

Chapter 5

Participant Plans

The making of the plan

5.1 The central element of the NDIS is that all funding and support will be dictated by a participant's plan. The plan consists of two principal parts, the *statement of goals and aspirations* developed by the participant, and the *statement of participant supports* that will be provided by the scheme in response to the 'participant's support needs, goals and aspirations, circumstances and informal supports.'¹

5.2 These two elements are further broken down and described in more detail through supplementary information provided to the committee by the department. The information provided also states that the statement of supports will estimate what supports will be required 'over the expected 12 month life of the plan'.²

5.3 The kind of outcomes for the participant that would be considered as part of the first element of the plan—the statement of goals and aspirations—could include:

- wellbeing;
- independence;
- social, civil and economic participation;
- developing and maintaining relationships; and
- choice and control.³

5.4 The agency will then consider information received from the participant through a self-reporting mechanism, as well as the results of the various assessments of the needs and requirements of the participant, in the making of a statement of support. These assessments may include both an assessment of the functional capacity of the participant and a risk assessment.⁴

5.5 Western Australia Individualised Services commented that the onus on the individual to develop a 'life plan' is not something that should be expected in the legislation, instead suggesting that the legislation should be looking at a narrow description of the plan:

We have a specific point about preparing participants' plans, and that has been a pretty common theme so far. This is one of the areas that has generated a lot of response, with lots of people asking, 'But do you have a life plan that you share with others?' I think this is about the fact that it has

1 FaHSCIA, *Submission 615*, Supplementary Submission 6152, Attachment D, p. 13.

2 FaHSCIA, *Submission 615*, Supplementary Submission 6152, Attachment D, p. 13.

3 FaHSCIA, *Submission 615*, Supplementary Submission 6152, Attachment D, p. 13.

4 FaHSCIA, *Submission 615*, Supplementary Submission 6152, Attachment D, p. 14.

been seen as 'the' life plan of a person, rather than a plan for investment in the support that will facilitate things that describe social and economic participation for that person at this particular time in their life stage, and I think we should discriminate between those in the legislation.⁵

5.6 Carolyn Frohmader from WWDA highlighted the potential difficulties in expecting someone to develop a life plan but restrict what parts of the plan would be supported by the NDIS:

I did ask the drafters if, for example, this person doing their life plan with their life aspirations and goals and they would like to be a mother, and they are a single woman with a disability, are they allowed to spend their NDIS money on assisted reproduction? And he nearly died. It was like, 'No, don't be ridiculous.' And I said, 'Well, why not?' If you ask somebody to set out their life goals, plans and aspirations and part of that is, 'I would like to be a mother and I would like to purchase access to the donor sperm program,' why not?⁶

5.7 ADACAS also commented on whether it was appropriate to expect someone with a disability to provide a 'life plan' when no-one else in society is expected to do so as a condition of accessing services:

The bill puts the participant's plan, particularly that statement of goals and aspirations, right in the very centre of the entire enterprise. Along with the support plan, it becomes the singular instrument by which supports are determined, measured, funded and all the rest. The requirement for this statement is in itself discriminatory. No other group or individual in our society has to submit a list of life goals and a plan before getting on with living—neither must they seek permission before the change their mind about those goals.⁷

5.8 Dr Galbally from the NPWDCC spoke of the huge effect that the development of a plan that includes aims and aspirations could have on people. To assist in the management of this change Dr Galbally recommended that DSOs should be established in the role envisaged by the Productivity Commission in their report:

[T]he day-to-day planning, coaching, I guess that is a way of putting it, is most important especially in the early days, but I would imagine it would remain important for quite a time. To suddenly have the chance to plan, to dream and to think what you might like to do with your life is going to be quite new for many people. We have therefore recommended that the role for the disability support organisations that was in the Productivity Commission's report be re-raised. This could be a great role for them and a

5 Ms Walker, Western Australia Individualised Services, *Proof Committee Hansard*, 18 February 2013, p. 41.

6 Ms Frohmader, Women with Disabilities Australia, *Proof Committee Hansard*, 22 February 2013, p. 38.

7 Mrs May, Aged and Carer Advocacy Service, *Proof Committee Hansard*, 4 March 2013, p. 11.

very important role for the building of capacity of individuals but also of communities.⁸

