

South Australia

# **Disability Inclusion (Restrictive Practices—NDIS) Amendment Bill 2020**

A BILL FOR

An Act to amend the *Disability Inclusion Act 2018*.

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Disability Inclusion (Restrictive Practices—NDIS) Amendment Act 2020*.

#### 2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

#### 3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### Part 2—Amendment of *Disability Inclusion Act 2018*

#### 4—Amendment of section 3—Interpretation

Section 3(1)—after the definition of *State Disability Inclusion Plan* insert:

*Tribunal* means the South Australian Civil and Administrative Tribunal under the *South Australian Civil and Administrative Tribunal Act 2013*.

#### 5—Insertion of Part 6A

After section 23 insert:

### Part 6A—Restrictive Practices

#### Division 1—Preliminary

##### 23A—Application of Part

- (1) This Part applies to the use of restrictive practices by a prescribed NDIS provider in relation to a prescribed person or class of prescribed persons.

- (2) For the purposes of this Part, the following persons are *prescribed NDIS providers*:
- (a) a registered NDIS provider who uses, or is reasonably likely to use, restrictive practices in the course of delivering NDIS supports to an NDIS participant;
  - (b) any other registered NDIS provider, or registered NDIS provider of a class, prescribed by the regulations for the purposes of this paragraph;
  - (c) any other person, or person of a class, prescribed by the regulations for the purposes of this paragraph (being a person who provides services to NDIS participants but is not a registered NDIS provider).
- (3) For the purposes of this Part, the following persons are *prescribed persons*:
- (a) an NDIS participant;
  - (b) a person who receives NDIS supports;
  - (c) any other person, or person of a class, prescribed by the regulations for the purposes of this paragraph.
- (4) Nothing in this Part authorises the use of restrictive practices other than in accordance with this Part.

### 23B—Interpretation

- (1) In this Part, unless the contrary intention appears—

*Authorised Program Officer*, in respect of a prescribed NDIS provider, means a person authorised as an *Authorised Program Officer* in respect of the prescribed NDIS provider under section 23L;

*behaviour support plan*, in relation to a prescribed person, means—

- (a) a behaviour support plan for the prescribed person within the meaning of the NDIS Rules, as in force from time to time; or

**Note—**

A behaviour support plan under the NDIS Rules includes an interim behaviour support plan.

- (b) any other behaviour support plan or interim behaviour support plan (however described) prescribed by the regulations for the purposes of this paragraph;

*detention*—see section 23C;

*level 1 restrictive practice* means a restrictive practice (not being a restrictive practice consisting of or involving the detention of a person) declared by the regulations to be a level 1 restrictive practice;

**level 2 restrictive practice** means a restrictive practice, or combination of restrictive practices, (not being a restrictive practice consisting of or involving the detention of a person) declared by the regulations to be a level 2 restrictive practice;

**NDIA** means the National Disability Insurance Agency;

**NDIS Quality and Safeguards Commission** means the NDIS Quality and Safeguards Commission under the *National Disability Insurance Scheme Act 2013*;

**NDIS participant** means a participant within the meaning of the *National Disability Insurance Scheme Act 2013*;

**NDIS Rules** means—

- (a) the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018*; or
- (b) if the rules referred to in paragraph (a) are revoked or replaced by rules made under the *National Disability Insurance Scheme Act 2013* dealing with restrictive practices—those rules,

as in force from time to time;

**NDIS supports** means supports within the meaning of the *National Disability Insurance Scheme Act 2013*;

**premises** includes a part of premises;

**prescribed NDIS provider**—see section 23A(2);

**prescribed person**—see section 23A(3);

**prohibited restrictive practices**—see section 23D;

**registered NDIS provider** has the same meaning as in the *National Disability Insurance Scheme Act 2013*;

**restrictive practice** means a regulated restrictive practice (within the meaning of the NDIS Rules);

**Note**—

Section 6 of the NDIS rules defines a regulated restrictive practice as follows:

- (a) seclusion, which is the sole confinement of a person with disability in a room or a physical space at any hour of the day or night where voluntary exit is prevented, or not facilitated, or it is implied that voluntary exit is not permitted;
- (b) chemical restraint, which is the use of medication or chemical substance for the primary purpose of influencing a person's behaviour. It does not include the use of medication prescribed by a medical practitioner for the treatment of, or to enable treatment of, a diagnosed mental disorder, a physical illness or a physical condition;

