

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

Public Hearing – 14 June 2024

ANSWER TO QUESTION ON NOTICE

Department of Social Services

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

Question reference number: IQ24-000052

Question asked by: Linda Reynolds

Type of Question: Spoken Hansard page: 32-33

Date set by the Committee for the return of answer: 17 June 2024

Question:

Senator REYNOLDS: Thank you. I want to talk about non-disclosure agreements. If you could just explain to me who actually - whose idea the non-disclosure - because I've never heard of them before in relation to public consultation - can you provide information about - was it DSS, was it NDIA? Who actually drafted them, initiated them, and who did they go to, and who was - why were they required?

DSS: Senator, I'm happy to try and give you an answer there. There was a number of targeted stakeholders that the department led in regard to some engagement ahead of the bill being introduced into the parliament.

Senator REYNOLDS: sorry, just on that. When you say 'targeted stakeholders', did you select them? Or did the minister provide or the minister's office provide input as to who should be targeted, as you said?

DSS: They were stakeholders that were determined in consultation with the minister.

Senator REYNOLDS: So the minister had input into which ones... Were they all DROs?

DSS: They were individual representatives. They may have been DROs. We can take that on notice, Senator, and provide you with a list of who they were.

Senator REYNOLDS: Can you provide a list of exactly who they were and - so, who they were, who were DROs at the time, 'cause I know there's been a changeover in DROs, who was and wasn't, in terms of the DROs, brought into the targeted stakeholder tents? If you could provide the detail, perhaps a sample of the deed of confidentiality, and - were they just used for consultation on the legislation? Or have they been used more widely for other discussions that relates to the NDIS?

Answer:

Key elements of the Bill were discussed with a group of disability stakeholders before introduction in the Parliament. Consistent with similar legislative processes, as these matters were yet to come before Parliament these stakeholders were asked to sign deeds of confidentiality. The deeds were issued by the Department of Social Services (the department).

The table below provides a list of stakeholders who were invited in their individual capacity to participate in ‘NDIS Reform Update Meetings’ to discuss the proposed legislative changes.

Invitees were asked to sign a deed of confidentiality ahead of a meeting on 14 March 2024. A copy of the deed of confidentiality is at **Attachment A**.

Invited stakeholder	Organisation	Was the person a member of a DRO? (DROs to 30 June 2024)
Andrew Rowley	Ability First	No
Ross Joyce	Australian Federation of Disability Organisations (AFDO)	Yes
Martin Laverty	Aruma (Alliance20)	No
Jenny Karavalos	Australian Autism Alliance	No
Angus McFarland	Australian Services Union	No
Rob White	Cerebral Palsy Alliance (Alliance20)	No
Skye Kakoschke-Moore	Children and Young People with Disability Australia	Yes
El Gibbs	Disability Advocacy Network Australia	Yes
Natalie Wade	Equality Lawyers	No
Damian Griffis	First Peoples Disability Network	Yes
Nicole Lee	N/A	No
Catherine McAlpine	Inclusion Australia	Yes
Claire Robbs	Life Without Barriers (Alliance20)	No
Laurie Leigh	National Disability Services	No
Carolyn Hodge	People with Disability Australia	Yes
Bronwyn Morkham	Young People In Nursing Homes National Alliance	No
Dwayne Cranfield	National Ethnic Disability Alliance	Yes



NDIS Reform Update Meetings Deed of Confidentiality

THIS DEED POLL is made on the _____ day of _____ ,

by

[insert name]

of _____ (the **Confidant**),
[insert address]

in favour of and legally enforceable by the **COMMONWEALTH OF AUSTRALIA**
(**the Commonwealth**) represented by and acting through the Department of Social Services
(**the Department**), GPO Box 9820 Canberra ACT 2601, ABN 36 342 015 855.

Recitals

This Deed Poll is made in the following context:

- A. The Confidant is a person who participates in the NDIS Reform Update Meetings.
- B. The Department holds Confidential Information, which may be provided to the Confidant during the course of their participation in the NDIS Reform Update Meetings. During the NDIS Reform Update Meetings, attendees may also generate information that is confidential to the Commonwealth.
- C. The Department requires the Confidant to preserve and maintain the confidentiality of information to which the Confidant will have access by virtue of his/her/their participation in the NDIS Reform Update Meetings.
- D. The Department requires, and the Confidant agrees, that it is necessary to take all reasonable steps (including the execution of this Deed) to ensure that the Confidential Information is kept confidential.



