and related information about an applicant's eligibility for clearance.

Section 138E applies if the police commissioner reasonably suspects a person is a relevant person and a criminal history event happens in relation to the person. The police commissioner has a positive obligation to notify the chief executive of the event. Subsection 138E(3) outlines the information that must that must be included in the notice, to the extent it relates to the criminal history event.

Section 138F provides details on the particular information to be given about a prohibition order or an offender prohibition disqualification order. This includes the duration of the order, and for an offender prohibition order— a brief description of the conduct that gave rise to the order, and whether the order is or was a temporary order or a final order under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*. For an application, if the order is not or was not made, information can be given about: the reasons the application was made; the reasons the order was not made; and if the application was for an offender prohibition order—the reasons given by the magistrate or court hearing the application for deciding not to make the order.

Section 138G provides a person must be notified if the police commissioner has decided that certain information about them is investigative information and the police commissioner has given that information to the chief executive. This ensures a person is informed that their information is considered to be investigative information and that it has been shared for particular screening purposes.

Section 138H provides that information given to the police commissioner under this division must not be accessed or disclosed for any purpose, other than a purpose under this part or relevant to law enforcement. Also, the information must not be used for any purpose, other than a purpose under this part. However, this does not apply to information the police commissioner already had before the chief executive provided it.

Subdivision 3 Provisions about investigative information

Sections 138I – 138L provides for the provision of investigative information.

Section 138I provides the police commissioner may decide that information related to the conduct of a person (the investigated person) is investigative information if satisfied there is or was evidence that, at the time of the investigated person's conduct, it constituted a schedule 6

or 7 offence (the alleged offence) committed against another person (the complainant); and the matters stated in subsection 138I(2) apply in relation to the alleged offence.

Section 138J applies if the police commissioner decides that information is investigative information about a person, the investigative information has been given to the chief executive, and a person is then issued with an exclusion. Subsection 138J(2) provides that the person may appeal to the Magistrates Court about a decision that information, given to the chief executive, is investigative information. Subsections 138J (3) and (4) outline the process for the appeal.

Section 138K provides that a Magistrates Court hearing an appeal under section 138J, about whether information given to the chief executive is investigative information, must decide afresh whether information given to the chief executive is investigative information.

Section 138L outlines the consequence of the Magistrates Court's decision on appeal about investigative information under section 138K.

Subdivision 4 Obtaining police information from other State entities

Sections 138M and138N outlines the processes for obtaining information from the director of public prosecutions and the chief executive of corrective services.

Section 138M provides that if the chief executive is aware of a charge or conviction of an offence by a relevant person, the chief executive may, by notice, ask the director of public prosecutions for information about the relevant person as outlined in subsection 138M(1). This includes circumstances of the charge or conviction, evidentiary material or a statement of reasons why a charge was not proceeded with. ***Evidentiary material*** is defined under subsection 138M(6) and may include, for example, a witness statement, an indictment or a record of an interview including a section 93A transcript.

Subsection 138M(2) provides the director of public prosecutions may comply with the request for information from the chief executive, if the director reasonably believes the information may help the chief executive to perform the chief executive's screening functions in relation to the person.

Subsection 138M(3) provides the director of public prosecutions must not give evidentiary material about an offence that relates to a person other than the relevant person. Subsection 138M(4) provides the director of public prosecutions is authorised to give this information, or a document containing this information, to the chief executive despite any other Act or law that requires the confidentiality of this information be maintained.

Section 138N provides the chief executive of the department that administers corrective services must give the chief executive a notice about each person who is subject to a sexual offender order. Subsection 138N(2) provides details on what must be included in the notice.

Subdivision 5 Obtaining disciplinary and other information from particular entities

Section 138O defines ***disciplinary information*** about a person is information about disciplinary action taken against the person, which includes:

- a foster carers' or kinship carers' certificate has been amended, suspended or cancelled under the *Child Protection Act 1999*;

- an approved early education or care service providers' provider or service approval or supervisor certificate has been amended, suspended or cancelled under the *Education and Care Services Act 2013* or the Education and Care Services National Law (Queensland);
- a person has been given a prohibition notice under the *Education and Care Services Act 2013*, Education and Care Services National Law (Queensland) or repealed Child Care Act 2002;
- a person's license to conduct a child care service under the repealed *Child Care Act 2002* has been amended, suspended or revoked; or
- the person's registration or permission to teach under the *Education (Queensland College of Teachers) Act 2005* or repealed *Education (Teacher Registration) Act 1988* was suspended, cancelled or otherwise affected under subsections 138F(e) or (f).

The use of the term 'amended' throughout subsection 13O(2) is so that positive changes to a person's approval, certificate or license are not captured as disciplinary action. This section is only meant to capture adverse disciplinary actions against a person.

Section 138P provides the chief executive may ask any of the prescribed entities (referred to as a ***State entity***) for disciplinary information about a relevant person. This list of prescribed entities includes the chief executive responsible for the administration of disciplinary action taken under the *Child Protection Act 1999*, the chief executive responsible for disciplinary action taken under the education and care services legislation and the Queensland College of Teachers, in relation to disciplinary action taken under the *Education (Queensland College of Teachers) Act 2005* or the repealed Educ*ation (Teacher Registration) Act 1988*.

This section gives effect to clause 58(f) of the IGA that NDIS worker screening units may take into account employer or other professional records or information when assessing an applicant's eligibility for clearance.

Section 138Q provides a State entity prescribed under section 138P must comply with a request by the chief executive seeking disciplinary information about a relevant person, if the State entity reasonably believes the information may help the chief executive to perform the chief executive's screening functions. Subsection 138Q(3) outlines what must be included as part of the provision of disciplinary information to the chief executive. Subsection 138Q(4) states that disciplinary information must not include information that identifies or is likely to identify a particular child.

Section 138R provides if the chief executive reasonably believes that a prescribed entity has information, other than disciplinary information, that is relevant in determining whether a person poses a risk of harm to people with disability, the chief executive may ask the entity for that information. Subsection 138R(4) provides that this section applies subject to the *Child Protection Act 1999*, section 186. In this section **prescribed entity** is defined in subsection 138R(5) Other entities may also be prescribed by regulation under subsection 138R(5)(c) for this section and if an entity is prescribed is enabled to enter into an information sharing arrangement with the chief executive to clarify the process for confidentially sharing relevant information. Upon receiving a notice by the chief executive requesting the information, the entity may provide the information if the entity reasonably believes the information is relevant to the chief executive's screening functions.

This section gives effect to clause 58(c) of the IGA that NDIS worker screening units may take into account child protection orders and/or related information when assessing an applicant's eligibility for clearance.

Section 138S provides that if a State entity gives disciplinary information about a relevant person to the chief executive under this subdivision and that information changes, the State entity must give the chief executive a notice about the change in the information. For example, if a kinship carers' license is amended from being suspended to cancelled, the chief executive responsible for the administration of the *Child Protection Act 1999* must update the chief executive of this change in disciplinary information. This obligation to update the chief executive does not apply to other types of information prescribed in section 138R.

Subdivision 6 Obtaining information about person's mental health

Section 138T provides the chief executive may obtain information about a person's mental health in circumstances where: the chief executive is deciding whether a relevant person poses an unacceptable risk of harm to people with disability; the relevant person was charged with, or convicted of, a serious offence or an offence relating to, or involving, a person with disability; and the chief executive reasonably believes it is necessary to consider the relevant person's mental health to make the decision. Other than for the reasons listed in subsection (1) the chief executive is not authorised to request and obtain mental health information about a person. Subsection (2) outlines the matters that may be considered when determining whether it is necessary to consider a relevant person's mental health as mentioned in subsection (1)(c).

Section 138U provides the chief executive may seek a relevant person's consent, by notice, to be examined by a registered health practitioner to enable the health practitioner to prepare a report about the relevant person's mental health, for the chief executive's screening functions. Subsection (2) outlines the details that must be included in the notice. This includes the requirement to notify the relevant person that if they do not consent, the chief executive may withdraw the relevant person's disability worker screening application or decide whether the relevant person poses an unacceptable risk of harm to people with disability without considering a report about the relevant person's mental health.

