



Australian Government

Department of Social Services

# Submission to Senate Community Affairs Legislation Committee Inquiry into the *Disability Services and Inclusion Bill 2023*

Department of Social Services

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## Introduction

The Department of Social Services (the Department) welcomes the opportunity to make a submission to the Community Affairs Legislation Committee about the *Disability Services and Inclusion Bill 2023* (the Bill) and the *Disability Services and Inclusion (Consequential Amendments and Transitional Provisions) Bill 2023*, referred for inquiry on 14 September 2023. If there is additional assistance or information beyond this submission that would support the Committee in its consideration of the Bill, the Department stands ready to assist.

## Overview of the Bills

The Bill, together with the enabling Bill, is designed to ensure Australian Government disability services outside the National Disability Insurance Scheme (NDIS) are supported by a fit-for-purpose, modern legislative framework. This will benefit the more than one in six Australians living with disability.

The enabling Bill repeals the current *Disability Services Act 1986* (DS Act), ensures continuity of existing supports and addresses references to the current Bill in other Commonwealth legislation.

The Bill will establish a broad and flexible legislative framework that enables the Government of the day to fund Commonwealth supports and services that benefit people with disability regardless of NDIS eligibility, with additional underpinning quality and safeguarding arrangements.

The DS Act is outdated in both its structure and substance, delivering a fragmented and inconsistent approach to providing legislative authority and mechanisms for the funding of Commonwealth programs for people with disability.

Contemporary disability programs employ a range of service delivery models that were not envisaged when the DS Act was established and their funding is currently authorised under the *Financial Framework (Supplementary Powers) Regulations 1997*.

The timing of these Bills is important as one of the intentions is to better facilitate Australian Government responses to findings and recommendations of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability and the NDIS Review.

The Bill will provide legislative authority for new and existing spending on disability related programs outside the NDIS. A single, unified source of enabling legislation authorising funding for disability supports and services will avoid the significant administrative delays and lack of consistent safeguards in the current system.

Arrangements and grants made under the proposed Act will be supported by appropriate quality safeguards such a mandatory Code of Conduct and certification standards where appropriate.

The Bill acknowledges the social model of disability, which recognises attitudes, practices and structures can be disabling and act as barriers preventing people from full participation as equal members of the community and from exercising their rights.

The Bill does not directly allocate funding for specific supports or services. Decisions around specific disability services that should be funded would be determined by the government of the day, with funding commitments made through budget processes. The flexibility built into the Bill allows the Government of the day to respond to emerging needs and changing circumstances, now and into the future, working in consultation with the disability community.

Supports and services may be provided under the Bill to any person with disability, including those with physical, psychosocial, cognitive, intellectual or sensory impairments. These disabilities may be present from birth or acquired and may be long-term or episodic.

The Bill engages with the vision and objectives of Australia's Disability Strategy 2021-2031 (the Strategy), and thereby plays a role in promoting and realising the human rights of people with disability. The rights of people with disability are promoted, embedded and enforced through the *Disability Discrimination Act 1992* and *Australian Human Rights Commission Act 1986*. This Bill supports those rights, including the rights to equality of opportunity and inclusion, autonomy of decision-making and privacy.

The enabling Bill ensures existing grants and programs will continue under existing arrangements rather than transition these to the new arrangements. Transition to new arrangements will occur when current funding agreements end. The mandatory Code of Conduct, provided for under the Bill, will apply to these existing arrangements.

## Key elements of the Bill

The purpose of the Bill is to enable funding for disability supports and services outside of the NDIS that are not covered by state, territory or local government obligations under relevant laws and Australia's Disability Strategy 2021-31. It does not sit in isolation or give effect to international obligations and other legislation on its own. The Bill is part of a broader suite of Commonwealth legislation such as the NDIS Act, the *Disability Discrimination Act 1992*, *Australian Human Rights Commission Act 1986* and *Social Security Act 1991*, which all contribute to upholding and promoting the rights of people with disability. It complements other Commonwealth legislation but does so within the scope and objects of the Bill.