- 5 (c) mechanical restraint, which is the use of a device to prevent, restrict, or subdue a person's movement for the primary purpose of influencing a person's behaviour but does not include the use of devices for therapeutic or non-behavioural purposes;
- 10 (d) physical restraint, which is the use or action of physical force to prevent, restrict or subdue movement of a person's body, or part of their body, for the primary purpose of influencing their behaviour. Physical restraint does not include the use of a hands-on technique in a reflexive way to guide or redirect a person away from potential harm/injury, consistent with what could reasonably be considered the exercise of care towards a person;
- 15 (e) environmental restraint, which restricts a person's free access to all parts of their environment, including items or activities.

However, care should be taken to check the current form of the NDIS Rules before relying on that definition.

20 ***restrictive practices guidelines*** means the restrictive practices guidelines published under section 23H, as in force from time to time;

***risk of harm***—see subsection (2).

- 25 (2) For the purposes of this Part, a reference to behaviour of a person that constitutes a ***risk of harm*** will be taken to be a reference to any of the following behaviours, or a combination of any of the following behaviours:
- 30 (a) the use of force against another person, or an express or implied threat that force will be used against another person;
- (b) self-harm, or an express or implied threat of self-harm;
- 30 (c) behaviour that substantially increases the likelihood that physical or mental harm will be caused to the person or to any other person (whether intentionally or unintentionally);
- (d) any other behaviour of a kind prescribed by the regulations.

### 23C—Meaning of *detention*

- 35 (1) For the purposes of this Part, a reference to the ***detention*** of a person will be taken to be a reference to—
- 40 (a) any direct or indirect curtailment of the person's ability to leave particular premises or a particular part of particular premises (whether by physical means, by force of policy or rules, by the withholding of information (such as an access code), by an omission or otherwise); or
- (b) a requirement that the person be and remain in particular premises or a particular part of particular premises (whether on a residential basis or otherwise); or

(c) the refusal or limitation of access to means of leaving particular premises or a particular part of particular premises (being means (such as a wheelchair) that the person is otherwise lawfully entitled to access and without which it is not reasonably possible for the person to leave the premises or part of premises); or

(d) any other act or omission of a kind declared by the regulations to be included in the ambit of this paragraph,

but does not include an act or omission of a kind declared by the regulations not to constitute the detention of a person.

(2) For the purposes of this section, the fact that a person may leave premises or a part of particular premises, or access means of leaving premises or a part of premises, with the permission of a specified person does not, of itself, mean that the person is not detained.

(3) However, the detention of a person pursuant to another Act or law will be taken not to constitute detention for the purposes of this Part.

### **23D—Prohibited restrictive practices**

(1) The Governor may, by regulation, prohibit the use of restrictive practices of a specified kind (*prohibited restrictive practices*) for the purposes of this Part.

(2) Nothing in this Part authorises the use of a prohibited restrictive practice.

### **23E—Limits on kinds of restrictive practices that may be used by person**

Nothing in this Part authorises a person to use a restrictive practice of a particular kind if—

(a) a condition or limitation on the authorisation of the person under this Part prevents the person from using such a restrictive practice; or

(b) the person does not hold an authorisation (however described) required under any other Act or law to use such a restrictive practice.

### **23F—Interaction with other Acts and laws**

(1) To avoid doubt, nothing in this Part limits the operation of the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018*, or any other rules under the *National Disability Insurance Scheme Act 2013*.

(2) To avoid doubt, nothing in this Part limits the operation of a behaviour support plan.

(3) This Part is in addition to, and does not derogate from, the *Mental Health Act 2009*, the *Guardianship and Administration Act 1993* or any other Act or law that authorises the use of restrictive practices.

- (4) Nothing in this Part limits the operation of the *Controlled Substances Act 1984* (and, in particular, a drug may only be administered in the course of a restrictive practice or administration of medical treatment by a person authorised to do so in accordance with that Act).