Section 138V outlines the process for the chief executive to obtain a report by a registered health practitioner, regarding a person's mental health, where the person has given consent under section (1)(c). The chief executive must give a copy of the person's consent to the registered health practitioner and the registered health practitioner may give the report to the chief executive despite any other Act or law that would otherwise require the confidentiality of the report be maintained.

Section 138W provides the chief executive must bear the costs for the following amounts charged by the registered health practitioner for preparing a report about the relevant person's mental health under this subdivision: the amount charged for examining the person for the report and the amount charged for preparing the report.

Section 138X outlines when the chief executive may, by notice, seek the relevant person's consent to obtain certain information about the person from the Mental Health Court or Mental Health Review Tribunal. Subsection (3) lists the matters that must be included in the notice to the relevant person.

Section 138Y provides for the process for the chief executive to obtain information from the Mental Health Court where the circumstances under subsection (1) apply to a relevant person. Subsection (5) provides the court complies with the chief executive's request by giving the following information: the court's decision about the matter and reasons for the decision; a copy or written summary of any expert's report about the person received in evidence by the court, including, for example, a medical report, psychiatrist's report or expert report that accompanied the reference of the matter to the court; transcripts of a hearing conducted if the court directed the transcript may be given to a party of the hearing or another person.

Section 138Z provides for the process of obtaining information from the Mental Health Review Tribunal, where the circumstances under subsection (1) apply to a person. Subsection (5) provides the tribunal complies with the request by giving the chief executive the following information: the tribunal's decision on the review and reasons for the decision; a copy or written summary of an expert's report about the relevant person received by the tribunal in the proceeding for the review, including, for example, a report about an examination of the person under the *Mental Health Act 2016*, section 454; transcripts of any hearing conducted for the review that the tribunal has directed may be given to a party to the hearing or another person.

Section 138ZA provides that if the circumstances in subsection (1) apply, the chief executive must give certain information to the registered health practitioner as soon as practicable after receiving the information. Subsection (3) provides the registered health practitioner must not make a record of the information, disclose the information to anyone, give anyone access to the information, or include any details of the information in a report about the person's mental health prepared under this subdivision. The maximum penalty for subsection (3) is 100 penalty units or 2 years imprisonment.

Section 138ZB provides for information that cannot be disclosed to relevant person under confidentiality order. This section applies if information given to the chief executive under section 138Y or 138Z includes information (restricted information) that cannot be disclosed to the person under a confidentiality order under the *Mental Health Act 2016*, section 696 or 722. The chief executive must not keep the restricted information, or a copy of the information, after giving the information to a registered health practitioner under section 138ZA, or use the restricted information for any purpose.

Section 138ZC provides that if the chief executive is given information, other than restricted information under subsection (1), about the relevant person under section 138Y (information from the Mental Health Court about a person's mental health) or 138Z (information from the Mental Health Review Tribunal about a person's mental health) and is deciding whether the relevant person poses an unacceptable risk of harm to people with disability, the chief executive may use the information to make the decision only if the relevant person consented to the chief executive using the information to make the decision. For example, a person may give consent for the Mental Health Court to give information about their mental state to the chief executive.

If a person's consent includes consent for the chief executive to use the information provided to the Court or Tribunal for the purposes of making a decision about whether the person poses an unacceptable risk of harm to people with disability, the chief executive has the authority to use that mental health information about a person. However, if the person has not consented to their mental health information being used for this purpose, the chief executive is not authorised to use this information obtained from the Court or Tribunal about a person to risk assess.

Section 138ZD authorises the Mental Health Court and Mental Health Review Tribunal to give the chief executive information under sections 138Y or 138Z, despite any other Act or law, including a law that that requires confidentiality is maintained for this information. For example, information may still be given to the chief executive despite a confidentiality order being imposed under the *Mental Health Act 2016* which would otherwise prevent that information from being disclosed. Section 227 of the DSA also provides that the chief executive must only use this information for certain purposes under the DSA.

Section 138ZE provides for safeguards around the information or documents given by the Mental Health Court under section 138Y or the Mental Health Review Tribunal under section 138Z. For example, the Mental Health Court or Mental Health Review Tribunal are prohibited from providing any record of material that has been given to the court or tribunal under sections 155, 163 or 742 of the *Mental Health Act 2016*.

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

Section 138ZF provides that this subdivision applies to information about a person that the chief executive was given access to or is in the chief executive's possession. For example, if the chief executive has relevant information about a person (such as police, investigative, disciplinary or mental health information) in its possession, the chief executive is authorised to give this information to the chief executive (working with children) if section 138ZG applies or to an interstate worker screening unit if section 138ZH applies.

Section 138ZG enables the chief executive to give information about a person to the chief executive (working with children) if the chief executive reasonably believes the information is relevant to the functions of the chief executive responsible for the working with children check under the WWC Act. Without limiting the ability to share information under subsection 138ZG(1), this information may include information about a disability worker screening application, information about a clearance, interstate NDIS clearance, exclusion or interstate NDIS exclusion held by a person, police information about a person, investigative information, disciplinary information or NDIS disciplinary or misconduct information about a person, and information about a person's mental health. This could also include other information that the chief executive reasonably believes necessary to share that is relevant to a working with children check, such as child protection information or domestic violence information. The intent of this section is to allow the Blue Card system and disability workers screening system to share relevant information required to risk assess a person and reduce duplication of requests and increase efficiencies, where possible.

Section 138ZH enables the chief executive to give information about a person to an NDIS worker screening unit if the chief executive is aware a person holds an interstate NDIS clearance or has an interstate working with children authority issued by a working with children screening unit under a corresponding law; or the NDIS worker screening unit or working with children screening unit has asked for information about a person to decide an application made by that person under a corresponding law. This includes police information or other information considered relevant to the functions of the NDIS worker screening unit or working with children unit under a corresponding law. However, subsection 138ZH(4) specifically prohibits the chief executive sharing a section 93A transcript or information contained in a section 93A transcript, given its particularly sensitive nature.

Given the application of section 138ZF and subdivision 6 (obtaining information about a person's mental health) in this division, the chief executive can only give another worker screening unit mental health information about a person if that information is already in the chief executive's possession.

Section 138ZI provides that the chief executive may give information about a person to the NDIS commission under an arrangement between the NDIS commission and the chief executive for any of the following reasons:

- to add it to the NDIS worker screening database;
- communicating information to a person or a notifiable person by the NDIS commission, for example, through the database;
- if the chief executive reasonably believes it is relevant to the NDIS commission's functions.

This includes, for example, information about an NDIS worker screening application, an NDIS clearance, including the suspension or cancellation of that clearance, an NDIS exclusion, including the cancellation of the exclusion or a notice given to a person about an NDIS worker screening application they have made. This enables the NDIS commission to conduct its oversight and monitoring functions under the NDIS Act and as agreed to under the IGA.

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

Section 138ZJ defines an ***authorised entity*** for a person.

Section 138ZK enables the chief executive to give certain information to an authorised entity about a person's State worker screening application, State clearance or State exclusion or a worker screening notice about a person that is given, or required to be given, to the authorised entity under the DSA, including by allowing the authorised entity to access this information electronically. The ability of the chief executive to share this information with an authorised entity reflects that under the DSA, these entities may have certain rights or obligations which require access to this information. For example, new section 59 provides that a funded service provider must not engage, or continue to engage, a person to carry out State disability work unless the person holds a clearance.

Section 138ZL provides that if a person is given or has access to information obtained under section 138ZK, the person must not use, disclose or give access to that information to anyone else unless authorised under subsection 138ZL(3). For example, information about a person may be used, disclosed or accessed if it is to identify, assess or monitor a risk, or potential risk, of harm to a person or people with disability in relation to the person carrying out disability work, it is to comply with an obligation under this Act, or is authorised under another law. The maximum penalty for failing to comply with this requirement is 100 penalty units.

