

INTERGOVERNMENTAL AGREEMENT ON NATIONALLY CONSISTENT WORKER SCREENING FOR THE NATIONAL DISABILITY INSURANCE SCHEME

Council of
Australian
Governments

An agreement between

- the **Commonwealth of Australia** and
- the **States and Territories**, being:
 - The State of New South Wales
 - The State of Victoria
 - The State of Queensland
 - The State of Western Australia
 - The State of South Australia
 - The State of Tasmania
 - The Australian Capital Territory
 - The Northern Territory of Australia

An agreement to a nationally consistent approach to worker screening for the NDIS to protect and prevent people with disability from experiencing harm from poor quality or unsafe supports or services under the NDIS.

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Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme

RECITALS

1. In December 2016, the Council of Australian Governments (COAG) endorsed the National Disability Insurance Scheme (NDIS) Quality and Safeguarding Framework (the Framework), setting out a new nationally consistent approach to regulation under the NDIS.
2. The Framework is designed to support the rights of people with disability by ensuring they have access to quality and safe services under the NDIS. A nationally recognised approach to worker screening is an important element of this Framework that minimises the risk of harm to people with disability from the people who work closely with them.
3. While the primary responsibility for recruiting and providing a safe environment for people with disability rests with employers, a worker screening outcome is one source of information that can support employers in fulfilling this responsibility.
4. This Agreement will set out the national policy for NDIS worker screening which will be brought into effect through relevant Commonwealth, state and territory legislation and policy guidelines.
5. Under the national policy for NDIS worker screening, people who provide NDIS supports and services through a registered NDIS provider and have more than incidental contact with a participant would be required to undergo worker screening. Worker screening would still be open to other workers but would not be mandatory for workers with only incidental contact with a participant.
6. Worker screening has a preventative effect in deterring individuals who pose a high risk of harm from seeking work in the sector, and reducing the potential for providers to employ workers who pose an unacceptable risk of harm to people with disability. Worker screening also has a corrective effect in prohibiting those persons who pose an unacceptable risk or are proven to have harmed vulnerable people from having more than incidental contact with people with disability when working for a registered NDIS provider.
7. In entering into this Agreement, the Commonwealth, and the States and Territories recognise that they have a shared responsibility for the design and implementation of the national policy on NDIS worker screening. The Commonwealth will lead the development and oversight of the broad policy design, and the States and Territories will be responsible for the operational elements of the policy.

PART 1 — FORMALITIES

Parties

8. This Agreement is between the Commonwealth and the States and Territories.

Term of the Agreement

9. This Agreement will commence from 1 July 2018 and will be operational in each jurisdiction as Parties sign the Agreement and will continue to operate unless the Parties unanimously agree to revoke or replace it.

Interoperability with other instruments and agreements

10. This Agreement is to be read in conjunction with:
 - a) the National Disability Insurance Scheme Act 2013
 - b) the DisabilityCare Australia Fund Act 2013
 - c) the NDIS Quality and Safeguarding Framework
 - d) agreements for the transition of the NDIS to full scheme where relevant for a State or Territory
 - e) agreements for the full scheme arrangements for the NDIS in each State or Territory
 - f) other relevant Commonwealth and State legislation.

Enforceability

11. The Parties do not intend any of the provisions of this Agreement to be legally enforceable. However, that does not lessen the Parties' commitment to this Agreement.

Definitions and interpretation

12. In this Agreement and its Schedules, the following definitions apply:

ACIC means the Australian Criminal Intelligence Commission.

Banning order means a written notice issued by the Commission prohibiting or restricting the activities of an NDIS provider or a person employed or otherwise engaged by an NDIS provider.

Child means a person less than 18 years of age.

Circumstances information means additional information held by jurisdictions' law enforcement agencies, typically in electronic databases, prosecution briefs or statements of material facts, about the circumstances of an offence or alleged offence relevant to a decision about whether a person poses a risk of harm to people with disability.

The Commission means the NDIS Quality and Safeguards Commission, the statutory body implementing core elements of the NDIS Quality and Safeguarding Framework.

COAG means the Council of Australian Governments.

Conviction means any recorded conviction or finding of guilt or offence proven for a criminal offence or acceptance of a plea of guilty by a court (whether the person was dealt with as an adult or a child). A conviction includes a conviction for which a pardon has been granted.

Criminal offence means a criminal offence punishable by law as defined in each jurisdiction.

Employer means an employer with its ordinary meaning, including registered NDIS providers, unregistered NDIS providers, self-managing NDIS participants and people in self-employed roles.

Expanded criminal history information means criminal history information held by jurisdictions' law enforcement agencies, inclusive of spent convictions, pending charges and non-conviction charges.

Ongoing monitoring means monitoring by NDIS worker screening units for information about a worker with an NDIS Worker Screening Check clearance during the period of time where the NDIS Worker Screening Check is valid. This includes but is not limited to relevant information from law enforcement agencies, such as charges and court outcomes related to relevant offences, and from the Commission.

National Clearance Database means the national database established in accordance with clauses 93 and 94 of this Agreement.

NDIA means the National Disability Insurance Agency, the independent statutory body established under the *National Disability Insurance Scheme Act 2013* to implement the NDIS and jointly funded by the Commonwealth and State and Territory governments.

NDIS means the National Disability Insurance Scheme, the scheme established by the *National Disability Insurance Scheme Act 2013*.

NDIS Worker Screening Check means a risk assessment by NDIS worker screening units of people delivering supports or services under the NDIS to evaluate if they represent an unacceptable risk to people with disability.

NDIS worker screening unit means State or Territory operated screening units or entities responsible for administering the NDIS Worker Screening Check.

Non-conviction charge means proceedings have been commenced against a person as an adult or a child, in relation to a charge: that has been withdrawn; that has been the subject of a nolle prosequi, a no true bill or a submission of no evidence to offer; that led to a conviction that was quashed on appeal; or upon which a person was acquitted or disposed of by a court otherwise than by way of conviction.

NPCS means the National Police Checking Service.

NWSSC means the NDIS Worker Screening Steering Committee referred to in clauses 105 to 107 of this Agreement.

Personal information has the meaning given in section 6 of the *Privacy Act 1988* (Cth).

Pending charge means a current charge for a criminal offence that has not yet been finalised, whether the person is being dealt with as an adult or a child.

Specified supports and services means NDIS funded support types and services that require an NDIS Worker Screening Check clearance, to be set out in policies to be maintained and hosted by the Commission in accordance with clause 25.

Spent conviction means a conviction which statute deems no longer part of the person's criminal history.

Supply means, in respect of expanded criminal history information or circumstances information, using best endeavours to locate, retrieve and provide the information, and includes the supply of the criminal history information to a participating NDIS worker screening unit via ACIC or the police service of that unit's jurisdiction.

Third-party government screening entity means a government department, agency or statutory body that is permitted or required to screen and risk assess the criminal and other history of a person who has previously been screened by an NDIS worker screening unit in the same jurisdiction.

Worker means someone employed or otherwise engaged in the provision of supports and services to people with disability under the NDIS, and includes people in paid, unpaid and self-employed roles. It includes employees, contractors, consultants, and volunteers.

Working with vulnerable persons screening process means a risk-assessment undertaken by State or Territory-operated screening units of a person to evaluate the level of harm posed by a worker in relation to children, people with disability and/or other vulnerable persons. It includes Working with Children Checks and Working with Vulnerable People Checks.

PART 2 — OBJECTIVES AND PRINCIPLES

Role and purpose of this Agreement

13. This Agreement provides the framework for conducting nationally consistent NDIS worker screening and provides assurance of the shared commitment of the Commonwealth and the State and Territory Governments to deliver nationally consistent NDIS worker screening.

Objectives for nationally consistent NDIS worker screening

14. The objective of nationally consistent NDIS worker screening is to protect and prevent people with disability from experiencing harm arising from poor quality or unsafe supports or services under the NDIS, by:
 - a) demonstrating that the rights of people with disability to be safe and protected are a high community priority
 - b) reducing the potential for providers to employ or engage individuals who pose an unacceptable risk of harm to people with disability
 - c) prohibiting individuals who have a history of harm against people with disability from having more than incidental contact with people with disability when working for a registered NDIS provider
 - d) deterring individuals who pose a high risk of harm from seeking work in the NDIS sector.