### 23G—Principles

The following principles are to be observed in the operation of this Part:

- (a) restrictive practices should only be used by prescribed NDIS providers in limited circumstances, as a last resort, in the least restrictive way and for the shortest period possible in the circumstances;
- (b) the use of restrictive practices is to be limited to circumstances in which prescribed persons cause, or may cause, harm to themselves or others;
- (c) the use of restrictive practices in relation to a prescribed person must be done in a manner that—
- (i) is, as far as is practicable, consistent with the prescribed person's human rights; and
  - (ii) safeguards the prescribed person and others from harm; and
  - (iii) is proportionate to the potential negative consequence or risk of harm; and
  - (iv) maximises the opportunity for positive outcomes and aims to reduce or eliminate the need for use of restrictive practices; and
  - (v) ensures transparency and accountability; and
  - (vi) ensures, where relevant, that restrictive practices are used in relation to a prescribed person in a way that is consistent with a behaviour support plan for the prescribed person;
- (d) the use of restrictive practices must not be used—
- (i) as a punishment or for the convenience of others; or
  - (ii) to address inadequate levels of staffing, equipment or facilities.

### 23H—Minister to publish restrictive practices guidelines

- (1) The Minister must, by notice in the Gazette, publish guidelines (the *restrictive practices guidelines*) for the purposes of this Part.
- (2) The Minister may, by subsequent notice in the Gazette, vary, substitute or revoke the restrictive practices guidelines published under subsection (1).

- (3) In preparing, varying or substituting the restrictive practices guidelines, the Minister—
- (a) must seek submissions from the Senior Authorising Officer and have regard to those submissions; and
  - (b) must undertake such consultation as may be required by the regulations (and may undertake such other consultation as the Minister thinks fit); and
  - (c) must comply with any other requirements set out in the regulations.
- (4) The Minister must, within 6 sitting days after publishing the restrictive practices guidelines, lay a copy of the guidelines (or the guidelines as varied) before both Houses of Parliament.
- (5) The Minister must cause the restrictive practices guidelines to be published on a website determined by the Minister.

## Division 2—Senior Authorising Officer

### 23I—Senior Authorising Officer

- (1) The Chief Executive may, by notice in writing, appoint a person to be the *Senior Authorising Officer* for the purposes of this Part (being a person who, in the opinion of the Chief Executive, has the appropriate clinical qualifications and experience to perform the functions and exercise the powers conferred on the Senior Authorising Officer by or under this Part).
- (2) The Senior Authorising Officer is to be a member of the Public Service and holds office for a term, and on conditions, determined by the Chief Executive.
- (3) The Senior Authorising Officer is subject to the direction and control of the Chief Executive.
- (4) The Chief Executive may vary or revoke an appointment under this section for any reason the Chief Executive thinks fit.

### 23J—Functions of Senior Authorising Officer

- (1) The Senior Authorising Officer has the following functions under this Part:
- (a) to assist the Minister in the preparation, variation or substitution of the restrictive practices guidelines;
  - (b) to keep the restrictive practices guidelines under review;
  - (c) to authorise specified persons to authorise the use of level 1 restrictive practices by a prescribed NDIS provider;
  - (d) to authorise the use of level 1 or 2 restrictive practices (or both);



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- (e) to promote the reduction and, where possible, the elimination of the use of restrictive practices in the disability sector;
  - (f) to provide education and training relating to the use of restrictive practices;
  - (g) to advise the Minister and other persons in relation to the use of restrictive practices in the disability sector;
  - (h) such other functions as may be assigned to the Senior Authorising Officer by or under this Act or by the Minister.
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- (2) The Senior Authorising Officer has such powers as may be necessary or expedient for the purposes of performing the Senior Authorising Officer's functions under this Part.

### 23K—Power of delegation

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- (1) The Senior Authorising Officer may delegate a function or power under this Part (other than a prescribed function or power) to a specified person or body.
- (2) A delegation under this section—
- (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the ability of the Senior Authorising Officer to act in any matter; and
  - (d) is revocable at will.
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- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

## 25 Division 3—Authorised Program Officers

### 23L—Authorised Program Officers in respect of prescribed NDIS providers

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- (1) The Senior Authorising Officer may, in accordance with any requirements set out in the regulations or the restrictive practices guidelines, by written instrument, authorise a person as an *Authorised Program Officer* in respect of a specified prescribed NDIS provider.
- (2) An authorisation under subsection (1) must set out—
- (a) the prescribed NDIS provider in respect of whom the Authorised Program Officer is authorised under this section; and
  - (b) the level or levels of restrictive practices the Authorised Program Officer may authorise the prescribed NDIS provider to use; and
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(c) any conditions or limitations that apply to the authorisation in relation to the use of restrictive practices, or restrictive practices of a specified kind; and

(d) the date (if any) on which the authorisation ceases to have effect; and

(e) any other information required by the regulations,

and may set out any other information the Senior Authorising Officer considers appropriate.