Subdivision 9 Other provisions

Section 138ZM provides for a validation tool to assist a requester to find out particular information about whether a person holds a clearance. In making the request (in the approved form and in an approved way), the requester must disclose certain information such as their name in which the person's clearance is issued and the person's registration number.

Section 138ZN provides that the chief executive must enter into a written arrangement with the chief executive (working with children) about asking the chief executive (working with children) for information, or giving the chief executive (working with children) information, under this part or the WWC Act; and the chief executive (working with children) asking the chief executive, or giving the chief executive information, under this part or the WWC Act. This is intended to streamline the process of confidentially sharing information between the two pre-employment screening units and reduce the duplication of having both Blue Card Services and the chief executive requesting the same types of information from other prescribed entities separately. This is intended to reduce the regulatory burden, share the same relevant information and maintain confidentiality of sensitive information.

Section 138ZO provides that the chief executive may enter into a written arrangement with the police commissioner or any other entity about asking for, and/or giving information under this part.

Section 138ZP requires the chief executive to make guidelines consistent with this Act, for dealing with information obtained under this part. Guidelines are intended to ensure natural justice is afforded to a person that information is obtained about, only relevant information is used to make decisions, and decisions based on the information are made consistently. If requested by a person, the chief executive must give a copy of the guidelines to the person free of charge.

Section 138ZQ provides that if the police commissioner is required to give a notice to a person under this part, the police commissioner may, by notice, state the person's address or addresses known to the police commissioner and ask whether the chief executive knows other information about the person's address. If known, the chief executive must give this information to the police commissioner. However, the information must not be used, disclosed or accessed for a purpose other than to give notice under this part. This ensures confidentiality when dealing with this type of sensitive information.

Division 9 Review and appeal

Subsection 138ZR(1) outlines the decisions of the chief executive which are a ***reviewable decision***. Subsection 138ZR(2) provides that a person mentioned in subsection 138ZR(1), in relation to a reviewable decision, is an ***affected person*** for the decision. This approach ensures NDIS and State worker screening processes and decisions incorporate natural justice. The policy intent is that if a person is issued with an exclusion, based on a conviction for a disqualifying offence, they cannot have that decision reviewed unless it is based on the grounds that the chief executive mistakenly identified the person as a disqualifying person.

Section 138ZS provides that the review process must start with an internal review. This means that an affected person for a reviewable decision may only apply to the Queensland Civil and Administrative Tribunal (QCAT) if the person has applied for an internal review and the internal review application has been decided, or taken to have been decided, under division 9.

Section 138ZT provides that an affected person may apply for internal review of a reviewable decision under this division. However, if the chief executive has made a decision based on the fact that a person is a disqualified person, the person may apply for an internal review of the decision only on the ground that the chief executive mistakenly identified the person as a

disqualified person. If an affected person has not been given an information notice about the decision, including the reasons for why the decision was made, the person may ask for such a notice. Even if the chief executive fails to give an information notice to a person about a reviewable decision, this does not limit, affect or prevent a person from applying for an internal review of the decision. This limitation on who may apply for internal review implements clauses 82 – 84 of the IGA.

Section 138ZU specifies the requirements for an application for internal review of a reviewable decision. The application must be in the approved form and made to the chief executive within 28 days after the person is given a notice for the decision or becomes aware of the decision. The chief executive may, at any time, extend the period, beyond 28 days, within which the application may be made. The decision made by the chief executive remains operable and current despite an application for an internal review being made.

Section 138ZV establishes the process for internal review. The chief executive must, within 28 days after receiving an application for internal review of a reviewable decision: review the decision and decide to either confirm or substitute another decision for the reviewable decision. The internal review process must be conducted by a person who did not make the original decision, and is more senior than the person who made the original decision, unless the original decision was made by the chief executive personally.

The chief executive must give the affected person a QCAT information notice (defined in Schedule 8). If the chief executive does not give the affected person a QCAT information notice within the period required under subsection 138ZV(1) or a longer period notified under subsection 138ZV(2), the chief executive is taken to confirm the reviewable decision. This means that the original decision made remains current. The intent of this provision is to ensure procedural fairness in the internal review process by providing that the review is conducted by a person more senior than the original decision-maker and an application is resolved in a timely way, where possible.

Section 138ZW provides that a person who has been given a QCAT information notice for an internal review may apply to QCAT for an external review of the internal review decision. This means that an affected person must have sought an internal review, received a decision based on that internal review before seeking an external review by QCAT. The intent of this provision is to provide for natural justice and procedural fairness by enabling the external review of reviewable decisions.

Section 138ZX provides for the stay of operation of particular decisions made by QCAT. This section applies to a QCAT decision made about an internal review decision under section 138ZW, to either issue a clearance to a person or end the suspension of a person's clearance. The QCAT decision does not take effect until the end of the period within which an appeal against QCAT's decision may be started or, if an appeal against QCAT's decision has started, the appeal is decided or withdrawn. This section applies despite sections 145 and 152 of the *Queensland Civil and Administrative Tribunal Act 2009*.

Section 138ZY clarifies the effect of an applicant becoming a disqualified person during a review process. If an affected person becomes a disqualified person during the process of seeking an internal review or external review of a reviewable decision, the application for review and any related proceedings must be dismissed, even if this would be contrary to a direction made by the Court of Appeal. In addition, any appeal of a QCAT decision must also

be dismissed. This provision reflects that a person who is convicted of a disqualifying offence must be automatically disqualified as they present an unacceptable risk of harm to a person with disability.

Division 10 Miscellaneous provisions

Section 138ZZ provides a person must not give information, or a document containing information, under part 5, that the person knows is false or misleading in a material particular to the chief executive, an NDIS service provider or funded service provider that engages, or is proposing to engage, the person. The maximum penalty for this offence is 100 penalty units or 2 years imprisonment.

Section 138ZZA enables the chief executive to approve an information system for generating, sending, receiving, storing or otherwise processing electronic communications between the chief executive and another person under part 5. The chief executive may also approve an information system for generating a decision under this part, other than a decision that requires a risk assessment to be conducted of a person before making the decision or a decision that cannot be generated by the information system which are to be prescribed by regulation. This may include, for example, a decision to issue a clearance where a person returns no assessable information. The chief executive must take all reasonable steps to ensure that a decision generated by an information system is correct. A decision generated by an information system is taken to be a decision made by the chief executive.

Section 138ZZB applies if another provision of this part requires the chief executive to give notice about a person to a notifiable person and the person has an NDIS application or holds an NDIS clearance or exclusion. Despite any provision to the contrary in this Act, the chief executive is not required to give notice to a notifiable person if the chief executive is satisfied that the information about a person has been communicated to a notifiable person by the NDIS Commission.

Clause 12 consequentially amends section 139 (Purpose of part 6) to clarify that it applies to NDIS supports or services as well as disability services. These changes ensure consistency with other amendments to the DSA that are required to update the terminology used to refer to NDIS disability work and State disability work.

Clause 13 consequentially amends section 140 (Application of part) to clarify that the part applies in relation to the following service providers that provide NDIS supports or services or disability services to an adult with an intellectual or cognitive disability: an NDIS service provider; a funded service provider; the department; and another service provider prescribed by regulation. These changes ensure consistency with other amendments to the DSA that are required to update the terminology used to refer to NDIS disability work and State disability work. It does not change the current policy intent.

Clause 14 replaces section 205 (Positive notice is evidence of holding positive notice) to provide that a clearance card issued to a person is evidence that a person holds a clearance.

Clause 15 amends section 206 (Indictable and summary offences) to provide that an offence is an indictable offence that is a crime, if the maximum penalty for the offence is 500 penalty units or more or 5 years imprisonment or more. This is consistent with the threshold for indictable offences under the WWC Act.

Clause 16 amends section 207 (Proceedings for indictable offences) to clarify the procedure for proceedings for indictable offences under the DSA.

