

# Chapter 1

## Introduction

### Purpose of the Bill

1.1 The National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017 (Bill) amends the *National Disability Insurance Scheme Act 2013* (Act) to:

- establish the independent National Disability Insurance Scheme Quality and Safeguards Commission (Commission); and
- make administrative amendments in response an independent review of the Act.

1.2 In introducing the Bill, the Minister for Social Services (Minister), the Hon. Christian Porter MP, stated the 'commission will deliver on the government's commitment to establish nationally consistent quality assurance mechanisms and safeguards for National Disability Insurance Scheme participants'.<sup>1</sup> The Minister further stated it is expected the Commission will enable participants to take reasonable risks in exercising choice and control in the supports they receive, whilst balancing governments' duty of care obligations to participants.<sup>2</sup>

### Bill structure

1.3 The Bill is structured in two schedules. **Schedule 1** of the Bill establishes the NDIS Commission and empowers it to:

- (a) regulate the registration of National Disability Insurance Scheme (NDIS) providers (proposed Divisions 2 and 9 of Part 3A of Chapter 4 and proposed section 181F);
- (b) oversee compliance and enforce breaches relating to provider conduct (proposed Division 8 of Part 3A of Chapter 4 and proposed paragraph 181E(d));
- (c) receive and management reports and complaints regarding provider conduct (Divisions 5, 6 and 7 of Part 3A of Chapter 4 and proposed section 181G);
- (d) provide policy leadership and standards for worker screening (proposed section 73T, proposed paragraph 181E(f) and proposed paragraph 181F(c));

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1 The Hon. Christian Porter MP, Minister for Social Services, *House of Representatives Hansard*, 31 May 2017, p. 5741.

2 The Hon. Christian Porter MP, Minister for Social Services, *House of Representatives Hansard*, 31 May 2017, p. 5741.

- (e) provide national leadership on the reduction and elimination of restrictive practices (proposed section 181H); and
- (f) facilitate the exchange of information between certain regulatory bodies (Division 2 of Part 1).<sup>3</sup>

1.4 **Schedule 2** of the Bill makes a range of administrative amendments which facilitate the operation of the Act, in response to an independent review of the Act, conducted in 2015.<sup>4</sup>

## **Background**

### ***Schedule 1***

1.5 In December 2016, the Council of Australian Governments' Disability Reform Council (COAG DRC) endorsed the NDIS Quality and Safeguarding Framework (Framework). In summary, the Framework:

...provides a nationally consistent approach to help empower and support NDIS participants to exercise choice and control, while ensuring appropriate safeguards are in place, and establishes expectations for providers and their staff to deliver high quality supports.<sup>5</sup>

1.6 The objectives of the framework are intended to deliver NDIS support services which:

- (a) maintain the rights of people with disability;
- (b) ensure informed decision making;
- (c) establish person-centred outcomes that promote choice and control for participants;
- (d) are safe and free from abuse; and
- (e) enable monitoring and responsiveness.<sup>6</sup>

1.7 As a significant formulation of regulatory policy, the framework was developed through a process of consultation, impact analysis, attention to inquiries into abuse and neglect in disability support services and targeted policy work.<sup>7</sup>

1.8 The Explanatory Memorandum (EM) for the Bill explains:

The Bill is an important step towards implementing the Framework and giving effect to the Commonwealth Government's regulatory responsibilities under the Framework.<sup>8</sup>

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3 Explanatory Memorandum (EM), pp. iv–v.

4 As completed by Ernst and Young.

5 Department of Social Services (Department), *NDIS Quality and Safeguarding Framework*, December 2016, p. 9.

6 Department, *NDIS Quality and Safeguarding Framework*, December 2016, pp [TBC].

7 Department, *NDIS Quality and Safeguarding Framework*, December 2016, pp. 8–10.

8 EM, p. ii.

1.9 In the 2017–18 Budget, the government announced it would fund the establishment of the Commission to operationalise the Framework.<sup>9</sup>

### **Schedule 2**

1.10 Schedule 2 of the Bill makes administrative amendments to the Act in response to an independent review, made under section 208 of the Act, which was required to be caused by the Minister within two years of the NDIS commencing.