1. INTERPRETATION

1.1 Definitions

Operative provisions

In this Deed Poll, unless the context otherwise indicates:

Activity includes providing independent, practical, expert, research and professional advice on issues, as well as managing and supporting associated activities.

Commonwealth includes any department or agency of the Commonwealth, which is from time to time responsible for administering this Deed Poll.

Confidential Information means whether or not in material form, any information that is disclosed to the Confidant by the Department or is generated by attendees of the NDIS Reform Update Meetings in that capacity that:

- a. is marked as confidential;
- b. is reasonably designated by the Department as confidential;
- c. contains Personal Information; or
- d. the Confidant knows, or ought to know, is confidential.

Confidential Information includes information comprised in or relating to any Intellectual Property Rights of the department (including intellectual property rights in material generated by the attendees of the NDIS Reform Update Meetings).

Copy means any Material in which Confidential Information is embodied.

Department of Social Services Contact Officer means the person specified (by name or position) in Schedule 1, or any substitute notified by the Department from time to time.

Intellectual Property Rights includes any:

- a. copyright;
- b. design, patent, trademark, semiconductor, circuit layout or plant breeder rights (whether registered, unregistered or applied for);
- c. trade business, company or domain name;
- d. know-how, inventions, process or Confidential Information whether in writing or recoded in any form;
- e. any other proprietary or personal rights, or license, arising from intellectual activity in the business, industrial, scientific or artistic fields.

Material includes documents, equipment, software (including source code and object code), goods, information and data stored by any means, including all copies and extracts of the same.

Personal Information has the same meaning as it has in the *Privacy Act 1988* (Cth).

Permitted Person means any attendee of the NDIS Reform Update Meetings or of the Department's staff, employee, servant or agent.

Security Incident means a security breach, violation, contact or approach from those seeking unauthorised access to Confidential Information.

1.2 Interpretation

1.2.1 In this Deed Poll, unless the contrary intention appears:

- a. words in the singular include the plural and vice versa;



- b. clause headings or words in bold format are for convenient reference only and have no effect in limiting or extending the language of the provisions;
- c. unless otherwise stated, a reference to legislation is to legislation of the Commonwealth, and includes any statutory modification, substitution or re-enactment of that legislation or legislative provision; and
- d. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning.

2. UNDERTAKING OF NON-DISCLOSURE

- 2.1 The Confidant must use the Confidential Information only as is reasonably necessary for the purpose of the Activity and participation in the NDIS Reform Update Meetings generally, strictly in accordance with this Deed.
- 2.2 The Confidant must not, without the prior written consent of the Department, disclose any Confidential Information to any person, other than to a Permitted Person in relation to the Activity, unless required by law.
- 2.3 The Confidant must not transfer any of the Confidential Information outside Australia or allow persons outside Australia to have access to any Material containing Confidential Information without the prior written consent of the Department.
- 2.4 The Department may impose any conditions it considers appropriate when giving consent under this clause 2 and the Confidant must comply with these conditions.
- 2.5 The Commonwealth may grant consent subject to conditions. In particular, the Commonwealth may require that the Confidant procure the execution of a deed poll substantially in the terms of this deed by the person to whom the Confidant proposes to disclose the Confidential Information.
- 2.6 Where the Confidant is required by law to disclose the Confidential Information, the Confidant must:
 - a. notify the Department's Contact Officer of their intention to disclose the Confidential Information prior to its disclosure, or as soon as possible thereafter if notification could not occur prior to disclosure for reasons beyond the Confidant's control;
 - b. provide full details of the relevant legal requirement and information to be disclosed;
 - c. notify the receiving person that the information is confidential; and
 - d. take any reasonable action requested by, and reasonably cooperate with any action taken by, the Department to challenge, prevent or limit such disclosure.
- 2.7 The Confidant agrees to notify the Department immediately, and provide full details, if the Confidant is aware or reasonably suspects that:
 - a. Confidential Information has, or may have been, accessed, used, modified or disclosed in any way other than as permitted under this Deed Poll; or
 - b. there has been any breach of this Deed Poll.

