

CRIMES AMENDMENT (WORKER SCREENING) REGULATIONS 2021

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

in compliance with section 15J of the *Legislation Act 2003*

Purpose

The purpose of the *Crimes Amendment (Worker Screening) Regulations 2021* (the Regulations) is to prescribe State and Territory persons and bodies and the relevant laws under which they are authorised for the purposes of sections 85ZZGI, 85ZZGJ and 85ZZGK of the *Crimes Act 1914* (the Crimes Act).

The Regulations also update a prescribed body and prescribed law for the purposes of sections 85ZZGB, 85ZZGC and 85ZZGD of the Crimes Act.

Background

The Crimes Act provides a procedural framework for the investigation and prosecution of Commonwealth criminal offences, along with a number of offences against the Commonwealth. Subject to a number of exclusions in Division 6 of the Crimes Act, Part VIIC of the Crimes Act provides that, where a conviction for an offence is spent, pardoned or quashed, the offender does not have to disclose the fact of the conviction, and others are prohibited from disclosing the conviction without the person's consent or taking the conviction into account.

Section 91 of the Crimes Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Divisions 2 and 3 of Part VIIC of the Crimes Act contain restrictions to the disclosure of information related to pardons, quashed convictions and spent convictions. The Crimes Act also contains mechanisms to protect persons with disability and children from sexual, physical and emotional harm by permitting criminal history information to be disclosed and taken into account in assessing the suitability of persons to work with persons with disability and children.

The *Crimes Amendment (National Disability Insurance Scheme—Worker Screening) Act 2018* amended the Crimes Act by inserting Subdivision AA into Division 6 of Part VIIC, creating an exclusion for disclosure of information about a pardoned, quashed or spent conviction of persons who work, or seek to work, with persons with disability in the National Disability Insurance Scheme (NDIS). The exclusion replicated the arrangements for the working with children checks regime in Subdivision A of Division 6 of Part VIIC.

The purpose of the *Crimes Amendment (Worker Screening) Regulations 2021* (the Regulations) is to prescribe the State and Territory persons and bodies permitted to obtain and deal with information about persons who work, or seek to work, with a person with a

disability, and the relevant laws under which they are authorised for the purposes of sections 85ZZGI, 85ZZGJ and 85ZZGK of the Crimes Act. The Regulations also update a prescribed body and the relevant law under which it is authorised for the purposes of sections 85ZZGB, 85ZZGC and 85ZZGD of the Crimes Act.

The Regulations form an important part of the broader National Disability Insurance Scheme Quality and Safeguarding Framework (the Framework), which is designed to support the rights of people with disability by ensuring they have access to quality and safe services under the NDIS. The Regulations allow Commonwealth, State and Territory agencies to deliver a nationally consistent approach to worker screening, which is a core element of the Framework aimed at mitigating the risk of harm to persons with disability.

Operation of the instrument

Before the Governor-General makes a regulation prescribing a person or body to which information may be disclosed, or by which information may be taken into account or disclosed for the purposes of sections 85ZZGI, 85ZZGJ or 85ZZGK of the Crimes Act, section 85ZZGL of the Crimes Act requires that the Minister must be satisfied that the person or body:

- (i) is required or permitted by or under a Commonwealth law, a State law or a Territory law to obtain and deal with information about persons who work, or seek to work, with a person with disability; and
- (ii) complies with applicable Commonwealth law, State law or Territory law relating to privacy, human rights and records management; and
- (iii) complies with the principles of natural justice; and
- (iv) has risk assessment frameworks and appropriately skilled staff to assess risks to the safety of a person with disability.

Sections 85ZZGI, 85ZZGJ and 85ZZGK of the Crimes Act deal with information in relation to persons who work, or seek to work, with persons with disability. The Regulations amend section 20A of the *Crimes Regulations 2019* (the Crimes Regulations) to prescribe additional persons and bodies, and additional laws, for the purposes of sections 85ZZGI, 85ZZGJ and 85ZZGK of the Crimes Act. As the Minister responsible for section 85ZZGL of the Crimes Act, the Attorney-General was satisfied that the above criteria have been met in relation to the persons and bodies that would be prescribed by the Regulations.

