NDIS Worker Screening (NT)

Information Paper – September 2019

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| **Document title** | NDIS Worker Screening (NT) |
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| **TRM number** | EDOC2019/277532 |

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| Acronyms | Full form |
| DoH | Department of Health |
| NDIS | National Disability Insurance Scheme |
| NT | Northern Territory |
| NTCAT | Northern Territory Civil and Administrative Tribunal |
| OoD | Office of Disability |
| SAFE NT | Screening Assessment for Employment – Northern Territory |

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# Background

This paper outlines the implementation and transitional arrangements for National Disability Insurance Scheme (NDIS) Worker Screening in the Northern Territory (NT). It sets out key dates and changes as well as information about bringing NT legislation in line with other states and territories, ensuring a contemporary nationally consistent NDIS Worker Screening framework.

All states and territories have committed to establish and operate nationally consistent worker screening arrangements, including the development of legislation as part of the NDIS Quality and Safeguards Framework and *Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme*.

The legislation to implement NDIS Worker Screening in the NT is due to be introduced in the Legislative Assembly later this year. A draft *National Disability Insurance Scheme (Worker Clearance) Bill 2019* is being developed. The Office of Disability (OoD) is sharing information on the proposed legislation during September 2019. This Information Paper forms part of that process.

# What is Worker Screening?

Worker screening is a tool to help employers check that people who are working or wish to work with the NDIS do not pose a risk of harm to people with disability.

The NT places a priority on the rights of people with disability to be safe and protected. This nationally consistent process will increase participant safety and reduce the risk of workers deemed to pose an unacceptable risk from moving unmonitored across Australia to seek employment.

It provides employers with an important tool for recruitment, selection and screening processes, and in the ongoing review of suitability of their workers. Worker screening and monitoring is one source of information that can support employers in fulfilling this responsibility.

# What is the NDIS Worker Screening Check?

An NDIS Worker Screening Check is a check of a person’s known past criminal history, professional misconduct, and other relevant information disclosed by the individual including international criminal history. If a person’s past behaviour indicates that they pose an unacceptable risk of harm to people with disability, they will be excluded from working with participants through an NDIS registered provider. Depending on the severity of the offences, this may be indefinitely (disqualification) or for a period of time (five year prohibition). The NDIS Worker Screening Check will be administered by the Screening Agency.

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| An **NDIS Worker Screening Check** is a check of a person’s known past criminal history, professional misconduct, and other relevant information disclosed by the individual for example international criminal history. |

A worker who has an NDIS Worker Screening clearance (a clearance) will be able to work for NDIS registered providers across Australia. A worker who has been issued an NDIS Worker Screening exclusion (an exclusion) by any state or territory will be excluded nationally.

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| An **NDIS Worker Screening clearance** is given to an applicant who does not have any relevant criminal history, disciplinary or misconduct records, and no issues raised via information deemed relevant by the Screening Agency. A clearance allows a worker to work for NDIS registered providers across Australia. |

Workers who have a clearance will be subject to **ongoing monitoring,** which includes monitoring of criminal charges anywhere in Australia and reportable incidents to the NDIS Quality and Safeguards Commission (NDIS Commission). Feedback from ongoing monitoring may lead to the Screening Agency imposing a suspension until a risk assessment is able to be completed. Clearances may be cancelled or the suspension lifted depending on the outcome of the risk assessment. Refer to [7.4 Risk Assessment](#_Risk_Assessments) for more information.

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| Workers who have a clearance will be subject to **ongoing monitoring** where their criminal history records, NDIS Commission records and any other information the Screening Agency considers relevant will be subject to regular review while the clearance remains current. |

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| A **suspension** of a worker’s clearance is used to prevent an individual from working with NDIS participants until the Screening Agency completes a risk assessment and decides whether to lift the suspension or cancel the clearance. |

The NT will host a database of NDIS Worker Screening Check outcomes similar to the current Working with Children Check (Ochre Card). The development of this database and establishment of the Screening Agency is currently underway.

