



Government of South Australia

Department of Human Services

NDIS Worker Check Guidelines

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NDIS Worker Check Guidelines

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1. Introduction

The 'NDIS Worker Check Guidelines' (the Guidelines) are made pursuant to section 12 of the *Disability Inclusion Act 2018* (the Act) and in accordance with the Disability Inclusion (NDIS Worker Check) Regulations 2020 (the Regulations).

The Guidelines provide the framework for how the central assessment unit will conduct an NDIS worker check for the purposes of the Act; i.e. how the central assessment unit will identify and assess relevant information against the risk assessment criteria to determine whether or not the person poses a risk to people with disability.

The Guidelines are based on nationally agreed policy contained in the Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme (NDIS IGA) and operational policy agreed by the NDIS Worker Screening Steering Committee (NWSSC) under the governance of the former Council of Australian Governments (COAG).

The Commonwealth *National Disability Insurance Scheme Act 2013* (the NDIS Act) and the *National Disability Insurance Scheme (Practice Standards – Worker Screening) Rules 2018* (the Worker Screening Rules). details the screening requirements for registered NDIS providers.

Under the NDIS IGA, state and territory governments are responsible for conducting NDIS worker screening checks consistent with the agreed national policy. The NDIS Quality and Safeguards Commission (the NDIS Commission) is responsible for monitoring NDIS worker and employer compliance with the national policy.

The Department for Human Services Screening Unit performs the functions and exercises the powers of the central assessment unit for the purposes of NDIS worker checks.

The Guidelines are to be read as a whole and in conjunction with the Act and the Regulations.

The Guidelines are intended to be subject to continuous improvement and will be reviewed periodically to determine whether they are meeting the requirements of the Act and Regulations.

2. Objects and principles

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.

The paramount consideration in respect of the conduct of a NDIS worker check is the safety and wellbeing of people with disability.

A NDIS worker check is not a determination of a person's suitability to work with people with disability. A NDIS worker check that results in a person being cleared is not proof of good character or that the person does not pose a risk to people with disability. It is an assessment of one person's prior conduct; it is a point in time assessment of past behaviour in order to predict future risk.

The fact that a NDIS worker check is conducted in relation to an employee does not satisfy an employer's obligation to ensure that a workplace is safe for people with disability. It is one part of a range of strategies to be employed by employers and the community to keep people with disability safe.

Employers cannot rely on a NDIS worker check to absolve them of responsibility for safeguarding people with disability. Organisations and employers must have in place comprehensive strategies to ensure safe environments.

3. Application for an NDIS worker check

A person may apply to the central assessment unit for an NDIS worker check if they are engaged by or will be engaged by an NDIS provider or self-managed participant to undertake NDIS work in South Australia.

Pursuant to section 18G of the Act, the central assessment unit will refuse to accept an application for an NDIS worker check if the person:

- Is not residing, or intending to reside in South Australia; and
- Is not undertaking NDIS work or intending to undertake NDIS work in South Australia.

An NDIS provider or self-managed participant must verify that the person is undertaking NDIS work or intending to undertake NDIS work on the application form.

An application for an NDIS worker check will be terminated if the person:

- Is not permitted to apply for an NDIS worker check; or
- Is unable to obtain verification of their application by an NDIS provider or self-managed participant; or
- Has provided incorrect information on their application or failed to provide all required information. For example, where the person has not provided correct legal names.

An application for an NDIS worker check will be uploaded to the National Worker Screening Database (National Database). This National Database is administered by the NDIS Commission and holds a register of workers who have applied for an NDIS worker check in any jurisdiction. The outcome of an application for an NDIS worker check will be recorded in the database and be available to all NDIS providers and self-managed participants who have registered access the database. Each NDIS worker will have one record in the National Database.

A person may request that their NDIS worker check application be withdrawn at any time. However, the central assessment unit must consent to the withdrawal.

Persons not permitted to apply for an NDIS worker check

Section 18H of the Act identifies persons who are not permitted to apply for an NDIS worker check:

- A person who has been issued an NDIS worker check exclusion
- A person who has had their NDIS worker check cancelled and been issued an exclusion in South Australia or another jurisdiction in the last five years because of a *presumptive disqualification offence* or risk assessment is not permitted to apply for an NDIS worker check, except where there has been a relevant change in circumstances.
- A person who has a pending application for an NDIS worker check in South Australia or another jurisdiction cannot apply for a NDIS worker check.
- A person who has an NDIS worker check issued in South Australia or another jurisdiction that has more than three months left before it expires cannot apply for an NDIS worker check.

In addition, a person who has previously been issued an NDIS worker check exclusion in South Australia or another jurisdiction because of a *disqualifying offence* is not permitted to apply for an NDIS worker check pursuant to section 18Q.

An application submitted by a person who is not permitted to apply will be terminated pursuant to regulation 10.

Relevant change in circumstances and early applications

Pursuant to section 18H, a person who has been issued an NDIS worker check exclusion in South Australia or another jurisdiction or who has had their NDIS worker check cancelled and been subsequently issued an exclusion because of a *presumptive disqualification offence* or risk assessment is not permitted to apply for an NDIS worker check for five years, except where there has been a *relevant change in circumstances*.

Each of the following is a *relevant change of circumstances*:

- proceedings for an offence on which the exclusion was based are withdrawn or dealt with without a finding of guilt in respect of the person;
- a finding of guilt for an offence on which the exclusion was based is quashed or set aside;
- a finding in respect of a risk assessment on which the exclusion was based is quashed or set aside, or otherwise ceases to have effect; or
- any other change of circumstances that the central assessment unit considers should result in the person being permitted to make an application.

A person who has had a *relevant change of circumstance* and wishes to make an early application for an NDIS worker check must first contact the central assessment unit before submitting an application. The central assessment unit must be satisfied that there has been a relevant change in circumstances before a person can make an early application. Evidence of the *relevant change in circumstances* must be provided (court certificates, letter from legal representative).

The granting of permission to make an early application for an NDIS worker check does not mean that the person will be granted a clearance. The person will still be subject to a risk assessment of all relevant information.

Employer Verification

An application for an NDIS worker check must be verified by an NDIS employer. Self-managed participants and self-employed workers are recognised as an NDIS employer for the purposes of NDIS worker checks.

A person can nominate multiple NDIS employers to verify an application. If any of those employers verifies the application, no additional verification from other employers will be required.

Employer verification occurs through the National Database. Once an application for an NDIS worker check is uploaded to the National Database, the National Database will contact the nominated NDIS employer(s) requesting that they verify that the applicant is, or will be, engaged by them to undertake NDIS work.

NDIS employers have 30 days to verify an application and will receive automated reminders 28, 21, 14 and 7 calendar days before the verification request expires.

Applicants will also receive automated email notifications from the central assessment unit at 23, 16, 9, and 2 calendar days before the verification request expires advising that their nominated NDIS employers have not verified their application. The central assessment unit will advise a person if a verification request expires or an NDIS employer declines to verify their application. The person

will be granted an additional 30 days to obtain verification from another NDIS employer. If verification does not occur within the additional 30 days (i.e. after 60 calendar days), the application will be terminated pursuant to regulation 10

Employer verification is the last step in the application process. Once an employer has verified the application, it becomes a “valid application” and is accepted by the central assessment unit for processing and risk assessment.

Withdrawal of an application

Section 18G of the Act permits a person to request their NDIS worker check application be withdrawn at any time. The central assessment unit must consent to the withdrawal except in the following circumstances:

- where the person’s NDIS worker check is suspended;
- Where the person’s most recent NDIS worker check was cancelled by the central assessment unit or by a screening agency in another state or territory, and the person was issued with an NDIS worker check exclusion;
- Where the central assessment unit has notified the person, or intends to notify the person, that it proposes to issue an NDIS worker check exclusion but has not yet determined the application; or
- Where the central assessment unit is of the opinion that there is a reasonable likelihood that a risk assessment will determine that the applicant poses a risk of harm to people with disability.
 - A reasonable likelihood may be formed where:
 - The person is currently or has previously been, prohibited under the *Child Safety (Prohibited Persons) Act 2016*
 - The person is currently or has previously been not cleared by the central assessment unit to work with children, persons with disability, in aged care services or with vulnerable people.
 - The person is currently or has previously been not cleared by an interstate screening agency to work with children, persons with disability, in aged care services or with vulnerable people.
 - The central assessment unit has identified that the person has an serious or extensive criminal history or other relevant information

The central assessment unit will record the withdrawal on the national worker screening database, at which point any nominated NDIS employer/s will also be notified.