In addition, before the Governor-General makes a regulation prescribing a person or body to which information may be disclosed or by which information may be taken into account or disclosed for the purposes of sections 85ZZGB, 85ZZGC or 85ZZGD of the Crimes Act, section 85ZZGE of the Crimes Act requires that the Minister must be satisfied that the person or body:

- (i) is required or permitted by or under a Commonwealth law, a State law or a Territory law to obtain and deal with information about persons who work, or seek to work, with children; and
- (ii) complies with applicable Commonwealth law, State law or Territory law relating to privacy, human rights and records management; and
- (iii) complies with the principles of natural justice; and
- (iv) has risk assessment frameworks and appropriately skilled staff to assess risks to children's safety.

Sections 85ZZGB, 85ZZGC and 85ZZGD of the Crimes Act deal with information in relation to persons who work, or seek to work, with children. The Regulations amend section 20 of the Crimes Regulations to update the prescribed persons and law in Victoria for the purposes of sections 85ZZGB, 85ZZGC and 85ZZGD of the Crimes Act. As the Minister responsible for section 85ZZGE of the Crimes Act, the Attorney-General was satisfied that the above criteria have been met in relation to the person that will be prescribed by the Regulations.

In considering the criteria in sections 85ZZGL and 85ZZGE, the Attorney-General:

- received advice from the Office of the Australian Information Commissioner in relation to the proposed prescription of the relevant bodies, as per section 85ZZ of the Crimes Act
- received advice from the Minister for the National Disability Insurance Scheme, the Hon Stuart Robert MP, in relation to the proposed prescription of the NDIS worker screening bodies, in particular the requirement that bodies have risk assessment frameworks and appropriately skilled staff to assess risks to the safety of a person with disability; and
- received advice from relevant Departments and States and Territories relating to the relevant considerations for the respective bodies.

Under paragraph 85ZZ(1)(b) of the Crimes Act, the Information Commissioner's functions include receiving and examining any written requests for complete or partial exclusion of persons from the application of Division 2 or 3 of the Crimes Act and advising the Minister whether an exclusion should be granted. In accordance with paragraph 85ZZ(1)(b) of the Crimes Act, the Information Commissioner has been consulted in relation to the Regulations.

Further details of the Regulations are set out in [Attachment A](#).

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Section 33(3) of the *Acts Interpretation Act 1901* confers the power to make any legislative instrument to be taken to include the power to repeal, rescind, revoke, amend or vary such an instrument.

Consultation

Northern Territory, Queensland, Victoria and Western Australia, the Department of Social Services and the Department of Home Affairs were consulted during the development of the Regulations and are supportive. No changes were required as a result of consultation.

Regulation Impact Statement

Following consultation with the Office of Best Practice Regulation (OBPR), no additional Regulation Impact Statement (RIS) is required for this measure. OBPR has confirmed that this measure is covered by the *NDIS Quality and Safeguarding RIS* (OBPR ID 16842).

Commencement

The Regulations commence on the day after they are registered, other than items 3 and 4 of Schedule 1. Item 3 of Schedule 1 commences on the later of the day after the Amendment Regulations are registered and the commencement of Part 2 of the *Disability Services and Other Legislation (Worker Screening) Amendment Act 2020* (Qld). Item 4 of Schedule 1 commences on the later of the day after the Regulations are registered and the

commencement of Part 2 of the *National Disability Insurance Scheme (Worker Screening) Act 2020* (WA). Items 3 and 4 of Schedule 1 will not commence at all if the relevant state legislation does not commence. Item 5 of Schedule 1 would commence the day after the instrument is registered.

Prescribed Laws

Copies of the relevant State and Territory Acts as prescribed are freely available online, and can be found at relevant State and Territory government websites set out below:

National Disability Insurance Scheme (Worker Clearance) Act 2020 (NT)

<https://legislation.nt.gov.au/en/Legislation/NATIONAL-DISABILITY-INSURANCE-SCHEME-WORKER-CLEARANCE-ACT-2020>

Disability Services Act 2006 (Qld)

<https://www.legislation.qld.gov.au/view/html/inforce/current/act-2006-012>

Worker Screening Act 2020 (Vic.)

