

Disability Services and Other Legislation (NDIS) Amendment Bill 2019

Amendments during consideration in detail to be moved by
The Honourable the Minister for Communities and Minister for Disability
Services and Seniors

1 **Clause 2 (Commencement)**

Page 8, lines 12 and 13, ‘a day to be fixed by proclamation’—
omit, insert—

1 July 2019

2 **After clause 17**

Page 13, after line 23—

insert—

17A Amendment of s 65 (Starting engagement of certain regular engaged persons other than volunteers)

Section 65(2)(b), after ‘the person’—

insert—

and section 69A does not apply in relation to
the person

17B Amendment of s 66 (Starting engagement of new engaged persons other than volunteers)

Section 66(2)(b), after ‘the person’—

insert—

and section 69A does not apply in relation to
the person

17C Amendment of s 67 (Continuing engagement of persons other than volunteers)

Section 67(2), from ‘unless’ to ‘the person.’—

omit, insert—

unless—

- (a) the service provider has applied for a prescribed notice or exemption notice, or a further prescribed notice or exemption notice, about the person; and
- (b) section 69A does not apply in relation to the person.

17D Insertion of new s 69A

After section 69—

insert—

69A Person in paid regulated engagement convicted of serious offence

- (1) This section applies if—
 - (a) a prescribed notice application or exemption notice application has been made about a person in relation to whom section 65, 66 or 67 applies; and
 - (b) the application has not been decided or withdrawn; and
 - (c) the chief executive becomes aware the person was convicted of a serious offence—
 - (i) if the person held a positive notice or positive exemption notice when the application was made—after the application was made; or
 - (ii) if the person held a positive notice or positive exemption notice that expired before the application was made—after the person’s notice expired; or
 - (iii) otherwise—before or after the application was made.

- (2) The chief executive must give the person a written notice that states—
 - (a) the person is not allowed to work at a service outlet of a service provider before the person's application is decided; and
 - (b) it is an offence for the person to continue to work at a service outlet of a service provider, or start in regulated engagement, unless the person is issued a positive notice or positive exemption notice.
- (3) If the chief executive gives the person a notice under subsection (2), the person must not, unless the person is issued a positive notice or positive exemption notice—
 - (a) if the person is engaged at a service outlet of a service provider when given the notice under subsection (2)—work at the service outlet; or
 - (b) start in other regulated engagement.

Maximum penalty—500 penalty units or 5 years imprisonment.
- (4) Subsection (5) applies if—
 - (a) the chief executive gives the person a notice under subsection (2); and
 - (b) the person is engaged by a funded non-government service provider or an NDIS non-government service provider.
- (5) The chief executive must give the service provider a written notice that states—
 - (a) the person is not allowed to work at a service outlet of a service provider before the person's application is decided; and

- (b) it is an offence for a service provider to allow the person to work at a service outlet of the service provider unless the person is issued a positive notice or positive exemption notice; and
 - (c) the service provider must not terminate the person's engagement or continued engagement solely or mainly because the service provider is given the notice.
- (6) A service provider may not terminate the person's engagement or continued engagement solely or mainly because the service provider is given a notice under subsection (5).

17E Amendment of s 70 (Prohibited engagement)

- (1) Section 70(2)(b), before subparagraph (i)—

insert—

- (ia) a notice under section 69A(5) that the engaged person is not allowed to work at a service outlet of a service provider before the person's application is decided; or

- (2) Section 70(2)(b)(i), after 'section 132(5)'—

insert—

, (6) or (7)

- (3) Section 70(2)(b)(ia) to (ii)—

renumber as section 70(2)(b)(i) to (iii).

17F Amendment of s 86 (Suspension of positive notice if charged with disqualifying offence or subject to temporary or interim order)

- (1) Section 86, heading, before 'disqualifying'—

insert—

serious or

(2) Section 86(1)(a), after ‘charged with a’—

insert—

serious offence or

17G Amendment of s 87 (Ending of suspension and issue of further prescribed notice)

Section 87(6)(a) and (c), before ‘disqualifying offence’—

insert—

serious offence or

17H Amendment of s 132 (Withdrawal of engaged person’s consent to screening)

Section 132(6)(a), after ‘charged with a’—

insert—

serious offence or

3 Clause 46 (Insertion of new pt 9, div 12)

Page 27, after line 30—

insert—

new serious offence means an offence that is a serious offence under the amended Act but was not a serious offence under this Act immediately before the commencement.