4. Conducting an NDIS worker check

The central assessment unit will obtain and assess where identified the following information for all persons who have applied for an NDIS worker check:

- National criminal history information held by law enforcement agencies, including expanded criminal history information where relevant;
- Disciplinary and misconduct information supplied by the NDIS Commission, including, but not limited to, any adverse and substantiated findings of formal investigations (such as reportable incident notifications, complaints, or breaches of the NDIS Code of Conduct), and adverse actions by the NDIS Commission including banning orders;
- The outcome of previous NDIS worker checks, conducted by either the central assessment unit or another jurisdiction;
- Notifications made to the South Australian Department of Child Protection pursuant to the *Children and Young People (Safety) Act 2017* or *Children's Protection Act 1993* (repealed);
- South Australian Department of Child Protection care concerns;
- Information provided by the person for the purposes of a NDIS worker check. This may be information submitted with the application or obtained or supplied as a part of the risk assessment process.

The central assessment unit may obtain and assess other relevant information in relation to a person who has applied for an NDIS worker check:

- Information about workplace misconduct by the person in the State or any other jurisdiction, being misconduct that concerns persons to whom a relevant risk of harm relates (whether or not such information was obtained in the course of, or relates to, disciplinary proceedings relating to the person).
- Information about any order imposed on the person by a court relating to child protection, apprehended violence or domestic or family violence in the State or any other jurisdiction.
- Information relevant to determining whether the person requires a risk assessment under a relevant law.
- Other information relevant to determining whether the person poses a relevant risk of harm to a person with disability.

Upon completion of an NDIS worker check the central assessment unit will either:

- grant an NDIS worker check – the person does not pose a risk of harm and is cleared to undertake NDIS work for any Registered NDIS provider; or
- issue an NDIS worker check exclusion – the person poses a risk of harm and is excluded from undertaking NDIS work for any Registered NDIS Provider.

Pursuant to section 18P, an NDIS worker check remains in force for five years.

Pursuant to section 18Q, an NDIS worker check exclusion remains in force:

- For five years where issued to a *presumptively disqualified person* or following a risk assessment; or
- Indefinitely where issued to a *disqualified person*.

A person who has been granted an NDIS worker check will be subject to national ongoing monitoring for relevant criminal history or NDIS Commission records, information held by the South Australian Department for Child Protection and any other information considered relevant by the central assessment unit. This may lead to a fresh risk assessment of a person's NDIS worker check .

5. Automatic grant of an NDIS worker check

The central assessment unit must grant an NDIS worker check to an applicant who does not have a criminal history record, disciplinary or misconduct record, child protection record, any issues identified through self-disclosure, or any other relevant records, and whom has not been previously issued with an NDIS worker check exclusion.

6. Automatic issue of an NDIS worker check exclusion

The central assessment unit must issue an NDIS worker check exclusion to an applicant who is a *disqualified person* within the meaning of section 18B of the Act.

A *disqualified person* is a person who has been found guilty of a *disqualification offence* committed as an adult.

Disqualification offences are identified in Appendix 1

Disqualification offences include:

- Offences of which a person has been convicted where that conviction is spent pursuant to the *Spent Convictions Act 2009* or a corresponding law within the meaning of that Act.
- An attempt to commit the offence, conspiracy to commit or aiding, abetting, counselling or procuring the offence.
- A corresponding offence under a previous enactment ie. an offence that has been repealed.
- A corresponding offence under a law of another State or Territory, including an offence referred to above.

Disqualification offences do not include:

- Findings of a court under Part A of the *Criminal Law Consolidation Act 1935* that the objective elements of a *disqualification offence* are established (whether or not the person was found not guilty of the offence, or was found to be mentally unfit to stand trial, pursuant to Division 2 or 3 of that Part);
- Offences that are expunged, quashed or that have been pardoned.
- Designated sex-related offences (decriminalised sex offences) which have been spent pursuant to the *Spent Convictions Act 2009*.

A *disqualified person* will not be provided with a notice of intention that the central assessment unit is proposing to issue an NDIS worker check exclusion - they will be automatically excluded.

The only grounds upon which the central assessment unit will review a *disqualified persons* application is if there is a mistake in identity or an error in criminal history information.

A *disqualified person* has no rights of appeal to the South Australian Civil and Administrative Tribunal.

7. Persons presumed to pose a risk of harm to people with disability

An applicant who is a *presumptively disqualified person*, within the meaning of section 18B of the Act, will be presumed to pose a risk of harm to people with disability and be issued an NDIS worker check exclusion, unless the person satisfies the central assessment unit that the offence can either be disregarded or there are exceptional circumstances.

A *presumptively disqualified person* is a person who has been found guilty of a *presumptive disqualification offence* committed as an adult.

Presumptive disqualification offences are identified in Appendix 2

Presumptive disqualification offences include:

- A charge for a *disqualification offence* or *presumptive disqualification offence* committed as an adult, where the charge has not yet been finally determined.
- Offences of which a person has been convicted where that conviction is spent pursuant to the *Spent Convictions Act 2009* or a corresponding law within the meaning of that Act.
- Findings of a court under Part A of the *Criminal Law Consolidation Act 1935* that the objective elements of a disqualification offence are established (whether or not the person was found not guilty of the offence, or was found to be mentally unfit to stand trial, pursuant to Division 2 or 3 of that Part).
- An attempt to commit the offence, conspiracy to commit or aiding, abetting, counselling or procuring the offence.
- A corresponding offence under a previous enactment ie. an offence that has been repealed.
- A corresponding offence under a law of another State or Territory, including an offence referred to above.

Presumptive disqualification offences do not include:

- Offences that have been expunged, quashed or that have been pardoned.
- Designated sex-related offences which have been spent pursuant to the *Spent Convictions Act 2009*.

Where a *presumptive disqualification offence* is identified, a risk assessment is required. The starting point for the risk assessment will be that the person is to be excluded and is presumed to

pose a risk of harm to people with disability. The central assessment unit does not need to consider or assess any further information other than the *presumptive disqualification offence*.

The central assessment unit must determine that the person poses a risk of harm to people with disability unless the person satisfies the central assessment unit that—

- the circumstances of the *presumptive disqualification offence* committed, or alleged to have been committed, by the person are such that the offence should be disregarded in determining whether the person poses a risk of harm to people with disability; or
- such exceptional circumstances exist in relation to the person that the person does not appear, or no longer appears, to pose a risk of harm to people with disability.

Evidence must exist which verifies that the offence can be disregarded or there are exceptional circumstances such that the person does not pose a risk of harm to people with a disability. A person does not have to prove both.

Where a *presumptive disqualification offences* is identified, the person will be notified of the central assessment unit's intention to exclude them unless they can provide evidence that satisfies the central assessment unit that they do not pose a risk of harm and be invited to provide a response. The onus is on the applicant to provide evidence to the central assessment unit; however, the central assessment unit may also consider information that it already holds.

An applicant will be given 30 days to respond to the central assessment unit. An applicant may request additional time to respond, with such additional time being granted at the central assessment unit's discretion.

If the person does not respond to the invitation within the time provided, the central assessment unit must determine the person poses a risk of harm to people with disability and is excluded from working with them.

The central assessment unit will issue the person a NDIS worker check exclusion and the person will be excluded from undertaking NDIS work for any Registered NDIS Provider.

Assessment of submissions made by presumptively disqualified persons

Where a presumptively disqualified person makes a submission to the central assessment unit to rebut the presumption that they pose a risk of harm to people with disability, the central assessment unit must conduct a risk assessment (refer to section 8). The starting point for the risk assessment will be that the person is to be excluded and is presumed to pose a risk of harm to people with disability. The central assessment unit does not need to consider or assess any further information other than the *presumptive disqualification offence*.

Guidance for determining whether circumstances exist to disregard the offence

Factors to be considered as to whether the circumstances of the presumptive disqualification offence committed, or alleged to have been committed, by the person are such that the offence should be disregarded in determining whether the applicant poses a risk of harm to people with disability may include but are not limited to:

- the offending was in response to an abusive domestic violence relationship.
- the person was acting in self-defence to, or defending another, against an unprovoked assault; or
- the person committed the offending under the direction/duress of a person in authority (e.g. a family member).

It is the circumstances of the offending itself that needs to be considered to meet this test, not any change in the circumstances of the applicant since the offence was committed.

Guidance for determining exceptional circumstances

Exceptional circumstances are those which the central assessment unit considers to be unusual, uncommon, or special.

- unusual means '*different from others of the same type*'
- uncommon means '*not seen, happening or experienced often*'; and
- special means '*not ordinary or usual*'.

It is the circumstances of the applicant at the time of the offending and the change in circumstances that has occurred since the offence was committed that need to be considered to meet this test. This may include, but is not limited to:

- The steps they have taken to address the behaviour which led to the offending
- Their conduct since the offending
- Voluntary completion of supervised intervention programs (treatment, rehabilitation, behaviour management).

The duration of time elapsed since the offence was committed and no subsequent offending alone is not sufficient to meet the 'exceptional circumstances' test. The applicant needs to demonstrate that there has been a change in their behaviour or the circumstances that led to the offending.

8. Risk assessment

A risk assessment of a person is an assessment and determination by the central assessment unit as to whether the person poses a risk of harm to people with disability.