1.11 The independent review was produced in December 2015 and found that opportunities had arisen to amend, or clarify, elements of the NDIS legislative framework to better enable the objectives and principles of the scheme.<sup>10</sup> Thirty three recommendations were made in the review, the majority of which proposed amendments to the Act.<sup>11</sup>

1.12 The COAG DRC considered the review's recommendations and released its response in December 2016, in which the vast majority of the review's recommendations were agreed to.<sup>12</sup>

1.13 Amendments in schedule 2 of the Bill are aligned with COAG DRC's response to the independent review.<sup>13</sup> The EM provides a breakdown of the recommendations implemented, or not implemented, by schedule 2 of the Bill.<sup>14</sup>

### **Financial impact**

1.14 Amendments in schedule 1 will cost \$209 million over the forward estimates.<sup>15</sup> Amendments in schedule 2 are not expected to have financial impact.<sup>16</sup>

1.15 Expenses for the Commission will be split across a number of government entities, including the Department of Social Services (Department), Department of Human Services and the Office of the Commonwealth Ombudsman.<sup>17</sup>

1.16 The Department informed that an allocation of \$29.3 million has been made over four years to develop information and communications technology solutions to support the Commission's work.<sup>18</sup>

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9 Commonwealth of Australia, *Budget Measures: Budget Paper No. 2 2017–18*, p. 154.

10 Ernst and Young, *Independent review of the NDIS Act*, December 2015, p. 3.

11 Ernst and Young, *Independent review of the NDIS Act*, December 2015, pp. 5–6.

12 Council of Australian Governments Disability Reform Council, COAG response to the independent Review of the National Disability Insurance Scheme Act 2013, December 2016.

13 EM, p. v.

14 EM, pp. 68–71.

15 EM, p. vi.

16 EM, p. vi.

17 Commonwealth of Australia, *Budget Measures: Budget Paper No. 2 2017–18*, p. 154.

18 Ms Anna Fieldhouse, Department of Social Services, *Committee Hansard*, 5 September 2017, p. 31.

1.17 Regulatory savings resulting from the Bill are expected to be \$23.2 million per annum. These savings are primarily attributed to lower fees to services providers, through streamlined verification processes under the Provider Registration and Code of Conduct. Regulatory savings will be partially offset by additional regulatory costs resulting from more stringent serious incident reporting requirements and restrictive practice oversight provisions included in the Bill.<sup>19</sup>

### **Consideration by other committees**

1.18 The Bill has been considered by the Senate Standing Committee for the Scrutiny of Bills (Scrutiny Committee) and the Parliamentary Joint Committee on Human Rights (Human Rights Committee).

#### ***Legislative scrutiny***

1.19 The Scrutiny Committee considered whether provisions contained in the Bill raise concerns under the scrutiny principles of Senate Standing Order 24(a)(i), (ii), (iii) and (iv).

1.20 The Scrutiny Committee made several key observations, including:

- the desirability for the Bill to provide high level guidance on the broad discretionary powers of the NDIS Quality and Safeguards Commissioner (Commissioner) to release personal information for the purposes of the Act;
- the importance of several items of delegated legislation to understanding the primary legislation;
- the appropriateness of delegating administrative powers under the *Regulatory Powers (Standard Provisions) Act 2014* to enable 'other persons' to assist Commission officials in exercising 'potentially coercive or investigatory powers';
- the appropriateness of including more defined provisions regarding fair hearing rights for providers to be afforded an opportunity to submit to proceedings which may result in the issuing of a provider' ban order; and
- the preference for powers proposed under proposed section 202A to be confined so that powers of the Commissioner are delegated to a narrower scope of Commission officials.<sup>20</sup>

#### ***Human rights***

1.21 The Human Rights Committee considered the Bill's compatibility with the right to privacy. In particular, the Human Rights Committee considered proposed subsection 67E(1) and proposed section 67F. Proposed subsection 67E(1) provides for the Commissioner to disclose information held by the Commission in certain listed circumstances for the purposes of the Act. Proposed section 67F enables provisions

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19 EM, p. 97.

