



Queensland

Disability Services and Other Legislation (Worker Screening) Amendment Bill 2018



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2018

A Bill

for

An Act to amend the Disability Services Act 2006 and the Police Service Administration Act 1990 for particular purposes

[s 1]

The Parliament of Queensland enacts— 1

Part 1 Preliminary 2

Clause 1 Short title 3

This Act may be cited as the *Disability Services and Other
Legislation (Worker Screening) Amendment Act 2018*. 4
5

Clause 2 Commencement 6

Part 3 commences on a day to be fixed by proclamation. 7

**Part 2 Amendment of Disability
Services Act 2006** 8
9

Clause 3 Act amended 10

This part amends the *Disability Services Act 2006*. 11

Clause 4 Insertion of new s 44A 12

Part 5, division 2— 13

insert— 14

44A Meaning of sole trader 15

A sole trader is an individual who— 16

(a) is an NDIS non-government service
provider; and 17
18

(b) in providing disability services as an NDIS
non-government service provider, provides
the disability services personally. 19
20
21

Clause 5	Amendment of s 46 (Persons engaged by a funded non-government service provider or an NDIS non-government service provider at a service outlet)	1
		2
		3
(1)	Section 46—	4
	<i>insert—</i>	5
	(2A) Also, for this part, an NDIS non-government service provider who is a sole trader is taken to be engaged by the service provider to carry out work at a service outlet of the service provider if the sole trader carries out, or is to carry out, the work at the outlet.	6
		7
		8
		9
		10
		11
(2)	Section 46(2A) to (7)—	12
	<i>renumber</i> as section 46(3) to (8).	13
Clause 6	Amendment of s 52 (Application for prescribed notice)	14
(1)	Section 52(1), ‘another person’—	15
	<i>omit, insert—</i>	16
	a person	17
(2)	Section 52(2)(c), after ‘person’—	18
	<i>insert—</i>	19
	, unless the engaged person is a sole trader	20
(3)	Section 52(3)(b)—	21
	<i>omit, insert—</i>	22
	(b) certification by the following entity that the entity has sighted documents, relating to proof of the engaged person’s identity, prescribed by regulation—	23
		24
		25
		26
	(i) for an application by a funded non-government service provider or an NDIS non-government service provider, other than a sole trader—the service provider;	27
		28
		29
		30
		31

[s 7]

	(ii) for an application by a sole trader—a prescribed person; and	1 2
(4)	Section 52— <i>insert—</i>	3 4
	(8) Subsections (5) to (7) do not apply to a sole trader.	5
Clause 7	Amendment of s 56 (Actions of chief executive after making decision on application)	6 7
(1)	Section 56— <i>insert—</i>	8 9
	(4A) Subsection (4) does not apply in relation to an NDIS non-government service provider who is a sole trader.	10 11 12
(2)	Section 56(5), penalty, ‘subsection (5)’— <i>omit, insert—</i>	13 14
	subsection (6)	15
(3)	Section 56(4A) and (5)— <i>renumber</i> as section 56(5) and (6).	16 17
Clause 8	Amendment of s 59 (Application for exemption notice)	18
(1)	Section 59(2)(c), after ‘person’— <i>insert—</i>	19 20
	, unless the engaged person is a sole trader	21
(2)	Section 59(3)(b)— <i>omit, insert—</i>	22 23
	(b) certification by the following entity that the entity has sighted documents, relating to proof of the engaged person’s identity, prescribed by regulation—	24 25 26 27

	(i) for an application by a funded non-government service provider or an NDIS non-government service provider, other than a sole trader—the service provider;	1 2 3 4 5
	(ii) for an application by a sole trader—a prescribed person; and	6 7
Clause 9	Amendment of s 63 (Actions of chief executive after making decision on application)	8 9
	(1) Section 63— <i>insert—</i>	10 11
	(4A) Subsection (4) does not apply in relation to an NDIS non-government service provider who is a sole trader.	12 13 14
	(2) Section 63(5), penalty, ‘subsection (5)’— <i>omit, insert—</i>	15 16
	subsection (6)	17
	(3) Section 63(4A) and (5)— <i>renumber</i> as section 63(5) and (6).	18 19
Clause 10	Amendment of s 65 (Starting engagement of certain regular engaged persons other than volunteers)	20 21
	Section 65— <i>insert—</i>	22 23
	(4) This section does not apply to a sole trader.	24
Clause 11	Amendment of s 66 (Starting engagement of new engaged persons other than volunteers)	25 26
	Section 66— <i>insert—</i>	27 28

[s 12]