The intent of the risk assessment process is not to decide whether a person is guilty or innocent or to reinvestigate a matter.

Requirement for risk assessment

Section 18N states that a risk assessment is required in the following circumstances:

- if the person is a *presumptively disqualified person*; or
- if the person has relevant criminal (not *disqualifying offences*), disciplinary or misconduct information or any other information considered relevant by the central assessment unit.

Where the person is a *presumptively disqualified person*, the starting point for the risk assessment will be an exclusion.

Where the person is not a *presumptively disqualified person* but has other relevant criminal, disciplinary or misconduct information or any other information considered relevant by the central assessment unit, there is no presumption of outcome as a starting point.

Risk context

In determining whether there is a risk of harm to people with disability, the risk of harm:

- Must be a real and appreciable risk of harm.
- Does not need to be likely or significant.
- Need not arise from recent events.

In determining if there is a real and appreciable risk, the central assessment unit does not need to be satisfied that it is likely the person will cause harm to a person with disability in the future. The assessment is not a prediction of risk.

The standard of proof to be applied in answering this ultimate question is a statutory standard which cannot be measured against or equated to an evidential standard of proof (e.g. such as criminal or civil standard of satisfaction). The standard of proof is whether there is a risk of harm to people with disability or not, rather than whether the risk is more probable than not.

The central assessment unit is not required to make a positive finding about the foundational facts giving rise to the concern of risk of harm to people with disability, in order to reach a level of reasonable satisfaction that the statutory standard of risk of harm to people with disability is met. A finding of risk of harm can still be made even where the central assessment unit is not satisfied on balance that the concerning conduct the subject of the foundational facts did occur. The central assessment unit may be satisfied of risk of harm of concerning conduct occurring if it is unable to exclude the possibility that the concerning conduct the subject of the foundational facts did occur.

When undertaking any risk assessment of the circumstances of an offence or misconduct, the safety and wellbeing of people with disability is to be the paramount consideration.

Harm includes—

- any detrimental effect on a person's physical, psychological, emotional, or financial wellbeing (personal harm); and
- non-consensual or inappropriate conduct of a sexual nature with or towards a person (whether or not that conduct poses a risk of personal harm).

The behaviour or conduct that constitutes each harm type includes, but is not limited to:

- Sexual: unlawful or non-consensual sexual contact with, or assault of, a person or sexual misconduct committed against any person, or in the presence of a child or vulnerable person
- Physical: unlawful physical contact or assault includes any behaviour of a physically violent nature (including domestic violent behaviour). This excludes authorised use of restrictive practice
- Psychological: causing another person to fear they may be physically, sexually, or otherwise assaulted or abused or witnessing physical or sexual assault or misconduct perpetrated upon another person
- Emotional: verbal abuse that is intended to intimidate, threaten, belittle, gain power and control or where the intent is to cause emotional pain or is demeaning or insulting.
- Neglect: failure to provide a person with the necessities of life (reckless or intentional) or failure to protect from abuse or neglect
- Financial: withholding or unauthorised use of vulnerable person's money, or coercion or misleading behaviour to obtain money or property from a vulnerable person.

Matters to be considered in risk assessment

In determining whether a person pose a risk of harm to people with disability, Section 180 of the Act requires that the central assessment unit must consider the following for the purposes of a risk assessment:

- the nature, gravity and circumstances of any offence, misconduct or other event that resulted in, or contributed to, the requirement for a risk assessment in relation to the person (a *relevant event*), and how it is relevant to NDIS work;
- the length of time that has passed since a relevant event occurred;
- the vulnerability of any victim of a relevant event 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;
- the person's criminal history, history of misconduct and other relevant history, including whether there is a pattern of concerning behaviour;
- the person's conduct since a relevant event;
- all other circumstances in respect of the person's criminal offending, misconduct and other relevant history and their impact on eligibility to be engaged in NDIS work;
- such other matters as the central assessment unit considers appropriate.

Note, this requirement to consider the above matters does not displace the starting point that a person who is a *presumptively disqualified person* is presumed to be excluded.

When conducting a risk assessment, vulnerability of the victim is not limited to the definition of *vulnerable person* applied to *disqualifying* and *presumed disqualifying offences*. This definition has intentionally been narrowed. When conducting a risk assessment, the central assessment unit can take into account other indicators of vulnerability including, but not limited to:

- social isolation
- race
- gender.

The following factors **should not be** taken into consideration:

- The impact of an exclusion on the applicant. The rights of, or personal impact to, an applicant or a holder of a clearance should they be excluded following risk assessment are not relevant to determining whether they pose a risk of harm.
- The nature of the role of the applicant. NDIS worker check clearances are portable between roles, employers, and jurisdictions. The stated role of the worker at the time of application is irrelevant and bears no weight on risk of harm.
- Value to the community. Whilst it is acknowledged that some individuals, by virtue of their history, have valuable experience to share with vulnerable people, and that people can make significant changes in their lives, this is irrelevant for the risk assessment. The role of the central assessment unit is to assess whether, based on prior conduct, a person poses a risk of harm to people with disability. It is not to assess suitability for employment – this is an employer’s responsibility.

It is not possible to outline every potential consideration or outcome. The tables below identify the minimum considerations in the event relevant information examined during the risk assessment requires further scrutiny.

Any conclusions reached, about a person’s risk of harm to people with disability will be based on information and evidence obtained by the central assessment unit decision maker.

Weighting information sources

As part of a risk assessment, a central assessment unit decision maker must review the relevant information before them, assess it, and determine if it demonstrates that an applicant poses a risk of harm to people with disability.

To determine the relative weight given to information in a risk assessment, the central assessment unit should take into account the context and characteristics of that information, including its reliability, how it was obtained, and the nature, extent and outcome of misconduct investigations.

The weight attributed to sources of information (evidence) refers to the quality and/or reliability, or persuasiveness of the information. In the context of a risk assessment, it is the emphasis or degree of reliance a decision maker may place on the different pieces of information before them. Information that is indefinite, vague, or improbable will be given less or no weight in comparison to evidence that has been tested by a court of law or is direct and unrefuted.

[Table 1](#) below sets out relevant contextual factors.

These contextual factors should be considered in their totality, not as individual factors or as an assessment checklist.

TABLE 1: CONTEXTUAL FACTORS FOR WEIGHING INFORMATION SOURCES

Characteristic	Greater weight	Lesser weight	Guidance and other factors to consider
Reliability of information	<ul style="list-style-type: none"> ▪ Evidence tested by a court of law including sentencing remarks. ▪ Details provided by informant. ▪ Substantiated findings of misconduct. ▪ Referee statements consistent with information provided by applicant, in application, and by other sources. ▪ Information from applicant that is consistent with other sources. 	<ul style="list-style-type: none"> ▪ Referee report of someone that may not be aware of all the facts. ▪ Information includes inconsistencies with the objective facts of a matter (where known). ▪ Applicant has a history of fraud or deception. ▪ 	<p>Truthfulness is the fact of being true. A decision maker should consider the veracity or truthfulness of the information before them.</p> <p>Completeness refers to the information having all the necessary or appropriate parts. Where the information is whole or has nothing missing, more weight may be placed on it.</p> <p>Reliability means a consideration of how accurate or trustworthy the information is. The information type can be consistently relied or depended on for accuracy or honesty. A decision maker should consider the veracity or truthfulness of the information source before them.</p>
How obtained	<ul style="list-style-type: none"> ▪ Obtained from a public authority or regulatory agency. ▪ Mandated notifier (1st hand account, not 2nd hand account). 	<ul style="list-style-type: none"> ▪ Anonymous tip off ▪ Non-mandated notifier ▪ Information has been provided under duress <p>Information obtained from a source with conflict of interest and little independence (e.g. family member)</p>	

Contextual factors for analysing risk

The contextual factors for analysing risk refer to the circumstance information of the offending or misconduct that might increase or decrease the risk that the applicant poses.

The central assessment must consider the substance of the information and have regard to:

- the nature, gravity and circumstances of any offence, misconduct or other event that resulted in, or contributed to, the requirement for a risk assessment in relation to the person (a **relevant event**), and how it is relevant to NDIS work;
- the length of time that has passed since a relevant event occurred;
- the vulnerability of any victim of a relevant event 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;
- the person's criminal history, history of misconduct and other relevant history, including whether there is a pattern of concerning behaviour;
- the person's conduct since a relevant event;
- all other circumstances in respect of the person's criminal offending, misconduct and other relevant history and their impact on eligibility to be engaged in NDIS work;
- such other matters as the central assessment unit considers appropriate.

Table 2 provides further detail. The contextual factors listed do not represent an exhaustive list of factors that could be considered.

These contextual factors should act as a guide to inform a thorough and balanced assessment of risk. The factors should be considered in their totality and the table is not intended for use as a checklist.

