

# Disability Services and Other Legislation (NDIS) Amendment Bill 2019

## Explanatory Notes

### Short title

The short title of the Bill is the Disability Services and Other Legislation (NDIS) Amendment Bill 2019.

### Policy objectives and the reasons for them

The National Disability Insurance Scheme (NDIS) represents a fundamental change to how services for people with disability are funded and delivered. A key aim of the NDIS is to enable participants to have greater choice and control in the pursuit of their goals and in the planning and delivery of supports.

On 16 March 2016, the Queensland and Commonwealth Governments agreed to Queensland's Bilateral Agreement for transition to the NDIS (Transition Bilateral Agreement). Transition commenced in Queensland on 1 July 2016, and implementation is due to be completed by 30 June 2019.

Under the Transition Bilateral Agreement, Queensland was required to continue existing quality and safeguards during transition. The *Disability Services and Other Legislation Amendment Act 2016* (DSOLAA) commenced on 1 April 2016 to give effect to this agreement and extended existing legislative safeguards to apply to non-government organisations in Queensland providing specialist disability supports and services under the NDIS.

As a result, Queensland's quality and safeguards under the *Disability Services Act 2006* (DSA) have continued in place. This includes: the criminal history screening of disability services workers; the authorisation of the use of restrictive practices; complaints management processes and monitoring and investigations. In addition, the community visitor program (CVP) under the *Public Guardian Act 2014* (PGA) and coronial oversight for deaths in care under the *Coroners Act 2003* (Coroners Act) have also continued.

The NDIS Quality and Safeguarding Framework (the NDIS QSF) was agreed by the Council of Australian Governments (COAG) on 9 December 2016. The NDIS QSF provides a nationally consistent approach to help empower and support NDIS participants to exercise choice and control, while ensuring appropriate safeguards are in place, and establishes expectations for providers and their staff to deliver high quality supports.

The NDIS QSF and the NDIS Quality and Safeguards Commission (the NDIS Commission) will commence operation in Queensland from 1 July 2019. From this time, the NDIS Commission will have responsibility for the oversight of registered NDIS providers in

Queensland. Functions including worker screening, authorising the use of restrictive practices and operating a community visitor function will remain the responsibility of Queensland.

Queensland will become a participating jurisdiction under the *National Disability Insurance Scheme Act 2013* (Cwlth) (the NDIS Act) from 1 July 2019. This means the NDIS Commission will commence operation in Queensland from 1 July 2019.

The Disability Services and Other Legislation (NDIS) Amendment Bill 2019 (the Bill) amends the Coroners Act, DSA, the *Guardianship and Administration Act 2000* (GAA), the PGA and the *Working with Children (Risk Management and Screening) Act 2000* (WWC Act).

The purpose of the Bill is to:

1. ensure that Queensland has made all urgent and critical amendments required to support the commencement of the operation of the NDIS Commission from 1 July 2019;
2. ensure that the DSA operates in conjunction with the Commonwealth legislative framework to provide a strong quality and safeguards framework, in particular in relation to the authorisation of restrictive practices and worker screening;
3. ensure that existing quality and safeguards under the DSA continue to apply to disability services currently regulated under the DSA that will be outside of the NDIS;
4. strengthen the operation of Queensland's disability worker screening system (the yellow card system) during the transition to new NDIS worker screening;
5. amend the Coroners Act to ensure that the deaths of certain NDIS participants must continue to be reported to the State Coroner;
6. amend the PGA to ensure that community visitors (adult) and (child) must continue to visit visitable sites where certain NDIS participants are in order to protect the participants' rights and interests; and
7. enable appropriate information sharing to occur with the NDIS Commission to assist with the performance of the NDIS commissioner's functions under the NDIS Act.

## **Achievement of policy objectives**

The Bill achieves the objectives by providing for the following amendments.

### **Quality and safeguards under the DSA**

#### *Reflecting the changing role of the Queensland Government*

The changes in the Bill reflect the roles and responsibilities of the NDIA, the NDIS Commission and the Queensland Government once Queensland is a participating jurisdiction from 1 July 2019. The Bill clarifies that the Queensland Government will have a reduced role in funding disability services at full scheme and will retain limited quality and safeguards functions for registered NDIS providers. The Bill also ensures that the existing quality and safeguards framework remains in place for disability services that the Queensland Government continues to fund or provide which are outside the scope of the NDIS QSF.

#### *Positive behaviour support and restrictive practices*

Restrictive practices are used to manage 'challenging behaviour' and to protect an adult with an intellectual or cognitive disability from causing harm to themselves or others.

From 1 July 2019, Queensland will only retain responsibility for authorising the use of restrictive practices. The Bill seeks to ensure that the current safeguards under the DSA form part of the authorisation process in Queensland.

The Bill makes changes to reflect the new roles and responsibilities from 1 July 2019 and to reflect the necessary intersections between Queensland legislation and the relevant Commonwealth legislation. The Bill also provides flexibility to ensure Queensland legislation can operate effectively with the Commonwealth *NDIS (Restrictive Practices and Behaviour Support) Rules 2018*, which are yet to be formally agreed for operation in Queensland.

#### Worker screening

Under the NDIS QSF, Queensland will retain responsibility for worker screening. The Intergovernmental Agreement on Nationally Consistent Worker Screening for the NDIS (the IGA) was signed by the Premier on 3 May 2018. The IGA sets the national policy framework to support nationally consistent NDIS worker screening.

It is necessary to continue to operate the yellow card system beyond 1 July 2019, during transition to full implementation of nationally consistent NDIS worker screening.

The current safeguards for worker screening will continue under the ‘yellow card system’ (for people working with adults with disability) and the ‘blue card system’ (for people working with children with disability) while Queensland transitions to NDIS worker screening.

The Bill strengthens existing safeguards by making changes to the framework for excluding people from working with people with disability. The Bill will expand the range of offences that will automatically disqualify a person from being able to hold a ‘yellow card’.

Consistent with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, the Bill will include the offences of Bestiality; Kidnapping of a child; Kidnapping for ransom of a child; Child stealing; and Abduction of a child under 16 as disqualifying offences. The offences of abduction, child stealing and kidnapping offences will only be treated as disqualifying if the context in which the offence was committed was not familial. In addition, the Bill further expands the disqualifying offences to include the murder and rape of an adult.

In addition the Bill recognises the need to adopt a flexible approach to the transition to the NDIS worker screening check and provides for the scope of screening to be amended by regulation as required. This will provide the opportunity for Queensland to determine an appropriate transition strategy and to be able to expand the scope of screening under the blue card and yellow card systems, if required, to move towards the approach that will be adopted under the new NDIS worker screening check. Finalisation of the transitional approach is subject to the agreement by Queensland to the operation of the *National Disability Insurance Scheme (Practice Standards—Worker Screening) Rules*. This requires flexibility in relation to the approach to be adopted.

#### Deaths in care under the Coroners Act

The Coroners Act provides a framework for reporting certain deaths to the State Coroner, which must then be investigated.

Under the Coroners Act, a relevant service provider must report a death to a police officer or a coroner if the death was a *death in care*. A death in care includes the death of a person with a disability if they were living in certain environments or receiving certain types of supports and services.

For transition to the NDIS in Queensland, the DSOLAA significantly expanded the definition of *death in care* with respect to NDIS participants. The amendments in this Bill aim to ensure that the deaths of certain NDIS participants must continue to be reported to the State Coroner. This aims to be consistent with the original scope of coronial jurisdiction for deaths in care of people with disability in that it is focused on those people in receipt of high levels of support and care.

To ensure that the deaths of certain NDIS participants must continue to be reported to a coroner or a police officer, the Bill will amend the Coroners Act to:

- amend the definition of *death in care* to include the death of an NDIS participant who was not living in a private dwelling or an aged care facility and was receiving or entitled to receive a *relevant class of supports* from a registered NDIS provider;
- clarify when a deceased person was living in a private dwelling; and
- amend the definition of *relevant service provider* to include a registered NDIS provider.

This will mean that the death of an NDIS participant receiving a *relevant class of supports* from a registered NDIS provider must be reported to the coroner or a police officer by the relevant service provider.

#### Community visitor program

The PGA establishes a CVP (adult) to protect the rights and interests of consumers staying at visitable sites. Community visitors (adult) have a range of inquiry and complaints functions, such as inquiring into, and reporting to the public guardian on, the adequacy of services for the assessment, treatment and support of consumers at a *visitable site*. Some visitable sites are prescribed under the *Public Guardian Regulation 2014* and relate to adults with impaired capacity for a personal or financial matter, or with an impairment.

The PGA also establishes a CVP (child) for community visitors (child) to protect the rights and interests of children staying at visitable locations, including a *visitable site*. Visitable site, for a child, includes a *residential facility* where the child is staying. A *residential facility* includes a place at which a child accommodation service (including the provision of respite services) is provided, funded or administered by the State.

The amendments in this Bill aim to continue to protect the rights and interests of NDIS participants by ensuring that community visitors (adult) and (child) continue to visit visitable sites where there are NDIS participants who are in receipt of high levels of support and care (that is, a *relevant class of supports* for adult NDIS participants and respite services for child NDIS participants).