Principles for nationally consistent NDIS worker screening

15. To realise these objectives, NDIS worker screening will be guided by the following principles:

- a) Human rights-based – the paramount consideration is the right of people with disability to live lives free from abuse, violence, neglect and exploitation, consistent with the United Nations Convention on the Rights of Persons with Disabilities
- b) Provider duty-of-care – employers have the primary responsibility for ensuring that they do not engage unsuitable people and that their workers are not acting or behaving in any way that puts people with disability at risk
- c) Risk-based – ensuring decisions are made based on the potential risk an individual worker poses after assessing the details of a range of relevant information
- d) Proportionality – ensuring that only workers whose role poses a significant opportunity for harm are required to be screened
- e) Consistency – ensuring the NDIS worker screening assessment delivers the same outcome, regardless of the jurisdiction in which the assessment was conducted
- f) Privacy and appropriate use of information – 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
- g) Natural justice – procedural fairness and transparency, ensuring NDIS worker screening processes and decisions will be independent and fair
- h) Efficiency and effectiveness – streamlined and simplified screening processes for workers and providers who operate across jurisdictions, with a single screening process for all NDIS worker roles.

PART 3 — ROLES AND RESPONSIBILITIES

Shared roles and responsibilities

16. The Parties to this Agreement share the following roles and responsibilities to:

- a) support and promote the objectives and principles of the NDIS, the NDIS Quality and Safeguarding Framework and this Agreement
- b) work collaboratively to implement and refine the policy settings for NDIS worker screening and settle and improve operational matters as needed
- c) work collaboratively to achieve national consistency in application, including consulting with Parties before submitting legislation that may affect national consistency
- d) work together to minimise risks to other Parties and manage unexpected risks as issues arise
- e) share information to assist with policy development and administration of nationally consistent NDIS worker screening, subject to privacy requirements
- f) fund the National Clearance Database, with funding contributions to be agreed no later than 1 July 2018 and set out as a Schedule to this Agreement.

Roles and responsibilities of the Commonwealth

17. The Commonwealth, through the Commission, has responsibility for the broad policy design and oversight of nationally consistent NDIS worker screening policy.
18. The Commonwealth will:
 - a) lead the development and provide ongoing administration of the National Clearance Database to record the outcomes of NDIS Worker Screening Checks and enable employers to verify workers and check their clearance status
 - b) in collaboration with the States and Territories, support the development of an evidence base to inform the continuous development and refinement of the national policy for NDIS worker screening
 - c) through the Commission, engage, educate and monitor worker and employer compliance with the national policy for NDIS worker screening
 - d) introduce or amend Commonwealth legislation to facilitate effective information sharing with participating NDIS worker screening units
 - e) through the Commission, provide relevant disciplinary and misconduct information in relation to a worker to participating NDIS worker screening units
 - f) support and facilitate the local implementation of the national policy for NDIS worker screening, consistent with the transitional quality and safeguards working arrangements that have been agreed, or are being agreed, with each state and territory

Roles and responsibilities of the States and Territories

19. The States and Territories have overarching responsibility for the operation of the policy in their jurisdictions as described in this Agreement and its Schedules.
20. Within their respective jurisdiction, each State and Territory Government will:
 - a) introduce or amend legislation establishing a scheme for the screening of NDIS workers consistent with the national policy as outlined in this Agreement
 - b) establish and operate NDIS worker screening units, which may include the expansion of existing worker screening units, consistent with the national policy as outlined in this Agreement
 - c) fund and manage the administrative and system support costs of NDIS worker screening units, including the costs of providing information to other jurisdictions under this Agreement
 - d) take enforcement action in relation to an applicant providing false or misleading information in connection with an NDIS Worker Screening Check and the unauthorised disclosure of information gathered during the course of an NDIS Worker Screening Check
 - e) facilitate effective information sharing arrangements between participating NDIS worker screening units and the Commission

- f) once the National Clearance Database is established, check all workers cleared under the NDIS Worker Screening Check against their state criminal history records for ongoing monitoring
 - g) in collaboration with the Commonwealth, support the development of an evidence base to inform the continuous development and refinement of the national policy
 - h) manage complaints about the operation of their NDIS worker screening units and appeals
 - i) support and facilitate the local implementation of the national policy for NDIS worker screening, consistent with the transitional quality and safeguards working arrangements that have been agreed, or are being agreed, with each state and territory
21. The requirements in this Agreement on a Party to supply information apply regardless of whether the Party has a participating NDIS worker screening unit.

PART 4 — WORKERS WHO REQUIRE AN NDIS WORKER SCREENING CHECK

Registered providers

22. Providers registered under the NDIS are obliged to comply with the national policy on NDIS worker screening as part of the NDIS registration requirements.
23. Workers of registered NDIS providers are required to have a valid and current NDIS Worker Screening Check clearance if they:
- a) are involved in the direct delivery of specified supports and services to people with disability or
 - b) are likely to have more than incidental contact with people with disability as a normal part of their duties or
 - c) are key personnel such as those holding executive, senior management and operational positions in a registered NDIS provider, for example, as a Chief Executive Officer, Chairperson or Board Member.
24. Contact includes physical contact, face-to-face contact, oral communication, written communication and electronic communication.
25. The Parties agree that the Commission will maintain and host the following policies to be agreed by jurisdictional representatives on the Senior Officials Working Group:
- a) the list of specified support and service types that require an NDIS Worker Screening Check
 - b) guidelines on the definition of 'more than incidental' contact
 - c) exemptions to the requirement for NDIS worker screening.
26. The Commission is responsible for determining the suitability test for key personnel as part of the Commission's provider registration process.

Unregistered providers

27. Self-managing NDIS participants may choose workers or providers not registered with the Commission. To maximise the potential for self-managing participants to use unregistered providers and workers, formal regulatory requirements on these providers and workers has been minimised.
28. Self-managing NDIS participants may request that workers who provide supports and services to them have an NDIS Worker Screening Check. Workers of unregistered providers may apply for an NDIS Worker Screening Check if they are delivering or are planning to deliver NDIS supports and services and their application is endorsed by their employer.
29. General information about the NDIS Worker Screening Check will be available to all participants. Self-managing participants, unregistered NDIS providers, and registered plan managers will be strongly encouraged to make use of the NDIS worker screening process for workers they engage.
30. The Parties agree to monitor and review the effectiveness of these arrangements as more evidence about self-management becomes available. The Commission will support this review process through examination of its regulatory intelligence, including complaints, reportable incidents notifications, and breaches of the NDIS Code of Conduct.
31. The Parties agree that the review of the scope of the NDIS Worker Screening Check set out at clause 115 will include consideration of the arrangements for unregistered providers and their workers.

Commonwealth employees and organisations engaged by governments to deliver supports and services to people with disability

32. Australian Public Service (APS) employees engaged by the NDIA or the Commission will be required to comply with the national policy on NDIS worker screening on the same basis as registered providers.
33. Organisations engaged by the NDIA by contract to deliver local area coordinator (LAC) services, early childhood early intervention (ECEI) services, information, linkages and capacity building (ILC) will be required to comply with the national policy on NDIS worker screening on the same basis as registered providers. For these organisations, compliance with the national policy will be included in their contract with the NDIA.
34. Organisations engaged by Commonwealth or State or Territory governments to deliver continuity of support (CoS) services or advocacy services to people with disability may be required to comply with the national policy on NDIS worker screening on the same basis as registered providers. For these organisations, compliance with the national policy will be included in their contract with the relevant government agency.