The particulars of the case may suggest additional matters relevant to the assessment of risk or that some of the contextual factors are not relevant. It is expected that central assessment unit staff will be appropriately skilled to make assessments about risk of harm to people with disabilities and will exercise professional judgement when making these decisions.

TABLE 2: CONTEXTUAL FACTORS FOR ANALYSING RISK

Factor	Increase Risk	Decrease risk	Guidance and other factors to consider
<p>The nature of the offence, misconduct and/or other relevant information</p> <p>Nature refers to the basic or inherent features, character or qualities of the information</p>	<ul style="list-style-type: none"> ▪ Abuse of power or breach of trust. ▪ Pre-meditated or wilful. ▪ If the offence appears ‘opportunistic’ or ‘once-off’ do the circumstances suggest planning. ▪ Committed against a vulnerable person or in the presence of a vulnerable person. ▪ Use of force, coercion or weapon. 	<ul style="list-style-type: none"> ▪ The offending is uncharacteristic (i.e. no other pattern of similar conduct), noting that not all opportunistic offending falls into this category. ▪ Nature of offence or misconduct is not relevant to working with vulnerable people. 	<p>If there is no identifiable victim, this does not necessarily diminish the offence or misconduct.</p> <p>Non-sexual offence or non-violent offence that is not fraud type misconduct, extreme misjudgements without accepting responsibility etc. – should be considered on a case-by-case basis.</p> <p>Level of training or support does not necessarily mitigate a breach of common standards of behaviour and should be considered on a case-by-case basis.</p>
<p>The gravity of the offence, misconduct and/or other relevant information</p> <p>Gravity refers to the seriousness of the information</p>	<ul style="list-style-type: none"> ▪ Placed on a sex offender or violent offender register. ▪ Dismissal, termination, reprimand or reduction in remuneration of employment in the case of misconduct. ▪ Evidence of behaviour escalating in severity or seriousness. ▪ Pattern of concerning behaviour. ▪ Offence or misconduct was prolonged. ▪ Significant impact on victim: serious physical or psychological injuries. 	<ul style="list-style-type: none"> ▪ Applicant ceased offending or misconduct without external intervention. ▪ Nature of offence or misconduct is not relevant to working with vulnerable people. 	<p>Severity of the penalty imposed – if a maximum penalty or imprisonment is not imposed, this does not necessarily mean the risk is not high. There are many very serious types of misconduct/offending that do not receive maximum penalties for many reasons, e.g. first offence, agreement to do treatment, early plea etc.</p> <p>Conversely, the imposition of imprisonment does not always mean the risk is high. (e.g. mandatory sentencing laws).</p> <p>Applicant is subject to current court orders - consider with nature of the offence. In some cases, the Court Orders may have nothing to do with misconduct that will have a bearing on risk.</p>

Factor	Increase Risk	Decrease risk	Guidance and other factors to consider
<p>The circumstances of the offence, misconduct and/or other relevant information.</p> <p>Circumstances refers to the facts or conditions connected with the relevant information.</p>	<ul style="list-style-type: none"> ▪ Left scene of crime or attempted to cover-up offence. ▪ Demonstrated insight. ▪ Planned. ▪ Unprovoked (in those jurisdictions where this is relevant). 	<ul style="list-style-type: none"> ▪ Accident. ▪ Offered assistance to victim. ▪ Nature of offence or misconduct is not relevant to working with vulnerable people. 	<p>Acting as part of a group vs on their own – an NDIS Worker Screening check is primarily about individuals working with vulnerable persons with most of the work to be on a 1-to-1 basis. Consider context of a sole operator vs a person who was influenced by a group of cohorts and the risk this presents.</p> <p>Diminished capacity - if a person suffers mental health issues and, in that state, behaves in a way that puts people at risk (e.g. violence/ indecent assaults etc.), then this becomes a weighted factor for risk unless there is evidence that these issues have been addressed.</p> <p>Person was intoxicated during the offending –substance abuse issues become a weighted factor for risk unless there is evidence that these issues have been addressed.</p>
<p>The length of time that has passed since the event occurred.</p>	<ul style="list-style-type: none"> ▪ Offending is recent, for example, within the last 5 years would generally be considered recent. 	<ul style="list-style-type: none"> ▪ Significant period of time since the offending occurred with no similar offending. 	<p>The relevance of a conviction being spent should be assessed on a case-by-case basis.</p> <p>Time since the offending and age of applicant when offence occurred should be considered together. For example, lesser weight may be given where the offending occurred a significant time ago and when the applicant was an adolescent, as opposed to if the applicant was an adult at the time of offending.</p>

Factor	Increase Risk	Decrease risk	Guidance and other factors to consider
Age of the applicant at the time of the offence or misconduct	<ul style="list-style-type: none"> ▪ Adult (over 25 years). 	<ul style="list-style-type: none"> ▪ Child. ▪ Adolescent (13 to 17 years old). ▪ Young adult (18 – 24 years old). ▪ The maturity of the offender at the time of the offence. 	<p>Time since the offending and age of offender when offence occurred should be considered together.</p> <p>Level of maturity of offender at time of offending may be taken into consideration.</p>
The vulnerability of the victim at the time of the event	<ul style="list-style-type: none"> ▪ Victim is under 18, elderly or person with disability or illness. ▪ Significant difference in mental capacity between victim and applicant. ▪ Power imbalance between victim and applicant e.g. applicant in a position of authority. ▪ Victim was intoxicated, asleep or otherwise vulnerable during the event. ▪ The applicant was aware of the victim’s vulnerability at the time of the offence. 		<p>Vulnerability in the context of a risk assessment is not confined to the definition of <i>vulnerable person</i> as applied to <i>disqualifying offences</i> and <i>presumed disqualifying offences</i></p>
The person’s relationship to the victim or position of authority over the victim at the time of the event	<ul style="list-style-type: none"> ▪ Formed a personal relationship with victim. ▪ Abuse of power or breach of trust and care. 		

Factor	Increase Risk	Decrease risk	Guidance and other factors to consider
<p>The person’s criminal, misconduct and disciplinary, or other relevant history</p>	<ul style="list-style-type: none"> ▪ Multiple convictions or allegations for the same type of offence or misconduct. ▪ Multiple convictions or allegations for different offences or misconduct of relevance. 	<ul style="list-style-type: none"> ▪ Significant (i.e. more than 5 years) crime free period relative to criminal offending or misconduct which indicates that the underlying contributing factors to the concerning offending or misconduct have been addressed. 	<p>Weighting should be less for misconduct/ offending that is of little relevance to risk, e.g. some disorderly, traffic offences etc.</p> <p>Greater weight should be given to misconduct that involves:</p> <ul style="list-style-type: none"> • Violent behaviour or assault • Indecent or sexual behaviour • Fraud, deception, or theft • Failing to provide care for someone <p>“Crime free” periods on their own are not mitigating. A person could have had significant jail/parole/probation time and therefore the fact that they have not been recorded as behaving in a concerning manner may not be indicative of resolution of underlying factors and therefore has little value in mitigating risk.</p>
<p>Whether there is a pattern of concerning behaviour</p>	<ul style="list-style-type: none"> ▪ Evidence of multiple offences/ and or concerning behaviours. ▪ Offence or misconduct commenced as a child and continued into adulthood. ▪ Behaviours of risk that recur. 	<ul style="list-style-type: none"> ▪ Single offence or misconduct. ▪ Insight into offending evident. 	

Factor	Increase Risk	Decrease risk	Guidance and other factors to consider
<p>The person’s conduct since the event</p> <p>Consider:</p> <ul style="list-style-type: none"> • changes in circumstances since the offence or misconduct • attitude towards offence or misconduct • treatment or rehabilitation undertaken by applicant. 	<ul style="list-style-type: none"> ▪ Breaches of court orders. ▪ Rejects responsibility or minimises actions. ▪ Failure to complete mandated treatment or engage with professional supports. ▪ Multiple withdrawals or non-graduation from voluntary treatment. 	<ul style="list-style-type: none"> ▪ Improved management of mental health, illness, problematic alcohol and/or drug use. ▪ Maturity or demonstrated change in behaviour. ▪ Greater social support, stability, or community engagement. ▪ Change in socio-economic factors that influenced the circumstances that led to the offence or misconduct. ▪ Shows insight into offending or misconduct and can articulate changes to attitude or behaviour to address offending or misconduct. ▪ Accepted treatment and/or need for change. ▪ Demonstrated improvement in area of concern. 	<p>Remorse should only be considered where assessed in by a qualified professional or stated in a Court document.</p>
<p>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.</p>	<ul style="list-style-type: none"> ▪ Case-by-case basis in consideration of the relevance and possible impact on people with disability 		

9. Administrative decision making

A central assessment unit determination as to whether a person is to be issued a NDIS worker check clearance or exclusion is an administrative decision that requires the exercise of discretion. In other words, the decision maker has a choice about what decision to make and why.

How should decision makers exercise discretionary powers?