The NDIS Commission will host a national database that will keep a register of cleared and excluded workers from all states and territories. NDIS registered providers can go to the national database to verify workers clearances and view the clearance status of prospective workers. The National NDIS Worker Screening Database will be managed by the Commission and is expected to be operational from 1 July 2020. Refer to [7.9 National NDIS Worker Screening Database](#_National_NDIS_Worker) for more information.

# Who Will Undergo Worker Screening?

Workers will require an NDIS Worker Screening Check if they are working for an NDIS registered provider delivering NDIS specific supports that require them to:

* be involved in direct delivery of support and services; or
* have more than incidental contact with people with disability; or
* are key personnel (such as management and operational positions).

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| The NDIS Commission provides a number of examples to inform the decision making in NDIS worker screening. <https://www.ndiscommission.gov.au/providers/worker-screening#02>  **Example One:**  Lee works for a mobility equipment company and delivers mobility equipment to the homes of people with disability. As a standard part of that role, he provides training and instructions to the customer about how to use the equipment safely and makes adjustments to the equipment to make it suitable for the customer. Lee needs to have a check because his role is likely to require more than incidental contact. This is because Lee has contact with people with disability and the nature of that contact (such as testing the person’s needs and preferences with them, talking about and responding to the nature of their disability) means that there is a level of openness and trust that is likely to lead Lee building rapport with his customers. |

Workers who do not have more than **incidental contact** with participants as a normal part of their jobs, such as administrative support staff will not be required to have a clearance. These staff can still choose to apply or their employers may choose to make worker screening a part of their recruitment processes.

**Example Two:**

Sue is an accountant who works in the ‘back office’ of a business that supplies custom prosthetics to people with disability. Sue often has coincidental contact with people with disability while she is moving through public areas of the business, such as when she walks through the lobby, at which time Sue nods and says hello to the customers. Sue does not need to go through worker screening because her role does not involve the direct delivery of custom prosthetics, and she is not required to have more than incidental contact with people with disability. This is because the duties of her role do not require her to have more than polite, functional contact with people with disability, or get to know them in any way.

NDIS registered providers have a responsibility to ensure that the worker or the contractor has an NDIS clearance or acceptable state-based check, if it is during the transition period. Volunteers working for NDIS registered providers, as well as those providing NDIS specific supports to children with disability, are also required to undergo screening. An NDIS Worker Screening clearance does not replace existing requirements for people engaging in child-related employment to obtain an Ochre Card in the NT. If you are working with a child that is an NDIS participant you will need both clearances.

Self-managing participants may request that workers who provide supports and services to them have an NDIS Worker Screening Check. Workers employed by unregistered providers may also apply for an NDIS Worker Screening Check as long as their application is endorsed by their employer. NDIS registered plan managers will also be strongly encouraged to make use of the NDIS Worker Screening Check for any workers they engage.

# When does Worker Screening commence?

The commencement date for issuing NDIS Worker Screening clearances in the NT is 1 July 2020. From this time, it is expected that all states and territories will have a single, NDIS National Worker Screening Check. All new applicants will need to apply for an NDIS Worker Screening clearance through their local Screening Agency.

NDIS registered providers will be mandated to ensure that workers engaged in roles that require worker screening have a valid and current clearance. Engaging workers that do not have a clearance in NDIS specific roles that require a clearance may breach the conditions of NDIS registration and lead to compliance action by the NDIS Commission. The NDIS Commission can provide further information about registration and the broader NDIS at their website: <https://www.ndiscommission.gov.au/providers/worker-screening>.

All Ochre Cards current at the time NDIS Worker Screening is implemented in the NT will remain valid for the purposes of providing NDIS specific supports until they expire, at which time the person will need to apply for an NDIS Worker Screening clearance. It is anticipated that the transition to NDIS Worker Screening will be complete within two years (this is the current validity period of an Ochre Card).

After 1 July 2020, people wishing to work with participants will be able to start work while their application is being assessed. Workers in this situation will require supervision by someone who has an NDIS Worker Screening clearance. This ensures appropriate safeguards for participants while making sure services are readily accessible.