<https://www.legislation.vic.gov.au/as-made/acts/worker-screening-act-2020>

National Disability Insurance Scheme (Worker Screening) Act 2020 (WA)

https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a147294.html

Explanation of the provisions

Section 1 – Name

This section provides the name of the instrument is the *Crimes Amendment (Worker Screening) Regulations*.

Section 2 – Commencement

This section specifies the commencement date of the Regulations.

The Regulations commence on the day after they are registered, other than items 3 and 4 of Schedule 1. Item 3 of Schedule 1 commences on the later of the day after the Amendment Regulations are registered and the commencement of Part 2 of the *Disability Services and Other Legislation (Worker Screening) Amendment Act 2020* (Qld). Item 4 of Schedule 1 commences on the later of the day after the Regulations are registered and the commencement of Part 2 of the *National Disability Insurance Scheme (Worker Screening) Act 2020* (WA). Items 3 and 4 of Schedule 1 will not commence at all if the relevant state legislation does not commence. Item 5 of Schedule 1 would commence the day after the instrument is registered.

Section 3 – Authority

This section provides that the Regulations are made under the *Crimes Act 1914* (Crimes Act).

Section 4 – Schedules

This section is a formal provision to provide that any instrument that is specified in the Schedule to the Regulations is amended or repealed as provided for in that Schedule. Schedule 1 of the Amendment Regulations makes amendments to the *Crimes Regulations 2019* (Crimes Regulations).

Schedule 1 – Amendments

This Schedule makes amendments to the Crimes Regulations.

Item 1 – Section 20

Section 20 of the Crimes Regulations lists prescribed persons and bodies and the State or Territory law under which they are required or permitted to be exempt from Divisions 2 and 3 of Part VIIC of the Crimes Act. These exclusions relate to work with children.

Item 1 amends table item 2 in section 20 of the Crimes Regulations to update the prescribed person for Victoria, and the State law under which that person is required or permitted to obtain and deal with information about persons who work, or seek to work, with children. The effect of item 1 is that Victoria will continue to have access to information about a pardoned, quashed or spent conviction of persons who work, or seek to work, with children. This will ensure the Regulations continue to be effective into the future.

Section 20 of the Crimes Regulations prescribes laws as in force from time to time. The

Commonwealth will monitor any amendments to prescribed State or Territory laws to assess whether any further amendments to section 20 of the Crimes Regulations would be appropriate.

Items 2-5 – Section 20A

Section 20A of the Crimes Regulations lists prescribed persons and bodies and the State or Territory law under which they are required or permitted to be exempt from Divisions 2 and 3 of Part VIIC of the Crimes Act. These exclusions relate to work with persons with disability.

Items 2, 3, 4 and 5 amend the table in section 20A of the Crimes Regulations by inserting new items of prescribed persons and bodies for Victoria, Queensland, Western Australia and Northern Territory, and the State or Territory law under which those persons or bodies are required or permitted to obtain and deal with information about persons who work, or seek to work, with a person with disability.

Section 20A of the Crimes Regulations provides that laws are only prescribed to the extent that the laws are NDIS worker screening laws (within the meaning of the National Disability Insurance Scheme Act 2013) and relate to persons working, or seeking to work with people with a disability (within the meaning of section 85ZZGM of the Crimes Act).

The effect of items 2, 3, 4 and 5 is that Victoria, Queensland, Western Australia and Northern Territory will have access to information about a pardoned, quashed or spent conviction of persons who work, or seek to work, with persons with disability in the NDIS.

‘NDIS worker screening laws’ are determined by legislative instrument, under section 10B of the *National Disability Insurance Scheme Act 2013*. Under the *National Disability Insurance Scheme Act 2013*, a ‘worker screening law’ is a State or Territory law determined by the Minister for the National Disability Insurance Scheme by legislative instrument, with the agreement of the relevant State or Territory. The Minister for the National Disability Insurance Scheme may only make such a determination if he is satisfied that the law establishes a scheme for the screening of workers for purposes including the NDIS.

Section 20A of the Crimes Regulations prescribes laws as in force from time to time. The Commonwealth will monitor any amendments to prescribed State or Territory laws to assess whether any further amendments to section 20A of the Crimes Regulations would be appropriate.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

CRIMES AMENDMENT (WORKER SCREENING) REGULATIONS 2021

The *Crimes Amendment (Worker Screening) Regulations 2021* (Amendment Regulations) are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Amendment Regulations

The Amendment Regulations amend the *Crimes Regulations 2019* (Crimes Regulations) to prescribe a person or body in Victoria, Queensland, Western Australia, and the Northern Territory to be authorised to receive, use and disclose spent, pardoned and quashed convictions for the purposes of working with persons with a disability. The Amendment Regulations also prescribe the authorising legislation.