	(4) This section does not apply to a sole trader.	1
Clause 12	Amendment of s 67 (Continuing engagement of persons other than volunteers)	2
	Section 67—	3
	<i>insert—</i>	4
	(3) This section does not apply to a sole trader.	5
Clause 13	Insertion of new ss 67A and 67B	6
	After section 67—	7
	<i>insert—</i>	8
	67A Restriction on sole trader providing disability services	9
	A person who is a sole trader must not provide disability services as an NDIS non-government service provider at a service outlet of the service provider unless—	10
	(a) the person has a current positive notice or current positive exemption notice; or	11
	(b) the person holds a WWC positive notice that is not suspended under the Working with Children Act and the person has applied for an exemption notice.	12
	Maximum penalty—250 penalty units.	13
	67B Currency of prescribed notice for sole trader	14
	(1) This section applies if—	15
	(a) a sole trader providing disability services as an NDIS non-government service provider at a service outlet of the service provider has a positive notice (the <i>previous notice</i>); and	16
		17
		18
		19
		20
		21
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		26
		27
		28

	(b) the sole trader applied for a further prescribed notice or exemption notice at least 30 days before the previous notice expires; and	1 2 3 4
	(c) the application has not been decided.	5
	(2) Despite section 58(2), the previous notice remains current from the day it would otherwise end under that subsection until the application is decided or withdrawn, unless the previous notice is earlier cancelled under division 8.	6 7 8 9 10
Clause 14	Amendment of s 68 (Starting engagement of volunteers)	11
	Section 68(1), note, ‘section 46(6)’—	12
	<i>omit, insert</i> —	13
	section 46(7)	14
Clause 15	Amendment of s 70 (Prohibited engagement)	15
	Section 70—	16
	<i>insert</i> —	17
	(3) This section does not apply to a sole trader.	18
Clause 16	Amendment of s 75 (Change in police information of person engaged by funded non-government service provider or NDIS non-government service provider)	19 20 21
	(1) Section 75(1), from ‘This section’ to ‘NDIS non-government service provider’—	22 23
	<i>omit, insert</i> —	24
	Subsections (2) to (4) apply to a person engaged by a funded non-government service provider or an NDIS non-government service provider, other than a sole trader,	25 26 27 28
	(2) Section 75—	29

[s 17]

- insert—* 1
- (5) Subsections (6) and (7) apply to a person who is a sole trader if— 2
3
- (a) the person is providing disability services as an NDIS non-government service provider at a service outlet of the service provider; 4
5
and 6
7
- (b) there is a change in the person’s police information. 8
9
- (6) The person must immediately disclose to the chief executive that there has been a change in the person’s police information. 10
11
12
- Maximum penalty—100 penalty units. 13
- (7) To remove any doubt, it is declared that it is not a requirement of subsection (6) that the person give the chief executive any information about the change other than that a change has happened. 14
15
16
17

- Clause 17 Amendment of s 77 (Change in police information of other persons)** 18
19
- (1) Section 77— 20
- insert—* 21
- (2A) Subsection (2) does not apply in relation to an NDIS non-government service provider who is a sole trader. 22
23
24
- (2) Section 77(2A) and (3)— 25
- renumber* as section 77(3) and (4). 26
- (3) Section 77— 27
- insert—* 28
- (5) Subsection (6) applies if the person is a sole trader. 29
30
- (6) Before providing disability services as an NDIS 31

non-government service provider at a service 1
outlet of the service provider, the person must 2
notify the chief executive that there has been a 3
change in the person's police information since 4
the person's current positive notice or current 5
exemption notice was issued. 6
Maximum penalty—100 penalty units. 7

- Clause 18** **Amendment of s 83 (Chief executive may cancel a 8
prescribed notice and substitute another prescribed 9
notice) 10**
- (1) Section 83— 11
insert— 12
 (2A) Subsection (2) does not apply if the person is a 13
 sole trader. 14
- (2) Section 83(3) and (7), 'subsection (6)'— 15
omit, insert— 16
 subsection (7) 17
- (3) Section 83(4), 'subsection (1) or (3)'— 18
omit, insert— 19
 subsection (1) or (4) 20
- (4) Section 83(6), 'subsection (3), the chief executive's decision 21
under subsection (4)'— 22
omit, insert— 23
 subsection (4), the chief executive's decision 24
 under subsection (5) 25
- (5) Section 83(7) and (8), 'subsection (3)'— 26
omit, insert— 27
 subsection (4) 28
- (6) Section 83(2A) to (8)— 29
renumber as section 83(3) to (9). 30

[s 19]