Further communication will take place before commencement of NDIS Worker Screening Checks in the NT that will include information about the process, Screening Authority and costs associated.

In the interim, the NT has committed to transitional arrangements. See also section [8. Where to From Here?](#_Where_to_From) for more information.

# Transitional Arrangements

Transitional arrangements are in place from now until 30 June 2020.

During the transitional period, a person can only engage in providing NDIS specific supports if they are in a role requiring an NDIS Worker Screening Check (as outlined at [4. Who Will Undergo Worker Screening](#_Who_Will_Undergo)) and:

* the person has a current clearance granted under the *Care and Protection of Children Act (NT) 2007* (Ochre Card); or
* the person has a current NDIS Worker Screening clearance which has been granted in a participating state/territory.

While the Ochre Card is primarily for working with children, throughout the transitional period it will also be used as a safeguard for people with a disability of all ages.

# Legislation

The *National Disability Insurance Scheme (Worker Clearance) Bill 2019* (the Bill) is the proposed law that will cover worker screening in the NT and is due to be introduced in the Legislative Assembly in late 2019. The following information provides an overview of the main components of the legislation.

The Bill aims to:

* send a strong message to the community that the NT places a priority on the rights of people with disability to be safe and protected;
* reduce the potential for NDIS registered providers to employ workers who pose an unacceptable risk of harm to people with disability;
* prohibit those persons that pose an unacceptable risk or have been proven to have harmed vulnerable people from working in the sector; and
* deter individuals who pose an unacceptable risk of harm from seeking work in the sector.

The Bill will include provision for the application, assessment, and ongoing national monitoring of NDIS Worker Screening clearances in the NT. It also includes provisions for information collection, use, storage and disclosure.

## Consultation

As part of the development of the NDIS Quality and Safeguards Framework, consultations were undertaken with people with disability, peak bodies representing people with disabilities, carers, service providers and workers. Feedback found that people supported a nationally consistent approach to worker screening to prevent people with a history of misconduct from moving interstate to take up new positions.

Some people who responded expressed concern about people being excluded altogether from working in the sector on the basis of past convictions.  Most people felt that the risk to vulnerable people clearly outweighed the rights of the small number of people who might be excluded from working in the sector.

Some providers were concerned over the potential for delays in allowing staff to commence work.  In the NT this Bill will allow workers to start work while their application is being processed, with appropriate safeguards in place.

The Bill has been developed following these consultations as well as additional consultations with the Commonwealth and other states and territories to ensure national consistency.

## Application

Applications for NDIS Worker Screening clearances will be processed by the Screening Agency.

A person can apply for a clearance if they:

* are working for an NDIS registered provider of supports;
* have been formally offered employment with an NDIS registered provider of supports;
* are volunteering with an NDIS registered provider of supports;
* are over the age of 18 years; and
* can provide proof of identity.

A person cannot apply for a clearance if they:

* have previously been assessed to be a disqualified person;
* have already applied and they are waiting on an outcome;
* currently hold a clearance with more than three months left until expiry; or
* are subject to a five year prohibition.

An applicant may withdraw their application at any time before the Screening Agency has commenced assessing the application, unless an **interim bar** has been issued.

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| An **interim bar** prevents a person who has applied for a clearance from working with participants while their application is pending and usually occurs when relevant information indicates there is a reasonable likelihood that the person poses an unacceptable risk of harm to a person with disability. |

## Assessment

The Screening Agency will assess the following information for all applicants:

* national criminal history information held by law enforcement agencies;
* disciplinary and misconduct information supplied by the NDIS Commission to the Screening Agency;
* self-disclosure information; and
* outcomes of previous NDIS Worker Screening Checks.

The applicant will be required to self-disclose to the Screening Agency the following:

* if they have been refused an NDIS Worker Screening clearance or other working with vulnerable persons screening processes previously in Australia or internationally,
* any relevant civil penalties,
* international criminal history,
* domestic violence and child protection orders and/or relevant information,
* any relevant workplace misconduct findings.