The Amendment Regulations assist State and Territory worker screening units in determining whether an applicant for an NDIS Worker Screening Check (NDIS Check) poses an unacceptable risk of harm to persons with disability under the National Disability Insurance Scheme (NDIS). The Amendment Regulations aim to uphold the human rights of persons with disability by helping protect them from experiencing harm from the persons working closely with them.

The protection of persons with disability from violence, abuse and neglect is a key priority for all Australian governments. In December 2016, the Council of Australian Governments (COAG) agreed to the NDIS Quality and Safeguarding Framework (the Framework). Nationally consistent NDIS worker screening is a key element of the Framework that will minimise the risk of harm to persons with disability from the persons who work closely with them.

Nationally consistent worker screening has been agreed with States and Territories through the Intergovernmental Agreement on Nationally Consistent Worker Screening for NDIS (Intergovernmental Agreement). The Intergovernmental Agreement sets out the national policy for worker screening and includes the development of a national worker screening database (database) hosted and administered by the Commissioner of the NDIS Quality and Safeguards Commission (Commission). The Amendment Regulations are an important step towards implementing nationally consistent NDIS worker screening and giving effect to the Commonwealth Government's regulatory responsibilities under the Framework.

The Amendment Regulations enable the use and disclosure of spent, quashed and pardoned conviction information to State and Territory worker screening units for the purposes of NDIS worker screening. It is well documented that reports of abuse and neglect perpetrated against persons with disability may not be pursued for a variety of reasons. This includes difficulties experienced in securing a conviction where the victim is a person with disability, and the challenges faced by persons with disability who are victims of crime. Including this

kind of additional information can provide a better indication of risk than criminal convictions alone and will assist worker screening units make a more accurate and informed assessment of the risk that a person may pose to persons with disability in the NDIS.

The Amendment Regulations seek to replicate the arrangements that have been in place for the purposes of the Working With Children Checks regime.

The *Crimes Amendment (National Disability Insurance Scheme – Worker Screening) Act 2018* (the Amending Act) amended the *Crimes Act 1914* (the Act) to permit, in certain circumstances, the spent, pardoned and quashed convictions of persons who work, or seek to work, with persons with disability in the NDIS to be disclosed to, and taken into account by, State and Territory worker screening units in determining whether a person is suitable to work with persons with disability in the NDIS.

The Amendment Regulations also amend the Crimes Regulations to update the person and legislation prescribed in Victoria to receive, use and disclose spent, pardoned and quashed convictions for the purposes of working with children. This ensures that mechanisms in the Crimes Act to protect children from sexual, physical and emotional harm by permitting criminal history information to be disclosed and taken into account in assessing the suitability of persons for work with children continue to be effective.

To the extent that the Amendment Regulations engage human rights, there are safeguards built in to the Amending Act, as well as the Framework, to ensure that spent, pardoned and quashed conviction information is shared only with prescribed persons or bodies for particular purposes. Further, before a State or Territory person or body can be prescribed by the Amendment Regulations to receive and use spent, pardoned and quashed convictions, the Minister needs to be satisfied that the State and Territory person or body:

- is required or permitted by or under a Commonwealth law, a State law or a Territory law to obtain and deal with information about persons who work, or seek to work, with a person with disability;
- complies with applicable Commonwealth law, State law or Territory law relating to privacy, human rights and records management;
- complies with the principle of natural justice; and
- has risk assessment frameworks and appropriately skilled staff to assess risks to the safety of a person with disability/ has risk assessment frameworks and appropriately skilled staff to assess risks to children's safety, as relevant.