Proportionality and scope

35. The Parties agree that proportionality is a vital part of NDIS worker screening. Proportionality in worker screening:
 - a) targets people who, as part of their work, have contact with people with disability and not those whose contact with people with disability is incidental
 - b) targets the types of work and settings that create the greatest opportunities to cause harm to people with disability

- c) does not impose an unacceptable burden on providers or workers wishing to provide supports and services in the NDIS
 - d) is sustainable for all levels of government.
- 36. The Parties agree to restrict the NDIS Worker Screening Check to workers delivering supports and services under the NDIS and associated with the NDIS, including LAC services, ECEI services, ILC, CoS services, advocacy services, the NDIA, the Commission and additional groups as agreed by all Parties.
- 37. Nothing in this Agreement precludes the Parties from establishing or maintaining other employment screening processes, including working with vulnerable people checks and disability employment screening, provided:
 - a) applicants and workers who have obtained an NDIS Worker Screening Check are separately identified and are screened consistent with the national policy outlined in this Agreement
 - b) the NDIS Worker Screening Check is restricted to workers identified as in scope for an NDIS Worker Screening Check in accordance with clauses 22 to 34
 - c) only applicants and workers who have undergone an NDIS Worker Screening Check are included in the National Clearance Database
 - d) only applicants and workers who have an NDIS Worker Screening Check clearance are subject to national ongoing monitoring against State and Territory police records, Commission disciplinary and misconduct records, and other relevant information as it becomes available nationally under this Agreement.
- 38. The Parties agree to monitor and review the scope of the NDIS Worker Screening Check as required.

Offences for delivering NDIS supports and services without a clearance

- 39. Compliance with the national policy for NDIS worker screening is a requirement for registered NDIS providers under the NDIS Practice Standards. Employers are responsible for ensuring all workers delivering specified supports and services and all workers that have more than incidental contact with people with disability hold a valid NDIS Worker Screening Check clearance. Non-compliance constitutes a breach of the conditions of registration and may be subject to regulatory action by the Commission.
- 40. The NDIS Code of Conduct applies to both registered and unregistered providers and their workers. Under the NDIS Code of Conduct, workers who have been issued an exclusion following an NDIS Worker Screening Check are required to notify their employer and any person with disability to whom they are delivering NDIS supports and services. Non-compliance constitutes a breach of the NDIS Code of Conduct, and may be subject to regulatory action by the Commission.
- 41. It may be an offence under State and Territory legislation to deliver NDIS supports and services in contravention of the national policy as outlined in this Agreement, and workers doing so may be prosecuted under the relevant State or Territory legislation.

PART 5 — APPLICATION PROCESS

Applying for an NDIS Worker Screening Check

42. Individual workers can apply to NDIS worker screening units for an NDIS Worker Screening Check once they have been engaged or an employer intends to engage them in the delivery of NDIS supports or services.
43. 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 the purposes of NDIS Worker Screening.
44. The approved form must provide for the following particulars:
 - a) information to establish the identity of the applicant
 - b) consent from the applicant to the NDIS worker screening unit obtaining any information from law enforcement agencies, the Commission or other organisations, and for the law enforcement agencies, the Commission or other organisation to disclose any information relevant to determining their eligibility for an NDIS Worker Screening Check clearance
 - c) consent from the applicant to have their NDIS Worker Screening Check outcome included in the National Clearance Database and to the disclosure of their NDIS Worker Screening Check outcome to current and prospective employers, to the Commission, to NDIS worker screening units and to third-party government screening entities
 - d) consent from the applicant to ongoing monitoring of their eligibility to maintain NDIS Worker Screening Check clearance for the duration of the clearance
 - e) consent from the applicant to share information from law enforcement agencies and the Commission for the purposes of working with vulnerable persons screening processes
 - f) self-disclosure of information set out in clause 45
 - g) any other requirements agreed by the Parties and attached as a Schedule to this Agreement.
45. Applicants will be required to self-disclose the following information as a part of the application process:
 - a) if they have been refused an NDIS Worker Screening Check or other working with vulnerable persons screening processes (such as a Working with Children Check or a Working with Vulnerable Persons Check) previously
 - b) relevant civil penalties
 - c) international criminal history
 - d) domestic violence and child protection orders and/or information
 - e) any relevant workplace misconduct findings.
46. It will be an offence under State and Territory legislation for applicants to provide false or misleading information in connection with an NDIS Worker Screening Check

application and applicants doing so may be prosecuted under the relevant State or Territory legislation.

Employer verification

47. Employers are responsible for verifying that an applicant for an NDIS Worker Screening Check is a worker in their organisation or that they intend to engage the applicant as a worker delivering NDIS supports and services.
48. The National Clearance Database will provide employers with the ability to verify employees as engaged or intended to be engaged by an NDIS provider, and to confirm the clearance status of a worker.

Application fees

49. The Parties agree it is desirable for jurisdictions to move towards nationally consistent application fees where possible.
50. Each State or Territory will set application fees on a cost-recovery basis. In recognition that NDIS Worker Screening Checks are required in relation to the receipt of NDIS funding, application fees will apply to both paid employees and volunteers.

Eligibility to work while an application is assessed

51. Subject to clauses 52 to 54, applicants can begin delivering NDIS supports or services once they have submitted an application for an NDIS Worker Screening Check.
52. For a person to begin working while their application is being processed, the following conditions must have been met:
 - a) the person must have completed an NDIS worker screening application, verified their identity and been verified by their employer as an NDIS worker
 - b) the application must not have been withdrawn or closed
 - c) the person must not have previously been excluded under an NDIS Worker Screening Check or have had their clearance revoked
 - d) the employer has agreed the person can work while their application is being processed
 - e) the employer has put in place risk management strategies
 - f) the employer has arranged for the person to be supervised by someone who has an NDIS Worker Screening Check clearance.
53. An NDIS worker screening unit may decide to impose an interim bar if records are identified that indicate the applicant may pose a risk to people with disability. An interim bar is used to prevent individuals from working with people with disability until a decision is made. An interim bar is in place until the NDIS worker screening unit removes the interim bar or an application is finalised; however, an applicant may seek an internal review of an interim bar after six months.
54. Jurisdictions may elect not to allow applicants to begin working until they have been issued an NDIS Worker Screening Check clearance.

Withdrawn applications

55. Applicants can withdraw their application at any time until the application is finalised or until an interim bar or an intention to exclude has been issued. Applications cannot be withdrawn once an interim bar or an intention to exclude has been issued.

PART 6 — ASSESSMENT

Types of information to be checked

56. NDIS worker screening units will assess the following information for all applicants:
 - a) national criminal history information held by law enforcement agencies, including expanded criminal history information where relevant
 - b) disciplinary and misconduct information supplied by the Commission to NDIS worker screening units, including any adverse and substantiated findings of formal investigation (such as in relation to reportable incident notifications, complaints, or breaches of the NDIS Code of Conduct), and adverse actions by the Commission including banning orders
 - c) once the National Clearance Database is established, the outcomes of previous NDIS Worker Screening Checks.
57. NDIS worker screening units may take into account additional circumstances information held by law enforcement agencies about the circumstances of an offence or alleged offence where available.
58. NDIS worker screening units may take into account any other information relevant to determining an applicant's eligibility for an NDIS Worker Screening Check clearance during the screening process, including information obtained through self-disclosure. This includes but is not limited to:
 - a) civil penalties
 - b) international criminal history
 - c) domestic violence and child protection orders and/or related information
 - d) information in relation to an applicant's previous Working With Children Checks, Working With Vulnerable Persons Checks or other worker screening process
 - e) state-based reportable or notifiable conduct schemes, such as from State Ombudsman and Complaints Commissions and professional associations
 - f) employer or other professional records/information, including professional references
 - g) courts and tribunals records.
59. The Parties agree that such information is likely to be relevant in assessing potential risks to people with disability; however, at present there is no national mechanism for sharing this information and it is not routinely available in all jurisdictions.

60. The Parties agree to work collaboratively together to continue to refine the policy settings for NDIS Worker Screening as this information becomes readily available nationally.

