

# Statement of Reasons

## Worker Screening Regulations 2021

### Introduction

The Worker Screening Regulations 2021 (the Regulations) will be made under the *Worker Screening Act 2020* (the Act) to:

- provide for fees for screening checks (Working with Children checks and NDIS checks)
- prescribe certain entities and their findings to enable information to be provided for a screening check, and an assessment of a Working with Children check or NDIS check in certain circumstances
- prescribe NDIS worker screening laws of other States and Territories for the purposes of information sharing and recognition of decisions made by other NDIS worker screening agencies, and
- provide for an offence relating to the failure by a person to notify of a change in personal details.

The Regulations also replace the Working with Children Regulations 2016 (the previous Regulations). As the Act replaces the *Working with Children Act 2005*, under which the previous Regulations were made, new Regulations are needed for the purposes of the Working with Children check.

The Regulations and accompanying Regulatory Impact Statement were released for public consultation on the Engage Victoria website between 10 November 2020 and 8 December 2020.

The Department of Justice and Community Safety (DJCS) received 10 submissions as follows:

- Victorian Council of Social Service
- National Disability Services (NDS)
- STAR Victoria Inc.
- Uniting Church of Australia, Synod of Victoria and Tasmania
- Motor Neurone Disease Association of Victoria (MND Victoria)
- Solve Disability Solutions Inc.
- Inclusion Melbourne
- Ms Nicola McKay
- Volunteering Victoria
- Justice Connect

### Key issues

All submissions related to the NDIS component of the Regulations and the majority of submissions related to the impact of an NDIS check fee for volunteers. Only issues within the scope of the Regulations have been addressed and are discussed in Table 1, below.

**Table 1: Summary of issues raised and DJCS' response and reasons**

Comments	Response and reasons
Victoria should develop a clear, timely and realistic implementation plan to engage	Transitional arrangements, including from the Department of Health and Human Services (DHHS) Disability Worker Exclusion Scheme (DWES) to NDIS worker screening, commenced on 1

Comments	Response and reasons
<p>all stakeholders in the introduction of NDIS checks.</p>	<p>July 2019 at which time it was announced that NDIS worker screening would commence on 1 July 2020. The delayed commencement from 1 July 2019 to 1 February 2021 was due to COVID-19 and was announced by DHHS and the NDIS Quality and Safeguards Commission in April 2020.</p> <p>Relevantly, it is anticipated that the majority of those people required to apply for an NDIS check when it commences on 1 February 2021 will have the benefit of the six month grace period provided for in the Act, or in the case of people who also have a WWC clearance, until that WWC clearance expires.</p> <p>In 2016, all Australian governments agreed to an NDIS Quality and Safeguarding Framework (Framework). The Framework provides a nationally consistent approach to help empower and support NDIS participants to exercise choice and control, while ensuring appropriate safeguards are in place. It also establishes expectations for providers and their staff to deliver high quality supports.</p> <p>As part of the Framework, all states and territories committed to a nationally consistent worker screening process. The NDIS check is a key component of the Framework.</p>
<p>The introduction of the NDIS check and associated fee will act as a disincentive to volunteers.</p>	<p>In 2016, Australian states and territories agreed to set application fees for an NDIS check on a cost recovery basis, and for fees to apply for both paid employees and volunteers (Intergovernmental Agreement on Nationally Consistent Worker Screening for the NDIS (IGA), cl.50<sup>1</sup>).</p> <p>Under the IGA, and replicated in the Act, only those workers who work for a registered NDIS provider in a risk assessed role need to apply for an NDIS check and obtain a NDIS clearance.</p> <p>A risk assessed role is one that:</p> <ul style="list-style-type: none"> <li>- involves the direct delivery of specified services and supports to people with disability; or</li> <li>- is likely to have more than incidental contact with people with disability as a normal part of your duties. This includes physical contact; face-to-face contact; oral, written and electronic communication with people with disability in various circumstances; or</li> <li>- is a key personnel role – for example, a person in an executive, senior management or decision-making position of a registered NDIS provider including as a member of the board.</li> </ul>

<sup>1</sup> Each State or Territory will set application fees on a cost-recovery basis. In recognition that NDIS Worker Screening Checks are required in relation to the receipt of NDIS funding, application fees will apply to both paid employees and volunteers’ ,cl 50, Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme, 2018.