(3) An authorisation under subsection (1)—

(a) may be conditional or unconditional; and

(b) has effect for—

(i) if a period is specified in the notice—that period; or

(ii) if no such period is specified—until it is revoked under this section.

(4) The Senior Authorising Officer may, by notice in the Gazette, vary or revoke an authorisation under this section, or a condition or limitation of the authorisation, on any grounds the Senior Authorising Officer thinks fit (including, without limiting this subsection, for a contravention of this Part or the restrictive practices guidelines).

#### **Division 4—Use of restrictive practices other than those involving detention**

##### **23M—General provisions relating to use of restrictive practices**

(1) Nothing in this Part authorises the use of restrictive practices—

(a) as a punishment or for the convenience of others; or

(b) to address inadequate levels of staffing, equipment or facilities.

(2) A prescribed NDIS provider may only use restrictive practices (including restrictive practices of a particular kind) if, in the opinion of the prescribed NDIS provider, there is no other way to minimise the risk of harm, or to prevent further harm from being caused, that is reasonably available in the circumstances.

(3) A prescribed NDIS provider may be assisted in the use of restrictive practices by such persons as the prescribed NDIS provider thinks fit.

(4) A person may use reasonable force in the course of using restrictive practices under this Part (however, the use of force is to be a last resort and must be reasonably necessary to enable the use of restrictive practices in the circumstances).

- (5) To avoid doubt, restrictive practices may be used in relation to a prescribed person—
- (a) without the consent of the prescribed person; or
  - (b) despite a refusal of the prescribed person to consent to the use of restrictive practices.
- (6) To avoid doubt, restrictive practices may be used in relation to a prescribed person who is a child.

**23N—Authorised Program Officer may authorise use of level 1 restrictive practices**

- (1) An Authorised Program Officer in respect of a prescribed NDIS provider may authorise the prescribed NDIS provider to use level 1 restrictive practices in relation to a prescribed person if the Authorised Program Officer believes on reasonable grounds that—
- (a) the prescribed person is displaying behaviour that constitutes a risk of harm; and
  - (b) the use of level 1 restrictive practices is necessary to minimise the risk of harm, or to prevent further harm from being caused; and
  - (c) the prescribed person has a behaviour support plan; and
  - (d) the use of level 1 restrictive practices of the relevant kind is contemplated by, and consistent with, the prescribed person's behaviour support plan.
- (2) An authorisation under this section—
- (a) must be in writing; and
  - (b) may be conditional or unconditional; and
  - (c) must set out—
    - (i) the kind or kinds of restrictive practices that the prescribed NDIS provider is authorised to use; and
    - (ii) any conditions or limitations that apply to the authorisation in relation to the use of restrictive practices, or restrictive practices of a specified kind; and
    - (iii) the date (if any) on which the authorisation ceases to have effect; and
    - (iv) any other information required by the regulations; and
  - (d) must comply with any other requirements set out in the regulations.
- (3) An Authorised Program Officer must, in authorising the use of level 1 restrictive practices, comply with the restrictive practices guidelines.

(4) A prescribed NDIS provider must, in using level 1 restrictive practices pursuant to an authorisation under this section, comply with the restrictive practices guidelines.

5 (5) Without limiting any other provision of this Part, or any other Act or law, a prescribed NDIS provider may, in relation to the use of level 1 restrictive practices in relation to a prescribed person, do 1 or more of the following:

10 (a) enter and remain in a place where the prescribed NDIS provider reasonably suspects the prescribed person may be found;

(b) search the prescribed person's clothing or possessions and take possession of anything in the prescribed person's possession that the prescribed person may use to cause harm to themselves or others, or to damage property;

15 (c) retain anything so taken from the possession of the prescribed person for as long as is necessary for reasons of safety (and then return the thing to the prescribed person or otherwise deal with the thing according to law).