## Structure of the Bill

The Bill is broken up into five parts:

- Part 1 provides the framing provisions, objects and principles to guide decision-making under the Bill, as well as key definitions.
- Part 2 outlines funding arrangements under the Bill and prescribes various activities for the benefit of people with disability along with the statutory funding conditions.

- Part 3 outlines quality and safeguarding arrangements to uphold the rights of people with disability when receiving supports and services, including providing for a mandatory Code of Conduct, compliance requirements, and regulatory alignment with other quality and safeguard systems where appropriate.
- Part 4 details information management, including unauthorised use or disclosure of protected information, and authorised use or disclosure of relevant information.
- Part 5 deals with miscellaneous matters, including delegation of powers by the Minister and the Secretary and the power to make rules.

## Objects and principles

The objects and principles of the Bill should be understood as establishing the framework within which the Bill will provide supports and services. It is intended that measures funded through this Bill will address and respond to the objects and principles identified.

While the objects and principles of the Bill establish a human-rights approach to funding disability supports and services, the Bill is not a human rights bill. The *Disability Discrimination Act 1992* remains the primary legislation for articulating and upholding the rights of people with disability. The Department also notes the ongoing work of the Parliamentary Joint Committee on Human Rights through its Inquiry into Australia's Human Rights Framework. The purpose of this Bill is to ensure legislative authority to fund a broad range of disability supports and services and to improve safeguards, addressing issues and limitations of the current DS Act.

## Definitions

Definitions provided in the Bill are intended to support broad inclusion. In keeping with the human-rights, person-centred approach of the Bill, they are framed inclusively to maximise flexibility regarding the scope of disability supports and services that can be funded, and the people with disability who may access them.

Following consideration of consultation feedback, the Bill intentionally does not include a definition of disability. As outlined in the Explanatory Memorandum to the Bill, to do so would be exclusionary, would not recognise the diversity of disability and may limit the range of people with disability that could access and benefit from supports or services. The framework created by the Bill is structured to accommodate the need for continued development of a wide variety of programs to support people with disability. It also recognises that people with disability experience and describe their disability in different ways.

The Department recognises that a number of respondents to the public consultation called for the inclusion of a definition based on the social model of disability or the wording used in the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD). However, a majority of feedback supported the decision to forego a definition, recognising that it allows the Bill to avoid unnecessarily restricting any person with disability from accessing the services and supports they need.

The Bill aims to be broad and flexible to allow for programs funded under the Act to define target groups based on need and circumstance appropriate to the program. For this reason, the Bill does not prescribe a target group. This ensures that supports and services funded under the Bill can still be developed for the benefit of specific cohorts, depending on the nature of the program, service or support.

This will allow the government of the day to respond to emerging needs and issues, relying on the broad and inclusive authority provided by the Bill.

## Eligible activities

Under the current DS Act, funding is limited to supports and services relating to advocacy, employment and print services. Under the proposed Bill, the list of supports and services eligible for funding (eligible activities) is significantly expanded. Section 13 of the Bill provides for funding arrangements and grants in relation to activities covering the provision of: accessibility, accommodation, advocacy, capacity, carer, community inclusion, counselling, education, employment, independent living, information, recreation and respite supports and services, as well as participating in research and evaluation programs and activities related to furthering the objects of the Bill.

Subsection 13(2) allows the Minister to determine additional activities, without limiting the kinds of activities the Minister may determine. This provides flexibility to respond to changing needs and will ensure that this Bill is able to support people with disability by providing authority for Commonwealth-funded supports and services well into the future.

In order to ensure appropriate safeguards are in place, all eligible persons (as defined in section 9) receiving funding under this Bill must comply with statutory conditions set out in section 15 of the Bill. These include complying with the Code of Conduct, implementing and maintaining appropriate complaints and incident management systems, and verifying that neither the eligible person nor any key personnel are subject to a banning order.

Certain activities considered higher risk activities (related to the risk of harm to people with disability) will be 'regulated activities' under the Bill. To be eligible to deliver these regulated activities, providers must hold a certificate of compliance or be covered by a determination in relation to the certification requirements for regulated activities.