5.9 The legislation has an extensive number of principles relating to plans that underpin plan development. The committee received evidence from carers organisations that questioned whether the bill's principles relating to the plan should reflect that the ability to exercise control over their own life is often facilitated by their families or carers:

Chapter 3, part 2, division 1, 31(g) should be modified so that it is underpinned by the right of the participant to exercise control over his or her own life to the maximum extent possible while recognising the support, assistance and judgement of family may be essential to the development of plans for some people with a disability.⁹

5.10 The Mental Health Fellowship of North Queensland also emphasised the important of families or carers being centrally involved with the development of a participant's plan:

Planners and assessors need to be guided in determining the plan for the person with a mental illness. They need to be guided by what the family members and carers are saying. The information I am getting from carers and family members, particularly through our Cairns carers hub, is that they are in the dark most of the time.¹⁰

5.11 Craig Wallace from PWDA expressed concern over the structure of the scheme, comparing it to the United Kingdom system which allocates funding first and then the participant sets their goals accordingly:

The draft bill asks that the plans contain a statement about the goals, objectives and aspirations of the participant. We have a problem with the language of 'goals'. Many people just want to live ordinary lives. Some of our members were of the view that the bill was being really prescriptive around plans. The process as described in the legislation is, one, a person is assessed as eligible; two, you make the plans; three, lastly, the funds are allocated. In the UK they actually do it the other way around so that the person knows the scope of the funding envelope and can then have a discussion about what the plan looks like, firstly, rather than the agency doing it.¹¹

5.12 Children with Disabilities Australia were strongly of the view that the making of a plan, particularly in relation to children, should be the role of the agency and not the individual or their family:

8 Dr Galbally AO, National People with Disabilities and Carer Council, *Proof Committee Hansard*, 4 March 2013, pp. 25–26.

9 Ms Pierce, Carers Victoria, *Proof Committee Hansard*, 20 February 2013, p. 39.

10 Mr Audas, Mental health Fellowship of North Queensland, *Proof Committee Hansard*, 29 January 2013, p. 8.

11 Mr Wallace, People with Disabilities Australia, *Proof Committee Hansard*, 4 March 2013, p. 59.

The absolute requirement for all participants to prepare a statement of goals and aspirations is, thus, very problematic where children with disability are concerned...Many families would indeed be insulted by the need to complete such a statement on behalf of their child in order to access essential supports, and we believe families should not have to do this in order to access funding. For some families with school-age children, goals and aspirations will be related to their child's ongoing health issues or their educational attainment, which are not even the primary role of the NDIS. For other families, as with many people across the community, the formal setting of goals is a highly contrived activity. The responsibility for developing a coherent goal based service plan that is absolutely relevant to the child's family sits with the NDIS. It is unreasonable to expect participants and families to present their life and needs in a bureaucratic format. CDA accepts that there is a need for a service plan in order to activate funding; however, the relevance and purpose of this additional plan in the scheme's design is highly questionable. As such, we recommend the removal of this requirement for participants.¹²

Committee View

5.13 The committee understands that the development of a statement of goals and aspirations is a useful way of including all of the facets of a person's life that contribute to their wellbeing. It also provides a long-term perspective that could inform what supports might be used to realise a long-term goal. However the long-term perspective does not appear to be mirrored by the provision of supports, which are to be provided for the '12 month period of the plan'. The question for the committee is whether this disconnect will have any material effect. The committee is concerned that if a support is provided to achieve a long term goal such as assisting the participant to access tertiary education, or long term physical rehabilitation, this could be reassessed each 12 month period and potentially be stopped if certain targets were not met. This could have undesirable consequences for the realistic and long-term pursuit of goals.

Recommendation 19

5.14 The committee recommends that, where support is provided for an objective that will extend beyond the 12 month life of the plan, the NDIS Rules make clear that the assessment of the outcome of this support will take the long-term objectives into account.