Clause 17 consequentially amends section 216 (Application of division) to clarify that the division applies in relation to the following service providers that provide NDIS supports or services or NDIS disability services to an adult with an intellectual or cognitive disability: an NDIS service provider; a funded service provider; the department; and another service provider prescribed by regulation. This ensures consistency with other amendments to the DSA to update the terminology used to refer to NDIS disability work and service providers under the NDIS. It does not change the current policy intent.

Clause 18 amends section 222 (Establishment of Ministerial advisory committees) to provide that a Ministerial advisory committee may be established for disability services and NDIS supports or services.

Clause 19 replaces section 227 (Confidentiality of information about criminal history and related information) with new section 227 (Confidentiality of police, disciplinary, mental health and other protected information). New section 227 applies to a person who is, or has been, a public service employee in the department and in that capacity, obtained protected information about another person. ***Protected information*** is defined to include: police information and related information; disciplinary information; NDIS disciplinary information or misconduct information; mental health information under part 5, division 8, subdivision 6; and other information given to the chief executive for screening purposes.

The person must not use, disclose or give access to protected information to anyone else unless authorised under subsection 227(4). The maximum penalty for this offence is 100 penalty units or 2 years imprisonment. The policy intent of this offence is to protect the confidentiality of information obtained under the DSA, and to ensure that information is only used as authorised under the DSA. This is largely consistent with the purpose and obligations under former section 227, which also continue by the way of a transitional provision under section 382.

This is consistent with the principles for nationally consistent NDIS worker screening under clause 15(f) of the IGA which includes privacy and appropriate use of information, specifically, that an individual's information obtained in the course of conducting an NDIS worker screening assessment will not be used for an improper purpose and will be protected from inappropriate disclosure.

Clause 20 consequentially amends section 228 (Confidentiality of other information) to clarify that section 228 applies to confidential information other than protected information under section 227(2). It also amends subsection 228(3)(c) to apply to person contracted by the chief executive to provide NDIS supports or services.

Clause 21 consequentially amends section 229 (Power to require information or documents) to clarify that the power to require information applies to NDIS supports or services. These ensure consistency with other amendments to the DSA that are required to update the terminology used to refer to NDIS disability work and State disability work.

Clause 22 removes section 232 which allows the chief executive and the police commissioner to enter into written arrangement for information sharing. The intent of this section has been

included in new section 138ZM therefore making previous section 232 no longer necessary.

Clause 23 consequentially amends section 239 (Regulation-making power) of the DSA to remove redundant sections and renumber the provision.

Clause 24 inserts a new division 13 under part 9 to provide for the transitional provisions required for the Disability Services and other Legislation (Worker Screening) Amendment Act 2020.

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

Subdivision 1 Preliminary

Section 367 defines the terms used in Division 13 (Transitional provisions for the Disability Services and other Legislation (Worker Screening) Amendment Act 2020).

Section 368 clarifies that a term defined under the unamended Act, and not under the amended Act, has the meaning it had under the unamended Act.

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

Section 369 provides that on commencement of the Bill, a person with a current positive notice ('yellow card') or current positive exemption notice ('yellow card exemption') may continue to work in state disability work or NDIS disability work on that existing card. Yellow card or yellow card exemptions will be taken to be a clearance issued under new section 98 of this Bill. However, the effect of subsection 369(3) is that a clearance issued under this section will not be recognised as a portable clearance with other NDIS worker screening unit. The transitioned clearance ends unless it is cancelled earlier. It is cancelled if the person's positive notice under the Act before it was amended by this Bill has expired or if the person's positive exemption notice was due to end.

If required, the chief executive can rely on new section 69 to ask the person for more information in relation to their transitioned positive notice in order to risk assess under the new framework. If the relevant person does not provide the additional information as requested in the prescribed timeframe, the chief executive can withdraw the person's application.

The transitioned positive notice or positive exemption notice will have the same characteristics as an NDIS clearance except for the fact that transitioned clearances will not be portable across other NDIS jurisdictions. The intent is that validity periods of positive notices will continue from when they were issued under the previous part 5 and will not reset on commencement of the Bill.

If a person holds a positive exemption notice it ends on the day the working with children check authority ends, even if the working with children check authority is cancelled earlier. The chief executive can utilise the amended Act to cancel the clearance as required in this circumstance.

Subsection 369(6) provides that to remove any doubt, any person who is a disqualified person at commencement will have their clearance cancelled and exclusion issued.

Section 370 provides that suspensions and notices requiring a person to cease work made under the unamended Act will continue to have effect after commencement of the Bill, and will be treated as if it was a suspension issued under the new section 111. Subsection 370(3) provides that an application made under former sections 87 or 89 to cancel a person's suspended positive notice or positive exemption notice that has not been decided or withdrawn before commencement will be taken to be an application under the new section 116 to end a suspension. A suspension or application to end a suspension will be dealt with under the amended Act. Given the new decision making framework will apply with commencement of the Bill, a person will be required to wait six months from commencement of the Bill before being able to apply to cancel their transitioned suspended clearance.

Section 371 provides that existing negative notices and negative exemption notices issued before commencement will be taken to be an exclusion at the commencement of the Bill. In this situation, the person will be taken to be excluded from carrying out both NDIS and State disability work in Queensland. Subsection 371(3) clarifies that for the purposes of interstate NDIS worker screening, a negative notice or negative exemption notice will be taken only as a State exclusion issued under new part 5. In other words, an exclusion issued under this section is not portable across other jurisdictions. The intent is that any validity periods or timeframes attached to negatives notices will continue from when they were issued under the previous part 5 and will not reset on commencement of the Bill. A person can apply to cancel an exclusion five years after the negative notice or negative exemption notice was issued.

Section 372 applies if immediately before the commencement, a prescribed notice application or prescribed exemption notice application (e.g. a yellow card exemption application) about a person had been made but not decided, withdrawn or taken to be withdrawn, or a prescribed exemption notice application (yellow card exemption application) for a person given to the chief executive (working with children) before the commencement, is given to the chief executive after the commencement. The intention of this section is to severe the connection between a blue card and a yellow card exemption so that at commencement of the Bill, a yellow card exemption application is treated as an application for clearance under the new Act. If new section 65 applies (i.e. a person has applied for a yellow card exemption that, if it was made post commencement, would have been an application to work in the NDIS system), the application will be taken to be a NDIS worker screening application. If former section 66 applies (i.e. a person has applied for a yellow card exemption application that would have been captured in the State system if the application had been made post commencement of the Bill), the application will be taken to be a State disability worker screening application. If neither of these situations apply, the application lapses on commencement and the chief executive must notify the person under subsection 372(4)(b). If required, the chief executive can rely on section 69 to ask the person for more information in relation to their transitioned application in order to risk assess them. If a person is a disqualified person, their application will be dealt with under the new framework and an exclusion will be issued.

Section 373 applies if before commencement of the Bill, a person gave the chief executive consent under former section 50 to be screened and that person's consent has not been withdrawn nor has the chief executive made a decision about whether to issue a yellow card or yellow card exemption yet under the previous part 5. In this case, the person's consent is taken to be consent given under the amended Act for a State disability worker screening application.

Section 374 provides that the amended Act applies for dealing with, and deciding, a transitioned application under sections 372 or 373. The chief executive must give notice to the transitioned applicant within 1 month of receiving notice by the chief executive (working with children) under section 372(1)(b) or otherwise, 1 month after commencement of the Bill. If required, the chief executive can rely on section 69 to ask the person for more information in relation to their transitioned application in order to have the necessary information to risk assess them.

Section 375 is intended to capture people that are currently working and have applied for a positive notice or positive exemption notice before commencement as their current card is about to expire (e.g. a card renewal). This applies if, on commencement of the Bill, a person has a pending disability worker screening application on foot, is engaged to work for a relevant employer and does not hold a transitioned exclusion. This section also applies if the person is an applicant with a transitioned application. A transitioned applicant could be a sole traders or volunteers working for an NDIS service provider, funded service provider or the department carrying out disability services and holds a transitioned clearance or working with children clearance.