## Compliance standards

The Bill includes quality and safeguard arrangements to protect the rights of people with disability when receiving supports and services. Section 23 of the Bill allows the Minister to make rules setting out 'compliance standards' for persons undertaking regulated activities. These rules can be general or in relation to different kinds of persons or regulated activities. For the purposes of the Bill, it is intended that providers would be certified against standards equivalent to the National Standards for Disability Services (NSDS), proposed to be made through legislative instrument.

## Alternative compliance standards

To improve consistency, reduce regulatory burden and reduce duplication across the sector, section 24 of the Bill allows the Minister to recognise compliance with alternative regulatory schemes or systems so that a provider does not need to be certified against the compliance standards. Demonstrated compliance with another regulatory scheme or system are ‘alternative compliance requirements’. The Secretary has the power to grant a certificate of compliance to a provider who meets the alternative compliance requirements in section 22 of the Bill.

This has significant beneficial impact for providers who work across multiple sectors and are already subject to multiple quality standards. Alternative compliance requirements will be set out in a legislative instrument, which allows this function to operate flexibly into the future while ensuring appropriate safeguarding measures.

## Inclusion in the Bill

The Bill aims to strengthen the inclusion of people with disability in Australian society, as articulated in the objects of the Bill (subsection 3(c)), which states that one object of the Bill is to “advance the inclusion and social and economic participation of people with disability”. Providers of supports and services must operate in line with the objects and principles of the Bill, and therefore any supports or services they provide must advance the inclusion of people with disability, including by supporting the development of person-centred supports.

The Bill takes an inclusive approach to authorising Commonwealth funding of disability supports and services, covering a broad and flexible range of services and supports in section 13 and including limitations only for the purpose of safeguarding. The Bill also acknowledges in its objects that supports and services should meet the needs of people with disability who experience compound disadvantage (subparagraph 3(h)(vi)). This inclusive approach to funding authorised by the Bill contributes to the fulfilment of the Department’s responsibilities under the Strategy and the UN CRPD to uphold the right of people with disability to participate fully in all aspects of life.

## Key legislative instruments to support the Bill

The Bill provides authority for the Minister or the Secretary to make a number of legislative instruments under the Bill, including to specify operational arrangements. These legislative instruments are currently in development, taking into account feedback from the public consultation on the Bill that occurred in July and August 2023. Once the legislative instruments are prepared, the Department will consult with key stakeholders on the instruments before they are made.

These instruments will be subject to parliamentary scrutiny processes, including disallowance. A high-level overview of the general intent of these key instruments is included below to assist the Committee in its consideration.

## Code of Conduct instrument

Under section 36 of the Bill, the Minister may make rules prescribing various matters, including rules for, or in relation to, a Code of Conduct (subsection 20(1)). It is intended that these rules will form the Code of Conduct instrument which all eligible persons must comply with (subsection 15(2)). It will be the responsibility of the person receiving funding under the Bill (as the entity with a direct relationship with the Commonwealth) to ensure that its key personnel and staff comply with the Code of Conduct.

The Code of Conduct instrument is intended to be aligned with the existing NDIS Code of Conduct (**Attachment A** to this submission refers), contributing to regulatory alignment between the NDIS and disability services more broadly. This alignment is beneficial to people with disability accessing services and supports as it clarifies that the same expectations apply no matter the source of funding. It also simplifies requirements and training for NDIS providers, who are already expected to be familiar with and required to comply with the NDIS Code of Conduct.

The Code of Conduct does not establish auditing or monitoring requirements, but complaints made or incidents reported to the Department that identify potential breaches will be addressed according to the processes articulated in the Complaints and/or Code of Conduct instrument and any subsequent rules or guidelines. Section 14(6) of the Bill sets out the actions the Minister may take in relation to a breach of statutory funding conditions (which includes the Code of Conduct).