Flexibility of the Plan

5.15 The department provided the committee with information on how flexible the plans will be in practice. This flexibility will be guided by a set of principles:

The plan will support flexibility in sourcing supports, regardless of how or by whom the plan is being managed, by:

12 Ms Gotlib, Children with Disabilities Australia, *Proof Committee Hansard*, 4 March 2013, p. 60.

- providing information to individuals to support choice during planning and the implementation of the plan;
- building the individual's capacity, where required, to exercise choice and control;
- ensuring that supports are age and life stage appropriate and take into account developmental needs, particularly for children;
- recognising that individual needs vary from week to week as part of normal life and therefore providing flexibility in the quantum and frequency of all supports purchased over the life of the participant's plan, as long as the total value of the plan is not exceeded;
- acknowledging that the basis for determining the level of supports included in the plan is based on a best estimate at the time the plan is developed, thus requiring an approach that allows some overs and unders between relevant funded supports.¹³

5.16 Vivienne Williams from Kids Matters Occupational Therapy commented on the importance of the plan being reviewed at regular intervals, and that the responsibility for this should lie with someone other than the participant:

With the plan, I think it is very important that it is reviewed yearly because things change. I would have concerns that people have a plan and then for logistical reasons that is their plan and even though it is written in the legislation that, yes, they have the entitlement to review it, I think there should be structures in place that it is regularly reviewed and not just left up to people who may not be aware or able.¹⁴

5.17 The flexibility of the plan and the ability for it to react quickly was an issue raised in relation to the management of chronic disease. MS Australia described the impact that a rapid deterioration of a condition could have on a person and their family:

It is the nature of the chronic disease and the interplay between the systems and someone's quality of life. As we said before, the right services are needed at the right time, so the response to changing plans needs to be rapid. Also plans need to really be individualised to the participant. With MS specifically there are hidden symptoms of fatigue and a lack of insight that can drive a family into breakdown.¹⁵

5.18 Dr Baker from NDS also highlighted the importance of designing a scheme with the capacity to react quickly to deal with points of crisis or emergency:

It is a critical function of any disability support system that is can respond to the unpredictable circumstance; to the emergency; to things that cannot easily be built in to a person's plan. The bill does give the capacity for that

13 FaHSCIA, *Submission 615*, Supplementary Submission 6152, Attachment D, p. 14.

14 Ms Williams, Kids Matters Occupational Therapy, *Proof Committee Hansard*, 30 January 2013, p. 15.

15 Ms Tame, MS Australia, *Proof Committee Hansard*, 31 January 2013, p. 26.

to happen and for the agency to review a plan at short notice. Where there needs to be more thought in the legislation is for a new entrant—someone who needs to become a participant very quickly. The agency needs the flexibility to be able to fund support for someone who seems eligible without them having to go through any time-consuming eligibility check.¹⁶

5.19 Kathryn Hough from Empowering People in Communities in Western Australia also specifically discussed the issue of having a 21-day period to decide on whether someone is eligible or not in the context of emergency or crises:

My sense is that when a crisis occurs people need support immediately. Family may be able to assist or put some interim supports in place but, in some examples here, if a family member who is the primary carer is seriously ill they will have to be flown to Perth for medical treatment, and the response for this needs to be immediate, within hours. Seeking 21 days for approval could be problematic.¹⁷

5.20 The department responded specifically to the argument that having to wait 21 days for a decision on eligibility does not mean that that is the period that everyone must wait. The bill states that a decision must be made 'within 21 days' and Dr Hartland added:

I would say that this time frame does not mean that you have to wait 21 days. If someone came to the agency in crisis, the agency would be able to respond immediately.¹⁸

Committee View

5.21 The committee shared the view raised by numerous contributors that any scheme must consider the changing nature of various disabilities, and reflect the associated needs in the support it provides. The supplementary information provided to the committee by the department on how the plan will be structured to manage changing requirements satisfies the committee that the scheme is likely to be flexible and broad enough to adapt to changing conditions.

Power of the Agency and the CEO in the plan-making process

5.22 The committee received evidence, alluded to in chapter 2, which questioned the extent of the powers of the agency in general, but particularly in relation to the participant's plan.