Human rights implications

Of the human rights and freedoms recognised in the international instruments listed in the definition of human rights at section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, the Amendment Regulations engage the following rights under international human rights law:

- Rights of persons with disabilities to live free from exploitation, violence and abuse – Article 16 of the *Convention of the Rights of Persons with Disabilities* (CRPD) done at New York, 30 March 2007;
- Right to work – Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) done at New York, 16 December 1966;

- Presumption of innocence – Article 14(2) of the *International Covenant on Civil and Political Rights* (ICCPR) done at New York, 16 December 1966;
- Right to privacy – Article 17 of the ICCPR; and
- Right to equality and non-discrimination – Articles 2(1) and 26 of the ICCPR.

Rights of persons with disability – Article 16 of the CRPD

Article 16 states that all parties to the CRPD shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities from all forms of exploitation, violence and abuse. The purpose of the CRPD is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

A nationally consistent approach to worker screening seeks to minimise the risk of harm caused to persons with disabilities by persons who work closely with them. A nationally consistent and recognised worker screening regime promotes the rights of persons with disability by:

- sending a strong signal to the community about the priority placed on the rights of persons with disabilities to be safe and protected;
- reducing the potential for providers to employ workers who pose a high risk of harm to persons with disabilities; and
- prohibiting persons who pose a high risk, or who are proven to have harmed vulnerable people, from working in particular roles in the NDIS sector.

The Amendment Regulations support the implementation of nationally consistent worker screening arrangements by prescribing State and Territory worker screening units to be authorised to receive and use spent, pardoned and quashed Commonwealth convictions for the purposes of the NDIS Check. This is consistent with recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse *Working with Children Checks* report (the Report), which aimed to strengthen the protection children receive through the Working with Children Checks regime. The Report indicated an applicant's complete and unabridged criminal history should be available for review by State and Territory worker screening units to enable a thorough risk-based worker screening assessment.

The Amendment Regulations promote the rights of persons with disability consistent with Australia's obligations, by ensuring that a suitable workforce delivers the supports and services provided through the NDIS.

Right to work – Article 6 of the ICESCR

Article 6 of the ICESCR recognises the right to work and 'includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts'. This right also applies to workers who work with persons with disability, including NDIS participants.

To the extent that the Amendment Regulations engage the right to work they will prescribe worker screening units able to access information about spent, pardoned and quashed convictions, which may be used to inform NDIS providers and prescribed agencies about

a person's suitability to hold a NDIS Check clearance. The National Disability Insurance Scheme (Practice Standards – Worker Screening) Rules 2018 require workers in 'risk assessed roles' within registered NDIS providers to hold a current NDIS Check clearance.

Persons may be excluded from holding a NDIS Check clearance if their criminal history information is determined to pose an unacceptable risk of harm to persons with disability. Risk assessed roles are those involving more than incidental contact with a person with disability, key personnel, or roles involving the delivery of supports or services specified by the NDIS Quality and Safeguards Commission.

This requirement reflects a proportionate approach whereby only workers whose role involves an opportunity to cause significant harm to persons with disability must undertake screening. This requirement does not prevent persons from working with unregistered providers in the NDIS, nor does it prevent persons from working in roles involving only incidental contact with persons with disability.

The paramount objective of the Amendment Regulations is to protect persons with disability from experiencing harm arising from unsafe supports or services under the NDIS. Persons with disability have the right to be protected from exploitation, violence and abuse from those who work closely with them and some NDIS participants are amongst the most vulnerable persons in the community.

Full criminal history information is an important and relevant consideration when assessing whether an applicant poses an unacceptable risk of harm to persons with disability. The State and Territory worker screening units to be prescribed in the Amendment Regulations are required to have appropriately skilled staff to assess risks to persons with disability, comply with the principles of natural justice and comply with a nationally consistent risk assessment and decision-making framework, including considerations of the circumstances surrounding any offence. These safeguards will ensure that the outcome of a worker screening assessment has achieved an appropriate balance between a person's right to work and the right persons with disability of protection from experiencing harm.

The Amendment Regulations support a proportionate approach that does not unduly prevent a person from choosing to work in the NDIS market and maintains the rights of persons with disability risk by excluding workers whose behavioural history indicates they pose an unacceptable risk of harm. The Amendment Regulations are compatible with human rights because, to the extent that they may limit a person's right to work, the limitations are reasonable and necessary to achieving the protection of persons with disability and confidence in the safety of the NDIS market.