## Regulated activities instrument

Under subsection 13(1), supports and services that can be funded are known as 'eligible activities'. The Bill also establishes in section 11 that a subset of these activities will be 'regulated activities', meaning that they are subject to additional statutory funding conditions (at subsection 15(3)). The regulated activities instrument enables the Secretary to determine which particular activities funded under the Bill are considered regulated activities.

The regulated activity instrument is intended to provide a clear decision-making role and framework for the Secretary when determining whether or not an eligible activity should be considered a regulated activity. When a new program or measure is developed under the Bill, the relative risk and complexity of the services and supports must be considered, and the Secretary must then make a determination about what level of regulatory oversight is required. The Code of Conduct will apply to all service providers, their key personnel and staff. This means that providers delivering lower risk programs (or activities) will still be subject to the Code of Conduct and other statutory conditions, while those delivering higher risk programs, or regulated activities, will also be required to hold a certificate of compliance or be covered by a determination in relation to the certification requirements for regulated activities.

By applying regulatory requirements at the program level, the Bill ensures flexibility to design a wide range of services and supports while also applying fair and consistent requirements to all providers within a particular program.



## Compliance instrument

As described above, under the new Bill, certain funded activities will be designated as ‘regulated activities’, meaning that they are subject to certification requirements in addition to meeting the Code of Conduct (outlined in subsection 15(3)). The instrument will establish the certification requirements that will apply under the new Bill, including setting compliance standards and alternative compliance requirements.

The default certification requirement under this instrument will be compliance standards identical (or near identical) to the NSDS. The NSDS is currently recognised through the *Disability Services Act (National Standards for Disability Services) Determination 2014* and is the product of extensive consultation, including agreement from State and Territory governments. These standards will be made similar to their current form as part of the compliance instrument.

This provides continuity for providers who are required to hold a certificate of compliance under current arrangements, such as Disability Employment Services (DES) providers. Due to the expanded scope of supports and services which can be funded under this Bill, these certification requirements can now be applied more broadly, wherever a program or measure is defined as a regulated activity as outlined above.

This instrument will also recognise compliance or certification of providers under other appropriate regulatory schemes or systems. These alternative compliance requirements will only be recognised if they are appropriate for a particular program.

For instance, many disability service providers deliver both NDIS and non-NDIS supports and services. The NDIS Practice Standards, established by the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*, contain similar requirements and principles as the NSDS. Therefore a provider may be able to obtain a certificate of compliance under the Bill for a particular program by virtue of being a registered NDIS provider (and therefore compliant with the NDIS Practice Standards).

This instrument will allow for increased alignment and reduced regulatory burden across the sector. This will make it simpler for providers to understand and meet their requirements, as well as ensuring that people with disability are able to access safe and high quality services whatever the source of funding.

## Information management instrument

Section 29 of the Bill sets out authorised uses and disclosures of relevant information by an entrusted person. An ‘*entrusted person*’ is defined as any of the following: the Secretary; an APS employee; and any other person employed or engaged by the Commonwealth to provide services to the Commonwealth.

The information management instrument will set out the authorised purposes for the uses and disclosures of relevant information. This includes for purposes determined by the Secretary (subsection 29(3)) and for purposes in which relevant information can be disclosed to a State or Territory (subsection 29(7)). The instrument will specify the legislative power or powers of the Parliament in respect of which the instrument is made.

For example, a determination made under subclause 29(3) could allow for the use or disclosure of relevant information for purposes such as providing a brief to a Minister so that the Minister can consider complaints or issues raised with the Minister by or on behalf of a person, and respond to that person in relation to the complaints or issues. Requiring the Secretary to set out the purposes for which an entrusted person may use or disclose relevant information provides for transparency so that people are aware of how their information may be used or disclosed. This will establish clear expectations around privacy and anonymity to uphold the rights of people with disability.

### Complaints management and resolution instrument

The complaints management and resolution instrument will set out rules that apply both to providers and to the Department in handling complaints. These requirements are intended to be largely comparable to the requirements established by the *NDIS (Complaints Management and Resolution) Rules 2018*. While the Bill does not provide for a separate complaints function and the NDIS Commission has broad investigatory powers, the complaints instrument nonetheless is intended to establish principles and requirements for how complaints are to be addressed.