5.23 AFDO described the extent of the powers and what safeguards they considered should be built in to the systems to prevent misuse of those powers:

There is a lot of power given to the CEO or their delegated authority in this legislation... They have the power to compel people to get certain kinds of

16 Dr Baker, National Disability Services, *Proof Committee Hansard*, 4 March 2013, p. 73.

17 Ms Hough, Empowering People in Communities, Western Australia, *Proof Committee Hansard*, 5 March 2013, p. 30.

18 Dr Hartland, FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 54.

assessments. They kick-start a person's plan. They have the power to approve or not approve a person's plan. They have the power to look at reviews and complaints. So there is a lot of power that is potentially vested in the one person as a delegated authority. The key thing is to ensure two things: firstly, that you do not have a situation where it is just one person, or one delegated authority, in areas where there is going to be some difficulty or where some careful decisions have to be made. There needs to be an approach where people can go to a tribunal, or a panel of people, for those decisions to be made. Secondly, it is about putting back some of the give and take into allowing people to push back... It is about creating further steps for people to appeal or to have some say in how this works, making it more collaborative and making sure that there is more than just one person and that it is a bit more transparent.¹⁹

5.24 The Association for Children with a Disability also commented on how to design the powers of the CEO to achieve the responsible management of public funds, while ensuring participants have the opportunity to manage an appropriate level of risk:

It is the way in which the legislation is written—that it is one person, this CEO, and obviously it is not; it is actually the agency...but it is really important to have safeguards in place too. It is all about the balance of what is essentially public funding and the importance of making sure that that is used effectively, but people definitely have some control and choice within that. As I said right at the very beginning, it is also about balancing the sustainability of the scheme. Therefore, it would be a matter of looking at each instance that you are suggesting, where the CEO has veto or power, and then recognising whether that is appropriate not. We have said that it is important that the ownership of the plan sits with the participant—in our case, that is children and their family.

5.25 The MS Society in WA spoke of the uncertainty and anxiety that the language in the bill may cause to participants:

Much of the work talks about the CEO being satisfied, it talks about approved form. Section 48(4) says that the CEO may conduct a review of the participant's plan at any time. I really need to point out how unsettling that can be for people for disabilities. The scheme, ironically, is geared towards providing surety, certainty and peace of mind for the individual with a disability on a long-term basis rather than the vagaries of the cap process, which you heard about in the earlier conversations. I am just anxious that we do not accidentally unsettle people who are very vulnerable with statements such as those.²⁰

5.26 PWDA commented on the extent of the CEO's powers and the need for an effective appeals system, and an explanation of the circumstances in which the powers will be exercised:

19 Ms Hobson, Australia Federation of Disability Organisations, *Proof Committee Hansard*, 20 February 2013, p. 6.

20 Mr Stafford, MS Society Western Australia, *Proof Committee Hansard*, 18 February 2013, p. 8.

The CEO has a lot of power under the bill. They can appoint nominees, specify which individuals can manage their own plans, require people to pursue compensation, reveal information to other agencies, ask people to repay funds and intervene in some areas outside the NDIS supports. The mechanisms for review and appeal need to be clear. These powers in some areas should be tempered. The reality will be that these powers are delegated—it [does] not actually mean the CEO, it means a delegate—so how is decision making at the local level going to happen? How is that delegation going to be exercised?²¹

5.27 The department's evidence to the committee provided the rationale for the various powers of the CEO throughout the bill. On the general point of whether too much power in decision making was vested in the hands the agency the department made the following argument:

While the National Disability Insurance Scheme is intended to enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports, it also has to provide a structure for decisions about the expenditure of a very significant amount of public funding. The allocation of funding to individuals is ultimately the responsibility of the Agency CEO. This is a responsibility that the Agency CEO should exercise in close partnership with people with disability and their families, carers and on occasion their advocates, but it is inevitably a decision making power that the Agency CEO has to exercise. The issue is whether the core decision points for the Agency CEO, and the associated information gathering powers, should be specified in legislation, or allowed to be done by the Agency CEO under the general administrative powers which officers responsible for the expenditure of public funding have available to them. The Bill reflects the judgement that it is more transparent, and ultimately protects the rights of people with disability to a greater extent, to have the powers of the Agency CEO clearly specified. This ensures that where appropriate the CEO's exercise of these powers can be scrutinised by external review bodies. In simple terms, specifying what the CEO is able to do also allows the law to be clear as to what the CEO is not able to do and therefore provides important protections to people with disability who are, or want to be, participants in the scheme.