Clause 19	Amendment of s 84 (Chief executive may cancel an exemption notice and substitute another exemption notice)	1 2 3
	(1) Section 84—	4
	<i>insert</i> —	5
	(2A) Subsection (2) does not apply if the person is a sole trader.	6 7
	(2) Section 84(3) and (7), ‘subsection (6)’—	8
	<i>omit, insert</i> —	9
	subsection (7)	10
	(3) Section 84(4), ‘subsection (1) or (3)’—	11
	<i>omit, insert</i> —	12
	subsection (1) or (4)	13
	(4) Section 84(6), ‘subsection (3), the chief executive’s decision under subsection (4)’—	14 15
	<i>omit, insert</i> —	16
	subsection (4), the chief executive’s decision under subsection (5)	17 18
	(5) Section 84(7) and (8), ‘subsection (3)’—	19
	<i>omit, insert</i> —	20
	subsection (4)	21
	(6) Section 84(2A) to (8)—	22
	<i>renumber</i> as section 84(3) to (9).	23
Clause 20	Amendment of s 85 (Cancellation of positive notice if relevant disqualified person)	24 25
	Section 85—	26
	<i>insert</i> —	27
	(5) Subsection (4) does not apply if the person is a sole trader.	28 29

Clause 21	Amendment of s 86 (Suspension of positive notice if charged with disqualifying offence or subject to temporary or interim order)	1 2 3
(1)	Section 86— <i>insert—</i>	4 5
	(5A) Subsection (5) does not apply if the person is a sole trader.	6 7
(2)	Section 86(5A) to (9)— <i>renumber</i> as section 86(6) to (10).	8 9
Clause 22	Amendment of s 88 (Suspension of a positive exemption notice if WWC positive notice suspended)	10 11
(1)	Section 88— <i>insert—</i>	12 13
	(6A) Subsection (6) does not apply if the person is a sole trader.	14 15
(2)	Section 88(6A) to (8)— <i>renumber</i> as section 88(7) to (9).	16 17
Clause 23	Amendment of s 89 (Ending of suspension and issue of further exemption notice or prescribed notice)	18 19
(1)	Section 89— <i>insert—</i>	20 21
	(8A) Subsection (8) does not apply if the person is a sole trader.	22 23
(2)	Section 89(8A) and (9)— <i>renumber</i> as section 89(9) and (10).	24 25
Clause 24	Amendment of s 90 (Notifying holder of expiry of positive exemption notice)	26 27
(1)	Section 90—	28

[s 25]

insert—

(4A) Subsection (4) does not apply if the person is a sole trader.

(2) Section 90(5), penalty, ‘subsection (5)’—

omit, insert—

subsection (6)

(3) Section 90(4A) and (5)—

renumber as section 90(5) and (6).

Clause 25 Amendment of s 91 (Request to cancel positive notice or positive exemption notice)

(1) Section 91—

insert—

(4A) Subsection (4) does not apply if the person is a sole trader.

(2) Section 91(4A) and (5)—

renumber as section 91(5) and (6).

Clause 26 Amendment of s 96 (Person who holds negative exemption notice but no longer holds WWC positive notice)

Section 96(3), ‘or 84(3)’—

omit, insert—

or 84(4)

Clause 27 Amendment of s 98 (Offences for disqualified person)

(1) Section 98—

insert—

(3A) Subsection (3) does not apply if the person is a sole trader.

-
- (2) Section 98(3A) and (4)— 1
renumber as section 98(4) and (5). 2

- Clause 28 Amendment of s 99 (Application for an eligibility declaration)** 3
4
Section 99(6)— 5
omit. 6

- Clause 29 Amendment of s 131 (Chief executive to give notice to funded non-government service provider or NDIS non-government service provider about making screening decision about engaged person)** 7
8
9
10
(1) Section 131— 11
insert— 12
(4A) This section does not apply to a sole trader. 13
(2) Section 131(4A) and (5)— 14
renumber as section 131(5) and (6). 15

- Clause 30 Amendment of s 132 (Withdrawal of engaged person's consent to screening)** 16
17
(1) Section 132(8)(b), after 'to the chief executive'— 18
insert— 19
and the engaged person is not a sole trader 20
(2) Section 132— 21
insert— 22
(9A) If the engaged person is an NDIS non-government 23
service provider who is a sole trader, a notice of 24
deemed withdrawal given to the person under 25
subsection (3)(d), (4)(d), (5)(c), (6)(b) or (7)(b) is 26
taken to be given also to the NDIS 27
non-government service provider. 28

[s 31]

(3) Section 132(9A) and (10)— 1
renumber as section 132(10) and (11). 2

Clause 31 Amendment of s 133 (Compliance with requirement to end, or not start, a person's engagement) 3
4
Section 133(1), 'another person'— 5
omit, insert— 6
a person 7

Clause 32 Amendment of s 138 (Register of persons engaged by particular entities or for whom particular applications are made) 8
9
10
(1) Section 138(2)— 11
insert— 12
(ba) whether the person is a sole trader; 13
(2) Section 138(2)(ba) to (f)— 14
renumber as section 138(2)(c) to (g). 15