Automatic clearances, exclusions and presumed exclusions

61. The Parties agree that:

- a) an applicant who does not have a relevant criminal history record, disciplinary or misconduct record, any issues identified through self-disclosure, or any other relevant records, and has not previously been issued an NDIS Worker Screening Check exclusion will automatically be issued an NDIS Worker Screening Check clearance
- b) an applicant who has a conviction for specified offences within the following categories will be issued an exclusion due to disqualifying offences with no right of appeal (except on grounds of mistaken identity), provided the applicant was at least 18 years old at the time of the offence. Disqualifying offences include:
 - i. murder and attempted murder
 - ii. serious assault against a child or vulnerable person
 - iii. sexual assault of a child or vulnerable person including incest
 - iv. child pornography-related offences
 - v. abduction or kidnapping offences against a child or vulnerable person involving a sexual or abusive element
 - vi. bestiality and serious animal cruelty offences
- c) an applicant with a conviction or pending charge for specified offences within the following categories will be excluded, unless there are exceptional circumstances, provided the applicant was at least 18 years old at the time of the offence:
 - i. manslaughter
 - ii. assault and sexual offences not captured in clause 61b
 - iii. dangerous or negligent acts against a person under care
 - iv. abduction or kidnapping offences not captured in clause 61b
 - v. animal cruelty offences not captured in clause 61b
 - vi. drug trafficking offences
 - vii. fraud and deception offences against a child or vulnerable person
 - viii. national security offences
 - ix. pending charges for offences captured in clause 61b.
- d) all other relevant criminal, disciplinary or misconduct information, or any other information considered relevant by the NDIS worker screening unit should trigger

an assessment of a person's eligibility for an NDIS Worker Screening Check clearance, consistent with the risk assessment factors set out below.

62. The Parties agree to work collaboratively to identify the specific criminal offences that fall within the categories specified in clause 61 as a policy document to be maintained by the NWSSC and hosted by the Commission.

Criteria for assessing risk

63. If an application does not result in an automatic clearance or an exclusion due to disqualifying offences, the application proceeds to a risk assessment.
64. A risk assessment is an evaluation of whether a person poses an unacceptable risk to people with disability in light of their criminal history and/or other relevant information, conducted by an NDIS worker screening unit.
65. For those categories of offences identified in clause 61c to lead to a presumed exclusion, the starting point for the risk assessment will be an exclusion unless there are exceptional circumstances warranting an NDIS Worker Screening Check clearance. Other risk assessments will not make any presumption of outcome as a starting point but will be considered on the relevant factors.
66. The Parties agree that the criteria for assessing risk to people with disability in the NDIS will include:
 - a) the nature, gravity and circumstances of the offence, misconduct and/or other relevant information, and how this is relevant to disability-related work
 - b) the length of time that has passed since the event occurred
 - c) the vulnerability of the victim at the time of the event and the person's relationship to the victim or position of authority over the victim at the time of the event
 - d) the person's criminal, misconduct and disciplinary, or other relevant history, including whether there is a pattern of concerning behaviour
 - e) the person's conduct since the event
 - f) all other relevant circumstances in respect of their offending, misconduct or other relevant history, and the impact on their eligibility to be engaged in disability-related work.
67. Risk assessment will be evidence-based to the extent possible, documented, and supported by nationally consistent business rules and tools.
68. The Parties agree to work together to continue to refine the risk assessment and decision-making framework, to be agreed and attached as a Schedule to this Agreement. This risk assessment and decision-making framework will be applied by an NDIS worker screening unit in determining an application and in applying an interim bar or suspension.
69. The Parties acknowledge the importance of having appropriately skilled staff to make assessments about risk to people with disability. Appropriately skilled includes having appropriate qualifications, experience or standing to make the assessment.

Intention to make an adverse decision

70. Without limiting the rights of individuals to natural justice, where there is an intention to make an adverse decision for reasons other than a disqualifying offence, the NDIS worker screening unit is required to:
- a) disclose the reason the adverse decision is proposed, except where the NDIS worker screening unit is required under Commonwealth, State or Territory law to refuse to disclose the information to the individual
 - b) allow the individual a reasonable opportunity to be heard
 - c) consider the individual's response before finalising the decision.

PART 7 — OUTCOMES AND APPEALS

Clearance outcomes

71. NDIS Worker Screening Checks are portable across roles and employers within the NDIS.
72. There are two possible outcomes for NDIS Worker Screening Checks:
- a) clearance – applicants are determined not to pose an unacceptable risk and are issued a clearance to deliver NDIS supports and services as a worker for any NDIS provider; or
 - b) exclusion – applicants are determined to pose an unacceptable risk and are excluded.
73. Excluded workers are prohibited from delivering NDIS specified supports and services, and non-specified supports and services entailing more than incidental contact with a person with disability as a registered NDIS provider or as a worker for a registered NDIS provider.
74. Excluded workers are also required under the NDIS Code of Conduct to disclose the outcome of their NDIS Worker Screening Check to any person or provider to whom they are providing supports or services under the NDIS.
75. Under the NDIS Code of Conduct, an NDIS provider must inform a self-managing NDIS participant if they intend to use a worker who has been excluded to deliver NDIS supports or services.

Duration

76. NDIS Worker Screening Checks are valid for up to five years from the date of the decision, subject to ongoing monitoring by NDIS worker screening units.
77. An excluded person may not re-apply for an NDIS Worker Screening Check for a period of five years after the date of the decision unless during the period they provide evidence to the NDIS worker screening unit of a significant and exceptional change in circumstances.

Ongoing monitoring and suspensions

78. Cleared applicants are subject to ongoing monitoring for relevant criminal history or Commission records or any other information considered relevant by the NDIS worker

screening unit, which may lead to re-assessment and possible revocation of an NDIS Worker Screening Check clearance before it expires.

79. An NDIS worker screening unit may decide to suspend an NDIS Worker Screening Check clearance during a re-assessment. A suspension is used to prevent individuals from working with people with disability until a decision is made. Relevant information that triggers a suspension will be included as part of the risk assessment and decision-making framework, to be attached as a Schedule to this Agreement.
80. An applicant may seek an internal review of a suspension after six months if an outcome has not been determined.

Reviews and appeals

81. Jurisdictions' schemes will be guided by the principles set out in clause 15, including the principles of natural justice, and the treatment of criminal history information set out in clause 61.
82. An individual can seek an internal review by the worker screening unit of:
 - a) a decision by an NDIS worker screening unit to issue an exclusion for reasons other than where it relates to a disqualifying offence with limited appeal rights
 - b) a decision by an NDIS worker screening unit to revoke an NDIS Worker Screening Check for reasons other than where a revocation relates to a disqualifying offence with limited appeal rights
 - c) a decision by an NDIS worker screening unit to issue an exclusion or revoke an NDIS Worker Screening Check clearance where the person has been convicted of a disqualifying offence with limited appeal rights, only where there is a mistake as to the identity of the individual
 - d) a decision by an NDIS worker screening unit to apply an interim bar once it has been in place for six months
 - e) a decision by an NDIS worker screening unit to suspend an NDIS Worker Screening Check clearance once it has been in effect for six months.
83. An exclusion due to a disqualifying offence with limited appeal rights refers to where a person has been convicted of a disqualifying offence, such persons being permanently excluded from appeal or by virtue of the conviction, the person is subject to an order which imposes control on the person's conduct or movement.
84. An individual cannot seek a review of an interim bar or suspension until six months has passed to allow the worker screening unit sufficient time to gather information where necessary and to make a determination. Jurisdictions will have the ability to determine a request for a review or appeal on the basis that a charge remains pending or an allegation is still subject to investigation or determination.
85. If the individual is not satisfied after the internal review, they may seek an external review by a tribunal or authority within that jurisdiction.

PART 8 — INFORMATION SHARING AND DISCLOSURE

86. The central purpose of sharing of information between jurisdictions is to minimise the risk of harm to people with disability. The outcomes of NDIS worker screening are

compromised when relevant and reliable information is unavailable to individual NDIS worker screening units.