5.28 David Bowen, the CEO for the agency, responded specifically to concerns that have been raised throughout the inquiry in relation to the practical application of the powers of the CEO:

The Bill and the rules speak of the CEO making all decisions and requesting information. Some commentators are concerned that this suggests all decisions may be made in Canberra and may even be made personally by the Agency CEO. This is not the intention, indeed far from it. Clause 202 of the Bill permits the CEO to delegate powers and functions under the legislation. There will be delegation of the CEO powers to Agency employees at all launch sites. The policy is to have all decisions

21 Mr Wallace, People with Disabilities Australia, *Proof Committee Hansard*, 4 March 2013, p. 59.

made by employees situated as close to NDIS participants, prospective participants, carers, nominees, support providers and other stakeholders as possible.²²

5.29 The committee also received the draft rules relating to the powers of the CEO in a variety of circumstances set out in the primary legislation. The rules set out criteria that the CEO must consider before coming to a decision. For example the criteria that would help decide whether a participant would be able to manage their own supports funding or whether this would present an unreasonable risk to them are:

- (a) whether material harm, including material financial harm, to the participant could result if the participant were to manage the funding for supports to the extent proposed, taking into account the nature of the supports identified in the plan;
- (b) the vulnerability of the participant to:
 - (i) severe physical, mental or financial harm; or
 - (ii) exploitation; or
 - (iii) undue influence;
- (c) the ability of the participant to make decisions;
- (d) the capacity of the participant for financial management;
- (e) whether, and the extent to which, any risks could be mitigated by:
 - (i) the participant's informal support network; or
 - (ii) any safeguards or strategies the Agency could put in place through the participant's plan.

3.9 The safeguards referred to in paragraph 3.8(e)(ii) could include, for example:

- (a) setting a shorter period before the participant's plan is reviewed; or
- (b) setting out regular contacts between the Agency and the participant; or
- (c) providing funding for supports (for example, budgeting training) that would assist the participant to manage their own plan.²³

5.30 Nicholas Mann from Slater and Gordon lawyers did not see the powers conferred to the CEO as being exceptional or unusual:

Certainly the powers conferred in this bill are similar to those that you would find in Comcare. They are perhaps a little stronger than some of the

22 Mr Bowen, NDIS Launch Transition Agency, *Proof Committee Hansard*, 5 March 2013, p. 39.

23 *National Disability Insurance Scheme draft Rules—Plan Management*, Part 3 Unreasonable risk—criteria for decision, pp. 6–7.

state legislation, such as the state insurance powers, but I do not think we see anything new or novel about the powers conferred in this bill.²⁴

Committee View

5.31 As discussed in chapter 2 the committee understands the concerns of submitters who were concerned about the general tone of the legislation and the apparently heavy handed nature of some of the powers of the CEO and the consequent implications these could have for the concept of choice and control. The nature of the NDIS policy and legislation development process, including the lack of availability of draft Rules due to time constraints, and commentators not being in receipt of all the information, has led to perceptions being created that may not be reflective of how the scheme will operate.

5.32 The information provided to the committee in the form of draft Rules, operational guidelines and evidence from senior officials from the department and the agency, has alleviated many of the concerns of the committee. In the context of the scheme being developed progressively using launch sites, the government's explicit commitment to learning through the launch process, and with the statutory review of the bill (clause 208), the committee is content that the powers of the CEO in the making and operation of the plan are appropriate.

Definition of reasonable and necessary supports

5.33 Clause 34 of the bill sets out criteria that must be satisfied in order for the support to be funded. These criteria are as follows:

- (a) the support will assist the participant to pursue the goals, objectives and aspirations included in the participant's statement of goals and aspirations;
- (b) the support will assist the participant to undertake activities, so as to facilitate the participant's social and economic participation;
- (c) the support represents value for money in that the costs of the support are reasonable, relative to both the benefits achieved and the cost of alternative support;
- (d) the support will be, or is likely to be, effective and beneficial for the participant, having regard to current good practice;
- (e) the funding or provision of the support takes account of what it is reasonable to expect families, carers, informal networks and the community to provide;
- (f) the support is most appropriately funded or provided through the National Disability Insurance Scheme, and is not more appropriately funded or provided through other general systems of service delivery or support services offered by a person, agency or body, or systems of service delivery or support services offered:
 - (i) as part of a universal service obligation; or