In this circumstance, until a relevant event happens, the person may continue to work without being subject to offences under associated with the 'no card, no start' policy under sections 53, 54, 59 and 61. Subsection (4) outlines what constitutes a ***relevant event***.

Subdivision 3 Application of new part 5 for particular persons

Section 376 provides for the application of new part 5 to registered health practitioners. If on commencement. the circumstances as outlined in subsection 376(1) apply to a person, and until a relevant event happens as outlined in subsection 376(3), the person may continue to carry out, or be engaged to carry out, the disability work and new sections 53, 54, 59 and 61 do not apply in relation to the person carrying out the disability work.

Subdivision 4 New serious offences and disqualifying offences

Section 377 provides for the effect of a conviction or charge for a new disqualifying offence or new serious offence. For the purposes of this Act, it does not matter when a person was charged with or convicted of a new disqualifying offence or new serious offence. Similarly, this Act applies in relation to a person who is charged with a new disqualifying offence or new serious offence even if the charge, or the acts or omissions constituting the alleged offence, happened before the commencement.

Subsection 377(3) provides that for the purposes of applying this Act to a transitioned clearance, a person convicted of a new disqualifying offence or new serious offence before the commencement is taken to have been convicted of the offence on the commencement, and a person the subject of a charge for a new disqualifying offence or new serious offence that has not been dealt with on the commencement is taken to have been charged with the offence on the commencement.

Section 378 applies if a person had made an application to cancel a negative notice or negative exemption notice before commencement and it has not been decided or withdrawn. If on commencement, the person is a disqualified person under the new framework , the application

is taken to be withdrawn. If the person is not a disqualified person, the amended Act applied for deciding the application.

Subdivision 5 Reviews and Appeals

Section 379 defines terms used under subdivision 5.

Section 380 applies if before commencement, a person made an application under former section 109 to have a reviewable decision reviewed and that application has not been withdrawn or decided. This section also applies if a person has made an appeal to the tribunal, started under the QCAT Act, relating to a reviewable decision and that application has not been withdrawn or decided. In this situation, the entity hearing the review or appeal must dismiss the application or appeal and any proceeding that relates to the application or appeal. This applies to a QCAT proceeding, even if the dismissal would be contrary to a direction of the Court of Appeal.

Subsection 380(4) provides the chief executive must make a substitute decision about the affected person under section 384.

Section 381 applies if a review under the unamended Act has not started before the amended Act commences and the time for starting a review has not yet expired. The affected person may ask the chief executive to make a substitute decision about them under section 383. However, this avenue does not apply if the person is a disqualified person given a disqualified person is automatically and permanently excluded. No fee is payable for an application made under subsection 383(2).

Section 382 applies if, under the unamended Act, a person has had the right to appeal under the QCAT Act against a decision about a part 5 reviewable decision and despite the amended Act commencing, the time for applying for an appeal has not yet expired. In this situation, the right to appeal ends on commencement. The person may apply to the chief executive, or the chief executive may act on the chief executive's own initiative, to make a substitute decision under new section 383. No fee is payable for an application made under subsection 382(3).

Section 383 applies if the chief executive is required to make a new decision about an affected person for a part 5 reviewable decision. For example, if a person has made an application to QCAT to have a reviewable decision reviewed but QCAT has not made a decision about the matter before commencement of the Bill, an affected person may ask the chief executive to review the matter afresh under the new framework. The new decision made by the chief executive will substitute the previous decision made.

Subsection 383(3) enables the chief executive to give the affected person a notice extending the period for another 28 days before the chief executive must comply with the requirements under subsection 383(2). The risk assessment required to be undertaken can only be conducted by a more senior person than the person who conducted the original reviewable decision, unless the original decision was made by the chief executive personally.

If the chief executive does not give a notice about QCAT information to the affected person under subsections 383(2) or (3), subsection (8) makes it clear that it will be as though the chief executive has decided that a person's transitioned exclusion will not be cancelled and if

person's transitioned clearance is suspended, the suspension will not be cancelled.

Subsections (9) clarifies that new sections 138ZW, 138ZX and 138ZY apply to any decision made by the chief executive under this section as though this new decision made was an internal review. For example, if a person receives the new decision under this section it will be treated like a decision made on an internal review. If the person is not satisfied with the outcome of this decision they have the same rights available for external review. For example, they may have the possibility of applying for external review under section 138ZW or apply for review by the Tribunal under section 138ZX.

Section 384 provides transitional arrangements regarding an appeal to the Magistrates Court about a decision that information is investigative information, under former section 113, made before commencement. The court may continue to hear and decide the appeal, and former sections 113 and 114 apply to the appeal, as if the amendment Act had not been enacted.

Section 385 applies if, before commencement, the person has a right to appeal to the Magistrates Court against a decision that information is investigative information and at commencement, the person has not started the appeal but still is within the period to do so. This section provides that the person may appeal to the Magistrates Court about the decision, with former sections 113 and 114 applying to the appeal, as if the amendment Act had not been enacted.

Subsections 384(4) and (5) and subsections 385(5) and (6) outline the new sections under the amended Act which apply, if the court either sets aside or confirms the decision appealed against. The appellant may apply under new section 130(1) to cancel the transitioned exclusion, if the court sets aside the decision. The appellant may apply for a new decision under section 383, corresponding to a relevant part 5 reviewable decision, if the court confirms the decision.

Subdivision 6 Other transitional provisions

Section 386 provides that things done before commencement in relation to a prescribed notice or exemption notice under the unamended Act before commencement may be considered to be taken to be done under the new Act on commencement.

Section 387 provides that the amended Act can apply to obligations or powers arising before commencement under the unamended Act in particular circumstances.

Section 388 outlines particular references in an Act or document and applies new terms of the amended Act.

Section 389 provides an application for an eligibility declaration made under the unamended Act that is not decided on commencement lapses. Section 389 also clarifies that an eligibility declaration held by a person immediately before commencement lapses.

Section 390 provides that the obligation to maintain confidentiality of information referred to under former section 227 continues to apply as though the amendment Act had not been enacted. The nature and effect of the confidentiality under section 228 will also continue to have the same effect despite the Bill commencing.

Section 391 provides for a transitional regulation-making power to prescribe the transitional

arrangements required by regulation.

Clause 25 replaces schedule 2 (Current serious offences).

Clause 26 amends schedule 2 (Current serious offences).

Clause 27 amends schedule 3 (Repealed or expired serious offences).

Clause 28 replaces schedule 4 (Current disqualifying offences).

Clause 29 amends schedule 4 (Current disqualifying offences).

Clause 30 amends schedule 5 (Repealed or expired disqualifying offences)

Clause 31 amends schedule 8 (Dictionary) to define key terms for the purposes of the DSA.

Part 3 Amendment of Working with Children (Risk Management and Screening) Act 2000

Clause 32 states that this part amends the *Working with Children (Risk Management and Screening) Act 2000* (WWC Act). It is noted this part of the Bill amends a number of sections of the WWC Act which are yet to commence (as part of the *Working with Children (Risk Management and Screening) and Other Legislation Amendment Act 2019*) and, as a result, the Notes on provisions refer to sections and use terminology which are yet to come into effect.

Clause 33 amends section 175 (Clearance required to employ person in regulated employment) to expand the aggravating circumstances for an offence committed under this section to include where the employee holds a disability exclusion under the *Disability Services Act 2006* (DSA) or an interstate NDIS exclusion and the employer knows or ought reasonably to know that the employee holds the disability exclusion or interstate NDIS exclusion.

Clause 34 amends section 176A (Person prohibited from regulated employment without clearance) to expand the aggravating circumstances for an offence committed under this section to include where the person holds a disability exclusion under the DSA or an interstate NDIS exclusion.