3. PRIVACY ACT OBLIGATIONS

To the extent that the Confidential Information includes Personal Information, the Confidant must abide by the provisions of the *Privacy Act 1988* (Cth), including the Australian Privacy Principles set out in that Act, whether or not the Confidant is legally bound to comply with that Act, and as if the definition of Personal Information in that Act includes Confidential Information. Refer to the Australian Privacy Principles on the Australian Government Office of the Australian Information Commissioner website at



www.oaic.gov.au/privacy/australian-privacy-principles/read-the-australian-privacy-principles. The Confidant must not do an act, or engage in a practice, that would breach an Australian Privacy Principle if done or engaged in by the Department.

4. RESTRICTIONS ON USE

The Confidant must use the Confidential Information only for the purpose of participation in the NDIS Reform Update Meetings or in relation to the Activity.

5. POWERS OF THE COMMONWEALTH

Production of Documents

- 5.1 The Commonwealth may demand the delivery to the Commonwealth of all documents in the possession or control of the Confidant containing the Confidential Information.
- 5.2 The Confidant must immediately comply with a demand under this clause 5.
- 5.3 If the Commonwealth makes a demand under this clause 5, and the Confidant has placed or is aware that documents containing the Confidential Information are beyond his or her possession or control, then the Confidant must provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose custody or control they lie and an authority to obtain the documents.
- 5.4 In this clause 5, “documents” includes any form of storage of Information.

Legal Proceedings

- 5.5 The Confidant acknowledges that the Commonwealth may take legal proceedings against the Confidant or third parties if there is any actual, threatened or suspected breach of this deed poll, including proceedings for an injunction to restrain such a breach.

6. SECURITY

- 6.1 The Confidant must adhere to the Department’s reasonable requirements in relation to the security of Confidential Information as advised to the Confidant from time to time.
- 6.2 The Confidant must notify the Department immediately if the Confidant becomes aware that a Security Incident has occurred.

7. COPIES

- 7.1 Property in each Copy vests or will vest in the Commonwealth.
- 7.2 The Confidant must take all necessary steps to secure all Copies against loss and unauthorised access, use, modification or disclosure, and must adhere to the Department’s reasonable requirements in relation to the security of Copies.
- 7.3 The Confidant must not record or copy any Confidential Information, or retain Copies of any Material received in connection with the Activity, without the Department’s prior written consent.
- 7.4 The Department may impose any conditions it considers appropriate when giving consent under clause 7.3, and the Confidant must comply with these conditions.



7.5 The Confidant must take reasonable precautions to prevent unauthorised access to, recording of or copying of the Confidential Information in the Confidant's control.

8. DEED IN FAVOUR OF

This Deed Poll is given in favour of the Commonwealth of Australia represented by and acting through the Department.

9. PERIOD OF CONFIDENTIALITY

Unless agreed otherwise by the Department in writing, all Confidential Information shall remain subject to the requirements of this Deed until it becomes available from a legal public source without restriction.

10. AMENDMENT

This Deed may only be amended or replaced in writing and executed by both parties.

11. WAIVER

11.1 No waiver by the Commonwealth of one breach of any obligation or provision herein contained or implied shall operate as a waiver of another breach of the same or of any other obligation or provision herein contained or implied.

12. GOVERNING LAW

This Deed Poll is to be construed in accordance with and any matter related to it is to be governed by the law of the Australian Capital Territory, and the parties submit to the exclusive jurisdiction of the courts of the Australian Capital Territory and courts of appeal from them.

Executed as a Deed Poll.

SIGNED, SEALED AND DELIVERED by:

Insert name of Confidant

Signature of Confidant

Insert name of Witness

Signature of Witness

on _____ day of _____
month, year



Schedule 1 to Deed of Confidentiality

Department Contact Officer

The Department Contact Officer is the person holding or occupying the position of the Branch Manager, NDIS Governance, Policy and Legislation, Department of Social Services. The Confidant can contact the Department Contact Officer

— by:

- **telephone** on 02 6146 3480 or through the Department of Social Services general contact telephone number on 1300 653 227
- **the National Relay Service** to ensure the department's contact numbers are accessible for people who are deaf or have a hearing or speech impairment. For more information, see the department's website at <http://www.dss.gov.au/contact/national-relay-service>
- **email** at _ or NDISConsultations@dss.gov.au
- **post** at GPO Box 9820 Canberra ACT 2601