24 Mr Mann, Slater and Gordon, *Proof Committee Hansard*, Thursday 21 February 2013, p. 16.

- (ii) in accordance with reasonable adjustments required under a law dealing with discrimination on the basis of disability;
- (g) the support is not prescribed by the National Disability Insurance Scheme rules as a support that will not be funded or provided under the National Disability Insurance Scheme;
- (h) the funding of the support complies with the methods or criteria (if any) prescribed by the National Disability Insurance Scheme rules for deciding the reasonable and necessary supports that will be funded under the National Disability Insurance Scheme.²⁵

5.34 Mr Rehn from the RIDBC voiced his concerns over the definition of 'reasonable and necessary supports', particularly around the criteria of value for money in clause 34(c):

We are a little concerned about the aspects of section 34, 'Reasonable and necessary supports', especially paragraph (c), which includes an economic rationale with the inclusion of value for money as a determining factor in assessing 'reasonable and necessary'. This is compounded by the statement that benefits achieved will be used as an undertaking factor in assessing value for money. This is extremely contentious from our perspective and we can foresee many issues arising from that paragraph.²⁶

5.35 Novita Children's Services in SA expressed their concern that there wasn't enough detail in the bill to assess whether or not the definition is appropriate and would cover the requirement supports:

One of our concerns is that the bill should not be passed until due consideration of those rules is provided for since in sections 26 and 27 around assessment and also section 34—the definitions of reasonable and necessary supports—there is quite a reliance on rules to articulate what those sections actually mean.²⁷

With clause 35 concerning reasonable and necessary support the issue is the same. Until we see the rules we do not know what might be included and what might be precluded.²⁸

5.36 Dr Maree Dyson made an interesting point that switching the two criterion may have an impact on the decision making when it comes to assessing the supports that will be funded:

I would reverse the notion of 'reasonable and necessary' to put 'necessary' as the first consideration. You ask: 'Is the response needed?' and then you move into discussions about the extent to which the funding and support is

25 NDIS Bill, clause 34.

26 Mr Rehn, Royal Institute for Deaf and Blind Children, *Proof Committee Hansard*, 1 February 2013, p. 3.

27 Mr Rappensberg, Novita Children's Services, *Proof Committee Hansard*, 19 February 2013, p. 11.

28 Mr Thompson, Novita Children's Services, *Proof Committee Hansard*, 19 February 2013, p. 12.

in fact reasonable. I think the emphasis is the wrong way around. There has to be a focus on outcomes.²⁹

Committee View

5.37 The committee has now seen draft rules that prescribe the criteria for the types of supports that will be provided and/or funded by the agency.³⁰ They are comprehensive, and while the committee cannot speak for the submitters who were concerned about what could constitute a 'reasonable and necessary' support, the committee is satisfied that the detail provided in the rules responds to the kinds of concerns raised during the inquiry.

Why does it matter if the participant is overseas?

5.38 Clause 40 of the bill provides for the suspension of a participant's plan in circumstances where the participant is absent from Australia beyond what is termed a 'grace period' of 6 weeks. The draft rules provide detail on various circumstances where this period could be extended: Clause 40 states:

40 Effect of temporary absence on plans

- (1) A participant for whom a plan is in effect may be temporarily absent from Australia for the grace period for the absence without affecting the participant's plan.
- (2) The ***grace period*** for a temporary absence of a participant is:
 - (a) 6 weeks beginning when the participant leaves Australia; or
 - (b) if the CEO is satisfied that it is appropriate for the grace period to be longer than 6 weeks—such longer period as the CEO decides, having regard to the criteria (if any) prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph.
- (3) If a participant for whom a plan is in effect is temporarily absent from Australia after the end of the grace period for the absence, the participant's plan is suspended from the end of the grace period until the participant returns to Australia.
- (4) For the purposes of this section, a person's absence from Australia is temporary if, throughout the absence, the person does not cease to reside in Australia (within the meaning of paragraph 23(1)(a)).

5.39 The Association for Children with a Disability submitted that this clause represented an impost by the agency on the lives of people with disabilities:

29 Dr Dyson, Private capacity, *Proof Committee Hansard*, 21 February 2013, p. 50.

30 National Disability Insurance Scheme Draft Rules, *Rules for registered providers of supports*, received 5 March 2013.