Subsection 15(4) of the Bill requires all providers who receive funding under the Bill to implement and maintain an appropriate complaints management and resolution system. For providers, the instrument will outline requirements, including that complaints are easy and accessible to make, that they are assessed and resolved in a reasonable timeframe, and appropriate documentation is kept in relation to complaints.

The instrument will also outline the Department's role, including deciding what action should be taken, supporting the individual to resolve the complaint, and determining if any further steps should be taken in relation to a complaint.

Complaints will continue to be managed by the Department through existing departmental complaints channels, outlined below. This ensures minimal disruption for people with disability who are receiving supports through existing programs.

Consistent with existing departmental complaints procedures, complaints will be managed by the relevant program areas. Where complaints relate to alleged fraud, they will be referred to the Department's Audit and Assurance Branch for investigation.

Arrangements under this Instrument will be in addition to the requirement under the Bill for service providers to implement and maintain a complaints management and resolution system appropriate for the size and nature of the provider.

This instrument will also address incident management.

## Complaints and incidents management

The Department understands the importance of making sure complaints processes are accessible, timely and effective, as emphasised through the public consultation for the exposure draft of the Bill. The new Bill allows for a complaints management and resolution instrument, which will broadly set out how complaints in relation to supports or services funded under the new Bill should be managed. The Department will continue to work with representative organisations and other key stakeholders to ensure processes are accessible and existing systems are well placed to handle complaints.

The Department also recognises the importance of ensuring incidents are managed in a consistent and appropriate manner. All service providers will be required to have an incident management system of an appropriate scale for their service. Providers will be required to promptly notify their Grant Agreement Manager and the Department when an incident occurs. The Department may issue recommendations to providers where an incident has occurred and the provider will be obliged to comply with the department's directions as part of their grant arrangements.

The Department will also continue to work with key stakeholders to ensure processes and incidents in relation to services funded under the proposed Bill are managed in a timely and effective manner, ensuring the safety and dignity of people with disability, their families and carers.

## Community consultation

The first round of consultation ran from 7 November 2022 until 12 February 2023. The second round of consultation on the exposure draft ran throughout July and August 2023.

Feedback from both rounds of consultation informed the development of the Bill. Recommendations made by submissions were considered and implemented where possible within the intended scope of the Bill. A summary of the consultation process and responses can be found in the report at **Attachment B**, while further information on key themes is provided below.

The Department will continue to work and engage with the disability community and other stakeholders in relation to the design and implementation of individual programs and services so that they are able to meet the needs of people with disability into the future.

### Key themes arising from consultation

Key themes in the submissions included barriers to accessibility and flexibility; co-design; complaints and safeguarding; definitions; human rights; and language use.

### *Barriers to accessibility and flexibility*

Suggestions around accessible language, including the need to clarify that accessibility of language includes translation (which itself includes Auslan and Easy Read), were accepted and incorporated into the Bill (see section 8 Definitions, “information supports or services”). Suggestions relating to the definition of ‘intersectionality’ were considered carefully and informed the final definition used by the Bill in section 8.

Some feedback suggested that the Bill should explicitly include the need to address and overcome barriers to inclusion and accessibility (especially at subsection 3(e)). While services and supports under the Bill are expected to contribute to addressing barriers to inclusion and accessibility and/or providing supports that enable participation where barriers exist, within the scope of eligible activities in the Bill, it is beyond the scope of this Bill to commit to ‘overcoming’ all barriers. This is a shared responsibility of all governments and the whole community.

Barriers to accessibility and inclusion in the domains of employment, education and health were also raised by some feedback. However, these comments were either broad expressions lacking actionable feedback, or else requested changes that were out of scope for the Bill. More information about this is provided below under the categories of definitions and human rights.

It is expected that issues expressed through the consultation process about the needs for complaints processes, application processes and referral systems will be able to be addressed in the instruments/rules and other guidance and processes.