Clause 35 amends section 176C (Exemption required to employ police officer or registered teacher in regulated employment) to expand the aggravating circumstances for an offence committed under this section to include where the employee holds a disability exclusion under the DSA or an interstate NDIS exclusion and the employer knows or ought reasonably to know that the employee holds the disability exclusion or interstate NDIS exclusion. This amendment is consistent with the change made by clause 33 of the Bill.

Clause 36 amends section 176E (Police officer or registered teacher prohibited from regulated employment without exemption) to expand the aggravating circumstances for an offence committed under this section to include where the person holds a disability exclusion under the DSA or an interstate NDIS exclusion. This amendment is consistent with the change made by clause 34 of the Bill.

Clause 37 amends section 176H (Definitions for division) to add to and refine the definition of 'restricted employment'. In particular, the definition has been expanded to include employment that is not regulated employment under Schedule 1, part 1, section 6A(3)(b), as inserted by the Bill. This captures the employment of a person who is a secondary school student on work experience carrying out risk-assessed NDIS work, or providing disability services, under the direct supervision of a person who holds a working with children authority.

Consistent with the current definition of 'restricted employment', clause 37 makes clear it also includes the employment of a person at a place where the employee is a person with disability who receives NDIS supports or services or disability services at the place (as per the reference to Schedule 1, part 1, section 6A(3)(a)).

Clause 38 inserts new section 187A (Application combined with disability worker screening application). New section 187A supports a person combining an application for a working with children check or a working with children check for an exemption (which only a police officer or registered teacher may apply for) with a disability worker screening application.

Subsections (1) and (2) provide that a person may combine an application for a working with children check or a working with children check for an exemption, with a disability worker screening application and that an application made in this way is a *combined application*.

Subsection (3) provides that Chapter 8 of the WWC Act applies to a combined application to the extent it is a working with children check application.

Subsection (4) provides that if a combined application is made to the chief executive (working with children), the chief executive (working with children) must give the information in the combined application, to the extent the information relates to the person's disability worker screening application, to the chief executive (disability services).

Clause 39 inserts new section 190A (Chief executive may request further information). Subsection (1) provides that this section applies to an applicant who has made a combined application and, in circumstances where the chief executive becomes aware that under the *Disability Services Act 2006* either (a) the applicant's disability worker screening application has been withdrawn; or (b) a disability exclusion has been issued to the applicant.

Subsection (2) provides that the chief executive may give an applicant who made a combined application a notice asking the applicant to advise the chief executive, within a reasonable stated time, whether or not the applicant wishes to proceed with the working with children check application. Subsection (3) stipulates that the request must state that, if the applicant does not comply with the request within the stated time, the applicant's working with children check application will be withdrawn.

Clause 40 inserts new section 193A (Effect of interim bar imposed by chief executive (disability services)). Subsection (1) provides that this section applies to an applicant who has also made a disability worker screening application, whether or not the applicant made a combined application, and where the chief executive is aware that the chief executive (disability services) has imposed an interim bar on the applicant under section 82 of the DSA.

Subsection (2) provides the chief executive is not required to decide the applicant's working with children check application until the chief executive becomes aware that the interim bar has ended.

Subsection (3) provides that, if the chief executive defers deciding the working with children check application in accordance with subsection (2), the chief executive must give the applicant a written notice about the deferral.

Clause 41 inserts new section 196A (Withdrawal of combined application). Subsections (1) to (3) provide that where an applicant has made a combined application, the applicant may combine a notice withdrawing their working with children check application with a request to withdraw their disability worker screening application, and that a request made in this way is a *combined withdrawal request*.

Subsection (4) provides that Chapter 8, Part 3 of the WWC Act applies to a combined withdrawal request to the extent it is a notice withdrawing a working with children check application under section 196 of the WWC Act.

Subsection (5) provides that if a combined withdrawal request is made to the chief executive (working with children), the chief executive (working with children) must give notice of the combined withdrawal request to the chief executive (disability services).

Clause 42 amends section 198 (Deemed withdrawal—failure to comply with particular requests) to ensure that the chief executive may withdraw a working with children check application if the chief executive gives the applicant a notice under new section 190A(2), as inserted by the Bill; and the person fails to comply with the request.

Clause 43 amends section 221 (Deciding application—no conviction or conviction etc. for non-serious offence). Section 221 provides for:

- the circumstances in which the chief executive must issue a working with children clearance to the person; and
- the circumstances in which the chief executive must issue a working with children clearance unless the chief executive is satisfied it is an exceptional case in which it would not be in the best interests of children for the chief executive to issue a clearance (known as the positive presumption test).

The amendments to section 221(1) and (2) extend the application of the positive presumption test so that it applies to situations where the chief executive is aware of other information about the person that the chief executive reasonably believes is relevant to deciding whether it would be in the best interests of children for the chief executive to issue a working with children clearance to the person. This will allow the chief executive to consider other information, not already caught by the existing legislative provisions, that the chief executive may lawfully receive from other sources, such as the chief executive (disability services).

Clause 44 amends section 223 (Deciding application – negative notice cancelled or holder of eligibility declaration), which deals with how the chief executive must decide a working with children check application by a person if that person has an eligibility declaration in force or had their negative notice cancelled under section 304I.

Subsection (1) amends section 223(2) to provide that if the chief executive is not aware of any new assessable information, the chief executive must issue a working with children clearance to the person.

Subsection (2) amends section 223(3) to provide that if the chief executive is aware of any new assessable information, the chief executive must issue a negative notice to the person, unless, under subsection (4), the chief executive is satisfied it is an exceptional case in which it would not harm the best interests of children for the chief executive to issue a working with children clearance.

Subsection (3) inserts new section 223(5) which provides that for section 223, 'new assessable information' about a person means information about the person that—

- is, police information, disciplinary information or other information that the chief executive reasonably believes is relevant to deciding whether it would be in the best interests of children for the chief executive to issue a working with children clearance to the person; and
- was not known to the chief executive when the chief executive cancelled the person's negative notice under section 304I or issued an eligibility declaration to the person.

Essentially, the amendments to section 223 expand the range of information that the chief executive may consider about the person to go beyond changes in police and disciplinary information to include changes in any other information about the person that is relevant to deciding whether it would be in the best interests of children for the chief executive to issue a working with children clearance to the person.

Clause 45 amends section 226 (Deciding exceptional case if conviction or charge) to provide that where the chief executive is deciding whether or not there is an exceptional case for a person and is aware that the person has been convicted of, or charged with an offence, the chief executive must have regard to information about the person given to the chief executive under section 138ZG of the DSA. This clause also makes some minor renumbering changes.

Clause 46 amends section 228 (Deciding exceptional case if disciplinary information exists).

Subsection (1) changes the heading to 'Deciding exceptional case if disciplinary information or other relevant information exists'.

Subsection (2) omits and replaces existing section 228(1)(b) to provide that the section applies if the chief executive is aware of disciplinary information about the person; or other information about the person that the chief executive reasonably believes is relevant to whether it would be in the best interests of children for the chief executive to issue a working with children clearance to the person.

Subsection (3) makes minor changes to section 228(2) to clarify that the factors listed in this subsection must be considered when the chief executive is aware of disciplinary information about the person.

Subsection (4) inserts new section 228(3) which provides, if the chief executive is aware of other information about the person mentioned in subsection (1)(b)(ii), the chief executive must have regard to the following matters:

- the nature of the information, including the circumstances and gravity of the behaviour or conduct the subject of the information;
- the relevance of the information to employment, or carrying on a business, that involves or may involve children;
- the length of time that has passed since the event or conduct the subject of the information occurred; and
- anything else relating to the information that the chief executive reasonably believes is relevant to the assessment of the person.

Clause 47 amends section 229 (Chief executive to invite submissions from person about particular information) to provide that when the chief executive invites submissions from a person in situations where the chief executive is proposing to decide the person's application by issuing a negative notice, the chief executive must give the person a written notice that states any other information about the person that the chief executive is aware of that the chief executive reasonably believes is relevant to whether it would be in the best interests of children for the chief executive to issue a working with children clearance to the person.