The Bill will amend the PGA to:

- amend the definition of *visitable site* in relation to the CVP (adult) to include premises, other than a private dwelling house, at which a funded adult participant lives and receives a *relevant class of supports* from a registered NDIS provider;
- clarify the definition of *private dwelling house*;
- amend the definition of *residential facility* to ensure that a visitable site for the CVP (child) extends to a place at which a child accommodation service is provided to a child, for the purpose of providing respite services (otherwise known as short term accommodation) in relation to the child by an NDIS provider or a registered NDIS provider; and
- require certain registered NDIS providers (in the case of visitable sites for adults) and certain NDIS providers or registered NDIS providers (in the case of visitable sites for children) to give the public guardian, in the way and at the times prescribed by regulation, *required information* about visitable sites.

For both the Coroners Act and PGA, *relevant class of supports* means any of the following classes of supports under the NDIS Act—

- (a) high intensity daily personal activities;
- (b) assistance with daily life tasks in a group or shared living arrangement;
- (c) specialist positive behaviour support that involves the use of a restrictive practice;
- (d) specialist disability accommodation.

The Bill will also make related amendments to the PGA to support the ongoing functions of community visitors and the public guardian.

## **Alternative ways of achieving policy objectives**

The proposed Bill is essential to support Queensland becoming a participating jurisdiction for the purpose of the NDIS from 1 July 2019. There is no alternative way of achieving the policy objectives.

## **Estimated cost for government implementation**

Any costs arising from these legislative amendments will be dealt with as part of the normal budgetary process.

## **Consistency with fundamental legislative principles**

The Bill is generally consistent with fundamental legislative principles (FLPs). Potential breaches of FLPs are addressed below.

### **Complaints**

*Legislation should have sufficient regard to the institution of Parliament – Section 4(2)(b) Legislative Standards Act 1992*

Part 3 of the DSA enables consumers to make complaints to the chief executive about the delivery of disability services by particular service providers. The Bill inserts a new section 32A into part 3 of the DSA, with the effect that complaints may be made about the department, service providers funded by the department (other than a service provider that is

another department) and another service provider prescribed by regulation. The new section also provides that a regulation can be made to provide that part 3 of the DSA does not apply in relation to particular service providers or in relation to the delivery of particular disability services. This may be considered a breach of fundamental legislative principles that legislation has sufficient regard to the institution of Parliament.

This approach requires the making of a Regulation, which will be subject to scrutiny by the Legislative Assembly. In addition, the making of the Regulation will be subject to the operation of the provisions which prescribe the Objects of the Act and the definition provision which outlines the extent of the disability services to which the Act applies. This will require any subordinate legislation to be developed within the boundaries of these provisions.

The approach adopted is required to provide flexibility to ensure there is no unnecessary duplication of complaints functions between Queensland and the NDIS Commission as full scheme NDIS is implemented, and to ensure there are not circumstances in which a consumer does not have a formal avenue of complaint.

In addition, the Bill inserts a new section 241AA which provides that the Minister must review section 32A and the review must be completed within 1 year after the commencement. This will require the Minister to consider whether the regulation making power in section 32A is still required to facilitate the effective implementation and application of the NDIS in Queensland.

### **Funding to people with disability**

#### *Legislation should have sufficient regard to the institution of Parliament – Section 4(2)(b) Legislative Standards Act 1992*

The Bill makes an amendment to the existing definition of ‘relevant disability services’, to enable these services to be prescribed by Regulation, as they relate to Part 4 (Funding to people with a disability). This may be considered a breach of fundamental legislative principles that legislation has sufficient regard to the institution of Parliament.

The approach requires the making of a Regulation, which will be subject to scrutiny by the Legislative Assembly. In addition, the making of the Regulation will be subject to the operation of the provisions which prescribe the Objects of the Act and the definition provision which outlines the extent of the disability services to which the Act applies. This will require any subordinate legislation to be developed within the boundaries of these provisions.

This approach is necessary to reflect that Part 4 was originally introduced to reflect the Queensland’s Governments commitment to increasing choice and control for people with disability in accessing disability services. As the role of the Queensland Government in funding disability supports will be reducing with the implementation of the NDIS, which embeds the fundamental principle of choice and control, it is envisaged there would not be the same need for individual funding agreements to be utilised under the DSA. The Bill retains scope for a regulation to prescribe the services in relation to which these arrangements may occur if the need arises.

## **Worker screening (including disqualifying framework)**

Legislation should have sufficient regard to the rights and liberties of individuals and should not adversely affect rights and liberties, or impose obligations retrospectively – Section 4(2)(a) and 3(a) and (g) Legislative Standards Act 1992

The Bill expands the range of disqualifying offences under the DSA. This will result in the automatic and permanent exclusion of a broader range of individuals from working with people with a disability. Consistent with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, the Bill will include the offences of Bestiality; Kidnapping of a child; Kidnapping for ransom of a child; Child stealing; and Abduction of a child under 16 as disqualifying offences. The offences of abduction, child stealing and kidnapping offences will only be treated as disqualifying if the context in which the offence was committed was not familial. In addition, the Bill further expands the disqualifying offences to include the murder and rape of an adult.

Under section 109 of the DSA, a person who is convicted of a disqualifying offence is afforded no review rights. This may be considered a breach of the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals and administrative power should be subject to appropriate review.

The inclusion of these additional offences is considered justified for the protection of people with disabilities from harm, as it prevents individuals with convictions for specified offences from working with people with disability in regulated disability-related service environments.

The new disqualifying offences will apply to people that have been convicted of the disqualifying offences prior to the commencement of the amendments. For example, a person may have their yellow card positive notice revoked if that person has been convicted of an offence under the expanded disqualifying framework. This may be considered a breach of the fundamental legislative principle that that legislation should not adversely affect rights and liberties, or impose obligations retrospectively.

The retrospective application is considered justified to ensure all yellow card applicants and holders are subject to the same workers screening process and disqualification framework and for the protection of people with disabilities from harm.

Legislation should have sufficient regard to the institution of Parliament – Section 4(2)(b) Legislative Standards Act 1992

Part 5 of the DSA relates to the screening of persons engaged by particular service providers, including NDIS non-government service providers.

The Bill inserts a new definition of ‘NDIS non-government service provider’ in the DSA to provide that, ‘an NDIS non-government service provider is a non-government service provider that is an NDIS provider, or a registered NDIS provider, providing disability services prescribed by regulation.’

The Bill also amends:

- part 5 of the DSA to include a new section 41A, which provides that part 5 does not apply to NDIS non-government service providers prescribed by regulation; and

- section 46 of the DSA with the effect that, despite anything else in section 46, a regulation may prescribe when an NDIS non-government service provider is, or is not, engaging a person for the purpose of part 5 of the DSA.

The Bill also amends section 239 (Regulation-making power) to provide that a regulation may be made to this Act to provide for appropriate transition arrangements where regulations of this nature are made.

Part 6 of the Bill introduces similar provisions into the WWC Act to:

- amend the definition of ‘NDIS non-government service provider’ in Schedule 7 to provide that it means an NDIS non-government service provider within the meaning of the DSA but does not include an NDIS non-government service provider prescribed by regulation under section 41A of the DSA;
- amend schedule 1, section 6 to insert a new subsection (3A) to provide that the employment of a person by an NDIS non-government service provider is regulated employment if it is prescribed by regulation and it is not regulated employment if a regulation provides it is not regulated employment; and
- insert a transitional regulation making power and a power to make a regulation under section 401 to provide for appropriate transition arrangements where regulations of this nature are made.

This approach recognises the need to adopt a flexible approach to the transition to the NDIS worker screening check and provides for the scope of screening to be amended by regulation as required. This provides the opportunity for Queensland to determine an appropriate transition strategy and to be able to expand the scope of screening under the blue card and yellow card system as required to move towards the approach that will be adopted under the new NDIS worker screening check. Finalisation of the transitional approach is subject to the agreement by Queensland to the operation of the *National Disability Insurance Scheme (Practice Standards—Worker Screening) Rules*. This requires flexibility in relation to the approach to be adopted.

The insertion of the new provisions to enable regulations to be made in these circumstances may be considered a breach of fundamental legislative principles that legislation has sufficient regard to the institution of Parliament. However, the approach requires the making of a Regulation, which will be subject to scrutiny by the Legislative Assembly. In addition, the making of the Regulation will be subject to the operation of the provisions which prescribe the Objects of the DSA and the WWC Act and the definition provisions which prescribes the extent of the disability services to which the Act applies. This will require any subordinate legislation to be developed within the boundaries of these provisions.

### **Restrictive practices – Application of part 6 of the DSA**

*Legislation should have sufficient regard to the institution of Parliament – Section 4(2)(b) Legislative Standards Act 1992*

Part 6 of the DSA regulates the use of restrictive practices by ‘relevant service providers’. The Bill replaces section 140 of the DSA (which states the service providers part 6 applies to) with a new provision that lists particular service providers, and enables a regulation to specify additional service providers. The new provision also provides that part 6 does not apply in relation to particular service providers or the delivery of particular disability services. This



may be considered a breach of fundamental legislative principles that legislation has sufficient regard to the institution of Parliament.

This approach will facilitate the effective implementation of full scheme NDIS in Queensland from 1 July 2019, while also providing the necessary flexibility to enable the application of the legislative framework to particular service providers, as required.

In addition, the Bill inserts a new section 241AA (Review of particular matters) which provides that the Minister must review section 140 and the review must be completed within 1 year after the commencement. This will require the Minister to consider whether the regulation making power in section 140 is still required to facilitate the effective implementation and application of the NDIS in Queensland.