Central assessment unit decision makers may only exercise their discretionary powers in accordance with the legislative provisions conferring the power and in accordance with the objects and principles of the Act.

Central assessment unit decision makers will act reasonably and impartially and will not make decisions based on their personal values.

In exercising discretionary powers, central assessment unit decision-makers will have regard to specific requirements of the Act, Regulations and Guidelines as well as any other policies of the central assessment unit. They will satisfy general administrative law requirements to:

- act in good faith and for a proper purpose;
- comply with legislative procedures;
- consider only relevant considerations and ignore irrelevant ones;
- act reasonably and on reasonable grounds;
- make decisions based on supporting evidence;
- give adequate weight to matters of great importance but not give excessive weight to matters of no great importance;
- give proper consideration to the merits of the case;
- provide the person affected by the decision with procedural fairness; and
- exercise their discretion independently and not under the dictation of a third person or body.

A failure to act within the power provided or to comply with general administrative law principles may result in the South Australian Civil and Administrative Appeals Tribunal overturning a decision or taking other action in respect of the decision.

Principles of procedural fairness

Procedural fairness requires government decision makers act fairly when making an administrative decision. It is concerned with the procedures used by a decision maker,

rather than the final outcome reached. It expects that fair and proper procedure be used when making a decision.

Procedural fairness has two components – the hearing rule and the bias rule. The bias rule demands that a decision maker will not handle matters in which they have an actual or reasonably perceived conflict of interest or bias. The hearing rule requires that someone who will be affected by a prospective administrative decision must be heard, whether through oral or written submissions, before the decision is made.

The central assessment unit and the Registrar (as the case requires) are required to provide persons procedural fairness in exercising powers or performing functions under the Act.

10. Issue of exclusion

Intention to exclude

Section 18J Act requires that, except where the person is a *disqualified person*, before the central assessment unit issues an NDIS worker check exclusion, the applicant must be notified in writing of:

- the intention to issue the exclusion; and
- that the applicant may make a submission to the central assessment unit within the period specified in the notice.

The central assessment unit must disclose the reasons as to the intention to issue the exclusion, except where the central assessment unit is required by law to refuse to disclose the information to the applicant. The reasons should include:

- the criteria for making that decision; and
- information on which that decision would be based. A summary of the information is sufficient. Original documents and the identity of confidential sources do not have to be, and may not legally be able to be, provided.

The central assessment unit must consider any submission made by an applicant within the specified period before finally deciding the application.

The central assessment unit provides a person 30 calendar days to make a written submission and/ or provide further information, from the date of the central assessment unit's letter inviting a response.

The central assessment unit may, at its discretion, provide a person up to 30 additional calendar days to make submissions where the person is in the process of obtaining independent evidence to support their submission.

A request for an extension must be in writing and provide reasons to satisfy the central assessment unit why the information or evidence cannot be obtained within the timeframe provided.

Decision to exclude to be made in timely manner on information available

If a person does not respond to the intention to exclude within the time provided, the central assessment unit will continue to conduct the risk assessment and make a determination based on the information before them.

The central assessment unit will not delay a decision to exclude by waiting for a pending charge to be finalised or for a misconduct/disciplinary matter to be finalised or appealed.

Issue of exclusion

If following the risk assessment, the applicant is determined to pose a risk of harm to people with disability, the applicant must be issued an NDIS worker check exclusion.

The notice of exclusion must be in writing and must be issued as soon as reasonably practical after the decision is made.

The decision of the central assessment unit should be documented, transparent and defensible. Except where the central assessment unit is not required to give detailed reasons (refer below), the notice of exclusion should include as a minimum:

- the name and title of the decision maker;
- a clear statement of the decision;
- the relevant provisions of legislation and regulations (or principles and guidelines where applicable) governing the decision;
- the reasons for the decision with reference to material facts and the evidence relied on to make the decision; and
- where the applicant made a submission, how this information was considered.

The notice of exclusion will also include information on how the person can seek a review of the decision.

Circumstances where the central assessment unit is not required to disclose reasons

In addition to where the central assessment unit is required by law to refuse to disclose information to an applicant, the central assessment unit may refuse to disclose

- Criminal intelligence, and

- Protected information.

Pursuant to section 18C, if the central assessment unit makes a decision on the basis of information that is classified by the Commissioner of Police as criminal intelligence, the central assessment unit is not required to provide any grounds or reasons for the decision other than that it would be contrary to the public interest to allow the person to work with people with disability.

Criminal intelligence means information relating to actual or suspected criminal activity (whether in South Australia or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or to endanger a person's life or physical safety.

Pursuant to section 18D, the Registrar may, in accordance with any requirements set out in the regulations, classify specified information as protected information.

if the central assessment unit makes a decision on the basis of information that is classified by Registrar as protected information, the central assessment unit is not required to provide any grounds or reasons for the decision other than that it would be contrary to the public interest to allow the person to work with people with disability.

Protected information is information that may, if disclosed—

- prejudice a criminal investigation; or
- identify, or enable the identification of, a person with disability or a parent, guardian, or family member of a person with disability who has been harmed, or is at risk of harm; or
- identify, or enable the identification of, a person who has made a report or notification that a person with disability has been harmed, or may be at risk of harm (whether under this Act or otherwise); or
- endanger a person's life or physical safety or wellbeing,

Protected information for the purposes of NDIS worker checks also includes information that has been classified as protected information under the *Child Safety (Prohibited Persons) Regulations 2019*.

In deciding to classify specified information as protected information, the Registrar must be satisfied that the information will prejudice an investigation or identify or endanger certain persons as described above.

11. Review of decision

A person may apply to the central assessment unit for an internal review of a *reviewable decision*. A person can not apply for an internal review of a decision that is a *non-reviewable decision*.

It is at the central assessment units discretion as to whether or not an application for an internal review will be accepted.

If a person is not satisfied after an internal review or does not wish to apply for an internal review, they may apply to the South Australian Civil and Administrative Tribunal (SACAT) under section 18ZI for external review.

Reviewable and non-reviewable decisions

For the purpose of applying to the central assessment for an internal review or to SACAT for external review the following decisions are *reviewable decisions*:

- a decision under section 18J to issue an exclusion.
- a decision under section 18W to terminate an application for a clearance.
- a decision under section 18R to suspend a clearance;
- a decision to cancel a clearance under subsection 18S (1) except where the person is a *disqualified* person or where the cancellation is at the request of the holder of the clearance.

The following decisions are *non-reviewable decisions*:

- A decision under section 18J to issue an exclusion, or to cancel a clearance under subsection 18S(2), where the applicant or holder is a *disqualified person*;
- A decision to issue an exclusion under section 18J, or to cancel a clearance under subsection 18S(2), where the applicant or holder is a presumptively disqualified person as a result of there being pending criminal charges against the person;
- A decision under subsection 18H(4) to not permit a person to make an early application;
- A decision under section 18W to terminate an application for a clearance or cancel a clearance;
- A decision under subsection 18I(2) to refuse to grant a clearance;
- A decision under subsection 18S(2) to cancel a clearance;
- A decision under regulation 10(1) to refuse or terminate an application because:
 - the applicant has not received endorsement by an employer.

- the applicant has been excluded by another jurisdiction while their application is being processed;
- A decision under section 18H to cancel an application because a person is banned from applying for an NDIS worker check.

An application for a review of a decision to suspend a clearance cannot be made until the suspension has been in force for at least 6 months.

Conduct of internal review

To ensure consistency in decision-making, the following principles should be adhered to in the conduct of an internal review:

- An application for an internal review must be made within 14 days of the date of the decision to exclude;
- An internal review is a fresh assessment of the application, not an assessment of whether the original assessment and decision was correctly conducted;
- In conducting the internal review, the central assessment unit will consider any relevant material submitted by the applicant. It is not limited to the information already held;
- While the review is underway the first decision will continue to apply; and
- The person conducting the internal review will not have been substantially involved in the original decision (the decision under review).

An individual may seek a review by the South Australian Civil and Administrative Tribunal of the internal review decision.

12. Ongoing monitoring

A person who has an NDIS worker check is subject to national ongoing monitoring for relevant national criminal history, misconduct and disciplinary information held by the NDIS Commission, and South Australian child protection information.

Depending on the nature of the information it will be assessed as an automatic exclusion presumed exclusion or risk assessment.

- *Disqualified persons* will be automatically excluded, and their clearance cancelled

- *Presumptively disqualified persons* will be excluded and their clearance cancelled unless they satisfy the central assessment unit that the offending should be disregarded or there are exceptional circumstance and that they do not pose a risk of harm to person with disability.
- All other relevant information will be risk assessed.

Suspension of NDIS worker check during risk assessment

Pursuant to section 18R, the central assessment unit may suspend the clearance of a person whilst new relevant information is being assessed.

A suspension is used to prevent individuals who have a valid NDIS worker check from working with people with disability where new information shows that they may pose a risk of harm to people with disability.