Clause 48 omits section 231 (Term of clearance and negative notice) and replaces it with a new section 231 (Term of clearance) and a new section 231A (Term of negative notice).

New section 231(1) provides that unless cancelled earlier under Part 5A, the term of a working with children clearance issued to a person is the term decided by the chief executive (working with children); or, otherwise, three years.

Subsection (2) provides that the chief executive (working with children) may decide that the term of a person's working with children clearance is the same as the term of a disability clearance issued to the person by the chief executive (disability services) after deciding a combined application made by the person; or a disability clearance otherwise held by the person.

Subsection (3) makes clear that the term decided by the chief executive (working with children) may be more than or less than three years.

New section 231A (Term of negative notice) provides that a negative notice remains in force until it is cancelled under Part 5A.

Clause 49 amends section 283 (Deciding application – police officer if further screening not required) which sets out the circumstances in which the chief executive must issue a working with children exemption to a police officer.

The amendments extend the application of section 283 so that it requires, before the chief executive issues a working with children exemption to the person, that not only the existing criteria of section 283 are established but that the chief executive is not aware of any other information about the person that would be relevant to deciding whether it would be in the best interests of children for the chief executive to issue the exemption to the person.

Clause 50 amends section 284 (Deciding application – registered teacher if further screening not required) which sets out the circumstances in which the chief executive must issue a working with children exemption to a registered teacher.

Similar to clause 49, the amendments extend the application of section 284 so that it requires, before the chief executive issues a working with children exemption to the person, that not only the existing criteria of section 284 are established but that the chief executive is not aware of any other information about the person that would be relevant to deciding whether it would be in the best interests of children for the chief executive to issue the exemption to the person.

It is noted that section 285 applies for deciding a working with children (exemption) application if sections 283 or 284 do not apply to the person. Essentially, this means that if the chief executive is aware of other information about the person that the chief executive reasonably believes is relevant to deciding whether it would be in the best interests of children for the chief executive to issue a working with children exemption to the person, the positive presumption test (referred to above) applies for deciding the application.

Clause 51 omits section 289 (Term of exemption and negative notice) and replaces it with a new section 289 (Term of exemption) and a new section 289A (Term of negative notice).

New section 289 provides that unless a relevant event happens earlier, the term of a working with children exemption issued to a person is the term decided by the chief executive (working with children); or, otherwise, three years.

Subsection (2) provides that the chief executive (working with children) may decide that the term of a person's working with children exemption is the same as the term of a disability clearance issued to the person by the chief executive (disability services) after deciding a combined application made by the person; or a disability clearance otherwise held by the person.

Subsection (3) makes clear that the term decided by the chief executive (working with children) may be more than or less than three years.

Subsection (4) restates the existing definition of *relevant event* for a working with children exemption as follows:

- if the holder of the exemption is a police officer—the holder stops being a police officer;
- if the holder of the exemption is a registered teacher—the holder stops being a registered teacher;
- the exemption is cancelled under Part 5A.

New section 289A provides that a negative notice remains in force until it is cancelled under Part 5A.

Clause 52 amends section 304A (Cancelling authority because of subsequent information). This section applies if, after issuing a working with children authority, the chief executive becomes aware of further information. Under the existing provisions, further information is defined to include disciplinary information or other criminal history that was not known when the decision to issue the authority was made; or a decision made by a court or tribunal, after the authority was issued.

The amendments to section 304A(1) include new subsection (ab) which adds other information about the person that the chief executive reasonably believes is relevant to deciding whether it would be in the best interests of children for the person to continue to hold the authority that was not known to the chief executive when the decision to grant the authority was made.

After considering this further information, the chief executive may cancel a person's working with children authority if it is appropriate to do so.

Clause 53 omits existing section 344 (Chief executive must give information about particular holders to chief executive (disability services)) and replaces it with new section 344 (Giving information to chief executive (disability services)).

New section 344(1) provides that this section applies to information about a person that the chief executive was given, or given access to, under chapters 7 or 8 of the WWC Act; or information in the chief executive's possession in relation to an employment-screening decision about the person.

Subsection (2) provides that the chief executive may give information about a person to the chief executive (disability services) if the chief executive reasonably believes the information is relevant to the functions of the chief executive (disability services) under Part 5 of the DSA.

Subsection (3) makes clear, without limiting subsection (2), that the types of information that may be given to the chief executive (disability services) includes—
- information about a working with children check application made by a person; and
- information about a working with children authority or negative notice held by a person; and
- police information about a person; and
- disciplinary information about a person; and
- information about a person's mental health.

Clause 54 inserts new section 344C (Notifying self-managed NDIS participant about particular matters).

New section 344C(1) provides that the section applies if a child is an NDIS participant; and a relevant person for the child gives the chief executive written notice that a stated person carrying on an NDIS regulated business is delivering NDIS supports or services to the child.

Subsection (2) provides that the chief executive may give the child, a person with parental responsibility for the child or the child's plan manager a written notice about any of the following matters—
- if a working with children check application made by the person is decided—that fact and whether the person was issued a working with children authority or negative notice;
- if the person holds a working with children authority—the authority expires or is suspended or cancelled;
- if, under section 339(3), the chief executive is required to give a notifiable person for the person a notice about a change in police information about the person—the change in the police information.

Subsection (3) makes clear that a notice about a change in police information must only include the information about the change that the chief executive is required to give a notifiable person for the person under section 339(3).

Subsection (4) inserts specific definitions of 'NDIS participant', 'NDIS regulated business', 'parental responsibility', 'plan manager' and 'relevant person'.

Clause 55 omits section 345 (Use of information obtained under this chapter about a person) as it is no longer necessary.

Clause 56 amends section 350 (Holder must notify change and pay prescribed application fee – volunteer or business carried on other than for financial reward) to provide in subsection (4) that if the chief executive considers it appropriate to do so, the chief executive may issue the person—

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

Clause 57 amends section 384 (Confidentiality of police, disciplinary and mental health information). Subsection (1) amends the heading so that it reads 'Confidentiality of protected information'.

Subsection (2) omits and replaces existing section 384(1)(b) to provide that the section also applies to a person who is or has been a public service employee employed in the department and, in that capacity, was given, or given access to, protected information about a person.

The definition of 'protected information':

- retains the types of information previously covered by section 384(1)(b) – that is, police information; disciplinary information; and information about the person's mental health;
- is expanded to include information given to the chief executive by the chief executive (disability) under the DSA, section 138ZG.

Subsections (3) and (4) make minor consequential changes to sections 384(2), (3) and (4) to align with the introduction of the new tag-term 'protected information'.

Subsection (5) omits and replaces existing section 384(4)(d) to clarify that a person may use the protected information, or disclose or give access to the information to another person if the use, disclosure or giving of access is expressly permitted under chapter 8 or section 395.

Clause 58 omits and replaces section 385 (Confidentiality of other information). The new section 385 essentially restates existing section 385 but with appropriate updates to reflect drafting practice and to remove references to the Commission for Children and Young People and Child Guardian, which no longer exists.

Subsection (1) provides that the section applies to a person who is or has been a Minister or a member of the Minister's staff; or a public service employee employed in the department; and, in that capacity, was given, or given access to, confidential information.

Subsection (2) clarifies that this section does not apply to confidential information that is protected information under section 384.

Subsection (3) provides the person must not use the confidential information, or disclose or give access to the information to anyone else, unless it is permitted under section 385(4). The maximum penalty for this offence is 100 penalty units.

Subsection (4) provides the person may use the confidential information, or disclose or give access to the information to another person if the use, disclosure of giving of access—

- is for the purpose of this Act; or
- is for the purpose of obtaining advice for, or giving advice to, the Minister in relation to the information; or
- is for the purpose of performing a function under another law; or
- is for a proceeding in a court or tribunal; or
- is authorised under a regulation or another law; or
- happens with the consent of the person to whom the information relates; or
- is for a purpose directly related to a child's protection or welfare.