### **Restrictive practices – Respite/community access plans**

#### Legislation should have sufficient regard to the institution of Parliament – Section 4(2)(b) Legislative Standards Act 1992

The Bill amends section 181 of the DSA to provide that a respite/community access plan for an adult with an intellectual or cognitive disability is a plan stating certain listed matters, as well as any other matter prescribed by regulation. The effect of these amendments is that a regulation may list additional matters that must be complied with for a respite/community access plan under section 181 of the DSA. The Bill also inserts a new section 183A which provides that in developing a respite/community access plan, the relevant service provider must comply with any other requirements prescribed by regulation. These provisions may be considered a breach of fundamental legislative principles that legislation has sufficient regard to the institution of Parliament.

This approach requires the making of a Regulation, which will be subject to scrutiny by the Legislative Assembly. In addition, the making of the Regulation will be subject to the operation of the provisions which prescribe the Objects of the Act and the definition provision which outlines the extent of the disability services to which the Act applies. This will require any subordinate legislation to be developed within the boundaries of these provisions.

This will enable flexibility to prescribe further requirements, if required, to ensure Queensland legislation can operate effectively with the *NDIS (Restrictive Practices and Behaviour Support) Rules 2018* when agreed for operation in Queensland.

### **Restrictive practices – Requirements for relevant service providers**

#### Legislation should have sufficient regard to the institution of Parliament – Section 4(2)(b) Legislative Standards Act 1992

The Bill amends sections 191, 193, 194 and 195 to provide that a ‘relevant service provider’, other than a relevant service provider prescribed by regulation, must comply with certain requirements, including giving statements about the use of restrictive practices, keeping and implementing procedures, keeping records and other documents, and notifying certain people about approvals given for the use of restrictive practices. The effect of these amendments is that a regulation may provide that these requirements do not apply to particular service

providers. This may be considered a breach of fundamental legislative principles that legislation has sufficient regard to the institution of Parliament.

This approach requires making of a Regulation, which will be subject to scrutiny by the Legislative Assembly. In addition, the making of the Regulation will be subject to the operation of the provisions which prescribe the Objects of the Act and the definition provision which outlines the extent of the disability services to which the Act applies. This will require any subordinate legislation to be developed within the boundaries of these provisions.

This will enable flexibility to ensure Queensland legislation can operate effectively with the *NDIS (Restrictive Practices and Behaviour Support) Rules 2018* when agreed for operation in Queensland.

### **Authorised officers**

*Legislation should have sufficient regard to the institution of Parliament – Section 4(2)(b) Legislative Standards Act 1992*

Part 6A of the DSA enables authorised officers to enforce, monitor and investigate the compliance of NDIS non-government service providers with provisions of the DSA. The Bill amends sections 200E, 200M, 200S and 200W with the effect that a regulation may exclude provisions of the Act from being within scope of these sections. This may be considered a breach of fundamental legislative principles that legislation has sufficient regard to the institution of Parliament.

Upon full scheme of the NDIS in Queensland from 1 July 2019, Queensland will retain responsibility for worker screening and the authorisation of the use of restrictive practices. This means that providers will still be required to comply with the provisions of the DSA and there may be instances where authorised officers require powers to investigate compliance of NDIS non-government service providers in relation to requirements under the DSA.

A regulation making power that allows certain provisions of the Act to be excluded from authorised officers' enforcement powers is necessary to enable flexibility to facilitate the effective implementation and application of full scheme NDIS in Queensland and ensure that the provisions only apply where required. This approach will ensure there is no unnecessary duplication of the functions and powers of the NDIS commissioner.

### **Locking of doors, gates and windows**

*Legislation should have sufficient regard to the institution of Parliament – Section 4(2)(b) Legislative Standards Act 1992*

The Bill replaces existing section 216 of the DSA with a new provision that lists particular service providers to which part 8, Division 2 applies, but also enables a regulation to specify additional service providers. The new section also provides that part 8, division 2 does not apply in relation to particular service providers or the delivery of particular disability services. This may be considered a breach of fundamental legislative principles that legislation has sufficient regard to the institution of Parliament.

Part 8, Division 2 applies to a service provider, who provides disability services to an adult with an intellectual or cognitive disability and locks gates, doors or windows at premises where these disability services are provided, only to prevent physical harm being caused to this adult, with a skills deficit. It operates by ensuring that service providers have an immunity from prosecution if they comply with the requirements under this division.

The replacement of section 216 is justified to facilitate the effective implementation of full scheme NDIS in Queensland from 1 July 2019, while also ensuring flexibility to ensure application of the provisions as required.

The approach requires the making of a Regulation which will be subject to scrutiny by the Legislative Assembly. In addition, the making of the Regulation will be subject to the operation of the provisions which prescribe the Objects of the Act and the definition provision which outlines the extent of the disability services to which the Act applies. This will require any subordinate legislation to be developed within the boundaries of these provisions.

In addition, the Bill inserts a new section 241AA (Review of particular matters) which provides that the Minister must review section 216 and the review must be completed within 1 year after the commencement. This will require the Minister to consider whether the regulation making power in section 216 is still required to facilitate the effective implementation and application of the NDIS in Queensland.

### **Disclosure of confidential information**

#### *Legislation should have sufficient regard to the rights and liberties of individuals – Section 4(2)(a) Legislative Standards Act 1992*

The Bill amends sections 227 and 228 of the DSA to ensure there is an authority for the chief executive who gains confidential information (including criminal history and related information) through administering the DSA to disclose that information to the NDIS commissioner if satisfied the disclosure would assist in the performance of the commissioner's functions under the NDIS Act or to an entity responsible for the administration or enforcement of a corresponding law, which will enable information to be provided to worker screening units in other jurisdictions.

This may be considered a breach of the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals.

The amendment of this section is justified to support full scheme NDIS in Queensland from 1 July 2019, to enable the effective transfer of information between state and commonwealth agencies to support the operation of their functions and ensure the safety of people with disability is maintained. For example, these provisions will enable the sharing of information, in relation to worker screening outcomes, to manage risks associated with individuals moving across jurisdictions in circumstances where they may have been excluded from working with people with disability.

### **Community Visitor Program**

Legislation should have sufficient regard to the rights and liberties of individuals - Section 4(3)(e) Legislative Standards Act 1992

Under the PGA, community visitors (adult) have a range of inquiry and complaints functions, including inquiring into, and reporting to the public guardian on, the adequacy of services for the assessment, treatment and support of consumers at a *visitable site*.

Clause 62 will amend the definition of *visitable site* to include premises, other than a private dwelling house, at which a funded adult participant lives and receives a relevant class of supports from a registered NDIS provider.

This amendment will enable community visitors (adult) to exercise their current powers under the PGA to enter premises where NDIS participants live without notice, including outside normal hours. Community visitors (adult) will also have powers to require staff members of registered NDIS providers at the premises to answer questions and produce documents relevant to the visitor's functions.

For community visitors (child), a visitable site includes a *residential facility* where the child is staying. A *residential facility* includes a place at which a child accommodation service is provided, funded or administered by the State.

Clause 67 will amend the definition of *residential facility* to ensure that the CVP (child) extends to a place where a child accommodation service is provided to a child, for the purpose of providing respite services (otherwise known as short term accommodation) in relation to the child by an NDIS provider or a registered NDIS provider. This will enable community visitors (child) to exercise their current powers under the PGA to enter a visitable site without notice, including outside normal hours. Community visitors (child) will also have powers to require staff members of an NDIS provider, or a registered NDIS provider, at a residential facility to answer questions and produce documents relevant to the visitor's functions.

These proposed amendments may depart from the fundamental legislative principle that legislation should confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

Clauses 62 and 67 continue existing arrangements under the PGA and are necessary to protect and assist NDIS participants in receipt of high levels of support and care at visitable sites.

Entry outside normal hours will only be authorised if the public guardian considers a community visitor (adult) or (child) cannot adequately perform a visitor's functions by entering a site during normal hours. Staff will also be protected if the provision of information required by a community visitor (adult) or (child) might tend to incriminate the person. Each community visitor must have an identity card that identifies the person as a community visitor (adult) or community visitor (child).

Legislation should have sufficient regard to the institution of Parliament – Section 4(2)(b) Legislative Standards Act 1992

Clauses 66 and 71 introduce new requirements for particular NDIS providers or registered NDIS providers to give the public guardian, in the way and at the times prescribed by

regulation, *required information* about the provision of services or supports to a consumer or information about the provision of respite services under the NDIS.

This could depart from the FLP that legislation should have sufficient regard to the institution of Parliament. To support the operation of the CVP it will be necessary for the public guardian to know the physical locations of *visitable sites*. However, it is also important that there is flexibility in the type of information that is provided, the way in which it is provided and the times at which it is provided so that this can be adapted to suit the needs and circumstances of service providers and the public guardian under the NDIS. The prescribed requirements for providing this information will be informed by consultation with registered NDIS providers and NDIS providers.

Only information that relates to certain visitable sites (that is, relating to a relevant class of supports provided by registered NDIS providers or NDIS providers) can be required. Further, providers are only required to provide information that is in their custody and control.

*Legislation should have sufficient regard to the rights and liberties of individuals*  
*– Section 4(2)(a) and 3(f) Legislative Standards Act 1992*

Clauses 66 and 71 introduce new requirements for particular NDIS providers or registered NDIS providers to give the public guardian, in the way and at the times prescribed by regulation, *required information* about the provision of services or supports to a consumer or information about the provision of respite services under the NDIS.