20 (6) A search referred to in subsection (5)(b) must be carried out expeditiously and in a manner that avoids, as far as reasonably practicable, causing the prescribed person any humiliation or offence.

(7) An Authorised Program Officer may only authorise the use of level 1 restrictive practices in relation to a prescribed person—

25 (a) for as long as is reasonably necessary to prevent the prescribed person from causing harm to themselves or others; or

30 (b) until the prescribed person's behaviour support plan expires or otherwise ceases to have effect, or is varied such that the use of level 1 restrictive practices is no longer consistent with the behaviour support plan,

whichever is the lesser.

35 (8) A prescribed NDIS provider who uses level 1 restrictive practices in relation to a prescribed person pursuant to an authorisation under this section must, in accordance with any requirements set out in the regulations, cause a written notice in respect of the use of restrictive practices to be given to—

(a) in the case of a prescribed person who is a child—a parent or guardian of the prescribed person; or

40 (b) in the case of a prescribed person who has a guardian or substitute decision maker—the guardian or substitute decision maker (as the case requires) and the prescribed person; or

(c) in any other case—the prescribed person.

(9) Nothing in this section authorises an Authorised Program Officer to authorise the use of level 2 restrictive practices (including, to avoid doubt, level 2 restrictive practices comprising a combination of level 1 restrictive practices).

(10) The regulations may make further provisions in relation to the use of level 1 restrictive practices under this section (including by prohibiting or limiting the use of level 1 restrictive practices in specified circumstances).

### **230—Authorisation of use of level 1 or 2 restrictive practices by Senior Authorising Officer**

(1) The Senior Authorising Officer may, on an application under this section or on the Senior Authorising Officer's own motion, authorise a prescribed NDIS provider to use level 1 or 2 restrictive practices, or level 1 or 2 restrictive practices of a specified kind, (or both) in relation to a specified prescribed person.

(2) An authorisation under this section—

(a) must be in writing; and

(b) may be conditional or unconditional; and

(c) must set out—

(i) the kind or kinds of restrictive practices that the prescribed NDIS provider is authorised to use; and

(ii) any conditions or limitations that apply to the authorisation in relation to the use of restrictive practices, or restrictive practices of a specified kind; and

(iii) the date (if any) on which the authorisation ceases to have effect; and

(iv) any other information required by the regulations; and

(d) must comply with any other requirements set out in the regulations.

(3) An application under this section—

(a) may only be made by a prescribed NDIS provider who is providing, or is to provide, services to the specified prescribed person, or an Authorised Program Officer in respect of such a prescribed NDIS provider; and

(b) must be made in a manner and form determined by the Senior Authorising Officer; and

(c) must be accompanied by such information or documents as the Senior Authorising Officer may require; and

(d) must comply with any other requirements set out in the regulations.

- (4) A prescribed NDIS provider must, in using level 1 or 2 restrictive practices pursuant to an authorisation under this section, comply with the restrictive practices guidelines.
- (5) Without limiting any other provision of this Part, or any other Act or law, a prescribed NDIS provider may, in relation to the use of level 1 or 2 restrictive practices in relation to a prescribed person, do 1 or more of the following:
- (a) enter and remain in a place where the prescribed NDIS provider reasonably suspects the prescribed person may be found;
  - (b) search the prescribed person's clothing or possessions and take possession of anything in the prescribed person's possession that the prescribed person may use to cause harm to themselves or others, or to damage property;
  - (c) retain anything so taken from the possession of the prescribed person for as long as is necessary for reasons of safety (and then return the thing to the prescribed person or otherwise deal with the thing according to law).
- (6) A search referred to in subsection (5)(b) must be carried out expeditiously and in a manner that avoids, as far as reasonably practicable, causing the prescribed person any humiliation or offence.
- (7) A prescribed NDIS provider who uses level 1 or 2 restrictive practices in relation to a prescribed person pursuant to an authorisation under this section must, in accordance with any requirements set out in the regulations, cause a written notice in respect of the use of restrictive practices to be given to—
- (a) in the case of a prescribed person who is a child—a parent or guardian of the prescribed person; or
  - (b) in the case of a prescribed person who has a guardian or substitute decision maker—the guardian or substitute decision maker (as the case requires) and the prescribed person; or
  - (c) in any other case—the prescribed person.
- (8) At the end of the period during which an authorisation under this section has effect, the Senior Authorising Officer may, on an application under this section or on the Senior Authorising Officer's own motion, authorise the further use of level 1 or 2 restrictive practices, or level 1 or 2 restrictive practices of a specified kind, (or both) in relation to a particular prescribed person.
- (9) The regulations may make further provisions in relation to authorisations under this section (including by prohibiting or limiting the making of applications in relation to prescribed persons of a specified class, or in specified circumstances).

