

**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: IQ21-000070

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 13 - inserts new subsection 67A(3) at the end of section 67A in a similar manner to item 9. This will provide certainty for the Commissioner or a Commission officer to disclose protected Commission information to the Agency or an officer of the Agency if the disclosure is for, or in connection with, the performance of the Agency's or the Chief Executive Officer's functions or the exercise of the Agency's or the Chief Executive Officer'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 Agency and the Commission to undertake statutory functions (recommendations 1, 5 and 7 refer).

This amendment will assist the Agency to obtain necessary information to undertake its statutory functions. The information obtained by the Agency or an officer of the Agency 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.

- a) What information is considered 'necessary'? Who makes those determinations? What guidelines/training will be provided to ensure that staff know what is and is not meant to be exchanged?
- b) What privacy protections, specifically, exist for participant data in this context?
- c) What notification requirements are there for exchanging information in this way? Are participants notified?

Answer:

- a) *What information is considered 'necessary'? Who makes those determinations? What guidelines/training will be provided to ensure that staff know what is and is not meant to be exchanged?*

The amendment in item 13 does not refer to information that is 'necessary'. However, information would be disclosed under this new provision only if the NDIS Commissioner or NDIS Commission officer were satisfied that the disclosure was relevant to and reasonably necessary for the performance of the Agency's or Agency CEO's functions. The disclosure would be subject to the applicable privacy principles and the privacy code under the Privacy Act. The NDIS Commission will review its privacy collection statement in light of any amendments passed by the Parliament and update it appropriately.

- b) *What privacy protections, specifically, exist for participant data in this context?*

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.

- c) *What notification requirements are there for exchanging information in this way? Are participants notified?*

There are no requirements currently or proposed by the amendments to notify the participant. However, wherever practicable, the NDIS Commission will tell the participant 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.

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.