The central assessment unit will impose a suspension if:

- the holder of a clearance is subject to a pending charge for a *disqualifying offence*.
- the holder of a clearance is subject to a banning order by the NDIS Commission as a result of information that indicates the person poses a risk of harm to people with disability
- the central assessment unit is satisfied that there is a reasonable likelihood that a risk assessment will determine that the person poses a risk of harm to people with disability.

A suspension will remain in place until such time as the central assessment unit completes its assessment or information upon which the suspension was issued changes and the central assessment unit is satisfied that there is no longer a reasonable likelihood that a risk assessment will determine that the person poses a risk of harm to people with disability. For example, the pending charge is resolved or the NDIS Commission varies or revokes the banning order.

The applicant must be advised that the central assessment unit has issued a suspension. This will generally occur at the time the applicant is advised there is an intention to exclude.

Cancellation of NDIS worker check and issue of exclusion

If the central assessment unit becomes aware an NDIS worker check holder is a *disqualified person*, or a risk assessment determines that an NDIS worker check holder poses a risk of harm to people with disability, the central assessment unit must:

- Issue a NDIS worker check exclusion in accordance with section 18J, and
- Cancel the persons NDIS worker check in accordance with section 18S.

If the central assessment unit proposes to issue an exclusion and cancel a clearance, other than because the clearance holder is a *disqualified person*, the central assessment unit must notify the clearance holder of its intention to do this.

The central assessment unit must disclose the reasons as to the intention to issue the exclusion and cancel the clearance, except where the central assessment unit is required by law to refuse to disclose the information to the clearance holder. The reasons should include:

- the criteria for making that decision; and
- information on which that decision would be based. A summary of the information is sufficient. Original documents and the identity of confidential sources do not have to be, and may not legally be able to be, provided.

The central assessment unit must consider any submission made by the clearance holder within the specified period before finally deciding the application.

The central assessment unit will give the clearance holder 30 calendar days to make a written submission and/ or provide further information, from the date of the central assessment unit's letter inviting a response.

The central assessment unit may, at its discretion, provide a clearance holder up to 30 additional calendar days to make submissions where it is clear the person is in the process of obtaining independent evidence to support their submission.

The clearance holder must make their request for an extension in writing. Their request must provide reasons sufficient to satisfy the central assessment unit why the information or evidence cannot be obtained within the timeframe provided.

If following the risk assessment, the applicant is determined to pose a risk of harm to people with disability, the applicant must be issued an NDIS worker check exclusion and their clearance cancelled.

The notice of the issue of exclusion and cancellation of clearance must be in writing and must be issued as soon as reasonably practical after the decision is made.

The decision of the central assessment unit should be documented, transparent and defensible. Except where the central assessment unit is not required to give detailed reasons (refer below), the notice should include as a minimum:

- the name and title of the decision maker;
- a clear statement of the decision;
- the relevant provisions of legislation and regulations (or principles and guidelines where applicable) governing the decision;
- the reasons for the decision with reference to material facts and the evidence relied on to make the decision; and
- where the applicant made a submission, how this information was considered.

The notice will also include information on how the person can seek a review of the decision.

13. Disclosure of Information

Section 18ZG of the Act authorises the central assessment unit, to disclose to a law enforcement agency within Australia or outside Australia, information obtained during the conduct of an NDIS worker check information that indicates that a *relevant offence* may have been committed or that constitutes evidence of a *relevant offence*.

A *relevant offence* is:

- A *disqualification offence*
- A *presumptive disqualification offence*
- Any other offence determined by the central assessment unit to be a *relevant offence*

Before determining to disclose information to a law enforcement agency related to an offence that is not a *disqualification* or *presumptive disqualification offence*, the Registrar must be satisfied that the offence or offending behaviour might endanger a person's life, or physical safety or wellbeing and that disclosure is necessary to prevent harm.

14. Definitions

A corresponding offence under a law of another State or Territory means an offence under a law of another State or Territory that is equivalent to the South Australian offence. Each jurisdiction has a table of offences that they have identified that are equivalent. These equivalence tables are based on each jurisdictions NDIS legislation and must be referred to determine if the offence is corresponding.

Designated sex-related offence (decriminalised sex offences) means an offence which is spent under *Spent Convictions Act 2009*

(a) a sex offence—

- (i) that is constituted by consenting adults engaging in sexual intercourse, or another form of sexual activity; or
- (ii) that is constituted by an adult procuring another adult to engage in consensual sexual intercourse, or another form of consensual sexual activity; or

(b) an offence where -

- (i) the offence is constituted by consenting persons of the same sex engaging in sexual intercourse, or another form of sexual activity; and
- (ii) at least 1 of them is 16 or 17 years of age (and none of them is younger); and
- (iii) their actions would not have constituted an offence if they were not of the same sex; and
- (iv) no person engaged in the activity was in a position of authority in relation to another person engaged in the activity.

Early application refers to applications that are lodged due to a relevant change in circumstances in the first five years after an exclusion is imposed.

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

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

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

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

NDIS IGA means the Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme.

NDIS Worker Screening Database means the national database established in accordance with clauses 93 and 94 of the NDIS IGA.

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.

15. Appendix 1 – Disqualification offences

The offences listed in the table below are *disqualification offences*.

If there is a reference to a condition in column 3 in respect of a particular offence, the offence will only be taken to be a *disqualification offence* if that condition is met.

If there is a reference to an exception in column 3 in respect of a particular offence, the offence will not be taken to be a *disqualification offence* if the condition is met; the offence will instead be a *presumptive disqualification offence*.

A reference to an offence in the table includes a reference to the following offences:

- an attempt to commit the offence;
- a conspiracy to commit the offence;
- aiding, abetting, counselling or procuring the offence;
- a corresponding offence under a previous enactment;
- a corresponding offence under a law of another State or Territory, including an offence referred to in a preceding paragraph in relation to the corresponding offence.

The conditions referred to in the table have the following meanings:

Child means a person less than 18 years of age.

Offence against child or vulnerable person means an offence where the victim of the offence was a child or vulnerable person, or the offence involved a child or vulnerable person

Relative of a person, means a person who is or was—

- related by marriage, consanguinity or adoption to the person
- related through a domestic partnership to the person
- a step-child or step-sibling of the person (regardless of age)
- the guardian of the person
- acting in loco parentis in relation to the person
- related to the person according to Aboriginal or Torres Strait Islander kinship rules, or where both persons are members of some other culturally recognised family group, or
- a carer of the person (within the meaning of the *Carers Recognition Act 2005*).

Vulnerable person – means an adult person who, by reason of age, illness or disability, is unable to properly care for themselves, or protect themselves against harm or exploitation. Indicators of vulnerability include – but are not limited to – where a person, who by reason of age, illness or disability, has difficulty:

- understanding their rights
- understanding the power imbalance between themselves and the offender
- understanding that the offender’s behaviour (committed, intended or otherwise) is inappropriate or illegal
- making a decision
- providing consent or agreement
- expressing disapproval or objection
- communicating, or
- preventing, defending or protecting themselves against the offence or the offender.

A person is not vulnerable in this context due to *gender, race or social status*.

Young Adult Relationship – means at the time of the offence the victim was more than 14 years of age and the offender was not more than 5 years older than the victim, and the offence did not involve violence or coercion

Act	Offences	Conditions/Exceptions
<i>Criminal Law Consolidation Act 1935</i>	section 11 (Murder)	
	section 12 (Conspiring or soliciting to commit murder)	
	section 19A(1) (Causing death or harm by use of vehicle or vessel) being an offence where the offender intended to cause death	
	section 20A (Choking, suffocation or strangulation in a domestic setting)	Offence against child or vulnerable person
	section 23 (Causing serious harm)	Offence against child or vulnerable person
	section 24 (Causing harm)	Offence against child or vulnerable person
	section 29 (Acts endangering life or creating risk of serious harm)	Offence against child or vulnerable person
	section 33A (Female genital mutilation)	Offence against child or vulnerable person
	section 33B (Remove child from state for genital mutilation)	
	section 39 (Kidnapping)	Offence against child or vulnerable person Exception where offender is a relative

Act	Offences	Conditions/Exceptions
<i>Criminal Law Consolidation Act 1935</i>	section 40 (Unlawful removal of child from jurisdiction)	Exception where offender is a relative
	section 48 (Rape)	Offence against child or vulnerable person
	section 48A (Compelled sexual manipulation)	Offence against child or vulnerable person
	section 49(1) (Unlawful sexual intercourse where victim under 14)	
	section 49(3) (Unlawful sexual intercourse where victim under 17 years)	Exception where in young adult relationship
	section 49(5) (Unlawful sexual intercourse in position of authority)	
	section 49(6) (Sexual intercourse with intellectually disabled person)	
	section 50(1) (Persistent sexual abuse of child)	
	section 51 (Sexual exploitation of a person with a cognitive impairment)	
	section 56 (Indecent assault)	Offence against child or vulnerable person Exception where in young adult relationship
	section 58 (Acts of gross indecency)	Offence against child or vulnerable person Exception where in young adult relationship
	section 59 (Abduction of male or female person)	Offence against child or vulnerable person
	section 60 (Procuring sexual intercourse)	Offence against child or vulnerable person
	section 61 (Permit unlawful sexual intercourse on premises)	
	section 63 (Production etc of child exploitation material)	Exception where in young adult relationship
	section 63AA (Production etc of child-like sex dolls)	
	section 63A (Possession of child exploitation material)	Exception where in young adult relationship
	section 63AAB (Possession of child-like sex dolls)	
	section 63AB (Offences relating to websites)	
	section 63B (Procure child to commit indecent act etc)	Exception where in young adult relationship

