

**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: IQ21-000066

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 9 - inserts new subsection 60(4) at the end of section 60. This will provide certainty for the Agency to disclose protected Agency information to the Commissioner or a Commission officer for the purposes of, or in connection with, the performance of the Commissioner's functions or the exercise of the Commissioner's powers. The Robertson Review considered it important that there should be a free exchange of information between the Agency and the Commission to enable the Commission to undertake its statutory functions in a more effective and efficient manner. This amendment will enable the Commission to obtain necessary information to undertake its statutory functions efficiently in recognition of recommendations 1, 5, and 7 of the Robertson Review. The information obtained by the Commission under this new subsection will be subject to the protected information provisions of the NDIS Act 2013 and will only be able to be used or disclosed in accordance with those provisions. Personal information will also be subject to the Privacy Act 1988 and will only be collected, used or disclosed in a manner consistent with these important legislative frameworks.

1. Having a two-way flow of information between the Agency and the Commission, without stipulating what the specific criteria for info sharing is, does not sufficiently provide certainty for people that their privacy is going to be protected.
2. The NDIA hold a significant amount of information on participants, so what kind of information will be enabled to flow freely between the agency and the Commission?
3. What criteria and training will agency staff have and Commission staff have to ensure that they do not send information that is not meant to be?
4. What consultation and engagement with participants/families/carers will there be about their information being shared across different gov bodies? Are there reporting requirements and notification requirements?
5. What are the specific provisions in place that ensure the privacy of participants is protected?

Answer:

1. The two-way flow of protected information between the Agency and the NDIS Commission must be in connection with the Commission and Agency functions or exercise of powers. Personal information must also be handled in accordance with the Privacy Act 1988.

This provision would provide greater certainty for participants than currently exist, as it prescribes the purposes for which they can share protected information.

The Robertson Review recommended a freer exchange of information was necessary for the NDIS Commission to undertake its statutory functions effectively.

2. The Agency would only disclose information to the NDIS Commission that is necessary for it to undertake its statutory functions, which relate to the quality and safeguards of NDIS supports and services. It is important to recognise that the Privacy Act 1988 and general privacy considerations still apply to the disclosure of information.

3. The Agency and the NDIS Commission already have robust processes in place to manage the recording, disclosure and use of protected information. All Agency staff undertake training on information handling and privacy annually and the Agency has a privacy service desk to advise and support Agency officers regarding privacy and information handling matters.

NDIS Commission staff have also been required to participate in mandatory training on the requirements and limitations of the information disclosure provisions in the NDIS Act. The intention is for the training to be repeated regularly and it would also be updated to cover the amended provisions. It could be complemented by guidelines under section 181D(2) relating to the NDIS Commission's use of the information. The offences associated with unauthorised disclosure are part of this training.

The Agency's obligations regarding privacy and information handling are set out in the National Disability Insurance Scheme Act 2013, National Disability Insurance Scheme (Protection and Disclosure of Information) Rules 2013, Privacy Act 1988, Archives Act 1983 and Australian Privacy Principles.

In addition the Agency Privacy Policy, Agency Information Sharing Protocol and NDIS Operational Guideline - Information Handling set out how the Agency records, discloses and uses protected Agency information. Further information is available at the following links:

Agency Privacy Policy - www.ndis.gov.au/about-us/policies/privacy

NDIS Operational Guideline - www.ndis.gov.au/about-us/operational-guidelines/information-handling-operational-guideline

Agency Information Sharing - www.ndis.gov.au/understanding/ndis-and-other-government-services/Agency-working-state-and-territory-governments/sharing-participant-information.

4. The Privacy Act 1988 requires an entity such as the Agency or NDIS Commission to have a Privacy Policy that sets out how it collects, uses and discloses personal

information. Privacy Policies are publicly available on the Agency's and Commission's websites.

These policies would be updated to reflect the changes in the Bill if passed.

5. 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 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.