Comments	Response and reasons
	<p>Given the above, the proposed fee settings included in the Regulatory Impact Statement were based on the premise that risk assessed roles would be performed by paid staff rather than volunteers.</p> <p>Some submissions did not support this view. Some NDIS providers explained that volunteers would form a part of their NDIS service model.</p> <p>In light of this feedback, DJCS proposes to utilise the fee waiver powers provided for in the Worker Screening Regulations 2021 in the case of applications by volunteers. This will ensure that the NDIS check fee does not act as a deterrent to volunteers.</p>
<p>If NDIS providers are unable to reimburse volunteers for the cost of their NDIS check, a fee presents an unfair financial burden on volunteers given they are not being paid for their labour.</p>	<p>DJCS proposes to utilise the fee waiver powers provided for in the Worker Screening Regulations 2021 in the case of applications by volunteers.</p> <p>In those cases where a registered NDIS provider is unable to reimburse NDIS check fees for volunteers engaged in risk assessed roles, volunteers will be able to apply to have the NDIS check fee waived.</p>
<p>The introduction of the NDIS check and associated fee will act as a disincentive to people who are starting out in the disability workforce.</p>	<p>The NDIS check is the minimum national standard for all workers engaged in risk assessed roles for registered NDIS providers and is only one of a range of strategies that operate together to reduce risk of harm to people with disability.</p> <p>NDIS providers must also implement additional policies, procedures and practices that assist in identifying and minimising risk of harm to people with disability. These include promoting positive organisational cultures that do not tolerate abuse, neglect or exploitation; ensuring quality recruitment, selection and screening; and maintaining a focus on education and training.</p> <p>From 1 February 2021, registered NDIS providers are required to engage only workers who have been cleared in any role that is a risk assessed role.</p> <p>A risk assessed role is one that:</p> <ul style="list-style-type: none"> <li>- involves the direct delivery of specified services and supports to people with disability; or</li> <li>- is likely to have more than incidental contact with people with disability as a normal part of your duties. This includes physical contact; face-to-face contact; oral, written and electronic communication with people with disability in various circumstances; or</li> <li>- is a key personnel role – for example, a person in an executive, senior management or decision-making position of a registered NDIS provider including as a member of the board.</li> </ul>

Comments	Response and reasons
	<p>The premise of the fee settings of the RIS is that such roles will not be performed by individuals on work placements and work experience arrangements. Further to this, structured programs such as work experience and vocational placements are not considered to be volunteer work.</p>
<p>Clarify and communicate the roles and responsibilities of different Victorian and Commonwealth safeguarding and screening mechanisms.</p>	<p>Disability workers not captured by NDIS worker screening are within scope of Victoria’s Disability Worker Regulation Scheme which regulates all disability workers in Victoria. More information about this scheme can be found on the Victorian Disability Worker Commission’s webpage: <a href="http://www.vdwc.vic.gov.au">www.vdwc.vic.gov.au</a>.</p> <p>DJCS will work closely with the Victorian Disability Worker Commission and the DHHS to ensure that messaging about NDIS worker screening and the Disability Worker Regulation Scheme clarifies the different roles of each scheme.</p>
<p>The burden of safeguarding requirements on registered providers may push some providers to become unregistered providers.</p>	<p>Requirements relating to worker screening are set by the Commonwealth NDIS Quality and Safeguards Commission and form part of the NDIS Practice Standards.</p> <p>Registered NDIS providers in all states and territories are required to comply with all of the relevant NDIS Practice Standards. The requirements relating to worker screening are set out in the <u>National Disability Insurance Scheme (Practice Standards – Worker Screening) Rules 2018</u>.</p> <p>Further information about the NDIS Practice Standards can be found on the NDIS Quality and Safeguards Commission webpage: <a href="http://ndiscommission.gov.au">NDIS Practice Standards   NDIS Quality and Safeguards Commission (ndiscommission.gov.au)</a>.</p>