

**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: IQ21-000068

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 11 - amends paragraph 67A(1)(e) in a similar manner to item 7. That is, item 11 removes the threshold requirement that a person reasonably believes that the recording, disclosure or use of protected Commission information is necessary to prevent or lessen a 'serious' threat to an individual's life, health or safety. This amendment responds to recommendations 1 and 9 of the Robertson Review enabling two-way flow of information between the Commission and the Agency and is intended to better identify and protect vulnerable participants. The Robertson Review found that the current threshold requirement of a 'serious' threat to an individual's life, health or safety to be too high and recommended its removal and replacement with a broader threshold of 'threat' to an individual's life, health or safety. Paragraph 67A(1)(e) is amended to enable a person to record, disclose or use protected Commission information where they reasonably believe that it is for the purpose of, or in relation to, preventing or lessening a threat (whether current or future) to an individual's life, health or safety and is a reasonable and proportionate means of protecting vulnerable participants.

This amendment will enable the Agency and the Commission to provide a proactive individualised approach in identifying a participant that may be at risk of harm so that appropriate actions can be taken.

1. Again, what is the meaningful difference between 'serious threat' and 'threat'?
2. What does this practically mean for a participant's engagement with both the Agency and the Commission? e.g. will this have any bearing on how the Agency seeks to manage a participant in the future?
3. Again, what are the privacy implications and protections for participant information?
4. What are the reporting/notification requirements where participant information has been shared for the stipulated purposes?

Answer:

1. See answer 2(e) IQ21-000064.

2. As per the amendment for the disclosure of protected Agency information, this amendment would allow for the NDIS Commission to record or disclose protected information for the purpose of, or in relation to, preventing or lessening a threat.

For example, where the NDIS Commission becomes aware that a participant may be at risk due to a worker's contravention of the Code of Conduct or registration requirements, the NDIS Commission may alert the Agency to enable proactive measures such as outreach to participants receiving services from the worker to ensure their safety.

3. The NDIS Act provides for offences where people access protected information without authorisation or where they use or disclose protected Agency information without authorisation.

Personal information is also protected by the Privacy Act 1988 which places limitations on how personal information may be dealt with, and requires an entity to report to the affected individual and the Office of the Australian Information Commissioner any unauthorised use or disclosure of personal information that gives rise to a risk of serious harm to an individual.

4. There are no requirements currently or proposed by the amendments to provide a report or notify the participant or any other person. However, wherever practicable, the NDIS Commission would tell the participant, their family or representative about the sharing of information about the participant and why it was shared.

However, the information shared would 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.