Act	Offences	Conditions/Exceptions
<i>Criminal Law Consolidation Act 1935</i>	section 66 (Sexual servitude and related offences)	Offence against child or vulnerable person
	section 67 (Deceptive recruiting for commercial sexual services)	Offence against child or vulnerable person
	section 68 (Use of children in commercial sexual services)	
	section 69 (Bestiality)	
	section 72 (Incest)	Offence against child or vulnerable person
	Section 74 (Persistent sexual abuse of a child) as in force before the commencement of the <i>Criminal Law Consolidation (Rape and Sexual Offences) Amendment Act 2008</i>	Exception where in young adult relationship
	section 80 (Abduction of child under 16 years)	Exception where offender is a relative
	section 83E(2) (Participation in criminal organisation)	Offence against child or vulnerable person
	section 139A (Dishonest communication with children)	
	section 241 (Impeding investigation of offences or assisting offenders) being an offence of assisting a principal offender who commits murder	
section 270B (Assault with intent)	Offence against child or vulnerable person	
<i>Aircraft Offences Act 1971</i>	section 9 (Destroy an aircraft to cause death)	
<i>Summary Offences Act 1953</i>	section 33(3) as in force before the commencement of the <i>Criminal Law Consolidation (Child Pornography) Amendment Act 2004</i>	Offence against child or vulnerable person Exception where in young adult relationship
<i>Criminal Code of the Commonwealth</i>	section 71.2 (Murder of a UN person etc)	
	section 71.4 (Intentionally causing serious harm to a UN person etc)	Offence against child or vulnerable person
	section 71.5 (Recklessly causing serious harm to a UN person etc)	Offence against child or vulnerable person
	section 71.8 (Unlawful sexual penetration)	Offence against child or vulnerable person
	section 71.9 or 10 (Kidnapping etc a UN person etc)	Offence against child or vulnerable person Exception where offender is relative
	section 73.2, 3 or 3A (People smuggling)	Offence against child or vulnerable person

Act	Offences	Conditions/Exceptions
<i>Criminal Code of the Commonwealth</i>	section 115.1 (Murder of an Australian citizen etc)	
	section 115.3 (Intentionally causing serious harm to an Australian citizen etc)	Offence against child or vulnerable person
	section 115.4 (Recklessly causing serious harm to an Australian citizen etc)	Offence against child or vulnerable person
	section 268.3, 5, 6 or 7 (Genocide)	
	section 268.4 (Genocide by causing serious bodily or mental harm)	Offence against child or vulnerable person
	section 268.8 or 9 (Crimes against humanity)	
	section 268.10, 13 to 16, 19 or 21(1) (Crimes against humanity)	Offence against child or vulnerable person
	section 268.24, 47(1), 48(1), 49(1), 70, 71(1), 76(2), 90(1), 92(1) or 93(1) (War crimes)	
	section 268.38(1), 40(1), 41 to 44, 50, 55, 56, 65, 91, 97 or 98 (War crimes—various) being an offence that results in the death of a person	
	section 268.25 to 28, 47(2), 48(2), 59, 60, 61, 64, 71(2), 73, 82, 84, 87(1) or 92(2) (War crimes—various)	Offence against child or vulnerable person
	section 270.3, 5, 6A, 7, 7B or 7C (Slavery etc)	Offence against child or vulnerable person
	section 271.2, 3, 4, 5, 6, 7, 7B, 7C, 7D or 7E (Trafficking in persons etc)	Offence against child or vulnerable person
	section 272.8, 9, 10, 11, 12, 13, 14, 15, 18, 19 or 20 (Child sex offences outside Australia)	
	section 273.6 or 7 (Offences involving child abuse material outside Australia)	
section 273A.1 (Possession of child-like sex dolls etc)		
section 274.2 (Torture)	Offence against child or vulnerable person	
section 471.19, 20, 22, 24, 25 or 26(1) (Postal offences)		
section 474.22, 22A, 23, 24A, 25A, 25B, 25C, 26, 27 or 27A(1) (Telecommunications offences)		
<i>Crimes (Internationally Protected)</i>	section 8(1) (Murder of internationally protected person)	
	section 8(2) (Attack internationally protected person) being an offence that results in grievous bodily harm	Offence against child or vulnerable person

Act

Offences

Conditions/Exceptions

Customs Act
1901 of the
Commonwealth

section 233BAB

16. Appendix 2- Presumptive disqualification offences

The following offences are *presumptive disqualification offences*:

The offences listed in the table below are *presumptive disqualification offences*.

If there is a reference to a condition in column 3 in respect of a particular offence, the offence will only be taken to be a *disqualification offence* if that condition is met.

A reference to an offence in the table includes a reference to the following offences:

- an attempt to commit the offence;
- a conspiracy to commit the offence;
- aiding, abetting, counselling or procuring the offence;
- a corresponding offence under a previous enactment;
- a corresponding offence under a law of another State or Territory, including an offence referred to in a preceding paragraph in relation to the corresponding offence.

The conditions referred to in the table have the following meanings:

person under care - in respect of an offender, means a child or vulnerable person who has a relationship with the offender in the context of receiving supports or services because of their vulnerability (other than activities that are part of normal familial care relationships). The following are examples of persons who may be persons under care:

- a child in foster care
- an elderly person in residential aged care
- a person with mental illness receiving treatment in a hospital, or
- a person with disability receiving services (to support their disability) in their home or in the community.

Non-vulnerable person – means a person who is not a child or a vulnerable person.

Offence against child or vulnerable person means an offence where the victim of the offence was a child or vulnerable person, or the offence involved a child or vulnerable person

Relative of a person, means a person who is or was—

- related by marriage, consanguinity or adoption to the person
- related through a domestic partnership to the person
- a step-child or step-sibling of the person (regardless of age)
- the guardian of the person

- acting in loco parentis in relation to the person
- related to the person according to Aboriginal or Torres Strait Islander kinship rules, or where both persons are members of some other culturally recognised family group, or
- a carer of the person (within the meaning of the Carers Recognition Act 2005).

Young Adult Relationship – means at the time of the offence the victim was more than 14 years of age and the offender was not more than 5 years older than the victim, and the offence did not involve violence or coercion

Act	Offences	Conditions
<i>Criminal Law Consolidation Act 1935</i>	section 7 or 10A (Treason)	
	section 13 (Manslaughter)	
	section 13A (Criminal liability in relation to suicide)	
	section 14 (Criminal neglect)	Offence against a person under care
	section 14A (failing to provide food etc)	Offence against a person under care
	section 19A(1) (Cause death or harm by use of vehicle or vessel)	
	section 19AA(2) (Unlawful stalking)	An offence aggravated by the circumstance referred to in section 5AA(1)(a)
	section 20 (Assault) being an aggravated offence	Offence against a child or vulnerable person
	section 20A (Choking, suffocation or strangulation in a domestic setting)	Offence against non-vulnerable person
	section 23 (Causing serious harm)	Offence against non-vulnerable person
	section 24 (Causing harm)	Offence against non-vulnerable person
	section 29 (Acts endangering life or creating risk of serious harm)	Offence against non-vulnerable person
	section 33A (Female genital mutilation)	Offence against non-vulnerable person
	section 39 (Kidnapping)	Offence against non-vulnerable person Offence where the offender is a relative
	section 40 (Unlawful removal of child from jurisdiction)	Offence where the offender is a relative