Clauses 66 and 71 include penalties for failure to comply with the information provision requirements. The maximum penalties for failure to comply with these requirements is 25 penalty units. This could depart from the FLP that legislation should have sufficient regard to the rights and liberties of individuals.

These penalties are comparable with other similar offences (for example, the existing penalty for failure of a relevant service provider to report a death in care under the Coroners Act, section 7). Further, providers are only required to provide information that is in their custody and control.

Section 4(3)(f) of the *Legislative Standards Act 1992* provides that legislation should provide appropriate protection against self-incrimination. Clauses 66 and 71 provide that providers do not have to give the public guardian required information if the provider has a reasonable excuse. A reasonable excuse would include if the provision of the information may incriminate the person.

Under clauses 65 and 70, the public guardian will have powers to share confidential information in reports prepared by community visitors (adult) and community visitors (child) with the NDIS commissioner. This could depart from the FLP that legislation should have sufficient regard to the rights and liberties of individuals.

However, confidential information in these reports may only be shared for the purpose of the public guardian's adult guardian functions and child advocate functions under the PGA. On receipt by the NDIS commissioner, confidential information in these reports will be subject to strict confidentiality provisions under the NDIS Act which regulate the use and disclosure of protected information held by the NDIS commissioner.

## **Transitional regulation-making power**

### *Legislation should have sufficient regard to the institution of Parliament – Section 4(2)(b) Legislative Standards Act 1992*

The Bill provides for a transitional regulation making power under the DSA, the GAA and the WWC Act to allow a regulation to make provision about a matter for which— (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the Act as it was in force immediately before the commencement to the operation of this Act as amended by the amending Act; and (b) the Act does not make provision or sufficient provision. It also provides that transitional regulation may have retrospective operation to a day not earlier than the day of commencement. The inclusion of this power is a potential departure from the principle that sufficient regard be given to the institution of Parliament.

The inclusion of a transitional regulation making power of this nature is considered necessary to address operational and practical issues that might arise in the implementation of full scheme NDIS.

To ensure the transitional regulation-making power has sufficient regard to the institution of Parliament, the Bill provides for the following sunset clauses: (a) a transitional regulation may only be made within 2 years after the commencement; (b) this part and any transitional regulation will expire 3 years after the day of commencement.

## **Consultation**

The Commonwealth Government undertook extensive consultation between 16 February 2015 to 30 April 2015 to assess regulatory impacts on participants, suppliers and specific stakeholder groups of the NDIS QSF. The Department of Social Services prepared a Decision Regulation Impact Statement (RIS) that was provided to COAG DRC for their decision.

As the Bill effectively implements the NDIS QSF in Queensland, further extensive consultation has not been undertaken at this time.

## **Consistency with legislation of other jurisdictions**

By 1 July 2019 it is anticipated that the NDIS QSF and the NDIS Commission will have commenced operation in all jurisdictions except Western Australia, which is scheduled to reach full scheme by 1 July 2020.

This Bill ensures Queensland's legislative framework will support and operate concurrently with the NDIS Act and the relevant Commonwealth subordinate legislation. Queensland's legislative frameworks for quality and safeguarding matters for which states and territories will retain responsibility under full scheme NDIS (including worker screening, authorisation of restrictive practices and operation of CVPs) differ from frameworks in other states and territories. These differences are acknowledged and accommodated under the NDIS QSF.

## Notes on provisions

### Part 1 Preliminary

*Clause 1* provides that the Bill, when enacted, may be cited as the *Disability Services and Other Legislation (NDIS) Amendment Act 2019*.

*Clause 2* provides that sections 44, 45, and 46 (other than to the extent it inserts a new part 9, division 12, subdivisions 2, 3 and 5) commence on assent. The remaining provisions of this Act commences on a day to be fixed by proclamation.

### Part 2 Amendment of the *Disability Services Act 2006*

*Clause 3* provides that Part 2 (Amendment of *Disability Services Act 2006*) of the Bill amends the *Disability Services Act 2006* (DSA).

*Clause 4* amends section 6 (Objects of Act) by: omitting subsection 6(b) and inserting a new subsection 6(ca) to reflect the need to support the operation of the NDIS in Queensland and ensure the quality and safety of disability services in the context of the national regulatory framework. This clause also replaces the term ‘funded’ service providers with ‘relevant’ service providers to reflect the removal of the definition of ‘funded service providers’ under the existing section 14. It also inserts definitions for the terms ‘national disability insurance scheme’ and ‘national regulatory framework’. The purpose of these amendments is to accurately reflect the scope of the objects of the DSA when Queensland becomes a participating jurisdiction, including with respect to the roles and responsibilities of the Queensland Government and the NDIS Commission under the NDIS QSF.

*Clause 5* amends section 7 (How objects are mainly achieved) by omitting section 7(c) and inserting a new subsection 7(ca) to reflect the need for the DSA to regulate particular aspects of the provision of disability services by particular NDIS providers and registered NDIS providers under the NDIS Act to ensure the quality and safety of the services. This approach recognises that the principles of choice and control are embedded in the NDIS Act and the operation of the scheme.

This clause also amends subsection 7(e) to introduce a reference to the fact that the objects of the DSA are mainly achieved by stating the circumstances in which relevant service providers are authorised to use restrictive practices in relation to adults with an intellectual or cognitive disability. This reflects the removal of the definition of ‘funded service provider’ and the amendments to part 6 of the DSA in relation to the Queensland Government’s role under the NDIS QSF with respect to the authorisation of the use of restrictive practices.

*Clause 6* inserts new section 10A which provides that a reference in the DSA to an ‘entity’ includes a reference to a department.

*Clause 7* amends section 13 (Meaning of service provider) to replace ‘a person’ with ‘an entity’.

*Clause 8* omits section 14 (Meaning of funded service provider) as the definition of funded service provider is no longer required to be used under the DSA and has been replaced with

relevant definitions throughout the Bill.

*Clause 9* amends section 16A (Meaning of NDIS non-government service provider) to provide that an NDIS non-government service provider is a non-government service provider that is an NDIS provider, or a registered NDIS provider, as defined under the NDIS Act, providing disability services which are prescribed by regulation. This amendment reflects contemporary definitions and language used under the NDIS Act.

*Clause 10* amends the current heading of Part 3 (Complaints about the delivery of disability services by funded service providers) to recognise that complaints about the delivery of disability services will apply to particular service providers for the purposes of Part 3. These service providers are identified in new section 32A.

*Clause 11* inserts new section 32A to clarify that Part 3 applies in relation to the delivery of disability services by the following service providers:

- the department;
- a service provider that receives funds from the department to provide disability services, other than a service provider that is another department;
- another service provider prescribed by regulation.

Part 3 does not apply to another department that is a service provider prescribed by regulation, or a service provider to the extent the service provider is providing disability services prescribed by regulation, for the purposes of new subsection 32A(2). By providing that service providers can be prescribed by regulation, this allows the DSA to retain flexibility to capture other service providers or exclude service providers as required.

*Clause 12* amends section 33 (Complaints by consumers) to clarify that a complaint may be made to the chief executive about the delivery of disability services by a service provider referred to in section 32A.

*Clause 13* amends section 37 (Definitions for pt 4) to provide an amended definition of ‘relevant disability services’ within which the term ‘disability’ is replaced by ‘disability, prescribed by regulation’. This will enable disability services to be prescribed by regulation for which a person may be able to obtain an individual funding agreement under Part 4. This reflects that Part 4 was originally introduced to reflect the Queensland Government’s commitment to increasing choice and control for people with disability in accessing disability services. As the role of the Queensland Government in funding disability supports will be reducing with the implementation of the NDIS, which embeds the fundamental principle of choice and control, it is envisaged there would not be the same need for individual funding agreements to be utilised under the DSA. The Bill retains scope for a regulation to prescribe the services in relation to which these arrangements may occur, for example there may be a unique situation in which a continuity of support arrangement requires an individual funding agreement.

*Clause 14* amends the current heading of part 5 (Screening of particular persons engaged by department or particular funded service providers) to remove the reference to ‘funded’ service providers and retain ‘particular’ service providers.

*Clause 15* inserts new section 41A to provide that Part 5 does not apply in relation to an NDIS non-government service provider prescribed by regulation. This reflects the need to adopt a



flexible approach to the transition to the NDIS worker screening check and provides for the scope of screening to be amended by regulation as required. This will provide the opportunity for Queensland to determine an appropriate transition strategy and to be able to expand the scope of screening under the blue card and yellow card systems, if required, to move towards the approach that will be adopted under the new NDIS worker screening check. Finalisation of the transitional approach is subject to the agreement by Queensland to the operation of the *National Disability Insurance Scheme (Practice Standards—Worker Screening) Rules*.

*Clause 16* amends section 44A (Meaning of sole trader) to clarify that a sole trader includes an individual who is an NDIS non-government service provider to which Part 5 applies, and provides disability services personally in this role.

*Clause 17* amends section 46 (Persons engaged by a funded non-government service provider or an NDIS non-government service provider at a service outlet) to replace the term ‘provider who’ in section 46(3) to ‘provider that’.