87. The Parties agree to take reasonable steps to ensure that information made available under this Agreement is:
 - a) appropriate and relevant for the purposes of conducting an NDIS Worker Screening Check
 - b) made available only to authorised persons
 - c) collected through lawful and fair means
 - d) accurate, up-to-date, complete and not misleading
 - e) made available in a timely manner.
88. The Parties recognise that the disclosure and use of criminal history and other information pertaining to an individual is sensitive, and must take into account issues of individual privacy.
89. The unauthorised disclosure of information gathered in the course of conducting NDIS Worker Screening Checks will be an offence under State and Territory legislation.
90. The Parties agree to take such steps as are reasonable in the circumstances to protect personal information from misuse, interference, loss unauthorised access, modification and disclosure; and will destroy the information or ensure it is de-identified when no longer required, in accordance with their relevant legislative obligations.
91. The Parties agree to put in place formal information sharing processes and mechanisms that are reliable, robust and transparent.

PART 9 — IMPLEMENTATION

Legislation

92. The legislative elements of the national policy for NDIS worker screening will be implemented through the following:
 - a) The Commonwealth will seek to enact legislation that will:
 - i. establish a statutory Commission to develop and oversee the broad policy design for nationally consistent screening of workers under the NDIS
 - ii. through the NDIS Practice Standards, introduce an obligation on registered NDIS providers to screen workers in accordance with the national policy, with the agreement of host jurisdictions
 - iii. empower the Commission to monitor registered NDIS provider compliance with their conditions of registration, including in relation to the screening of workers
 - iv. through the NDIS Code of Conduct, introduce an obligation on NDIS providers and their workers to disclose an exclusion

- v. enable the Commission to maintain and provide state and territory worker screening units and employers access to a centralised database of outcomes of NDIS worker screening.
- b) Each State and Territory Government will seek to enact legislation in their jurisdictions establishing a scheme for the screening of persons providing supports and services to people with disability consistent with this Agreement, including expressly enabling the consideration of information set out in the Agreement and its Schedules.
- c) Each of the Parties, including the Commonwealth, will seek to repeal, amend, or modify any other legislation under their jurisdiction required to implement the national policy, including facilitating information sharing and enforcement cooperation between Commonwealth, State and Territory agencies.

National Clearance Database

93. The Parties agree to the establishment and maintenance of a National Clearance Database from July 2019 with:
- a) the Commission responsible for administering the database, and providing access to the National Clearance Database (including to all States and Territories)
 - b) the Commission responsible for providing access to a subset of the National Clearance Database to employers and self-managing participants
 - c) the Commission responsible for ensuring employer verification of applications, and for making this information available to NDIS worker screening units
 - d) the Commission and the States and Territories responsible for providing input into the National Clearance Database
 - e) the input into the National Clearance Database to be agreed by the Parties by July 2019 and attached as a Schedule to this Agreement.
94. The National Clearance Database would serve to:
- a) maintain a register of cleared and excluded applicants and workers from all jurisdictions to support national portability
 - b) facilitate the exchange of relevant information about individuals applying to work in the NDIS, and ensure that a decision to issue an NDIS Worker Screening Check exclusion, interim bar or suspension would be available to all jurisdictions
 - c) enable national ongoing monitoring of cleared applicants' criminal history records during the validity period of their clearance to ensure worker screening units can assess and respond in a timely manner to risk posed to participants
 - d) enable employer verification of applicants.

Communications and stakeholder engagement

95. All Parties agree to develop national communications protocols and engage stakeholders in relation to NDIS worker screening, supported by the Commission, on the basis that messaging within jurisdictions should be as far as possible consistent with national messaging but tailored to the circumstances that may apply within that jurisdiction.

96. The Parties will jointly implement a consultation, education and engagement process with participants, workers and providers prior to the introduction of the new arrangements.

Reporting and performance benchmarks

97. The Parties agree to report on the operation and performance of the NDIS worker screening scheme in their jurisdiction annually to the NWSSC.
98. The reporting requirements will be determined by the NWSSC. At a minimum, this will include reporting on the number of days taken to finalise assessments.
99. Reporting will enable the NWSSC to monitor the performance of the NDIS worker screening scheme, including the timely finalisation of applications, identify any changes needed to improve the outcomes of the national policy on NDIS worker screening, and streamline the operational and information sharing arrangements for NDIS worker screening.

PART 10 — FINANCIAL ARRANGEMENTS

Funding the National Clearance Database

100. The Parties agree to jointly commit funding to support the development and continued operation of the National Clearance Database, noting that:
- a) the Commonwealth will contribute 50 per cent of funding
 - b) the States and Territories will contribute the remaining 50 per cent of funding, with the contribution of each state and territory to be calculated on the basis of population share.
101. Funding contributions will be agreed by the Parties no later than 1 July 2018 and attached as a Schedule to this Agreement.

Billing between the States and Territories

102. The Parties agree that it is desirable for jurisdictions to move away from reciprocal billing for the supply of information under this Agreement.

Other costs

103. All other costs arising from this Agreement and the provision of information by jurisdictions and the Commission under this Agreement will be met by the jurisdiction that accrues the cost.
104. If future key priorities are agreed which require additional investment to the funding agreed in this Agreement, the Parties must unanimously agree to vary this Agreement.

PART 11 — GOVERNANCE OF THE AGREEMENT

NDIS Worker Screening Steering Committee

105. The NWSSC will consist of officials from the Commonwealth, state and territory governments, and will be responsible for supporting and monitoring the implementation of nationally consistent NDIS worker screening, refining policy settings including proposing amendments to this Agreement, and resolving operational issues related to the implementation of this Agreement.

106. Meeting arrangements for the NWSSC will be agreed between the Parties and will be set out in its Terms of Reference.
107. The NWSSC will report to the Senior Officials Working Group or appropriate sub-group, and the Disability Reform Council, or appropriate Ministerial Council.

Variation of the Agreement

108. This Agreement, and Schedules to the Agreement, may be amended at any time by agreement in writing by all the Parties.
109. The Parties agree that new Schedules may be added to this Agreement to support refinements to the nationally consistent NDIS worker screening policy.

Delegations

110. The relevant Commonwealth Minister with portfolio responsibility for the National Disability Insurance Scheme is authorised to agree and amend Schedules to this Agreement.
111. A state or territory First Minister or Minister with portfolio responsibility for disability services will be authorised to agree and amend Schedules to this Agreement.

Dispute resolution

112. Any Party may give notice to other Parties of a dispute under this Agreement.
113. Officials of the Parties involved in the dispute attempt to resolve any dispute in the first instance.
114. If a dispute cannot be resolved by officials, it may be escalated to relevant Ministers, and, if necessary, the COAG Disability Reform Council or appropriate Ministerial Council and COAG.

Review of the Agreement

115. In accordance with clause 38 and consistent with clause 62, the NWSSC will review the scope of the NDIS Worker Screening Check, including the Commission policy guidelines on the definition of more than incidental contact, and the list of disqualifying offences and offences resulting in a presumed exclusion set out in clause 61, by July 2019. The NWSSC will report on the outcomes of the review to the Senior Officials Working Group.
116. The operation of the national policy on NDIS worker screening and this Agreement more broadly will be reviewed as part of the review of the Framework, commencing in mid-2021, three years after commencement. The terms of reference for the review of the national policy will be agreed by the Disability Reform Council, or appropriate Ministerial Council. The outcomes of the review of the national policy will be provided to the Disability Reform Council, or appropriate Ministerial Council, by mid-2022.

Termination of the Agreement

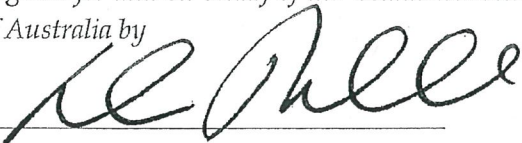
117. In exceptional circumstances, a party to the Agreement may withdraw from this Agreement by giving 12 months' notice of intention to do so, in writing, to the Disability Reform Council, or appropriate Ministerial Council and COAG.
118. Following notification of a party's intention to withdraw from this Agreement, the terms of the withdrawal, including the date on which the Party will cease to be a Party, and any legislative changes, ongoing funding obligations and other arrangements that may be

necessary as a consequence of the withdrawal will be negotiated in good faith and agreed between the Parties.