Act	Offences	Conditions
	section 48 (Rape)	Offence against non-vulnerable person
	section 48A (Compelled sexual manipulation)	Offence against non-vulnerable person
	section 49(3) (Unlawful sexual intercourse where victim under 17 years)	Offence where in young adult relationship
<i>Criminal Law Consolidation Act 1935</i>	section 56 (Indecent assault)	Offence against non-vulnerable person Offence where in young adult relationship
	section 58 (Acts of gross indecency)	Offence against non-vulnerable person Offence where in young adult relationship
	section 59 (Abduction of male or female person)	Offence against non-vulnerable person
	section 60 (Procuring sexual intercourse)	Offence against non-vulnerable person
	section 63 (Production etc of child exploitation material)	Offence where in young adult relationship
	section 63A (Possession of child exploitation material)	Offence where in young adult relationship
	section 63B (Procure child to commit indecent act etc)	Offence where in young adult relationship
	section 66 (Sexual servitude and related offences)	Offence against non-vulnerable person
	section 67 (Deceptive recruiting for commercial sexual services)	Offence against non-vulnerable person
	section 72 (Incest)	Offence against non-vulnerable person
	Section 74 (Persistent sexual abuse of a child) as in force before the commencement of the <i>Criminal Law Consolidation (Rape and Sexual Offences) Amendment Act 2008</i>	Offence where in young adult relationship
	section 80 (Abduction of child under 16 years)	Offence where offender is relative
	section 83E(2) (Participation in criminal organisation)	Offence against non-vulnerable person
	section 139 (Deception)	Offence against child or vulnerable person
	section 140(4) (Dishonest dealing with documents)	Offence against child or vulnerable person
	section 142 (Dishonest exploitation of position of advantage)	Offence against child or vulnerable person
	section 144B (False identity etc) where the serious offence to which the offence relates involves a child or vulnerable person	

	section 144C (Misuse of personal identification information) where the serious offence to which the offence relates involves a child or vulnerable person	Offence against child or vulnerable person
	section 144D(1) or (2) (Prohibited material)	
	section 169 (Serious criminal trespass—non-residential buildings)	An offence aggravated by the circumstance referred to in section 5AA(1)(a)
Act	Offences	Conditions
<i>Criminal Law Consolidation Act 1935</i>	section 170 (Serious criminal trespass—places of residence)	An offence aggravated by the circumstance referred to in section 5AA(1)(a)
	section 174 (Piracy)	
	section 270(1)(c) (Cheat or fraud at common law)	Offence against child or vulnerable person
	section 270AB (Attempted manslaughter)	
<i>Controlled Substances Act 1984</i>	section 32 (Trafficking) where the offence relates to a commercial or large commercial quantity	
	section 33 (Manufacture of controlled drugs for sale) where the offence relates to a commercial or large commercial quantity	
	section 33A (Sale, manufacture etc of controlled precursor) where the offence relates to a commercial or large commercial quantity	
	section 33B (Cultivation of controlled plants for sale) where the offence relates to a commercial or large commercial quantity	
	section 33C (Sale of controlled plants) where the offence relates to a commercial or large commercial quantity	
	section 33F (Sale, supply or administration of controlled drug to child)	
	section 33G (Sale, supply or administration of controlled drug in school zone)	
	section 33GA (Sale of equipment to child for use in connection with consumption of controlled drugs)	
	section 33GB (Sale of instructions to a child)	
	section 33H (Procuring child to commit offence)	
<i>Animal Welfare Act 1985</i>	section 13(1) (Ill treatment of animals)	
<i>Summary Offences Act 1953</i>	section 6A (Violent disorder)	Offence against child or vulnerable person

section 26B(1) and (2) (Humiliating and degrading filming)	Offence against child or vulnerable person
section 26C (Distribution of invasive image)	Offence against child or vulnerable person
section 26D (Indecent filming)	Offence against child or vulnerable person

Act	Offences	Conditions
<i>Summary Offences Act 1953</i>	section 33(3) as in force before the commencement of the <i>Criminal Law Consolidation (Child Pornography) Amendment Act 2004</i>	Offence where in young adult relationship
	section 37 (Possession, production or distribution of extremist material)	
	section 39 (Valueless cheque)	Offence against child or vulnerable person
<i>Guardianship and Administration Act 1993</i>	section 76 (Ill-treatment or neglect of person with mental incapacity)	Offence against a person under care
<i>Mental Health Act 2009</i>	section 49 (Neglect or ill-treatment)	
<i>Criminal Code of the Commonwealth</i>	section 71.3 (Manslaughter of a UN person etc)	
	section 71.4 (Intentionally causing serious harm to a UN person etc)	Offence against non-vulnerable person
	section 71.5 (Recklessly causing serious harm to a UN person etc)	Offence against non-vulnerable person
	section 71.8 (Unlawful sexual penetration)	Offence against non-vulnerable person
	section 71.9 or 10 (Kidnapping etc a UN person etc)	Offence against non-vulnerable person Offence where offender is a relative
	section 73.2, 3 or 3A (People smuggling)	Offence against non-vulnerable person
	section 73.8, 9 or 10 (Document offences relating to people smuggling etc)	Offence against child or vulnerable person
	Division 80 (Treason etc)	
	section 82.3 to 9 (Sabotage)	
	section 83.1, 2 or 3 (Other threats to security)	
section 91.1, 2, 3, 6, 8, 11 or 12 (Espionage)		

section 92.2, 3, 4, 7, 8, 9 or 10 (Foreign interference)

section 92A.1 (Theft of trade secrets involving foreign government principal)

section 101.1, 2, 4, 5 or 6 (Terrorism)

Act

Offences

Conditions

Criminal Code of the Commonwealth

section 102.2(1), 3, 4, 5, 6, 7 or 8 (Terrorist organisations)

section 103.1 or 2 (Financing terrorism)

section 115.2 (Manslaughter of an Australian citizen etc)

section 115.3 (Intentionally causing serious harm to an Australian citizen etc)

Offence against non-vulnerable person

section 115.4 (Recklessly causing serious harm to an Australian citizen etc)

Offence against non-vulnerable person

section 119.1(1) or 4(2) (Foreign incursions and recruitment)

section 122.1, 2 or 4 (Secrecy of information)

section 134.1 or 2 (Obtaining property or a financial advantage by deception)

Offence against child or vulnerable person

section 135.1(1) or (2), 2 or 4(1) (Other offences involving fraudulent conduct)

Offence against child or vulnerable person

section 136.1 (False or misleading statements in applications)

Offence against child or vulnerable person

section 137.1 or 2 (False or misleading information or documents)

Offence against child or vulnerable person

section 142.2 (Abuse of public office)

Offence against child or vulnerable person

section 144.1 (Forgery)

Offence against child or vulnerable person

section 145.1, 2, 4 or 5 (Offences relating to forgery)

Offence against child or vulnerable person

section 148.1(1) or 2(1) or (3) (Impersonation of Commonwealth officials)

Offence against child or vulnerable person

section 268.4 (Genocide by causing serious bodily or mental harm)

Offence against non-vulnerable person

section 268.10, 13 to 16, 19 or 21(1) (Crimes against humanity)

Offence against non-vulnerable person

section 268.11, 12, 17, 18, 20, 21(2), 22 or 23 (Crimes against humanity)

Act	Offences	Conditions	
<i>Criminal Code of the Commonwealth</i>	section 268.25 to 28, 47(2), 48(2), 59, 60, 61, 64, 71(2), 73, 82, 84, 87(1) or 92(2) (War crimes—various)	Offence against non-vulnerable person	
	section 268.29 to 37, 38(2), 39, 45, 46, 49(2), 51 to 54, 57 to 59, 62, 63, 66 to 68, 72, 74, 75, 76(1), 77 to 81, 85, 86, 88, 89, 90(2), 93(2), 94 to 96, 99, 100 or 101 (War crimes)		
	section 268.40(2), 41 to 44, 50, 55, 56, 91, 97 or 98 (War crimes not resulting in death)		
	section 270.3, 5, 6A, 7, 7B or 7C (Slavery etc)		Offence against non-vulnerable person
	section 271.2, 3, 4, 5, 6, 7, 7B, 7C, 7D or 7E (Trafficking in persons etc)		Offence against non-vulnerable person
	section 273B.4 (Failing to protect child at risk of child sexual abuse offence)		
	section 274.2 (Torture)		Offence against non-vulnerable person
	section 302.2 (Trafficking commercial quantities of controlled drugs)		
	section 303.4 (Cultivating commercial quantities of controlled plants)		
	section 304.1 (Selling commercial quantities of controlled plants)		
	section 305.3 (Manufacturing commercial quantities of controlled drugs)		
	section 305.4 (Manufacturing marketable quantities of controlled drugs)		Offence against child or vulnerable person
	section 306.2, 3, 4 (Pre-trafficking controlled precursors)		Offence against child or vulnerable person
	section 307.1 or 11 (Importing and exporting offences)		
	section 308.3 (Possessing plant material, equipment or instructions for commercial cultivation of controlled plants)		
	section 309.2, 3, 4, 7, 8, 10 to 15 (Drug offences involving children)		
section 310.2 or 3 (Harm and danger to children under 14 from serious drug offences)			
section 372.1, 1A or 2 (Identity fraud offences)		Offence against child or vulnerable person	
section 474.17A (Aggravated offences involving private sexual material—using a carriage service to menace, harass or cause offence)			

*Crimes
(Internationally
Protected Persons)
Act 1976 of the
Commonwealth*

section 480.4 (Dishonestly obtain or deal in personal financial information)

Offence against child or vulnerable person

section 8(2) (Attack internationally protected person) being an offence that results in grievous bodily harm

Offence against non-vulnerable person