



NDIS Quality  
and Safeguards  
Commission

## Senate Community Affairs Committee

### NDIS Amendment Bill 2021 Inquiry

#### Answer to Question on Notice

Reference: SQ21-000105

## Worker Screening Units - information flow between the NDIS Commission and worker screening units

Hearing: 2 August 2021

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### Question:

**Senator GREEN:** I guess my concern is, if you have information and you haven't made a finding yet, you can pass that information on to the agency conducting the NDIS worker screening check but it wouldn't be until those issues are raised with that worker that they would be aware that that information has been provided. I guess the second part of my question is—I don't know a lot about the NDIS worker screening process, so I apologise, but is there a process for them to dispute that information?

**Ms Taylor:** Worker screening arrangements are complicated and they do vary by jurisdiction. In the interests of time, I'm happy to provide on notice how the information flows between the commission and worker screening units for the purpose of making a clearance decision and the process each state and territory goes through around risk assessment where there might be a concern—and also the thresholds for consideration of the types of contraventions or misconduct that would be relevant in a clearance. Of course, not all matters the commission might be concerned about would be matters which might cause a clearance to not be granted to an individual.

**Senator GREEN:** If you could put that on notice it would be helpful. Just to be clear: I don't think anyone would want someone who does have a serious issue raised with the commission to not have that information be part of the worker screening process. But I'm also conscious that a worker should have natural justice in terms of how they are given that information and be able to dispute it if they don't agree with the report. That's the information I would like to get on notice, Ms Taylor—and from the department as well if you have further information on that.

**Ms Taylor:** Certainly. Having received a worker clearance myself, I might just add that, when you apply for a screening, you are often asked to agree to have information made available to the screening unit from various bodies, including the commission. So you are giving your consent at the point of application. But we will check that for all jurisdictions.

**Answer:**

National NDIS worker screening commenced nationally from 1 July 2021 (from 1 February 2021 in all jurisdictions other than the Northern Territory).

The Intergovernmental Agreement for Nationally Consistent Worker Screening (IGA), establishes the roles and responsibilities for state and territories and the Commonwealth in worker screening, and the things that must be considered in risk assessing an application for clearance.

These matters are reflected in state and territory legislation made to enable the screening function for each jurisdiction and includes:

- National criminal history information and any additional circumstances information held by law enforcement agencies;
- Disciplinary and misconduct information;
- Outcomes of previous NDIS Worker Screening Checks;
- Civil penalties, international criminal history, domestic violence and child protection orders, state-based reportable or notifiable conduct schemes and court and tribunal records; and
- Additional information obtained by state and territory worker screening units such as interviewing an applicant or seeking references from their employer.

The IGA sets out information to be shared between the commonwealth, states and territories to enable worker screening units to undertake this risk assessment, being:

- a) Between states and territories for the exchange of criminal history information;
- b) Between the NDIS Quality and Safeguards Commission (NDIS Commission) and the states and territories regarding the NDIS Commission's disciplinary and misconduct information, including any adverse and substantiated findings of formal investigation, and enforcement actions by the NDIS Commission; and
- c) Between the states and territories for the exchange of state/territory-based disciplinary and misconduct information.

Specifically, the NDIS Commission will share disciplinary and misconduct information which might include where a banning order has been made; where a provider has reported to the NDIS Commission as part of its functions that they have undertaken an internal investigation resulting in the dismissal of a worker; or where an active investigation is underway into the conduct of a worker where there is a serious allegation of their involvement in mark to a person with disability. Currently details of these matters are not provided to a worker screening unit. A flag is included against a worker which prompts a worker screening unit to seek further information from the person, or the employer within whom they are associated to include an application for a clearance, or to view the NDIS Commission's register where a banning order or other enforcement action has been taken.

Under section 181D(3A) of the *National Disability Insurance Scheme Act 2013* (NDIS Act), the NDIS Commissioner is required to have due regard to procedural fairness in performing his or her functions. In most circumstances, this includes engaging with affected persons prior to executing compliance or enforcement action. Further, in respect of certain compliance or enforcement actions, including banning orders, the NDIS Commissioner is required under the NDIS Act to provide an opportunity for a person to provide submissions and consider such submissions prior to taking that action unless the exceptions in section 73ZN(8) are met.

### ***Consent arrangements***

State and territory worker screening units are required to ensure at the point of application for an NDIS Worker Screening Check, applicants give fully informed consent to, amongst other things, the worker screening unit accessing following information about them to inform assessment of an application for clearance:

- a) The conduct of a Nationally Co-ordinated Criminal History Check including convictions, findings of guilt, pending charges, spent convictions, and non-conviction outcomes in accordance with the requirements each jurisdiction has in place with the Australian Criminal Intelligence Commission;
- b) Ongoing monitoring in all states and territories of any relevant criminal history information (including pending charges) from the time they lodge their application and continuing while they hold a clearance;
- c) The disclosure of their personal information to other worker screening units for the purposes of an NDIS Check and police agencies across Australia for the purposes of an NDIS Check and law enforcement purposes;
- d) Enquiries being made to determine their eligibility to hold an NDIS Check clearance from any source considered necessary by the worker screening unit, including but not limited to, the NDIS Commission, police, courts and tribunals, prosecuting authorities, and other government agencies, and
- e) Information about any misconduct or disciplinary action (including compliance or enforcement action) being sought from, provided by, shared with and retained by the NDIS Commission or other worker screening agencies in any state or territory.

### ***Natural Justice for workers***

Worker screening units may determine that a clearance cannot be made for a person. In denying a worker a clearance, they must:

- a) Disclose the reason the adverse decision is proposed, except where the NDIS worker screening unit is required under Commonwealth, state or territory law to refuse to disclose the information to the individual;
- b) Allow the individual a reasonable opportunity to respond; and
- c) Consider the individual's response before finalising the decision.

Each jurisdiction has internal and external review processes in place for decisions made by the NDIS worker screening unit.