PART 12 — TRANSFER

119. The Parties agree to implement worker screening for the NDIS in alignment with the full Scheme roll-out of the NDIS and the commencement of the national quality and safeguarding arrangements in each jurisdiction. The NDIS Worker Screening Check will be available in New South Wales and South Australia from July 2018, and be available in remaining states and territories, except Western Australia, from July 2019. In Western Australia, the NDIS Worker Screening Check will begin in 2020, subject to final negotiations.
120. The Parties recognise that the full effect of the policy for nationally consistent NDIS worker screening will be implemented incrementally over time as: jurisdictions reach full scheme; State, Territory and national ICT systems to administer NDIS Worker Screening Checks and support national information sharing are established and workers gradually transition to the new arrangements.
121. The transfer arrangements and timing for full implementation will be negotiated between the Parties in good faith, on a basis which ensures the safety of people with disability and a smooth transition for workers and providers, and with respect to the operational capacity of NDIS worker screening units.
122. The Parties agree that workers transitioning across to the NDIS worker screening process will be prioritised in accordance with detailed phasing arrangements to be agreed bilaterally between the Commonwealth and each jurisdiction.

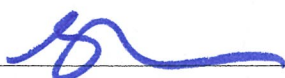
Signed for and on behalf of the Commonwealth
of Australia by



The Honourable Malcolm Turnbull MP
Prime Minister of the Commonwealth of Australia

Date

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State of New South Wales by



The Honourable Gladys Berejiklian MP
Premier of the State of New South Wales

Date

6/6/18

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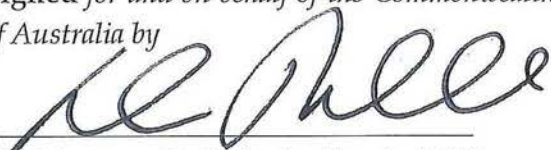
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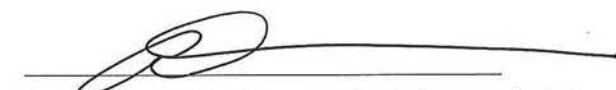
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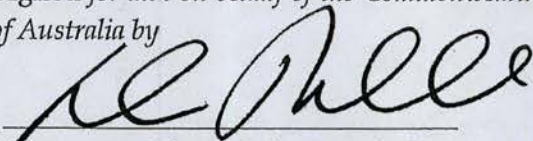
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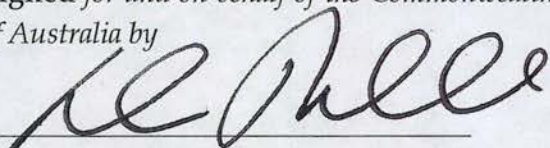
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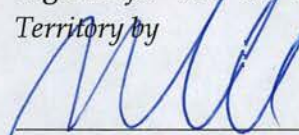
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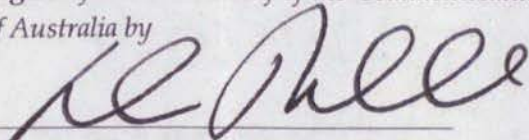
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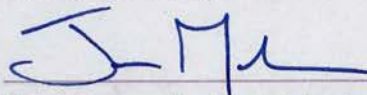
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The Honourable Daniel Andrews MLA
Premier of the State of Victoria

JAMES MERLINO
ACTING PREMIER

Date 9.7.18

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Premier of the State of Queensland

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Andrew Barr MLA
Chief Minister of the Australian Capital Territory

Date 4/12/2018

Signed for and on behalf of the Northern Territory by

The Honourable Michael Gunner MLA
Chief Minister of the Northern Territory of Australia

Date

Exchange of Criminal History Information for the NDIS Worker Screening Check

INTERGOVERNMENTAL AGREEMENT ON NATIONALLY CONSISTENT WORKER SCREENING
FOR THE NATIONAL DISABILITY INSURANCE SCHEME

INFORMATION TO BE EXCHANGED

- A1 The Parties agree that they will exchange criminal history information, meaning the following categories:
- a) convictions
 - b) spent convictions
 - c) pending charges
 - d) non-conviction charges.
- A2 The Parties agree that they will exchange, if available, circumstances information held by jurisdictions' police services about the circumstances of an offence or alleged offence that might not be clear from the bare record of the offence or alleged offence, such as:
- a) when the offence was committed or was alleged to have been committed
 - b) the age of the offender or alleged offender
 - c) the age of the victim of the offence or alleged offence
 - d) whether the offence or alleged offence involved, might have involved or was intended to involve a person or persons with disability
 - e) the relationship, if any, between the offender or alleged offender and any person with disability involved in the offence or alleged offence
 - f) the circumstances and nature of the behaviours constituting or involved with the offence or alleged offence
 - g) other factors relevant to a decision about whether a person poses a risk of harm to people with disability.
- A3 This Agreement does not displace existing arrangements relating to the NPCS.

PROCESS FOR EXCHANGING INFORMATION

- A4 Police services, through ACIC, provide criminal history information to NDIS worker screening units.
- A5 When a participating NDIS worker screening unit makes a request for a NPCS check, police services, including police services outside the unit's jurisdiction, will supply expanded criminal history information to the NDIS worker screening unit in a timely manner.
- A6 If a lengthy turnaround time is required because, for example, documents are required to be retrieved from remote locations, police services will notify the unit of the reason for this.
- A7 An NDIS worker screening unit that has received inter-jurisdictional criminal history information may ask the police service of another jurisdiction for circumstances information relating to the criminal history information.
- A8 An inter-jurisdictional request for circumstances information will be in a form agreed to by the requesting NDIS worker screening unit and the supplying police service that indicates the purpose of the request and provides sufficient information identifying the person and their relevant charge or conviction.
- A9 The police service will supply the circumstances information, if available, to the unit in a form agreed to by the unit and the police service, in a timely manner.
- A10 When circumstances information is not able to be provided in response to a request or if a lengthy turnaround time is required, the police service will inform the participating screening unit of the reason for this.

USE AND DISCLOSURE OF INTER-JURISDICTIONAL CRIMINAL HISTORY INFORMATION

- A11 Participating NDIS worker screening units are prohibited from—and, where appropriate, subject to penalty for—disclosing inter-jurisdictional criminal history information beyond the screening unit or to persons not performing functions relevant to conducting an NDIS Worker Screening Check or other working with vulnerable persons screening processes other than as required by law.
- A12 Disclosure of the criminal history information to tribunals, courts or authorities undertaking reviews of decisions of the participating screening unit for the purpose of facilitating a review is an acceptable disclosure.
- A13 In exceptional circumstances, the participating NDIS worker screening unit may be under statutory obligations to use or disclose the inter-jurisdictional criminal history information for the protection of a particular child or class of children, as part of a legislated child protection function. Such statutory obligations and disclosure pursuant to them are consistent with this agreement.
- A14 The participating screening unit must obtain at the time of application the consent of a person which records that the person understands that an NDIS Worker Screening Check will involve the request and disclosure of criminal history information, including information from other jurisdictions and information about the circumstances of the convictions or charges. This consent is ongoing whilst the person holds an NDIS Worker Screening Check clearance.
- A15 The participating screening unit must comply with Commonwealth, State and Territory privacy and human rights legislation where relevant.

- A16 The participating screening unit must comply with records management legislation within their jurisdictions that determines information management, storage, retention and destruction requirements.

MINIMISING DUPLICATION AND COSTS WITHIN JURISDICTIONS

- A17 Nothing in this Agreement prevents an NDIS worker screening unit from:

- a) indicating to a third-party government screening entity whether criminal history information, including inter-jurisdictional expanded criminal history and circumstances information, exists in relation to a person, provided:
 - i. the NDIS worker screening unit does not disclose the person's actual criminal history
 - ii. the NDIS worker screening unit advises the third-party government screening entity that no adverse inferences about the person's criminal history or eligibility for employment should be drawn from an indication that person has or may have a criminal history
 - iii. the person involved has given their consent
- b) forwarding to a third-party government screening entity a person's criminal history information, including inter-jurisdictional expanded criminal history and circumstances information, provided:
 - i. the NDIS worker screening unit has contractual or other arrangements with ACIC and police services for forwarding the information to the third-party government screening entity
 - ii. the third-party government screening entity intends to use the information for the purposes of conducting or monitoring compliance against an NDIS Worker Screening Check or other working with vulnerable persons screening processes
 - iii. the person involved has given their consent.