Clause 33 Insertion of new pt 9, div 11 16
Part 9— 17
insert— 18
Division 11 Transitional provisions for Disability Services and Other Legislation (Worker Screening) Amendment Act 2018 19
20
21
22
23

341 Definitions for division 24
In this division— 25

amending Act means the *Disability Services and Other Legislation (Worker Screening) Amendment Act 2018*. 1
2
3

unamended Act means this Act as in force 4
immediately before the commencement. 5

**342 Prescribed notices or exemption notices 6
issued to sole traders before commencement 7**

(1) This section applies if, before the 8
commencement, the chief executive issued a 9
prescribed notice or an exemption notice to a sole 10
trader. 11

(2) The prescribed notice or exemption notice is 12
taken to be, and always to have been, as valid as if 13
part 5, as in force immediately after the 14
commencement, had been in force on the day the 15
notice was given. 16

**343 Certification by prescribed persons before 17
commencement 18**

(1) This section applies if, before the 19
commencement— 20

(a) a sole trader applied under the unamended 21
Act, section 52 or 59 for a prescribed notice 22
or an exemption notice; and 23

(b) a prescribed person certified that the 24
prescribed person had sighted documents, 25
relating to proof of the sole trader's identity, 26
prescribed by regulation. 27

(2) Despite the unamended Act— 28

(a) the chief executive may, whether before of 29
after the commencement, accept the 30
certification by the prescribed person 31
instead of by the NDIS non-government 32

[s 34]

service provider as proof of the sole trader's identity; and	1 2
(b) the application, or prescribed notice or exemption notice issued by the chief executive as a result of the application (whether issued before or after the commencement), is not affected only because of a change to the entity certifying the documents.	3 4 5 6 7 8 9
344 Delayed application of particular provisions	10
(1) This section applies to a person who is a sole trader if, before the commencement—	11 12
(a) the person was providing disability services as an NDIS non-government service provider at a service outlet of the service provider; and	13 14 15 16
(b) the person had applied for—	17
(i) a prescribed notice under the unamended Act, section 52; or	18 19
(ii) a prescribed notice under the Working with Children Act, section 199; and	20 21
(c) the application had not been decided.	22
(2) Sections 67A and 67B do not apply to the person until the day that is 4 months after the commencement.	23 24 25
Clause 34 Amendment of sch 8 (Dictionary)	26
Schedule 8—	27
<i>insert—</i>	28
<i>prescribed person</i> means—	29
(a) a justice; or	30

	(b) a commissioner for declarations under the <i>Justices of the Peace and Commissioners for Declarations Act 1991</i> ; or	1 2 3
	(c) a lawyer; or	4
	(d) a police officer.	5
	<i>sole trader</i> see section 44A.	6
Part 3	Amendment of Police Service Administration Act 1990	7 8
Clause 35	Act amended	9
	This part amends the <i>Police Service Administration Act 1990</i> .	10
Clause 36	Amendment of s 1.4 (Definitions)	11
	Section 1.4—	12
	<i>insert</i> —	13
	<i>disability-related employment screening</i> , for part 10, division 1B, see section 10.2S.	14 15
Clause 37	Amendment of pt 10, div 1B, hdg (Provisions about exchange of criminal history for child-related employment screening)	16 17 18
	Part 10, division 1B, heading, ‘child-related’—	19
	<i>omit, insert</i> —	20
	particular	21
Clause 38	Amendment of s 10.2S (Definitions for div 1B)	22
	Section 10.2S—	23
	<i>insert</i> —	24

[s 39]

disability-related employment screening means 1
using information about a person in a way that is 2
authorised or required under a law of another 3
State or the Commonwealth that relates to 4
assessing whether a person poses a risk of harm to 5
people with a disability. 6

- Clause 39** **Amendment of s 10.2T (Giving criminal history to interstate screening unit or approved agency for child-related employment screening)** 7
8
9
- (1) Section 10.2T, heading, ‘child-related’— 10
omit. 11
- (2) Section 10.2T(a) and (b), after ‘employment screening’— 12
insert— 13
or disability-related employment screening 14

- Clause 40** **Insertion of new pt 11, div 11** 15
- Part 11— 16
insert— 17
- Division 11** **Transitional provision for Disability Services and Other Legislation (Worker Screening) Amendment Act 2018** 18
19
20
21
22

- 11.19 Exchange of criminal history for disability-related employment screening** 23
24
- (1) This section applies in relation to the 25
commissioner giving a person’s criminal history 26
to an interstate screening unit or an approved 27
agency as mentioned in section 10.2T for the 28
purpose of disability-related employment 29

screening of the person.

1

- (2) To remove any doubt, it is declared that for
section 10.2S, definition *criminal history*, a
reference to a charge against the person for an
offence includes a charge for an offence alleged to
have been committed by the person before the
commencement.

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