This clause also inserts new subsection (7A) to provide that a regulation can prescribe that an NDIS non-government service provider is, or is not, engaging a person at a service outlet of the provider. This applies despite anything else in section 46. This reflects the need to adopt a flexible approach to the transition to the NDIS worker screening check and provides for the scope of screening to be amended by regulation as required. This will provide the opportunity for Queensland to determine an appropriate transition strategy and to be able to expand the scope of screening under the blue card and yellow card systems, if required, to move towards the approach that will be adopted under the new NDIS worker screening check. Finalisation of the transitional approach is subject to the agreement by Queensland to the operation of the *National Disability Insurance Scheme (Practice Standards—Worker Screening) Rules*. Clause 18 also renumbers the subsections in section 46.

*Clause 18* amends section 139 (Purpose of pt 6) to replace ‘funded service providers’ with ‘relevant service providers’.

*Clause 19* replaces section 140 (Service providers to which pt 6 applies) to provide that part 6 applies to the following service providers that provide disability services to an adult with an intellectual or cognitive disability:

- an NDIS provider;
- a registered NDIS provider;
- the department;
- a service provider that receives funds from the department to provide disability services, other than a service provider that is another department;
- another service provider prescribed by regulation.

Subsection (2) provides that this part does not apply in relation to a service provider:

- prescribed by regulation; or
- to the extent the service provider is providing disability service prescribed by regulation.

This approach will facilitate the effective implementation of full scheme NDIS in Queensland from 1 July 2019, while also providing the necessary flexibility to enable the application of the legislative framework to particular service providers, as required.

Subsection (3) provides that a service provider is a ‘relevant service provider’ to the extent that this part applies in relation to the provider under subsections (1) and (2).

Subsection (4) clarifies that part 6 applies to a ‘relevant service provider’, in relation to the provision of disability services to all adults with an intellectual or cognitive disability, regardless of whether particular disability services are provided with funding received from the Commonwealth or the State.

This clause also notes that when this part applies to a forensic disability client, reference should be made to section 47 of the *Forensic Disability Act 2011*.

*Clause 20* amends section 143 (Explanation of operation of pt 6) to provide that Part 6 states the circumstances in which a relevant service provider is authorised to use restrictive practices in relation to an adult with an intellectual or cognitive disability.

The intention of this amendment is to reflect that from 1 July 2019 Queensland will continue to be responsible for the authorisation of the use of restrictive practices under the NDIS. To ensure existing safeguards are maintained, existing requirements regarding assessments and the preparation of positive behaviour support (PBS) plans will form part of the authorisation process.

*Clause 21* inserts new section 150A (Authorisation of containment or seclusion) to provide the circumstances in which a relevant service provider is authorised, under part 6, to contain or seclude an adult with an intellectual or cognitive disability. If applicable, the adult must be assessed under section 148. In addition, the relevant service provider must be able to comply with the requirements to contain or seclude the adult under sections 151 to 154. If the adult is already subject to a containment or seclusion approval, the relevant service provider is authorised to contain or seclude the adult, if any changes to the adult’s PBS plan have been made by the chief executive under division 1, subdivision 3 of part 6.

The effect of this new section is that it requires relevant service providers to comply with the assessment provisions in the DSA, as well as the specific requirements for containing or secluding an adult, as part of Queensland’s authorisation framework for the use of a restrictive practice. It also means that a PBS plan that includes the use of containment or seclusion can only be changed by the chief executive. This is to ensure the existing safeguards under part 6 of the DSA are retained within the context of authorisation.

*Clause 22* inserts new section 165A (Authorisation of chemical, mechanical or physical restraint or restricting access) to provide the circumstances in which a relevant service provider is authorised, under part 6, to use chemical, mechanical or physical restraint on, or restrict access of, an adult with an intellectual or cognitive disability. If applicable, the adult must be assessed under section 148. In addition, the relevant service provider must be able to comply with the requirements under sections 166 to 171 for this use. If the adult has a PBS plan that provides for the use of these types of restrictive practices under division 4, subdivision 2 of part 6, the relevant service provider is authorised to use these restrictive practices, if any changes to the plan have been made by the relevant service provider under section 174.

The effect of this new section is that it requires relevant service providers to comply with the assessment provisions in the DSA, as well as the specific requirements for chemical,

mechanical or physical restraint, or restricting access, as part of Queensland's authorisation framework for the use of a restrictive practice. It also means that a PBS plan that provides for the use of chemical, mechanical or physical restraint, or restricting access, can only be changed upon consultation, or with the consent, of certain persons. This is to ensure the existing safeguards under part 6 of the DSA are retained within the context of authorisation.

*Clause 23* amends section 181 (Requirement to develop respite/community access plan) to insert subsection (2)(m) to provide that a further matter, setting out a requirement for what must be included in a respite/community access plan, can be prescribed by regulation. This will enable flexibility to prescribe further requirements if required to ensure Queensland legislation can operate effectively with the *NDIS (Restrictive Practices and Behaviour Support) Rules 2018* when agreed for operation in Queensland.

*Clause 24* inserts new section 183A (Other requirements for developing respite/community access plan) to clarify that a relevant service provider must comply with any other requirements, prescribed by regulation, in developing a respite/community access plan. This will enable flexibility to prescribe further requirements if required to ensure Queensland legislation can operate effectively with the *NDIS (Restrictive Practices and Behaviour Support) Rules 2018* when agreed for operation in Queensland.

*Clause 25* amends section 191 (Requirement to give statement about use of restrictive practices) to insert new subsection (1) to provide that this section applies to a relevant service provider, other than a relevant service provider prescribed by regulation, that is providing disability services to an adult with an intellectual or cognitive disability and is considering using restrictive practices in relation to the adult. This provides flexibility to prescribe relevant service providers to which section 191 does not apply.

*Clause 26* amends section 193 (Requirement to keep and implement procedure) to provide that a relevant service provider, other than a relevant service provider prescribed by regulation, must keep and implement procedures. This will enable flexibility to exclude certain relevant service providers from the requirements to comply with this section.

*Clause 27* amends section 194 (Requirement to keep records and other documents) to enable flexibility to exclude certain relevant service providers from the requirements to comply with this section.

*Clause 28* amends section 195 (Notification requirements about approvals given for use of restrictive practices) to enable flexibility to exclude certain relevant service providers from the requirements to comply with this section.

*Clause 29* amends section 199 (Requirement to give information about the use of restrictive practice to chief executive) to provide that that a relevant service provider, other than a relevant service provider prescribed by regulation, using a restrictive practice in relation to an adult with an intellectual or cognitive disability, must give information about the use of restrictive practices to the chief executive. This will enable flexibility to exclude certain relevant service providers from the requirements to comply with this section.

*Clause 30* amends section 200E (Additional functions of authorised officers in relation to NDIS non-government service providers) to provide that certain provisions of the DSA can be excluded by regulation from the operation of the functions of authorised officers in relation to

NDIS non-government service providers.

*Clause 31* amends section 200M (Issue of warrant) to clarify that the power to issue a warrant is limited to if there are reasonable grounds to suspect it is necessary to enter a place to check whether an NDIS non-government service provider has complied with, or is complying with, a provision of the DSA, other than an excluded provision.

*Clause 32* amends section 200S (General powers) to provide that certain provisions of the DSA can be excluded from the operation of the provision.

*Clause 33* amends section 200W (Power to require information) to reflect that an authorised officer will have the power to require information if the authorised officer believes an offence against a provision of the DSA, other than an excluded provision, has been committed by an NDIS non-government service provider. This reflects that from 1 July 2019 the DSA will only regulate the compliance of NDIS non-government service providers with the provisions of the DSA.

*Clause 34* replaces section 216 (Application of div 2) to provide that division 2 applies in relation to the following service providers that provide disability services to an adult with an intellectual or cognitive disability and locks gates, doors or windows at premises where these disability services are provided, only to prevent physical harm being caused to this adult, with a skills deficit:

- an NDIS provider
- a registered NDIS provider;
- the department;
- a service provider that receives funding from the department to provide disability services, other than a service provider that is another department;
- another service provider prescribed by regulation.

Subsection (2) provides that Division 2 does not apply to a service provider prescribed by regulation or to the extent the service provider is providing disability services prescribed by regulation.

Subsection (3) provides that a service provider is a ‘division 2 service provider’ to the extent Division 2 applies in relation to the provider under subsections 1(a) and (2).

*Clause 35* amends section 217 (Definitions for div 2) to omit the definition of ‘relevant service provider’, and inserts the definition of ‘division 2 service provider’, as defined under section 216(3).

*Clause 36* amends section 218 (Immunity from liability-relevant service provider) to clarify that this provision applies to a ‘division 2 service provider’, instead of a ‘relevant service provider’.

*Clause 37* amends section 219 (Immunity from liability-individual acting for relevant service provider) to clarify that this provision applies to a ‘division 2 service provider’, instead of a ‘relevant service provider’.

*Clause 38* amends section 220 (Department’s policy about locking of gates, doors and

windows) to clarify that this provision applies to a ‘division 2 service provider’, instead of a ‘relevant service provider’.

*Clause 39* amends section 226 (Person with a disability must advise chief executive about compensation) to reflect the removal of the definition of ‘funded service provider’.

*Clause 40* amends section 227 (Confidentiality of information about criminal history and related information) to provide further exceptions against the non-disclosure of information under subsection (3). Under subsection (4), the disclosure of information under section 227 may also be made, or access given, by the chief executive to the NDIS commissioner if satisfied that it would assist in the performance of the NDIS commissioner’s functions under the NDIS Act. This ensures the chief executive has the ability to provide information to the NDIS commissioner, given the majority of the quality and safeguards framework (including the Code of Conduct and the ability to make banning orders) are administered by the NDIS Commission.