- A18 These arrangements are intended to avoid unnecessary duplication and cost in criminal history screening within screening units or across a jurisdiction's screening units arising because of the Agreement.

BILLING ARRANGEMENTS

- A19 Notwithstanding the general principle that jurisdictions should move away from reciprocal billing, the following principles should apply to the police services billing participating NDIS worker screening units for the supply of circumstances information unless the relevant NDIS worker screening unit and inter-jurisdictional police service agree to alternative arrangements:

- a) the supplying police service will invoice the requesting inter-jurisdictional unit for circumstances information, if any, supplied during the previous calendar month
- b) the fee will apply to circumstances information relating to each offence or alleged offence, unless the relevant police prosecution brief covers more than one offence or alleged offence for which circumstances information is sought, in which case one fee will apply

- c) disputes about charging or billing will be settled between the supplying police service and the requesting inter-jurisdictional participating NDIS screening unit.

A20 Fees or billing arrangements may be waived or reduced at the discretion of police services or altered by agreement with the requesting NDIS worker screening unit.

Risk Assessment and Decision-making Framework

INTERGOVERNMENTAL AGREEMENT ON NATIONALLY CONSISTENT WORKER SCREENING FOR THE NATIONAL DISABILITY INSURANCE SCHEME

PURPOSE OF THIS SCHEDULE

- B1 This Schedule outlines the risk assessment and decision-making framework that will be used by all NDIS worker screening units in determining an application for an NDIS Worker Screening Check, in applying an interim bar or suspension, in revoking a clearance and in closing an application. The objective of this Schedule is to promote national consistency in outcomes between NDIS worker screening units.
- B2 This Schedule supports the principles and objectives in Part 2 of the Agreement and sets out how the principles for nationally consistent worker screening are applied to the risk assessment and decision-making process. That is:
- a) the paramount consideration in a risk assessment is the safety and wellbeing of people with disability, and, in particular, their right to live free from abuse, violence, neglect and exploitation (including financial);
 - b) decisions are made based on evidence-based information that indicates an individual worker may pose an unacceptable risk, and professional judgement is applied in accordance with this Schedule;
 - c) the risk assessment and decision-making framework provides sufficient guidance to NDIS worker screening units such that an assessment is likely to deliver the same outcome, regardless of the jurisdiction in which the assessment was conducted;
 - d) the risk assessment and decision-making framework ensures that assessments and decisions are made through a reasoned and defensible process
 - e) the risk assessment is underpinned by practices that are continually refined to support high-quality decision-making to minimise the risk of harm to people with disability from the people who work closely with them.

PRESUMPTIONS

- B3 An applicant or a holder of a clearance who has not previously been issued an NDIS Worker Screening Check exclusion, and does not have a relevant criminal history record, disciplinary or misconduct record, any issues identified through self-disclosure, or any other relevant and assessable records must be issued an NDIS Worker Screening Check clearance.

- B4 An applicant or a holder of a clearance who has been convicted of a disqualifying offence as an adult must be issued an NDIS Worker Screening Check exclusion.
- B5 An applicant or holder of a clearance with a conviction or pending charge for offences leading to a presumed exclusion must be issued with an exclusion unless the NDIS worker screening unit is satisfied, based on all the information before them, that there are exceptional circumstances such that the person does not pose an unacceptable risk of harm to people with disability.
- B6 Exceptional circumstances are those that the NDIS worker screening unit considers are unusual, uncommon or special, and result in the NDIS worker screening unit being satisfied the person does not pose an unacceptable risk of harm to people with disability. Exceptional circumstances are not limited to the circumstances of the offence leading to a presumed exclusion.
- B7 If an applicant or holder of a clearance has relevant assessable information other than a disqualifying offence, the NDIS worker screening unit must undertake a risk assessment and decide, based on all the information before them, if there is an unacceptable risk of harm to people with disability.
- B8 If the NDIS worker screening unit is satisfied that the person does not pose an unacceptable risk of harm to people with disability, a clearance must be issued.
- B9 If the NDIS worker screening unit is satisfied that the person does pose an unacceptable risk of harm to people with disability, an exclusion must be issued.
- B10 The above applies for determining applications, ongoing monitoring and reapplications.

MEANING OF UNACCEPTABLE RISK OF HARM

- B11 In determining whether or not a person poses an unacceptable risk of harm, the NDIS worker screening unit must consider if there is a real and appreciable risk that the applicant might in the future cause harm to people with disability.
- B12 Harm includes, but is not limited to, any detrimental effect on a person's physical, sexual, psychological, emotional or financial wellbeing.
- B13 In determining if there is a real and appreciable risk, the NDIS worker screening unit does not need to be satisfied that it is likely the person will cause harm to a person with disability in the future.
- B14 In determining whether or not a person poses an unacceptable risk of harm, the NDIS worker screening unit must consider the following factors, as set out in clause 66 of the Agreement:
- a) the nature, gravity and circumstances of the offence, misconduct and/or other relevant information, and how this is relevant to disability-related work
 - b) the length of time that has passed since the event occurred
 - c) the vulnerability of the victim at the time of the event and the person's relationship to the victim or position of authority over the victim at the time of the event

- d) the person's criminal, misconduct and disciplinary, or other relevant history, including whether there is a pattern of concerning behaviour
 - e) the person's conduct since the event
 - f) all other relevant circumstances in respect of their offending, misconduct or other relevant history, and the impact on their eligibility to be engaged in disability-related work.
- B15 To determine the relative weight given to information in a risk assessment, NDIS worker screening units will take into account the context and characteristics of that information, including its reliability, how it was obtained, and the nature, extent and outcome of investigations.
- B16 The rights of and personal impact to an applicant or a holder of a clearance are not relevant in determining whether they pose an unacceptable risk of harm.
- B17 Where an applicant has multiple criminal offences of varying severity, NDIS worker screening units will consider disqualifying offences and presumed exclusion offences before considering other offences.

INTERIM BARS AND SUSPENSIONS

- B18 An NDIS worker screening unit may, at any time after receiving an application and pending determination of the application, impose an interim bar on the applicant.
- B19 An NDIS worker screening unit may suspend the clearance of a person at any time.
- B20 An interim bar or suspension must be imposed if:
- a) the applicant or the holder of clearance is subject to a pending charge for a disqualifying offence, until such time that the charge is resolved or once the NDIS worker screening unit completes its assessment
 - b) the applicant or the holder of clearance is subject to a banning order by the NDIS Commission as a result of information that indicates the person poses an unacceptable risk of harm to people with disability, until such time that the NDIS Commission varies or revokes the banning order, or the NDIS worker screening unit completes its assessment
 - c) the NDIS worker screening unit is satisfied that there is a reasonable likelihood that a risk assessment will determine that the person poses an unacceptable risk of harm to people with disability.
- B21 Jurisdictions are not required to impose interim bars if the laws of that jurisdiction do not permit applicants to work while an application is being processed. However, a person is not eligible to work in any jurisdiction while on application if their application was made in a jurisdiction that does not impose interim bars.

OPERATIONAL RESOURCES AND GOVERNANCE

- B22 The Parties recognise that they have a shared responsibility for the design and implementation of the national policy on NDIS worker screening, and will work collaboratively to develop evidence-based tools, operational resources, and appropriate national moderation processes, to support this Schedule as required.

REVIEW OF THIS SCHEDULE

- B23 The Parties acknowledge that aspects of this framework will require further consideration and refinement over time. While there is substantial research on the risk factors for sexual offences and abuse of children, a comprehensive evidence base on the incidence and risk factors of harm to vulnerable adults accessing NDIS supports and services is not yet available. The Parties will work together to build a national evidence base over time, including identifying best practice.

