

Community Affairs Legislation Committee: Inquiry into National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024 [Provisions]

Public Hearing – 22 May 2024

ANSWER TO QUESTION ON NOTICE

Department of Social Services

Topic: Inquiry into National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024 [Provisions]

Question reference number: IQ24-000039

Question asked by: Marielle Smith

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

Date set by the Committee for the return of answer: 5 June 2024

Question:

4. Regarding the proposed amendments to the bill (received 22 May 2024):
- Could the department please provide a clear overview of what changes would be made to the bill if the amendments passed, and;
 - What the impacts of these amendments would be?

Answer:

Proposed Amendments to section 10

If the proposed amendments are supported, the existing draft of section 10 in the Bill will be removed and replaced with the new draft included in the proposed amendment sheet.

In addition, there will be a transitional rule to support the operation of section 10 pending new Category A rules which will be designed with the disability community and agreed by states and territories.

Stakeholders expressed concerns about the amendments to section 10 proposed by the Bill as initially drafted as these required a participant to consider whether a particular support is an NDIS support for them with reference to a list of criteria. The proposed section also only listed certain articles of the Convention for the Rights of People with Disability (CPRD).

To address these concerns, the Government has decided to move parliamentary amendments to replace new section 10 with a revised definition of ‘NDIS support’. An earlier exposure draft of the proposed amendment was published on the Department’s website.

The proposed amendments will change the structure of section 10 so the Minister must assess whether certain supports may rely on any of Australia’s obligations under of the CRPD (or the sickness benefits power) when making rules under proposed subsection 10(1). The revised provision also takes the onus off participants to identify relevant obligations under the CRPD, and as a result the specific articles of the CRPD no longer need to be specifically referenced.

Intergovernmental agreements outline the supports that are appropriately provided by the NDIS and those that are more appropriately funded by other programs and service systems. For example, the NDIS is not responsible for supports that may be provided through the Medicare or other Commonwealth programs, nor is it responsible for supports that may be provided through State and Territory health care systems. This requirement already exists in the *National Disability Insurance Act 2013* and is relevant to both access and the existing planning framework. For example, current paragraph 34(1)(f) of the Act provides that reasonable and necessary supports must be most appropriately funded or provided through the NDIS.

Other Parliamentary Amendments

On 5 June 2024, additional parliamentary amendments were proposed by the Government in response to feedback from consultation.

These include new transitional NDIS rules that will set out supports and classes of supports that are or are not NDIS supports based on existing intergovernmental agreements and the current NDIS (Support for Participant) Rules 2013. These transitional rules will be developed in consultation with the disability community and will be replaced by new Category A rules requiring State and territory agreement.

Other amendments to the Bill which were supported in response to feedback will:

- clarify that co-design is central to the Government's reform agenda
- clarify that no changes have been made to participant's rights of review
- ensure participants will have a copy of their needs assessment
- ensure there are appropriate safeguards around new information gathering powers
- embed an independent 5-year review of the operation of the Bill.

These amendments demonstrate the Government's ongoing commitment to listen and take on feedback on the Bill as required.