The Amendment Regulations also update the Victorian body that is authorised to consider information relating to pardoned, quashed or spent convictions in the context of working with children. Exemptions relating to working with children protect children from sexual, physical and emotional harm by permitting criminal history information to be disclosed and taken into account in assessing the suitability of persons for work with children by prescribed persons and bodies. As such, to the extent that the amendment limits the right to work, the limitations are reasonable and necessary in the circumstances.

Presumption of innocence – Article 14(2) of the ICCPR

Article 14(2) of the ICCPR provides that a person charged with a criminal offence has the

right to be presumed innocent until proven guilty. The Amendment Regulations allow a State and Territory worker screening unit to consider pardoned, quashed or spent convictions in determining whether an applicant poses a risk to persons with disability, and does not override the presumption of innocence. The worker screening unit's only consideration is whether the convictions provided by the Amendment Regulations, along with the rest of a person's criminal history, shows a history of behaviour that results in an unacceptable risk of harm to persons with disability.

The Amendment Regulations also update the Victorian body that is authorised to consider information relating to pardoned, quashed or spent convictions in the context of working with children. The above rationale regarding the presumption of innocence also applies to this amendment.

Right to privacy – Article 17 of the ICCPR

Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with their privacy. The Amendment Regulations engage the right to privacy as they provide access to an applicant's detailed criminal history information to prescribed State and Territory worker screening units.

The limit on applicants' right to privacy is legitimately authorised by Subdivision AA of Division 6 of Part VIIC of the Act, which provides for spent, pardoned and quashed conviction information to be disclosed and taken into account in assessing whether a person who works, or seeks to work, with a person with disability, poses a risk to such a person. The State and Territory worker screening units being prescribed by the Amendment Regulations are required to take measures to ensure the appropriate protection and use of the information to be received, and these measures are contained in the prescribed legislation of each jurisdiction. In addition, each worker screening unit being prescribed has its own State or Territory privacy legislation that it must comply with in respect of the collection, use and storage of personal information. Further, applicants for a NDIS Check will be asked for their informed consent, which provides permission to the prescribed worker screening units to access such information as a part of the application process.

The Amendment Regulations are compatible with human rights because, to the extent that they may limit a person's right to privacy, the limitations are reasonable and necessary to achieving the protection of persons with disability and confidence in the safety of the NDIS market. Further, each worker screening unit must ensure that they have appropriate processes in place to protect the privacy of a person who is applying for the NDIS Check.

The Amendment Regulations also update the Victorian body that is authorised to consider information relating to pardoned, quashed or spent convictions in the context of working with children. Exemptions relating to working with children protect children from sexual, physical and emotional harm by permitting criminal history information to be disclosed and taken into account in assessing the suitability of persons for work with children by prescribed persons and bodies. As such, to the extent that the amendment limits the right to privacy, it is consistent with the ICCPR and is reasonable in the circumstances.

Right to equality and non-discrimination under Article 2(1) and 26 of the ICCPR

Article 2(1) provides that an individual's rights are respected and recognised in the ICCPR, without distinction of any kind such as race, colour, sex, language, religion, political or other

opinion, national or social origin, property, birth or other status. Article 26 provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground.

Differential treatment, including the differential effect of a measure that is neutral on its face, will not constitute unlawful discrimination if the differential treatment is rationally connected to the legitimate objective of that measure. Any differential treatment envisaged by the Amendment Regulations is reasonable and proportionate. This is because the legitimate objective of the Amendment Regulations is to protect persons with disability and children from harm.

Further, there is sufficient research and objective evidence that support the relevance of criminal records as a basis for determining an individual's risk to vulnerable persons. This, along with the criteria outlined in sections 85ZZGE and 85ZZGL of the Act that must be satisfied before a State and Territory worker screening unit can be prescribed by the Amendment Regulations and key safeguards that are in place ensures that any differential treatment will not constitute unlawful discrimination.

Conclusion

The Amendment Regulations advance the protection of the rights of persons with disability and children in Australia consistent with the CRPD, particularly in relation to preventing exploitation, violence and abuse in the NDIS sector.

The Amendment Regulations are compatible with human rights because, to the extent that it may limit human rights the limitations are reasonable, necessary and proportionate to achieving the protection of persons with disability and children and confidence in the safety of the NDIS market.

The Hon. Christian Porter
Attorney-General