This clause also inserts new subsection 227(4)(cb) to allow the chief executive to disclose, or give access to information under section 227 to an entity that is responsible for the administration or enforcement of a corresponding law, that is, the law in another State or Territory relating to the screening of persons engaged or to be engaged at a service outlet. This will enable the department, including its worker screening unit, to share information with other States and Territories’ worker screening units to ensure the safety of people with disability is maintained.

*Clause 41* amends section 228 (Confidentiality of other information) to provide a further exception against the non-disclosure of confidential information, other than information referred to in sections 227(1)(b) and (2)(b). Under new subsection 228(6), the chief executive may disclose information to a) the NDIS commissioner or b) to an entity that is responsible for the administration or enforcement of a corresponding law if satisfied this will assist in the performance of the commissioner’s functions under the NDIS Act or that entity’s functions relating to the corresponding law. This is to enable the chief executive to share information where satisfied that the disclosure would assist the NDIS Commission in administering its quality and safeguarding functions.

*Clause 42* amends section 239 (Regulation-making power) to provide that a regulation may be made to this Act to delay the application of a provision of part 5 for a period of not more than 1 year if a provider becomes a new NDIS non-government service provider or a person becomes a new engaged person. It also provides the regulation may make provisions about a matter for which it is necessary, desirable or convenient to make a provision in relation to: i) a service provider becoming a former service provider; or ii) a person becoming a former engaged person. It also inserts definitions for the purposes of section 239 of the DSA. The ability to delay through Regulation the application of specific provisions of Part 5 in relation to NDIS non-government service providers and engaged persons is required to provide the flexibility necessary as Queensland continues to operate the yellow card system beyond 1 July 2019 and transitions to nationally consistent NDIS worker screening.

*Clause 43* inserts new section 241AA to provide that the Minister must review section 32A (Application of Part 3 – Complaints about the delivery of disability services by particular service providers), section 140 (regarding relevant service providers to which Part 6 applies), the chief executive’s functions under part 6, division 3, subdivisions 2 and 3 (regarding multidisciplinary assessment and PBS plans), and section 216 (Application of Part 8, div 2 –

Locking of gates, doors and windows). The clause provides that the review must be completed within 1 year after commencement. This provides an opportunity, within 1 year of operation under full scheme NDIS, to consider whether these provisions are required to be maintained, amended or removed as part of Queensland's legislative framework moving forward. This review provision ameliorates the use of regulations by requiring a review within a specified period. It also ensures there is a review of the chief executive's functions in relation to the preparation of containment and seclusion plans in recognition of the need for this function to transition to a market based response under the NDIS.

*Clause 44* omits section 241B (Expiry of pt 6A) to enable the investigation, monitoring and enforcement provisions under Part 6A to be retained to the extent authorised officers can exercise these functions to ensure compliance with provisions of the DSA (for example, with worker screening provisions under Part 5).

*Clause 45* omits Part 9, division 10 (Transitional provisions for Disability Services and Other Legislation Amendment Act 2016) as Part 6A will no longer be omitted.

*Clause 46* inserts transitional provisions through the inclusion of Part 9, Division 12 (Transitional provisions for Disability Services and Other Legislation (NDIS) Amendment Act 2019).

Section 345 inserts definitions for this division including amended Act, amending Act, former, new disqualified person, new disqualifying offence and new relevant disqualified person.

Subdivision 2 deals with new disqualifying offences under Schedule 4 of the DSA. Sections 346 to 361 provide transitional arrangements to deal appropriately with the following matters:

- effect of a conviction or charge for new disqualifying offences (section 346);
- existing prescribed notice and exemption notice applications (section 347);
- cancelling positive notices and positive exemption notices held by particular new disqualified persons (sections 348 and 349);
- existing applications to cancel negative notices and negative exemption notices (section 350);
- existing applications to end a suspension of a positive notice and positive exemption notices (sections 351 and 352);
- existing eligibility applications (section 353);
- expiry of existing eligibility declarations (section 354);
- existing applications for reversal of decision refusing an eligibility declaration (section 355)
- undecided reviews and appeals by new disqualified persons (section 356);
- review of Part 5 reviewable decisions about new disqualified person (section 357);
- appeals by new disqualified persons against a QCAT decision relating to a Part 5 reviewable decision (section 358);
- existing appeals by the chief executive against a QCAT decision relating to a Part 5 reviewable decision (section 359);
- appeal by the chief executive against a QCAT decision relating to a Part 5 reviewable decision (section 360);
- disqualification orders for new disqualifying offences committed before commencement (section 361).

Subdivision 3 deals with immunity from liability. Section 362 provides that the use of the term ‘relevant service provider’, under subdivision 3, refers to the definition of ‘relevant service provider’ by former section 140(1). This applies to the immunity from liability provisions in sections 363 and 364.

Section 363 provides that former part 6, division 7, subdivision 1 continues to apply in relation to the use of restrictive practices, before the commencement of this Act, by a relevant service provider, or an individual acting for the relevant service provider.

Section 364 provides that former sections 218 and 219 continue to apply in relation to the locking of gates, doors or windows, before the commencement of this Act, by a relevant service provider, or an individual acting for the relevant service provider.

Subdivision 4 deals with repeal of particular provisions. Section 365 provides that sections 20 and 20A of the *Acts Interpretation Act 2954* (Qld) do not apply in relation to the repeal of former sections 339 and 340. This is necessary as Part 6A is being retained.

Subdivision 5 deals with transitional regulation-making power. Section 366 provides for a transitional regulation-making power which allows for a regulation to be made to achieve the transition from the operation of the DSA as it was in force immediately before commencement, to the operation of the amended Act. A transitional regulation may only have retrospective effect up to the day of commencement and may only be made within 2 years of commencement. The regulation-making power, and any regulations made under it, will expire 3 years after the day of commencement.

*Clause 47* amends Schedule 4 (Current disqualifying offences) by inserting the following entries for the Criminal Code –

- section 211 (Bestiality);
- section 354 (Kidnapping) with the qualifier that the offence was committed against a child and the context in which the offence was committed was not familial;
- section 354A (Kidnapping for ransom) with the qualifier that the offence was committed against a child;
- section 363 (Child-stealing) with the qualifier that the context in which the offence was committed was not familial; and
- section 363A (Abduction of a child under 16) with the qualifier that the context in which the offence was committed was not familial.

Subsection (2) and (3) omit relevant qualifiers so that the murder of an adult and the rape of an adult will be treated as disqualifying offences.

*Clause 48* amends existing definitions by:

- omitting definitions for funded service provider, participant, participant’s plan, plan and relevant service provider;
- inserting definitions for corresponding law, division 2 service provider, excluded provision, NDIS commission, NDIS commissioner, NDIS provider, registered NDIS provider and relevant service provider; and
- amending the definition of ‘consumer’ to omit reference to ‘funded non-government service provider’ or an ‘NDIS non-government service provider’.

### Part 3 Amendment of Coroners Act 2003

Clause 49 states that this part amends the *Coroners Act 2003*.

Clause 50 amends section 7 (Duty to report deaths).

Section 7(2) is amended to insert a reference to paragraph (e) after section 9(1)(a). As a result a *relevant service provider* who becomes aware of a death in care under section 9(1)(e) as amended by the Bill must report the death as required under section 7.

Section 7(8) is amended to replace the definition of *relevant service provider*. The definition is extended to include the registered NDIS provider that was providing the services or supports mentioned in section 9(1)(e).

Clause 51 amends section 9 (*Death in care* defined).

Section 9(1)(e), the part of the definition which relates to NDIS participants is replaced. Under new paragraph (e), a person's death is a *death in care*, if when the person died, the person was a participant who was not living in a private dwelling or an aged care facility and who was receiving or entitled to receive, under the person's participant's plan, services or supports— (i) paid for wholly or partly from funding under the NDIS; and (ii) provided by a registered NDIS provider that is registered under the NDIS Act, section 73E to provide a relevant class of supports; and (iii) within the relevant class of supports.

New subsection (3A) provides when a deceased person was living in a private dwelling for subsection (1)(a)(iii)(A) and (e). A deceased person was living in a private dwelling if the dwelling was used, or used principally, as a separate residence for—

- (a) if a restrictive practice was used at the dwelling in relation to the deceased person under a chapter 5B approval in effect immediately before the person died—the deceased person and 1 or more of the deceased person's relations; or
- (b) if specialist positive behaviour support was provided at the dwelling under the deceased person's participant's plan and the support involved the use of a restrictive practice—the deceased person and 1 or more of the deceased person's relations; or
- (c) if specialist disability accommodation was provided at the dwelling under the deceased person's participant's plan—the deceased person and 1 or more of the deceased person's relations; or
- (d) if paragraphs (a), (b) and (c) do not apply—the deceased person and 1 or more of the deceased person's relations, or the deceased person only.

This provision clarifies that any living arrangement where a deceased person lived with, and primarily received care and support from, their family or lived on their own is excluded from the definition of *death in care*. However, if the deceased person received a restrictive practice or specialist disability accommodation, then the person was living in a private dwelling if the person lived with their family.

Subclause (3) omits the definitions for *participant's plan* and *plan* from subsection (4) as a consequence of the amendments in subclause (4).