Funding of the National Clearance Database

INTERGOVERNMENTAL AGREEMENT ON NATIONALLY CONSISTENT WORKER SCREENING FOR THE NATIONAL DISABILITY INSURANCE SCHEME

FUNDING CONTRIBUTIONS

- C1 The Parties agree to jointly fund the development and maintenance of the National Clearance Database from 2018-19 onwards, with:
- a) the Commonwealth to contribute 50 per cent of funding
 - b) the States and Territories to contribute the remaining 50 per cent of funding, with the contribution of each state and territory to be calculated on the basis of population share (determined by the 2016 Census data for the period up to 2020-21).
- C2 Commonwealth will provide initial funding in 2017-18 to support the early development of the National Clearance Database.
- C3 The agreed funding contribution by the Parties is shown in Table 1 below. All payments are exclusive of GST.

TABLE 1: FINANCIAL CONTRIBUTION OF EACH JURISDICTION FOR THE NATIONAL CLEARANCE DATABASE*

Financial contribution	2017-18	2018-19	2019-20	2020-21	Proportion
Commonwealth	\$0.368m	\$4.541m	\$0.894m	\$0.674m	50.0%
New South Wales	—	\$1.452m	\$0.286m	\$0.215m	16.0%
Victoria	—	\$1.150m	\$0.226m	\$0.171m	12.7%
Queensland	—	\$0.913m	\$0.180m	\$0.135m	10.1%
Western Australia	—	\$0.480m	\$0.094m	\$0.071m	5.3%
South Australia	—	\$0.325m	\$0.064m	\$0.048m	3.6%
Tasmania	—	\$0.099m	\$0.019m	\$0.015m	1.1%
Australian Capital Territory	—	\$0.077m	\$0.015m	\$0.011m	0.8%
Northern Territory	—	\$0.044m	\$0.009m	\$0.007m	0.5%

* Funding from 2021-22 onwards will be agreed by the Parties no later than 1 April 2021.

INVOICING ARRANGEMENTS

- C4 Payment schedules and milestones will be agreed bilaterally between the Commonwealth and states and territories.

- C5 The Commonwealth will issue invoices to the States and Territories 30 days prior to the scheduled payment day.
- C6 When the scheduled payment day is a Saturday, Sunday or a public holiday in the relevant jurisdiction, the payment will be required on the next business day.
- C7 The timing and amount of payments may be varied when necessary by the agreement in writing between the Commonwealth and the affected jurisdiction.

UNDERSPENDS AND OVERSPENDS

- C8 Having regard to the agreed estimated costs of the development of the National Clearance Database, the Commonwealth will fund 100 per cent of any cost overruns.
- C9 The Commonwealth will not be required to pay a refund to the States and Territories if the actual cost of the National Clearance Database is less than the agreed estimated costs of the project.

Application Form and Process

INTERGOVERNMENTAL AGREEMENT ON NATIONALLY CONSISTENT WORKER SCREENING FOR THE NATIONAL DISABILITY INSURANCE SCHEME

PURPOSE OF THIS SCHEDULE

- D1 This Schedule supports the requirements for the application process set out in Part 5 of the Agreement by providing a set of recommended processes and guidelines for the application form, the identity proofing process, and the reapplication process.

APPLICATION FORM

- D2 An application for an NDIS Worker Screening Check must be in a form approved by the NDIS worker screening unit, and include or be accompanied by the proof of identity, fee and any other information required by the NDIS worker screening unit.
- D3 An approved form must include the requirements set out in Part 5 of this Agreement.
- D4 The approved form should support the establishment and operation of the National Clearance Database, including the collection and disclosure of data fields to be agreed by all Parties, consistent with clause 93 of this Agreement.
- D5 Jurisdictions that have the capability to do so will also support the collection of statistical and demographic information in a form to be specified by the Commission, including information about an applicant's educational qualifications, disability status, and cultural and linguistic diversity data on a voluntary basis. The statistical and demographic information to be collected will be specified by the Commission in agreement with those States and Territories that have the capability to collect this information to ensure national consistency in data. The application form should state that:
- a) it is voluntary for applicants to provide this information
 - b) this information will not be used by the NDIS worker screening unit to determine a person's application
 - c) the information collected will be disclosed to the Commission and other agencies to support research into matters relevant to the NDIS and policy development, and will be used to inform and improve the work of the Commission.
- D6 Jurisdictions have discretion on how to operationalise the requirements for the application form.

IDENTITY PROOFING AND RESIDENCY REQUIREMENTS

- D7 The Parties agree to put in place identity proofing requirements at a standard that is sufficient to access nationally coordinated criminal history checks.

- D8 It is open to jurisdictions how they operationalise the standard requirements within their jurisdiction, including whether or not elements of the identity proofing process are undertaken by the NDIS worker screening unit or another agency.
- D9 Jurisdictions may adopt additional identity proofing processes over and above these minimum requirements where appropriate for their jurisdiction.
- D10 The Parties acknowledge that, in some cases, people may face genuine difficulty in providing the necessary evidence to identify themselves to the required level of assurance. Exceptional cases are those where a person does not possess and is unable to obtain the necessary information or evidence of identity. This may include people whose birth was not registered; Aboriginal and Torres Strait Islander peoples; people who are homeless; undocumented arrivals to Australia; people living in remote areas; people who are transgender or intersex; people effected by natural disasters; people with limited access to identity documents, for example because they were raised in institutional or foster care; people with limited participation in society; and young people or those over 18 who are yet to establish a 'social footprint' in the community.
- D11 Each jurisdiction will put in place alternative identity proofing processes for exceptions cases to ensure that people who may be unable to meet the standard requirements are not unduly prevented from working in certain roles in the NDIS. These alternative identity proofing processes must accord with the requirements to access nationally coordinated criminal history checks and will be reviewed regularly by each jurisdiction.
- D12 Each jurisdiction will have a document that outlines the individual identity proofing processes in their jurisdiction and will make this available to other NDIS worker screening units and the Commission where required.
- D13 Jurisdictions may put in place a requirement for applicants to reside or work in that jurisdiction.

EXCLUDED PERSONS CANNOT APPLY

- D14 A person who has been convicted of a disqualifying offence and is issued an NDIS Worker Screening Check exclusion is excluded permanently and cannot make a further application unless the exclusion is overturned (on grounds of mistaken identity), or the conviction is quashed or set aside or otherwise ceases to have effect.
- D15 A person cannot apply for an NDIS Worker Screening Check if they have been issued an exclusion or had their clearance revoked within the last five years, unless there has been a significant and exceptional change in circumstances that would allow for an early application. An early application may be permitted in the following significant and exceptional circumstances:
- a) proceedings for an offence on which the exclusion or revocation was based are withdrawn or dealt with without the person being found guilty of the offence
 - b) a finding of guilt or misconduct on which the exclusion or revocation was based are quashed or set aside or otherwise ceases to have effect
 - c) an NDIS worker screening unit permits a person to make such an application.

- D16 To avoid all doubt, an NDIS worker screening unit cannot permit a person to make an early application if the person has been convicted of a disqualifying offence, and the conviction remains in force.

REAPPLICATION

- D17 The Parties agree to streamline the application process for workers whose clearances are about to expire. This should include a streamlined application form (such as prepopulating information in the application form) as far as is practicable for a person reapplying for an NDIS Worker Screening Check in the same jurisdiction.
- D18 A reapplication form must ask for the applicant's existing NDIS worker screening number, regardless of which jurisdiction issued the original clearance.
- D19 There is no obligation on a jurisdiction to streamline the application process if a person is applying to their jurisdiction for the first time, even if that person has previously held an NDIS Worker Screening Check.
- D20 A person may continue to work with people with disability in the NDIS while their re-application is being processed until such time that the NDIS worker screening unit determines their re-application, subject to the following:
- a) the person reapplied for an NDIS Worker Screening Check in a form approved by the NDIS worker screening unit (including meeting any identity proofing and fee requirements) before their current clearance expired
 - b) the re-application has not been withdrawn or closed
 - c) the person remains engaged in the delivery of NDIS supports and services by a recognised employer
 - d) the person remains subject to ongoing monitoring.
- D21 To avoid all doubt, clause D20 applies in jurisdictions that do not otherwise permit a person to work while their application is pending.
- D22 Jurisdictions may determine how far in advance of the expiry of the current clearance a person can make a re-application.