20 Senate Standing Committee for the Scrutiny of Bills, Scrutiny Digest 6/17, pp. 50–55.

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regarding the Commissioner's excise of disclosure powers to be made in the NDIS Rules.

1.22 The statement of compatibility with human rights for the Bill outlines disclosure provisions. The rationale is predicated on the role of the Commissioner in receiving information regarding potential cases of abuse, or statutory breaches, and the requirement for a capacity to work with mainstream systems to ensure such occurrences are addressed.<sup>21</sup>

1.23 The Human Rights Committee accepted the rationale for disclosure provisions as legitimate.<sup>22</sup> But questioned the breadth and proportionality of the discretion afforded to the Commissioner when balanced against the principle of protecting the right to privacy.<sup>23</sup>

### **Conduct of the inquiry**

1.24 On 31 May 2017, the Minister introduced the Bill in the House Representatives.<sup>24</sup>

1.25 Pursuant to resolution of the Senate, the provisions of the Bill were referred to the Senate Community Affairs Legislation Committee (Committee) on 15 June 2017, for inquiry and report by 5 September 2017. On 17 August 2017, the Senate granted an extension of time for reporting until 13 September 2017.<sup>25</sup> On 13 September 2017, the Senate granted an extension of time for reporting until 13 October 2017.<sup>26</sup> On 13 October 2017 the Committee presented an interim report and on 16 October 2017, the Senate granted an extension of time for reporting to 8 November 2017.<sup>27</sup>

1.26 Information regarding the inquiry was placed on the Committee's website.<sup>28</sup>

### **Submissions**

1.27 The Committee wrote to relevant organisations and invited them to make a submission to the inquiry by 28 July 2017.

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21 EM [statement of compatibility with human rights, p. 13].

22 Parliamentary Joint Committee on Human Rights, Human rights scrutiny report: Report 7 of 2017, August 2017, p. 28.

23 Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report: Report 7 of 2017*, August 2017, p. 29.

24 House of Representatives, *Votes and Proceedings*, No. 56, 31 May 2017, p. 801.

25 *Journals of the Senate*, No. 55, 17 August 2017, p. 1759.

26 *Journals of the Senate*, No. 62, 13 September 2017, p. 1983.

27 *Journals of the Senate*, No. 64, 16 October 2017, p. 2062.

28 See: Community Affairs Legislation Committee, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/NDIS\\_QualitySafeguards](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/NDIS_QualitySafeguards) (accessed 6 September 2017).

1.28 At the time of reporting, the Committee received had 47 submissions which were published on the Committee's website. A list of submissions received is at Appendix 1.

***Witnesses***

1.29 Public hearings for the inquiry were held on 4 and 5 September 2017 in Canberra.

1.30 The Committee heard evidence from 17 organisations. A list of witnesses is at Appendix 2.

1.31 The Committee would like to thank the organisations which made submissions to the inquiry and provided evidence at its public hearings.

***Receipt of NDIS draft rules***

1.32 On 10 October 2017, the Minister for Social Services provided the following draft NDIS Rules to the Committee:

- NDIS (Protection and Disclosure of Information) Rules;
- NDIS (Incident Management and Reportable Incidents) Rules;
- NDIS (Complaints) Rules;
- NDIS Practice Standards (Schedule: Core Module); and
- NDIS (Behavioural Support) Rules.

1.33 The Committee agreed to a request from the Minister for these draft rules to be accepted confidentially, as the documents would be subject to future consultation with industry stakeholders.

***Note on references***

1.34 References to the Committee *Hansard* are to the proof *Hansard*. Page numbers may vary between the proof and official *Hansard* transcripts.