4 Clause 46 (Insertion of new pt 9, div 12)

Page 28, after line 1—

insert—

345A Effect of pre-commencement charge for serious offence

- (1) This section applies if a person is the subject of a charge for a serious offence that has not been dealt with on the commencement.
- (2) For applying the amended Act in relation to the person, the person is taken to have been charged with the offence on the commencement.

345B Effect of conviction or charge for new serious offence

- (1) For applying the amended Act in relation to a person convicted of a new serious offence, it is immaterial—
 - (a) when the offence was committed; or
 - (b) when the person was convicted of the offence.
- (2) The amended Act applies in relation to a person who is charged with a new serious offence, even if—
 - (a) the person was charged before the commencement; or
 - (b) the acts or omissions constituting the offence happened before the commencement.

5 Clause 46 (Insertion of new pt 9, div 12)

Page 28, after line 22—

insert—

- (3) For applying the amended Act to a current positive notice held by a person immediately before the commencement, a person the subject of a charge for a new disqualifying offence that has not been dealt with on the commencement is

taken to have been charged with the offence on the commencement.

346A Effect of conviction for new disqualifying offence on existing positive notice or positive exemption notice

- (1) This section applies if—
 - (a) a person held a current positive notice or positive exemption notice immediately before the commencement; and
 - (b) the person was convicted of a new disqualifying offence before the commencement.
- (2) For applying the amended Act to the person's positive notice or positive exemption notice, the offence is taken to be, or to continue to be, a serious offence despite the enactment of the amending Act.
- (3) Without limiting subsection (2), if the person applies for another positive exemption notice after the commencement, or section 347, 348 or 349 applies in relation to the person—
 - (a) the person's conviction for the offence is taken to be, or to continue to be, a conviction for a serious offence; and
 - (b) the person is taken not to be a disqualified person or relevant disqualified person in relation to the person's conviction for the offence.

6 Clause 46 (Insertion of new pt 9, div 12)

Page 29, lines 18 to 25—

omit, insert—

348 Existing positive notice held by person convicted of new serious offence or new disqualifying offence

- (1) This section applies if—
- (a) immediately before the commencement, a person held a current positive notice; and
 - (b) before the commencement, the person was convicted of—
 - (i) a new serious offence; or
 - (ii) a new disqualifying offence that is taken to be a serious offence under section 346A(2).
- (1A) Section 74 does not apply to the person in relation to the person's conviction for the offence.
- (1B) The chief executive must—
- (a) consider whether it is appropriate to cancel the person's positive notice under this section because of the person's conviction for the offence; and
 - (b) give the person a notice stating that, because of the enactment of the amending Act, the chief executive is considering under this section whether the person should continue to hold the person's positive notice.
- (1C) If the person is engaged by a funded non-government service provider or an NDIS non-government service provider and is not a sole trader, the chief executive must give the service provider a notice mentioned in subsection (1B)(b).

7 Clause 46 (Insertion of new pt 9, div 12)

Page 30, lines 5 and 6—

omit, insert—

- (3) Section 83(2), (3), (5) and (6) apply to the decision under subsection (2) as if a reference in section 83 to making a decision, or proposing to substitute a negative notice, were a reference to making a decision, or proposing to substitute a negative notice, under subsection (2).
- (4) If the chief executive decides not to cancel the person's positive notice under this section, the chief executive must give the persons mentioned in subsection (5) a notice stating that the chief executive is satisfied, having considered the enactment of the amending Act, the person should continue to hold the person's positive notice.
- (5) For subsection (4), the persons to whom the notice must be given are—
 - (a) the person; and
 - (b) each service provider given a notice under subsection (1B).

8 **Clause 46 (Insertion of new pt 9, div 12)**

Page 30, lines 7 to 15—

omit, insert—

349 Existing positive exemption notice held by person convicted of new serious offence or new disqualifying offence

- (1) This section applies if—
 - (a) immediately before the commencement, a person held a current positive exemption notice; and
 - (b) before the commencement, the person was convicted of—
 - (i) a new serious offence; or
 - (ii) a new disqualifying offence that is taken to be a serious offence under section 346A(2).