***Clearance***

An applicant who does not have any relevant information identified and has not been previously issued an NDIS Worker Screening exclusion will be issued a clearance. Clearances are valid for five years from the date of the decision, subject to ongoing monitoring by the Screening Agency.

***Exclusion due to disqualifying offences***

An applicant who has a conviction(s) for offences which include, but are not limited to, murder, serious assault or sexual assault, against a child or vulnerable person or child pornographywill be issued an **exclusion due to disqualifying offences** (disqualification) with no right of appeal. They must have been at least 18 years of age at the time of the offence.

Workers who are disqualified are:

* prohibited from delivering NDIS supports and services as a NDIS registered provider or as a worker for a NDIS registered provider;
* required, under the NDIS Code of Conduct, to disclose the outcome of their NDIS Worker Screening Check to any person or provider to whom they are providing supports or services under the NDIS;
* not permitted to reapply for an NDIS Worker Screening Check; and
* not permitted to request a review of the decision (no right of appeal).

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| **Exclusion due to disqualifying offences** – occurs when an applicant has a conviction(s) for offences which include, but are not limited to, murder, serious assault or sexual assault, against a child or vulnerable person or child pornography. A person who has an exclusion due to disqualifying offences has no right of appeal. |

***Exclusion – five year prohibition***

An applicant with a conviction or pending charge for offences which include, but are not limited to, manslaughter, assault and sexual offences, drug trafficking, fraud and pending charges on the disqualifying offences will be issued an exclusion for a five year period.

Workers who are issued a five year prohibition are:

* prohibited from delivering NDIS supports and services as a NDIS registered provider or as a worker for a NDIS registered provider;
* required, under the NDIS Code of Conduct, to disclose the outcome of their NDIS Worker Screening Check to any person or provider to whom they are providing supports or services under the NDIS;
* not permitted to reapply for an NDIS Worker Screening Check for a period of five years after the date of the decision unless during the period they provide evidence of exceptional changes in their circumstances; and
* able to request a review of the decision (refer to [7.8 Review](#_Review) for more information).

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| **Exclusion – five year prohibition** – occurs when an applicant has a conviction(s) or pending charge(s) for offences which include, but are not limited to, manslaughter, assault and sexual offences, drug trafficking, fraud and pending charges on the disqualifying offences. |

## Risk Assessment

A risk assessment is an evaluation of whether a person poses an unacceptable risk of harm to people with disability. If an application does not result in a clearance, or exclusion due to disqualifying offences, then the application proceeds to a risk assessment.

If the Screening Agency has a belief that there is a reasonable likelihood that the person poses an unacceptable risk of harm to a person with a disability, a person who has:

* applied for a clearance - will be issued an interim bar preventing them from working with participants until a risk assessment is completed. Refer to [7.2 Application](#_Application) for more information.
* a clearance - will be issued a suspension preventing them from working with participants until a risk assessment is completed.

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| A **risk assessment** is an evaluation of whether a person poses an unacceptable risk of harm to people with disability. If an application does not result in a clearance, or exclusion due to disqualifying offences, then the application proceeds to a risk assessment. |

The starting point for a risk assessment is exclusion, that is, the applicant will be unable to work in a disability related role until the outcome of the risk assessment has been determined.

States and territories are currently working to refine a nationally consistent, evidence based risk assessment and decision making framework.

The criteria for assessing risk will include:

* the nature, gravity and circumstances of the offence or misconduct and its relevance to disability related work;
* length of time since the event occurred;
* vulnerability of the victim, relationship/position of authority to the victim;
* the person’s criminal, misconduct and disciplinary, or other relevant history, including whether there is a pattern of concerning behaviour;
* the person’s conduct since the event; and
* any other relevant circumstances as identified by the Screening Agency.

## Outcomes

Outcomes are notified in writing. There are two possible outcomes for NDIS Worker Screening Checks:

* **Clearance** - applicants determined not to pose an unacceptable risk are granted a clearance to deliver NDIS supports and services for any NDIS registered provider; or
* **Exclusion** - applicants are determined to pose an unacceptable risk and are issued an exclusion (disqualification) or exclusion (five year prohibition).