Clause 59 amends section 395 (Report by chief executive) to provide that a report provided to the Minister may include information about a person obtained under chapter 8A, which establishes the register of regulated persons who provide home-based care services.

Clause 60 amends section 401 (Regulation-making power) by omitting and replacing existing subsection (2) to provide that a regulation may provide for arrangements between the chief executive and the chief executive (disability services) in relation to receiving, withdrawing, dealing with and deciding combined applications. The existing ability for a regulation to prescribe fees payable under the Act and provide for the fees to be refunded or waived is retained. New subsection (c) provides that a maximum penalty of 20 penalty units may be imposed for a contravention of a regulation.

Clause 61 omits existing chapter 11, part 20 (Transitional provision for Disability Services and Other Legislation (NDIS) Amendment Act 2019) and inserts new Chapter 11, Part 20 (Transitional provisions for Disability Services and Other Legislation (Worker Screening) Amendment Act 2020).

New section 590 (New regulated employment) applies if, immediately before the commencement, a person was employed in employment, or was continuing in employment, mentioned in schedule 1, section 6A; and the employment was not regulated employment mentioned in schedule 1, section 6; and the person does not hold a working with children authority.

In these circumstances, subsection (2) provides that section 175, 176A, 176C and 176E of the WWC Act do not apply in relation to the person until 3 months after commencement; or, if the person makes a working with children check application within this period, the application is decided or withdrawn.

New section 591 (New regulated business) applies if, immediately before the commencement, a person was carrying on a business mentioned in schedule 1, section 16A; and the business was not a regulated business mentioned in schedule 1, section 16; and the person does not hold a working with children authority.

In these circumstances, subsection (2) provides that sections 176B and 176G of the WWC Act do not apply in relation to the person until 3 months after commencement; or, if the person makes a working with children check application within this period, the application is decided or withdrawn.

New section 592 (Information that may be given under section 344) provides that the chief executive may give information about a person to the chief executive (disability services)

regardless of whether the information relates to a matter that happened before or after commencement.

Subsection (2) makes clear this could include, amongst other things, information about a working with children check application made before the commencement; or information about a working with children authority or negative notice issued before the commencement; or information mentioned in section 344(3)(c) to (e) obtained by the chief executive before the commencement.

New section 593 (Continuing obligation of confidentiality) makes transitional arrangements in relation to persons to whom section 385 applied immediately before commencement and after commencement, section 385 ceased applying to the person. The provision stipulates that former section 385 continues to apply to the person in relation to particular information that the person acquired, gained access to or was given before commencement as if the amendment Act was not enacted.

Clause 62 amends Schedule 1, section 6 (Health, counselling and support services) to omit references which related to the delivery of disability services or NDIS services and supports.

Clause 63 inserts new Schedule 1, section 6A (Disability work) to consolidate and simplify the blue card screening requirements for persons undertaking disability work with children into one stand-alone category of regulated employment.

New Schedule 1, Part 1, section 6A(1) and (2) provides that employment is regulated employment if the usual functions of the employment include:

- providing disability services to a child or children with disability; or
- carrying out risk-assessed NDIS work for an NDIS service provider in relation to a child or children with disability as an employee of the NDIS service provider or at a place where the NDIS service provider provides NDIS supports or services to a child or children with disability.

Subsection (3) provides that employment is not regulated employment if the employee is:

- a person with disability who receives NDIS supports or services or disability services at the place; or
- a secondary school student on work experience carrying out risk-assessed NDIS work or disability services only under the direct supervision of a person who holds a working with children authority; or
- a volunteer who is a relative of a person who receives NDIS supports or services or disability services at the place and is at the place only to help with the care of the person.

'NDIS service provider' and 'risk-assessed NDIS work' are defined for the purposes of new Schedule 1, part 1, section 6A by reference to the *Disability Services Act 2006*, section 15 and section 45(2), respectively.

Clause 64 amends Schedule 1, part 2, section 16 (Health, counselling and support services) to omit references which related to the delivery of disability services or NDIS services and supports.

Clause 65 inserts new Schedule 1, section 16A (Disability work) in Schedule 1 to consolidate and simplify the blue card screening requirements for persons carrying on a disability-related business.

New Schedule 1, part 2, section 16A provides that a business is a regulated business if the usual activities of the business include, or are likely to include:
- providing disability services to a child or children with disability; or
- providing NDIS supports or services to a child or children with disability.

Clause 66 amends Schedule 7 (Dictionary) by omitting a range of redundant terms and inserting a range of new definitions required to support the effective operation of the blue card system alongside the disability worker screening regime.

Part 4 Amendment of other legislation

Division 1 Amendment of Evidence Act 1977

Clause 67 provides that this division amends the *Evidence Act 1977*.

Clause 68 amends section 93AA (Unauthorised possession of, or dealing in, s 93A criminal statements) to ensure that the chief executive (disability services) can be provided with section 93A transcripts in the same circumstances as the chief executive (working with children).

Subsection (1) amends existing section 93AA(2A)(a) and (b) to provide that the police commissioner and director of public prosecutions have authority to possess a section 93A statement or do any of the things mentioned in subsection (1) if it is for the purpose of:
- preparing a section 93A transcript to give it, or a summary, to the chief executive (working with children) or chief executive (disability services); or
- giving a section 93A transcript, or a summary of a section 93A transcript, to the chief executive (working with children) or chief executive (disability services) under an employment-screening Act.

Subsection (2) inserts new subsection (2AB) to provide that the chief executive (working with children) or chief executive (disability services) has authority for subsection (1) and does not commit an offence if the respective chief executive has the possession of the section 93A transcript or does any of the things mentioned in subsection (1) for the purpose of, under an employment-screening Act:
- giving a section 93A transcript, or a summary of a section 93A transcript, that is in the chief executive's possession to the other chief executive; or
- making an employment-screening decision.

Subsection (3) amends section 93AA(2B) to provide that a person does not commit an offence against subsection (1)(a) by possessing a section 93A transcript, or a summary of a section 93A transcript, if the transcript or summary was given to the chief executive (working with children) or chief executive (disability services) under subsection (2A)(b) or (2AB); and the transcript is in the person's possession, at the relevant time, for the purpose of making an employment-screening decision.

Subsections (4) and (5) make minor consequential amendments as a result of terminology changes.

Subsections (6) and (7) omit redundant definitions and references to positions and insert new definitions to support the operation of the section.

Therefore, it is noted that following the commencement of the amendments to section 93AA, the provision will no longer refer to the Commissioner for Children and Young People and Child Guardian (the CCYPCG commissioner). While no specific transitional provision has been included in the Bill, section 588 of the WWC Act provides for a continuing obligation of confidentiality for the CCYPCG commissioner in relation to particular information given to the CCYPCG commissioner during the time in which the commissioner administered the WWC Act. This continuing obligation of confidentiality applies to section 93A transcripts.

Division 2 Amendment of the Police Powers and Responsibilities Act 2000

Clause 69 provides that this division amends the *Police Powers and Responsibilities Act 2000* (PPRA).

Clause 70 consequentially amends the heading of part 1A to insert the heading 'part 1A provisions for employment-screening laws.'

Clause 71 inserts new section 789B in chapter 23, part 1A to enable a police officer to require a person to give their disability worker clearance card to the police officer in the following circumstance: the police officer knows, or reasonably suspects the person holds a disability worker clearance card and the person has been charged with a disqualifying offence or is a disqualified person under the DSA. The police officer must give the disability worker clearance card to the chief executive of the department in which the DSA is administered.

A person must comply with this requirement unless the person has a reasonable excuse. The maximum penalty for this offence is 100 penalty units. This power is necessary to ensure that a person charged or convicted of a disqualifying offence can also be prevented from working with people with disability and is supported by appropriate safeguards. This power is consistent with a similar power under section 789A of the PPRA, which requires the production of an employment-screening document under the WWC Act.

Division 3 Other amendments

Clause 72 provides that schedule 1 amends the Acts that it mentions.