- (1A) Section 74 does not apply to the person in relation to the person's conviction for the offence.
- (1B) The chief executive must—
 - (a) consider whether it is appropriate to cancel the person's positive exemption notice under this section because of the person's conviction for the offence; and
 - (b) give the person a notice stating that, because of the enactment of the amending Act, the chief executive is considering under this section whether the person should continue to hold the person's positive exemption notice.
- (1C) If the person is engaged by a funded non-government service provider or an NDIS non-government service provider and is not a sole trader, the chief executive must give the service provider a notice mentioned in subsection (1B)(b).

9 Clause 46 (Insertion of new pt 9, div 12)

Page 30, lines 26 and 27—

omit, insert—

- (3) Section 84(2), (3), (5) and (6) apply to the decision under subsection (2) as if a reference in section 84 to making a decision, or proposing to substitute a negative exemption notice, were a reference to making a decision, or proposing to substitute a negative exemption notice, under subsection (2).
- (4) If the chief executive decides not to cancel the person's positive exemption notice under this section, the chief executive must give the persons mentioned in subsection (5) a notice stating that the chief executive is satisfied, having considered the enactment of the amending Act, the person

should continue to hold the person's positive exemption notice.

- (5) For subsection (4), the persons to whom the notice must be given are—
- (a) the person; and
 - (b) each service provider given a notice under subsection (1B).

10 After clause 46

Page 38, after line 14—

insert—

46A Amendment of sch 2 (Current serious offences)

- (1) Schedule 2, item 4, entry for the Criminal Code—

insert—

315A Choking, suffocation or strangulation in a domestic setting

- (2) Schedule 2, item 4, entry for the Criminal Code, section 300, all the words in column 3—

omit.

- (3) Schedule 2, item 6, entry for the Criminal Code (Cwlth), section 270.6 Sexual servitude offences—

omit.

- (4) Schedule 2, item 6, entry for the Criminal Code (Cwlth)—

insert—

270.5 Servitude offences

271.4 Offence of trafficking in children

271.7 Offence of domestic
trafficking in children

**46B Amendment of sch 3 (Repealed or expired
serious offences)**

Schedule 3—

insert—

3 Criminal Code (Cwlth)

Provision of Act	Relevant heading	Qualification relating to the provision of the Act
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270.6	Sexual servitude offences	only if an offender was or could have been liable as mentioned in section 270.8, as the provisions were in force from time to time before their repeal by the <i>Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013</i> (Cwlth)
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**11 Clause 47 (Amendment of sch 4 (Current disqualifying
offences))**

Page 38, line 17, after entry for section 211 Bestiality—

insert—

306 Attempt to murder

309 Conspiring to murder

315A Choking, suffocation or
strangulation in a
domestic setting

320A	Torture	if the offence was committed against a child
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12 Clause 47 (Amendment of sch 4 (Current disqualifying offences))

Page 39, before line 1, after entry for section 363A Abduction of child under 16—

insert—

364 Cruelty to children
under 16

13 Clause 47 (Amendment of sch 4 (Current disqualifying offences))

Page 39, lines 4 and 5, ‘entry for section 349’—

omit, insert—

entries for sections 349, 350 and 351

14 Clause 47 (Amendment of sch 4 (Current disqualifying offences))

Page 39, after line 6—

insert—

(4) Schedule 4, item 5, entry for the Criminal Code (Cwlth), entry for section 270.6 Sexual servitude offences—

omit.

(5) Schedule 4, item 5, entry for the Criminal Code (Cwlth)—

insert—

270.5 Servitude offences if the offence was committed against a child

271.4 Offence of trafficking in children

271.7 Offence of domestic trafficking in children

15 After clause 47

Page 39, before line 7—

insert—

47A Amendment of sch 5 (Repealed or expired disqualifying offences)

Schedule 5—

insert—

3 Criminal Code (Cwlth)

Provision of Act	Relevant heading	Qualification relating to the provision of the Act
270.6	Sexual servitude offences	only if an offender was or could have been liable as mentioned in section 270.8, as the provisions were in force from time to time before their repeal by the <i>Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013</i> (Cwlth)

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