

**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: IQ21-000067

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 10 - inserts new paragraphs 67A(1)(da) and (db). Chapter 6B confers functions on the Commissioner relating to the NDIS worker screening database and specifies that one of the purposes of the database is the sharing of information in the database with persons or bodies for the purposes of the NDIS. However, the Commissioner may wish to share information on the database in circumstances where the sharing is not for the purposes of the NDIS and may also hold information relevant to whether a person should have or should continue to maintain an NDIS worker screening check which is not contained in the database and which should be disclosed to another person or body.

New paragraph 67A(1)(da) will authorise the disclosure of protected Commission information to a State or Territory, or to an authority of a State or Territory, for the purposes of NDIS worker screening, including for the purpose of the carrying out of an NDIS worker screening check, for the purpose of an NDIS worker screening law 7 or the screening of a worker employed or otherwise engaged by an NDIS provider or of a member of the key personnel of a registered NDIS provider.

This amendment will allow for the Commission to disclose protected information for the purpose of assessing the suitability of persons wishing to provide NDIS supports based on previous history. This information will be utilised in determining a person's application for a NDIS worker screening check and ongoing monitoring of an existing NDIS worker screening check. The NDIS worker screening check is a key safeguard measure under the NDIS Quality and Safeguarding Framework.

New paragraph 67A(1)(db) will authorise protected Commission information to be disclosed to such persons or bodies, and for such purposes, as are prescribed in the NDIS rules. This will enable the NDIS rules to specify entities with a role in relation to persons with disability and facilitate information disclosure to those entities, including: early identification

of people with disability who are at risk of harm or neglect; and to support a reasonable, necessary and proportionate safeguarding response by those entities.

1. What is the practical effect of 67A(1)(db)? What will it look like for a Commission staff member to do this?
2. What are the guidelines and training for Commission staff to know how to appropriately handle this information?
3. What are the notification and reporting requirements where a participant's information is being passed on to authorities? Is the Commission required to notify the participant/family/carer?

Answer:

1. These amendments would enable the efficient and timely disclosure of relevant information to organisations or people with a direct and legitimate interest in matters relevant to people with disability.

In the case of disclosures to worker screening authorities, it would provide them with information that is directly relevant to the suitability of a person to work with people with disability. It would help those authorities to carry out expeditiously the checks that NDIS rules require registered NDIS providers to have done of staff in certain roles and that many NDIS participants may want workers they propose to engage to have had.

In the case of disclosures to prescribed persons or bodies for prescribed purposes, it is anticipated that the prescribed persons and bodies would predominantly be government authorities with a particular role in relation to people with disability such as, authorities who have responsibility for deciding whether to authorise the use of restrictive practices in relation to people with disability or state and territory disability commissioners. It may also be appropriate to prescribe child protection authorities or law enforcement bodies.

The prescribed purposes for which information would be disclosed to them would be carefully and closely confined having regard to the objects of the NDIS Act and the Commissioner's core functions, which include engaging in the sharing of information to achieve the objects of the NDIS Act.

2. NDIS Commission staff have been required to participate in mandatory training on the requirements and limitations of the information disclosure provisions in the NDIS Act. The training, which was initially delivered in face-face sessions, is also available to staff on line. The intention is for the training to be repeated regularly and it would also be updated to cover the amended provisions should they be passed by the Parliament. It could be complemented by guidelines under section 181D(2) relating to the NDIS Commission's use of the information.
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 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 or some other person as the persons regulated by the NDIS Commission.