

**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: IQ21-000069

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 12 - inserts new paragraph 67A(1)(f) at the end of subsection 67A(1) in a similar manner to item 8. This will provide certainty for the Commission to record, disclose or use protected Commission 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 67A(1)(f) will only authorise the recording, disclosure or use of protected Commission 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 67A(1)(f) provides limited authority to record, disclose or use protected Commission information and is a reasonable and proportionate means of protecting vulnerable participants. This amendment is in response to recommendation 9 of the Robertson Review and is intended to better protect vulnerable participants.

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

1. What requirements are there to engage with and co-design safeguarding with the participant/family/carer?
2. What requirements are there to involve the participant in decision-making about their own safety?
3. What requirements are there for the Commission to notify participants that they have been identified as being at risk/vulnerable and therefore requiring further safeguarding?

Answer:

1 and 2: Section 4 (8) of the NDIS Act 2013 outlines the following principle that underpins the Act: "People with disability have the same right as other members of Australian society to be able to determine their own best interests, including the right to exercise choice and control, and to engage as equal partners in decisions that will affect their lives, to the full extent of their capacity."

This principle is reflected throughout the Act, the Rules made under the Act and in the operations of the Agency and the NDIS Commission.

In practice, this means engaging with and having regard to the will and preferences of participants in relation to their safety wherever possible. For example, it is a requirement in the NDIS (Restrictive Practices and Behaviour Support) Rules 2018 section 20(d) to consult with the person with a disability in the development of their behaviour support plan.

There may be some situations such as where a person with a disability or another person is at immediate risk of harm or where general action is taken to protect participants, such as the banning of a provider or worker, where full engagement may not be possible.

3: There are no requirements currently or proposed by the amendments to notify the participant, their family or representatives. However, wherever practicable, the NDIS Commission will tell the participant, their family or representative about the sharing of information about the participant and why it was shared. However, the information shared will not necessarily be about a participant (whether identified or not). It is more likely to be about an NDIS provider or worker as the persons regulated by the NDIS Commission. The NDIS Commission will review its privacy collection statement in light of any amendments passed by the Parliament and update it appropriately.