**23P—Revocation of authorisation to use restrictive practices**

The Senior Authorising Officer may, if the Senior Authorising Officer reasonably believes that it is appropriate to do so, by notice in writing—

- 5 (a) revoke an authorisation to use level 1 restrictive practices given by an Authorised Program Officer under section 23N; or
- 10 (b) vary or revoke an authorisation to use level 2 restrictive practices given by the Senior Authorising Officer under section 23O.

**Division 5—Information gathering and sharing****23Q—Senior Authorising Officer may require information from State authorities**

- 15 (1) The Senior Authorising Officer may, by notice in writing, require a State authority to provide to the Senior Authorising Officer such information relating to a specified person as may be in the State authority's possession and that the Senior Authorising Officer reasonably requires for the purposes of this Part.
- 20 (2) A State authority must provide the information to the Senior Authorising Officer in the manner, and within the period, specified in the notice.
- 25 (3) If a State authority refuses or fails to comply with a notice under subsection (1), the Senior Authorising Officer may, after consultation with the State authority, report the refusal or failure to the Minister and to the Minister responsible for the State authority.

**23R—Senior Authorising Officer may require information from other persons**

- 30 (1) The Senior Authorising Officer may, by notice in writing, require a specified person (whether or not the person is a prescribed NDIS provider) to provide to the Senior Authorising Officer such information relating to a specified person as may be in the person's possession and that the Senior Authorising Officer reasonably requires for the purposes of this Part.
- 35 (2) A person to whom a notice is given under subsection (1) must provide the information to the Senior Authorising Officer in the manner, and within the period, specified in the notice.
- (3) A person who refuses or fails to comply with a notice under subsection (1) is guilty of an offence.

Maximum penalty: \$5 000.

**23S—Senior Authorising Officer may notify NDIA or the NDIS Quality and Safeguards Commission**

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- (1) The Senior Authorising Officer may notify the NDIA or the NDIS Quality and Safeguards Commission (or both) of any matter relating to a registered NDIS provider that has come to the attention of the Senior Authorising Officer in the course of exercising a power or performing a function or duty under this Act.
- (2) Without limiting the matters that may be included in a notification under this section, a notification may include personal information relating to a prescribed person or prescribed persons.
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**23T—Senior Authorising Officer may disclose etc information to other jurisdictions**

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- (1) Despite a provision of this or any other Act or law, the Senior Authorising Officer is authorised to receive and make use of information relevant to the functions of the Senior Authorising Officer under this Part from any person or body in this or any other jurisdiction.
- (2) Despite a provision of this or any other Act or law, the Senior Authorising Officer is authorised to disclose information in the possession of the Senior Authorising Officer to a prescribed person or body in another State or Territory for purposes related to the screening of persons who work with people with disability.
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- (3) In this section—
- prescribed person or body* means—
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- (a) a person or body whose official function consists of or includes the screening of persons who work with people with disability (however described); or
- (b) any other person or body prescribed by the regulations for the purposes of this paragraph.

**23U—Disclosure of information to prevent harm**

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Despite a provision of this or any other Act or law, the Senior Authorising Officer may disclose information obtained in the course of the administration or operation of this Part to an appropriate person or body if the Senior Authorising Officer is of the opinion that to do so is reasonably necessary to prevent harm being caused to a person with disability.

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**23V—Disclosure of information for research etc purposes**

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Despite a provision of this or any other Act or law, the Senior Authorising Officer may disclose information obtained in the course of the administration or operation of this Part to an appropriate person or body for the purposes of research into the operation of this Part or a law of another State or Territory related to the use of restrictive practices.