## Review

An applicant can seek an internal review if a decision was made by a Screening Agency to:

* issue an exclusion;
* apply an interim bar; or
* suspend a clearance.

Internal reviews are conducted by the Screening Agency. An individual cannot seek a review of an interim bar or suspension until six months has passed to allow the Screening Agency sufficient time to gather information where necessary and make a determination.

If an individual is not satisfied after the internal review, they may seek an external review by the Northern Territory Civil and Administrative Tribunal.

## National NDIS Worker Screening Database

The National NDIS Worker Screening Database will be administered by the NDIS Commission and will:

* include a register of cleared and excluded applicants and workers from all jurisdictions;
* allow for the exchange of relevant information about individuals applying to work in the NDIS;
* ensure that a decision to issue an exclusion, interim bar or suspension would be available to all states and territories;
* enable national ongoing monitoring of cleared applicants’ criminal history during the period of their clearance; and
* enable employer verification of applicants.

# Where to From Here?

Transitional arrangements are now in place until 30 June 2020 (refer to section [6. Transitional Arrangements](#_Transitional_Arrangements) for more information). The *National Disability Insurance Scheme (Worker Clearance) Bill 2019* is scheduled to be introduced in the Northern Territory Legislative Assembly in October 2019. Following the passage of the Bill through the Legislative Assembly, a commencement date will be announced and proposed law will become an Act.

## What Does This Mean for Participants?

Once implemented, NDIS Worker Screening will:

* ensure a safer environment for participants;
* reduce the potential for NDIS registered providers to employ workers who pose an unacceptable risk of harm to people with disability; and
* prohibit those persons that pose an unacceptable risk or have been proven to have harmed vulnerable people from working in the sector.

**Self-managed participants are encouraged to make use of the NDIS Worker Screening Check for any workers they engage.**

## What Does This Mean for Workers?

Ensure that you maintain your current NT Ochre Card. Applications for an Ochre Card can be made through SAFE NT for new workers.

Once implemented, the NDIS National Worker Screening Database will allow for portability of screening across states and territories. It is your responsibility as a worker to disclose anything to your employee that may impact your ability to hold a NDIS Worker Screening clearance.

The NDIS Code of Conduct applies to all unregistered providers of NDIS supports and their workers providing NDIS services and supports. The NDIS Commission will investigate any breaches.

## What Does This Mean for Providers?

Responsibility for recruiting and providing a safe environment for people with disability rests with all service providers.

Service providers who are NDIS registered providers are required under the *National Disability Insurance Act 2013 (NDIS Act)* and the NDIS (Practice Standards – Worker Screening) Rules 2018 (the Rules) to minimise the risk of harm to a person with disability. Making sure staff undergo worker screening is a very important tool to assist employers to recruit and maintain staff that do not pose an unacceptable risk to participants.

As part of the transitional arrangements, all NDIS registered providers must ensure workers have an Ochre Card or a current NDIS Worker Screening clearance which has been granted in a participating state/territory (where they are available).

The NDIS Code of Conduct applies to all unregistered service providers and their workers providing NDIS services and supports. The NDIS Commission will investigate any breaches.

## Key Dates

**From 1 July 2019:**

* The NDIS Commission started managing quality and safeguards in the NT.

<https://www.ndiscommission.gov.au/about/start-dates/nt>

* Transition arrangements commence for the NT. An Ochre Card is required for all workers.

**From 1 July 2020:**

* Nationally consistent NDIS Worker Screening Checks will be operational in all states and territories.
* All new workers employed by NDIS registered providers require an NDIS Worker Screening clearance.
* Ochre Cards will continue to be sufficient until expiry at which time an NDIS Worker Screening clearance will be required.
* Ochre Cards will remain mandatory for child-related work.

## More information

If you have any questions or require further information please contact the Office of Disability on

8999 2809 or [DSExecutive.DOH@nt.gov.au](mailto:DSExecutive.DOH@nt.gov.au).