### *Co-design*

Several submissions noted the critical importance of co-design and suggested that it be a compulsory prerequisite for activities to receive funding. The Department acknowledges the importance of engaging and involving people with disability in policy, program and service design and review processes, and will continue to use and build on existing arrangements with disability representative organisations and other stakeholders to do that. Subsection 3(d) establishes as an object of the Bill ‘support people with disability to exercise choice and control in matters that affect their lives, including by participating in the development and review of policy and programs. The decision was made not to specify within the Bill particular methods of involvement of people with disability in such processes so as not to unnecessarily restrict or constrain these arrangements.

### *Complaints and safeguarding*

Respondents engaged thoughtfully with the proposed approach to quality and safeguarding and supported the proposed Code of Conduct. Many questions were raised about how the Code of Conduct would be upheld, with respondents generally holding that the effectiveness of implementing and monitoring the Code of Conduct was highly important in ensuring the overall effectiveness of quality and safeguarding arrangements under the Bill.

The Department acknowledges these issues as an important part of implementation. Details around the Code of Conduct, complaints processes referral pathways, reporting, investigation and resolution will be addressed in the relevant instrument in order to ensure that they are able to be responsive to any future changes. The Department intends to consult further in relation to these matters.

Based on initial feedback, the period of time for a person who does not have a certificate of compliance for a regulated activity to seek and obtain one was reduced to 15 months (from 18 months) in order to provide more peace of mind around safeguarding.

Suggestions that monitoring and compliance activities under this Bill should align with activities undertaken by other agencies rather than duplicating work have been noted for future consideration, though this currently remains a matter for the government of the day. The Bill would support future work toward regulatory alignment, including in relation to recognition of alternative standards, NDIS banning orders, the code of conduct and information sharing.

### *Definition of Disability*

Notably, this Bill abstains from providing a definition for disability, based largely on feedback gathered in the two consultation rounds. 74% of 139 respondents in the first round responded to the question of whether to have a definition or not; 52% of these respondents were in favour of a definition but varied in their opinion as to what a suitable definition might entail (with commonalities being that it should be based on the UN CRPD and on the social model of disability). The remaining 48% of respondents to the question were not supportive, largely due to concerns that any definition would only serve to exclude certain people with disability, including those with chronic illness or episodic conditions.

Given the diverse views expressed about the inclusion of a definition for disability, along with the various definitions that were suggested, it was decided to refrain from defining disability within the Bill, ensuring it would be read and interpreted broadly. This broad and inclusive approach was embedded in the Bill, including in the range of supports and services that are able to be funded under the Bill, as well as the funding mechanisms available to program designers.

The second consultation period showed broad support for this decision.

### *Other Definitions*

The definition of 'capacity building supports or services' was changed significantly based on consultation. Feedback noted that it would be valuable to emphasise community capacity building and also individual capacity building. The definition was amended in section 8 to accommodate both these categories of activity.

A definition for 'community inclusion supports or services' was added in section 8 in response to consultation feedback about the need for cultural supports and services to allow people with disability to participate fully in their chosen community and culture, including by removing barriers to their inclusion.

Some submissions requested a definition of ‘carer’ be included in the Bill. After careful consideration, it was decided not to include a definition of ‘carer’ in the Bill in order to preserve the focus clearly on people with disability themselves. ‘Carer supports and services’ was, however, added to both the definitions in section 8 and the list of eligible activities in section 13.

Some other suggestions for expanded or altered definitions included:

- employment (this was partially actioned, but a simple definition of ‘employment supports and services’ was preferred in order to maintain consistency with other defined supports and services and avoid unnecessary complications for consequential amendments to social security law)
- the social environment (specifically that it should include the digital environment – this was elaborated on in the Explanatory Memorandum)
- ensuring the focus of the Bill remains clearly on people with disability (these changes were implemented in the Bill).

Others called for the addition of support or service categories that already fell under one or more of the existing categories (for example, services of last resort is covered by accommodation supports and services; individual and systemic advocacy are covered by advocacy supports and services and capacity-building programs) or that are out of scope (for example, transport, an area of state and territory responsibility).