**23W—Provision of other information to Senior Authorising Officer**

- 5 (1) Despite a provision of this or any other Act or law, a person or body (including, to avoid doubt, an administrative unit or public sector employee within the meaning of the *Public Sector Act 2009*) may provide to the Senior Authorising Officer any information that the person or body reasonably believes is relevant to the functions of the Senior Authorising Officer under this Act.
- 10 (2) A person or body incurs no civil or criminal liability in respect of the provision of information to the Senior Authorising Officer in good faith and without negligence under this section.

**23X—Information sharing for national register or database**

15 Despite a provision of this or any other Act or law, the Senior Authorising Officer may disclose information obtained in the operation or administration of this Part for the purpose of providing relevant information for entry in a national register or database relating to the use of restrictive practices.

**Division 6—Dispute resolution****23Y—Internal review by Senior Authorising Officer**

- 20 (1) A person who is aggrieved by a decision of an Authorised Program Officer or a prescribed NDIS provider under this Part is entitled to a review of the decision by the Senior Authorising Officer.
- 25 (2) An application for review—
- (a) must be made in a manner and form determined by the Senior Authorising Officer; and
  - (b) must be made within 30 days after the day on which the decision was made (or such longer time as the Senior Authorising Officer may allow).
- 30 (3) On an application for review under this section the Senior Authorising Officer may confirm, vary or reverse the decision under review.
- (4) The regulations may make further provision in respect of a review under this section (including, to avoid doubt, by limiting the kinds of decisions that may be the subject of an application or review).

**23Z—Review of decisions by South Australian Civil and Administrative Tribunal**

- 35 (1) Subject to this section, the Tribunal is, by force of this section, conferred with jurisdiction to deal with matters consisting of the review of the following decisions (*reviewable decisions*):
- 40 (a) a decision of the Senior Authorising Officer under this Part;
- (b) any other decision prescribed by the regulations.

- (2) An application for review of a reviewable decision may be made to the Tribunal by—
- (a) the person to whom the decision relates; or
  - (b) a person, or persons of a class, prescribed by the regulations for the purposes of this paragraph.
- (3) An application must be made within 30 days after the date of the reviewable decision (or such longer period as may be allowed by the Tribunal).
- (4) However, the Tribunal may only allow an extension of time under subsection (3) if satisfied that—
- (a) special circumstances exist; and
  - (b) another party will not be unreasonably disadvantaged because of the delay in commencing the proceedings.

## **Division 7—Miscellaneous**

### **23ZA—Limitation of liability**

- (1) The Minister, the Senior Authorising Officer and any other person or body incurs no civil or criminal liability for an act or omission in the course of performing a function under this Part (being an act or omission done or made in good faith and without negligence).
- (2) An Authorised Program Officer, a prescribed NDIS provider or a person assisting a prescribed NDIS provider, incurs no civil or criminal liability for an act or omission relating to the use of restrictive practices in accordance with this Part (being an act or omission done or made in good faith and without negligence).
- (3) The owner, occupier or operator of premises (however described) incurs no civil or criminal liability for an act or omission relating to the use of restrictive practices at the premises in accordance with this Part (being an act or omission done or made in good faith and without negligence).

### **23ZB—Offence to hinder or obstruct Senior Authorising Officer etc**

- (1) A person who hinders or obstructs the Senior Authorising Officer or an Authorised Program Officer in the course of performing a function or exercising a power under this Part is guilty of an offence.  
Maximum penalty: \$5 000.
- (2) A person who hinders or obstructs a prescribed NDIS provider in relation to the use of restrictive practices under this Part is guilty of an offence.  
Maximum penalty: \$5 000.

**23ZC—False or misleading statements**

5 A person must not make a statement knowing that it is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in information provided under this Part.

Maximum penalty: \$10 000.

**23ZD—Evidentiary provision**

In proceedings for an offence against this Act, an allegation in an information—

- 10 (a) that a specified person was, or was not, the Senior Authorising Officer at a specified time; or
- (b) that a specified person was, or was not, an Authorised Program Officer in respect of a specified prescribed NDIS provider at a specified time; or
- 15 (c) that a specified person was, or was not, a prescribed NDIS provider at a specified time; or
- (d) that a specified person was, or was not, a registered NDIS provider at a specified time; or
- 20 (e) that a specified restrictive practice was, or was not, a level 1 or 2 restrictive practice (as the case requires) at a specified time,

must be accepted as proved in the absence of evidence to the contrary.