

**Standing Committee on Community Affairs
Legislation Committee**

Public Hearing – 2 August 2021
ANSWER TO QUESTION ON NOTICE

Social Services Portfolio

Topic: Inquiry into the National Disability Insurance Scheme Amendment (Improving Supports for At Risk Participants) Bill 2021

Question reference number: IQ21-000065

Senator: Jordon Steele-John

Type of Question: Written. **Hansard Page/s:**

Date set by the Committee for the return of answer: 4 August 2021

Question:

Privacy and Information

Item 8 - inserts new paragraph 60(2)(f) at the end of subsection 60(2). This will provide certainty that a person is authorised to record, disclose or use protected Agency information if it is for the purpose of, or in relation to, reporting a past threat to an individual's life, health or safety. The reporting of a past threat to an individual's life, health or safety enables proactive measures to be taken to prevent future risk of harm to a participant. New paragraph 60(2)(f) will only authorise the recording, disclosure or use of protected Agency information where a person has reasonable grounds for believing it is for the purpose of, or in relation to, reporting a past threat to an individual's life, health or safety. New paragraph 60(2)(f) provides a limited authority to record, disclose or use protected Agency information. This amendment is in response to recommendation 9 of the Robertson Review and improves the protection of vulnerable participants. This amendment is considered a reasonable and proportionate means of protecting vulnerable participants.

This amendment will enable the Agency and the Commission to take into consideration a past threat against a participants life, health or safety when making decisions about things like whether additional supports or protections should be put in place, or whether a provider or worker is suitable to continue providing NDIS supports.

1. How will the Commission use this information to prevent future risk of harm?
2. How will the participant/family/carer been consulted with and engaged with to implement safeguarding measures?
3. What constitutes reasonable grounds for believing that recording this info relates to reporting past threat to safety?
4. Assuming New para 60(2)(f) is limited to a person's belief that there are 'reasonable grounds' to record if they subjectively determine past threat?

Answer:

1. Threat information disclosed to the NDIS Commission by the Agency under new section 60(2)(e) could be used to investigate whether the threat had arisen from any act or omission of an NDIS provider or one of their workers. This could help inform whether there has been a breach of obligations under the NDIS Act (such as under the NDIS Code of Conduct) and whether any steps (such as the use of a compliance or enforcement power) needed to be taken to address the breach.

2. If the NDIS Commission proposed to use information disclosed to it by the Agency under new section 60(2)(e) to investigate potential non-compliance by an NDIS provider or worker and possibly take compliance or enforcement power, the Commission would engage with the participant, their family and representatives as they do now when an investigation is instigated. Safeguarding measures can occur when a matter comes to the attention of the NDIS Commission through a complaint, or a reportable incident. Safeguarding measures can also occur when the NDIS Commission takes compliance or enforcement action against a provider or a worker. That is, safeguarding measures can be taken when initiated through information provided by a participant a family member or carer.

3. Reasonable grounds require the existence of facts which are sufficient to persuade a reasonable person. The term 'reasonable grounds' is referred to throughout the Act and is applied consistently throughout. Situations which may warrant the recording of information that relate to reporting a past threat to a participant's life, health and safety vary depending on the nature of the threat.

By enabling the recording of this information, the Agency would be able to take into consideration past threats against a participant when making decisions about things like whether additional supports or protections should be considered.

It would also enable the NDIS Commission to consider whether a provider or worker is suitable to continue providing NDIS supports and whether regulatory action may be required.

4. If a participant has been subjected to a past threat, this new clause would allow for the Agency to record and disclose that information for the purposes of enabling proactive measures to reduce a current or future risk of harm.