### *Human rights*

A consistent theme throughout the consultation feedback was predicated on a misunderstanding that the Bill is or should be a human rights bill, suggesting for example that the Bill should ‘embed and give effect to’ Australia’s obligations under the UN CRPD rather than ‘give effect to’, or that the Bill should specifically implement a commitment to universal design as per UN CRPD Article 4. While this Bill furthers the rights of people with disability, including the rights to equality of opportunity and inclusion, autonomy of decision making and privacy, the rights of people with disability are embedded and enforced through the *Disability Discrimination Act 1992*. Thus, ‘give effect to’ remains the preferred wording.

Other feedback called on the wording of the Bill to prevent the funding of any activities that could be considered to have the effect of segregating people with disability. The Bill does not pre-emptively specify the explicit nature of each service or support nor the setting or parameters within which a service or support is delivered. These issues are matters for the government of the day to decide on a program-by-program basis.

### *Language amendments*

Many submissions made suggestions for small but significant changes to the wording of the Bill, mostly in the objects and principles, seeking overall person-centred, contemporary language that aligns with a social model of disability. For example, instead of ‘protect people with disability’, the suggestion was to use ‘protect the rights of people with disability’ (paragraph 3(f)) as it is less paternalistic. Likewise, a suggestion to reframe ‘raise community awareness of the competence and value of people with disability’ to ‘promote respect for the inherent dignity, difference and individual autonomy of people with disability’ (paragraph 3(e)) makes the language of this particular object more person-centred and inherently respectful.

Changes such as these were adopted to the maximum extent possible, unless there were legal grounds not to. For example, one request to require funded services be ‘trauma-informed’ was rejected from the Bill on the grounds that there is no legally settled definition of the term ‘trauma-informed’; instead, this was elaborated on in the Explanatory Memorandum.

On the other hand, changes requesting the Department remove caveats of ‘to the extent possible’ from paragraph 3(h) of the objects under the Bill and to include the word ‘ensure’ as often as possible (e.g. to *ensure* respect for difference) were largely not accepted. The Bill broadens the range of supports and services that can be funded. The application of the objects in paragraph 3(h) to a type of support or service will vary in practice depending on the nature of the program funded. The use of the phrase ‘to the extent possible’ is used sparingly, noting that the application of support to people with disability or their access to supports and services will vary in practice subject to the nature of the program.

### *Other / out of scope*

In addition to the out-of-scope suggestions discussed above, participants also requested the following, which were considered to be out of scope for this Bill:

- Suggestions relating to transport: this is a State and territory issue.
- Explicit links to Australia’s Disability Strategy 2021-2031: the Strategy is by design time-limited (expires in 2031) and covers all governments so it is not appropriate to reference. The objects in the Bill are, however, aligned to the vision and objectives in the Strategy.
- Recognition of gaps in various schemes and programs of support for people with disability: while the Bill does not call these out explicitly, by providing broad and flexible funding authority the Bill allows for these gaps to be addressed as identified by the government of the day.
- Commitments to ongoing funding of various areas, including for example Disability Representative Organisations and advocacy services: the Bill provides a broad and flexible funding authority; the details of what this should be explicitly funded is a matter for the government of the day and is dealt with through Budget processes and appropriation bills.
- Practical guidelines to assist grantees to understand their obligations under the objects and principles and the Code of Conduct: agreed in principle, but this is best placed in the instruments and operational guidance rather than the Bill itself.

- References to injury compensation services: these are not considered within the scope of disability supports and services and are covered by various state and territory legislation.

## Conclusion

The Department considers that the Bills, if passed, will enable the Department to better administer and implement the policies and programs of the Australian Government that benefit and support people with disability to fully participate and exercise choice and control over their lives. It provides a broad and flexible legislative basis for the Commonwealth to continue to provide support for people with disability regardless of their eligibility for the NDIS and strengthens the quality and safeguarding arrangements for those supports. The wording of the Bill has been informed by engagement with the disability community and other stakeholders and the Department will consult with key stakeholders as instruments and rules are developed.

The Department thanks the Committee for its consideration of this submission.