Subclause (4) provides definitions for *chapter 5B approval, national disability insurance scheme rules, participant's plan, relation, relevant class of supports, restrictive practice, specialist disability accommodation* and *specialist positive behaviour support*.

*Relevant class of supports* means any of the following classes of supports under the NDIS Act—

- (a) high intensity daily personal activities;
- (b) assistance with daily life tasks in a group or shared living arrangement;
- (c) specialist positive behaviour support that involves the use of a restrictive practice;
- (d) specialist disability accommodation.

These classes of supports relate to high levels of care and support to NDIS participants.

Subclause (5) renumbers section 9(3A) and (4) as section 9(4) and (5).

*Clause 52* inserts new part 6, division 5 (Transitional provision for Disability Services and Other Legislation (NDIS) Amendment Act 2019).

New section 116 (Deaths before commencement) states that this Act as in force immediately before the commencement continues to apply in relation to the death of a person before the commencement.

*Clause 53* amends schedule 2 (Dictionary) by inserting a definition for *registered NDIS provider*.

## **Part 4      Amendment of Guardianship and Administration Act 2000**

*Clause 54* states that this part amends the *Guardianship and Administration Act 2000*.

*Clause 55* amends section 80R (Application of ch 5B) by replacing from 'funded' with 'relevant service provider'. This change is to reflect amendments made under the DSA in relation to the definition of 'funded service provider'.

*Clause 56* amends section 80U (Definitions for ch 5B) by omitting the definition of 'relevant service provider.'

*Clause 57* inserts new chapter 12, part 13 (Transitional provision for Disability Services and Other Legislation (NDIS) Amendment Act 2019). This supports the changes made to the definition of 'funded service provider within the meaning of the DSA' to ensure that there is sufficient capability to be able to manage any transitional issues which may arise.

*Clause 58* amends schedule 4 (Dictionary) by replacing the existing definition of 'relevant service provider' with '*relevant service provider* see the *Disability Services Act 2006*, section 140(3).' This supports the changes made to the definition of 'relevant service provider' within the meaning of the DSA.

## **Part 5      Amendment of Public Guardian Act 2014**

*Clause 59* states that this part amends the *Public Guardian Act 2014*.

*Clause 60* amends section 12 (Functions—adult with impaired capacity for a matter) by omitting ‘(as defined under section 80U of that Act)’ from section 12(1)(g).

*Clause 61* amends section 14 (Powers) by inserting new subsection (3). Subsection (3) enables the public guardian to ask the NDIS agency or NDIS commissioner for information the public guardian considers necessary or convenient to perform the public guardian’s functions.

*Clause 62* amends section 39 (Definitions for pt 6) by omitting the definition of *private dwelling* and inserting definitions for *chapter 5B approval*, *funded adult participant*, *private dwelling house*, *relation*, *relevant class of supports*, *specialist disability accommodation* and *specialist positive behaviour support*.

The revised definition of *private dwelling house* provides that private dwelling house means premises at which an adult, with impaired capacity for a personal matter or a financial matter or with an impairment, lives if the premises are used, or used principally, as a separate residence for—

- (a) if a restrictive practice is being used at the premises in relation to the adult under a chapter 5B approval—the adult and 1 or more of the adult’s relations; or
- (b) if specialist positive behaviour support is being provided at the premises under the adult’s participant’s plan and the support involves the use of a restrictive practice—the adult and 1 or more of the adult’s relations; or
- (c) if specialist disability accommodation is being provided at the premises under the adult’s participant’s plan—the adult and 1 or more of the adult’s relations; or
- (d) if paragraphs (a), (b) and (c) do not apply—the adult and 1 or more of the adult’s relations, or the adult only.

The revised definition of *private dwelling house* clarifies that any living arrangement where an adult, with impaired capacity for a personal matter or a financial matter, or with an impairment, lives and primarily receives care and support from, their family or on their own is excluded from the definition of *visitable site*. However, if the adult receives a restrictive practice or specialist disability accommodation, then *private dwelling house* means a living arrangement where the adult lives with their family.

*Relevant class of supports* means any of the following classes of supports under the *National Disability Insurance Scheme Act 2013* (Cwlth)—

- (a) high intensity daily personal activities;
- (b) assistance with daily life tasks in a group or shared living arrangement;
- (c) specialist positive behaviour support that involves the use of a restrictive practice;
- (d) specialist disability accommodation.

These classes of supports relate to high levels of care and support to adult NDIS participants.

Subclause (3) amends the definition of *visitable site* by inserting new paragraph (ba). Under paragraph (ba), visitable site means premises, other than a private dwelling house, at which a funded adult participant lives and receives services or supports that—(i) are paid for wholly or partly from funding under the national disability insurance scheme; and (ii) are provided under the adult’s participant’s plan; and (iii) are provided by a registered NDIS provider that is

registered under the *National Disability Insurance Scheme Act 2013* (Cwlth), section 73E to provide a relevant class of supports; and (iv) are within the relevant class of supports.

Subclause (4) renumbers section 39, definition *visitable site*, paragraphs (ba) and (c) as paragraphs (c) and (d).

*Clause 63* amends section 41 (Inquiry and complaint functions) by inserting new *paragraph* (c) under subsection (3). New paragraph (c) enables a community visitor (adult) to refer any other matter in relation to a complaint to the NDIS commissioner if the community visitor (adult) considers the NDIS commissioner has functions in relation to the matter.

*Clause 64* amends section 44 (Power to do all things necessary or convenient) by inserting new paragraph (g) under subsection (1). New paragraph (g) enables a community visitor (adult) to ask the NDIS agency or NDIS commissioner for information the visitor considers necessary or convenient to perform the visitor's functions.

*Clause 65* amends section 47 (Reports by community visitors (adult)). Subclause (1) omits from 'under' to 'site—' under section 47(4)(e) and inserts 'is being used at the visitable site under a chapter 5B approval—'.

Subclause (2) inserts new paragraph (h) under section 47(4) to enable the public guardian to give a copy of a community visitor (adult) report to the NDIS commissioner if the report relates to the provision of services or supports by a registered NDIS provider at a visitable site and new section 49A applies to the provider in relation to the services or supports.

*Clause 66* inserts new section 49A (Requirement for particular registered NDIS providers to give information to public guardian).

Subsection (1) states that this section applies to a registered NDIS provider that provides services or supports to a consumer under the consumer's participant's plan at a visitable site if—(a) the services or supports are paid for wholly or partly from funding under the national disability insurance scheme; and (b) the registered NDIS provider is registered under the *National Disability Insurance Scheme Act 2013* (Cwlth), section 73E to provide a relevant class of supports; and (c) the services or supports are within the relevant class of supports.

Subsection (2) requires the registered NDIS provider to give the public guardian, in the way and at the times prescribed by regulation, required information that is in the provider's custody or control, unless the provider has a reasonable excuse. The maximum penalty for failure to comply with this requirement is 25 penalty units.

The introduction of this requirement will enable the public guardian to identify visitable sites for the purpose of administering the CVP (adult).

Subsection (3) defines *required information* for section 49A.

*Clause 67* amends section 51 (Definitions for ch 4) by inserting new paragraph (f) into the definition of *residential facility*. Under new paragraph (f), *residential facility* means a place at which a child accommodation service is provided to a child, under the child's participant's plan, for the purpose of providing respite services in relation to the child.

This provision will ensure that a child accommodation service relating to the provision of respite services for children with disability continues to be visitable under the NDIS.

Although *respite services* is not a term used in the NDIS legislative framework, services that are generally understood as respite services will continue to be provided under the NDIS. They may commonly be described as short term accommodation and assistance, assistance in living arrangements and assistance with self-care overnight.

*Clause 68* amends section 56 (Functions of community visitor (child), etc.).

New subsection (3A) provides that without limiting subsection (1)(b), the function of a community visitor (child) mentioned in that subsection includes referring a matter in relation to a child's concerns and grievances to the NDIS commissioner if the visitor considers the NDIS commissioner has functions in relation to the matter.

Subclause (2) renumbers section 56(3A) to (5) as section 56(4) to (6).

*Clause 69* inserts new section 68A (Community visitor (child) may ask NDIS agency or NDIS commissioner for particular information). New section 68A enables a community visitor (child) to ask the NDIS agency or NDIS commissioner for information the visitor considers necessary or convenient to perform the visitor's functions.

*Clause 70* amends section 70 (Reports by community visitors (child)) by inserting new paragraph (h) under section 70(4). Under new paragraph (h), the public guardian may, as far as the public guardian considers appropriate, give a copy of a report about a visit to a child staying at a visitable site, or information from the report, to the NDIS commissioner.

*Clause 71* inserts new section 72A (Requirement for particular NDIS providers and registered NDIS providers to give information to public guardian).

Subsection (1) states that this section applies to an NDIS provider or a registered NDIS provider that provides a child accommodation service to a child, under the child's participant's plan, for the purpose of providing respite services in relation to the child.

Subsection (2) requires the NDIS provider or registered NDIS provider to give the public guardian, in the way and at the times prescribed by regulation, required information that is in the provider's custody or control, unless the provider has a reasonable excuse. The maximum penalty for failure to comply with this requirement is 25 penalty units.

The introduction of this requirement will enable the public guardian to identify visitable sites that are residential facilities providing respite services in relation to a child NDIS participant and allocate community visitors (child) to these sites for the purpose of administering the CVP (child).