This is an insurance scheme, not a welfare-to-work scheme. Why is it any business of the Agency whether the participant is overseas, provided it is consistent with the plan?³¹

5.40 Bolshy Divas posed the same question: 'should people with disability be allowed to go on holiday, and should they have to ask permission?'³² DANA argued that:

NDIS supports should continue to be available, without CEO involvement, to people travelling overseas when they are undertaking a normative activity that does not affect their residency.³³

5.41 Others, while not necessarily rejecting the provision outright, thought the period was too short. Service provider Novita Children's Services agreed it was too short, suggesting an extension of 'at least a further 4 weeks'.³⁴

Committee View

5.42 The committee notes that the report already contains residency requirements for participants. It also requires participants to notify the CEO if they have a change of circumstances relevant to their participation or their plan (clause 51). It notes that this provision, while of concern to some submitters, also has the benefit of allowing the CEO to continue to provide reasonable and necessary supports reflecting a person's circumstances, including circumstances involving travel. The committee is pleased to see that the draft rules explicitly recognise a range of circumstances in which extended overseas travel may be sought, and that these are to be considered by the CEO in processes under clause 40 of the bill.

Privacy

5.43 There were some concerns raised in evidence about the privacy provisions in Chapter 4 of the bill. The Queensland Disability Network commented generally on the issue by providing an example of when the privacy of people with disabilities is breached inappropriately, or information is requested by care givers beyond what is necessary:

With regard to privacy: QDN believes again that this is a very important window where currently some non-essential information relating to the person's life is shared with care givers. I can give a personal example in this instance where I once had a HACC service visiting my house and they wanted to know what form of contraception I was using. It had no relevance to wiping the kitchen benches. I think there is a level of intrusion and invasion into the personal aspects of life for people with disability which

31 Association for Children with a Disability, *Submission 741*.

32 Bolshy Divas, *Submission 564*, p. [11].

33 Disability Advocacy Network Australia, *Submission 516*, p. 23.

34 Novita Children's Services, *Submission 441*, p. 5.

has gone on for too long. Only information which is relevant to support needs to be shared with those delivering the support.³⁵

5.44 The Office of the Australian Information Commissioner commented specifically on sections of the bill around the interaction between state and federal laws, proposing that efforts be made to ensure consistency across jurisdictions:

[I]t appears that the National Disability Insurance Scheme Launch Transition Agency (NDIS Agency) will be covered by the Privacy Act and that the Information Privacy Principles will apply to its operations. However, it is unclear the extent to which other entities participating in the Scheme will be covered by privacy law. Some non-government organisations may be covered by State or Territory privacy law where they are contracted by State or Territory agencies to provide services on behalf of government. Others may not be covered by privacy law in States where no such legislation exists. Further, if a participating entity falls within the small business exemption in the Privacy Act it will not be covered by Commonwealth privacy law. Given the amount of personal information that will be collected and used under the Scheme, it will be important to ensure appropriate and consistent coverage of all participating entities under privacy law.³⁶

5.45 The department responded to the concerns of the Commissioner as set out in their submission with the view that the provisions in the bill were fairly standard and well tested in various Commonwealth laws:

Dr Hartland: These are reasonably standard provisions in Commonwealth legislation to protect information that the agency acquires and to allow the agency owner to share it under limited and transparent conditions. So the rules on protection and disclosure of information that we have provided to you outline the circumstances where the agency CEO may disclose information. These are reasonably standard, I think, for Commonwealth acts. I do not think we have departed a great deal from other areas. It has an added complexity that it has to interact with state laws, so it is probably a bit more complex in its expression than we are when we do it in social security, but—

Ms Wilson: I am a bit surprised that there are concerns from the Privacy Commissioner, to be honest, because these provisions are pretty well known and pretty well tested in a range of other Commonwealth laws.³⁷

5.46 The committee also noted that departmental officials are scheduled to meet with the Australian Information Commissioner to discuss the concerns outlined in his submission.³⁸ The committee anticipates that if any amendment to the provisions that

35 Ms Vicary, Queensland Disability Network, *Proof Committee Hansard*, 30 January 2013, p. 4.

36 Office of the Australian Information Commissioner, *Submission 486*, p. 2.

37 Dr Hartland, FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 73.

38 Dr Hartland, FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 73.

ensure consistency across jurisdictions was required, this would be considered by the department.