Subsection (3) defines *NDIS provider* and *required information* for section 72A.

*Clause 72* amends section 110 (Eligibility for appointment as community visitor (adult)) by inserting new paragraphs (d) to (i) into subsection (2). To avoid a conflict of interest, under subsection (2) a person may not hold office as a community visitor (adult) while the person— (d) holds office as the chief executive officer of the NDIS agency; or (e) is an employee of the

NDIS agency; or (f) is a consultant engaged by the NDIS agency under the *National Disability Insurance Scheme Act 2013* (Cwlth), section 171; or (g) holds office as the NDIS commissioner; or (h) is an employee of the NDIS commission; or (i) is a consultant engaged by the NDIS commissioner under the *National Disability Insurance Scheme Act 2013* (Cwlth), section 181V.

*Clause 73* amends section 111 (Eligibility for appointment as community visitor (child)).

Subclause (1) amends 111(2) by replacing ‘person is’ with ‘person’.

Subclause (2) amends section 111(2)(a) by replacing ‘a member’ with ‘is a member’.

Subclause (3) amends section 111(2)(b) by replacing ‘a public’ with ‘is a public’.

Subclause (4) amends section 111(2)(c) by replacing ‘engaged’ with ‘is engaged’.

Subclause (5) amends section 111(2)(d) by replacing ‘an approved’ with ‘is an approved’.

Subclause (6) amends section 111(2) by inserting new paragraphs (e) to (j). To avoid a conflict of interest, under subsection (2) a person may not hold office as a community visitor (child) while the person—(e) holds office as the chief executive officer of the NDIS agency; or (f) is an employee of the NDIS agency; or (g) is a consultant engaged by the NDIS agency under the *National Disability Insurance Scheme Act 2013* (Cwlth), section 171; or (h) holds office as the NDIS commissioner; or (i) is an employee of the NDIS commission; or (j) is a consultant engaged by the NDIS commissioner under the *National Disability Insurance Scheme Act 2013* (Cwlth), section 181V.

*Clause 74* inserts new chapter 7, part 3 (Transitional provisions for Disability Services and Other Legislation (NDIS) Amendment Act 2019).

New section 190 (Definitions for part) provides definitions for *amending Act*, *former* and *former visitable site* for new part 3.

New section 191 (Inquiries in relation to former visitable sites started before commencement) applies if—(a) before the commencement, a community visitor (adult) inquired, or started to inquire, under former section 41(2) into a matter in relation to a former visitable site; and (b) immediately before the commencement, the community visitor (adult) had not reported to the public guardian on the matter.

Subsection (2) requires the community visitor (adult) to continue to perform the inquiry functions under section 41(2) in relation to the matter.

Subsection (3) states that section 41(4) and chapter 3, part 6, division 4 apply to the performance of the complaint functions as if—(a) the functions were being performed under section 41(2); and (b) the former visitable site were a visitable site under chapter 3, part 6.

New section 192 (Existing complaints about former visitable sites) applies if—(a) before the commencement, a complaint was made about a matter mentioned in former section 41(2) in relation to a former visitable site; and (b) immediately before the commencement, a community

visitor (adult) for the former visitable site had not resolved the complaint, or referred it, under former section 41(3).

Subsection (2) requires the community visitor (adult) for the former visitable site to perform the complaint functions mentioned in section 41(3) in relation to the complaint.

Subsection (3) states that section 41(4) and chapter 3, part 6, division 4 apply to the performance of the complaint functions as if—(a) the functions were being performed under section 41(3); and (b) the former visitable site were a visitable site under chapter 3, part 6.

New section 193 (Existing requests for community visitor (adult) to visit former visitable site) applies if, before the commencement, a person made a request under former section 43(1)(a) or (b) in relation to a former visitable site.

Subsection (2) states that subsection (3) applies if—(a) the request was made under former section 43(1)(b) to a staff member at the former visitable site; and (b) immediately before the commencement—(i) the staff member had not told the public guardian about the request; and (ii) the period that is 3 business days after the request is made had not ended.

Subsection (3) requires the staff member to, within 3 business days after the request is made, tell the public guardian about the request. The maximum penalty for failure to comply with this requirement is 40 penalty units.

Subsection (4) states that if, immediately before the commencement, a community visitor (adult) for the former visitable site had not visited the site in accordance with the request—(a) a community visitor (adult) for the site must visit the site as soon as practicable after being informed of the request; and (b) chapter 3, part 6, division 4 applies to the performance of the function under paragraph (a) as if—(i) the function were being performed under section 43; and (ii) the former visitable site were a visitable site under chapter 3, part 6.

New section 194 (Existing authorisations to enter former visitable sites outside normal hours) provides that an existing authorisation in relation to an existing complaint continues to have effect according to its terms and conditions.

Subsection (2) provides definitions for *existing authorisation* and *existing complaint* for section 194.

New section 195 (Reports about visits to former visitable sites before commencement) applies if, before the commencement, a community visitor (adult) visited a former visitable site.

Subsection (2) states that if, immediately before the commencement, the community visitor (adult) had not complied with former section 47(1) in relation to the visit—(a) the community visitor (adult) must prepare a report on the visit under section 47 and give a copy of the report to the public guardian; and (b) the public guardian must, as soon as practicable after receiving a copy of the report, give a copy of the report to a person in charge of the site.

Subsection (3) states that if, immediately before the commencement, the public guardian had not complied with former section 47(3) in relation to a report on the visit, the public guardian must give a copy of the report to a person in charge of the site.

Subsection (4) states that section 47(4) applies in relation to a copy of a report on the visit received by the public guardian before or after the commencement.

New section 196 (Proceedings for particular offences) applies in relation to an offence committed against any of the following provisions, in relation to a former visitable site, before the commencement—

- (a) former section 43(2);
- (b) former section 44(3);
- (c) former section 49.

Subsection (2) states that without limiting the *Acts Interpretation Act 1954*, section 20, a proceeding for the offence may be started or continued, and a person may be convicted of and punished for the offence, as if the amending Act, section 63 had not commenced.

Subsection (3) states that subsection (2) applies despite the Criminal Code, section 11.

*Clause 75* amends schedule 1 (Dictionary) by inserting definitions for *chapter 5B approval*, *funded adult participant*, *national disability insurance scheme*, *national disability insurance scheme rules*, *NDIS agency*, *NDIS commission*, *NDIS commissioner*, *participant's plan*, *registered NDIS provider*, *relation*, *relevant class of supports*, *restrictive practice*, *specialist disability accommodation* and *specialist positive behaviour support*.

## **Part 6      Amendment of Working with Children (Risk Management and Screening) Act 2000**

*Clause 76* states that this part amends the *Working with Children (Risk Management and Screening) Act 2000*.

Screening of people working with children with disability is currently undertaken under the WWC Act. This part mirrors the changes made under the DSA to recognise the need to adopt a flexible approach to the transition to the NDIS worker screening check and provide for the scope of screening to be amended by regulation as required. This will provide the opportunity for Queensland, if required, to determine an appropriate transition strategy and to be able to expand the scope of screening under the blue card and yellow card system as required to move towards the approach that will be adopted under the new NDIS worker screening check. Finalisation of the transitional approach is subject to the agreement by Queensland to the operation of the *National Disability Insurance Scheme (Practice Standards—Worker Screening) Rules*. This requires flexibility in relation to the approach to be adopted.

*Clause 77* amends section 401 (Regulation-making power) to provide that a regulation may be made to this Act to delay the application of a provision of chapter 8 for a period of not more than 1 year if a provider becomes a new NDIS non-government service provider or a person becomes a new employee. It also provides the regulation may make provisions about a matter for which it is necessary, desirable or convenient to make a provision in relation to: i) a service provider becoming a former service provider; or ii) a person becoming a former employee. It also inserts definitions for the purposes of section 401 of the WWC Act. This provision is necessary because of the amendments made to Schedule 1, section 6 (Health, counselling and support services) to enable a regulation to alter the scope of screening under the WWC Act.

These changes are necessary to provide the flexibility necessary as Queensland continues to operate existing screening systems beyond 1 July 2019, during transition to implementation of nationally consistent NDIS worker screening.

*Clause 78* inserts new part 20 in chapter 11 of the WWC Act to provide for a transitional regulation-making power that allows for a regulation to be made to achieve the transition from the operation of the WWC Act as it was in force immediately before commencement, to the operation of the amended Act. This is to provide flexibility to ensure the WWC Act operates as intended for full scheme NDIS. A transitional regulation may only have retrospective effect up to the day of commencement and may only be made within 2 years of commencement. The regulation-making power, and any regulations made under it, will expire 3 years after the day of commencement.

*Clause 79* amends schedule 1, section 6(3) (Health, counselling and support services) to clarify that employment outlined in subsections (1) and (2) is not regulated employment if prescribed by regulation.

This clause also inserts new subsection (3A) to provide that a regulation can prescribe that a person is, or is not, in regulated employment with an NDIS non-government service provider. This applies despite subsections (2) and (3). This clause also renumbers the subsections in section 6 of schedule 1.

*Clause 80* amends schedule 7 to insert a new definition of ‘NDIS non-government service provider’.

## **Part 7      Other amendments**

### **Schedule 1      Other amendments**

*Clause 81* states that Schedule amends the Acts it mentions. Schedule 1 makes minor and technical amendments to the *Disability Services Act 2006* and the *Guardianship and Administration Act 2000*.