

A2374416

17 October 2023

Senator the Hon Marielle Smith
Legislation Committee Chair
Senate Standing Committee on Community Affairs
Parliament House ACT 2600

Dear Chair

Additional information

The Senate Community Affairs Legislation Committee's (the Committee) is inquiring into the provisions of the Disability Services and Inclusion Bill 2023 (the Bill) and Disability Services and Inclusion (Consequential Amendments and Transitional Provisions) Bill 2023. On 3 October 2023, I made a submission to the Committee's inquiry. On 9 October 2023, I attended the Committee's hearing to provide evidence. Thank you for inviting me to respond to statements made by other witnesses at the Committee's 9 October hearing, and to provide additional information to the Committee.

In my evidence, I stated that including the requirements for complaints and incident management in a legislative instrument would address my concerns including the need for transparent reporting of complaint and incident data. I wish to add that while establishing such requirements through legislative instruments is broadly consistent with the approach taken in other legislation, other models provide greater rigour. For example, Chapter 4 of the *National Disability Insurance Scheme Act 2013* (NDIS Act) includes a range of provisions to ensure the scheme's integrity, including a civil penalty for breaching the code of conduct. Also, Chapter 6A of the NDIS Act establishes the independent NDIS Quality and Safeguards Commission to oversee the scheme. The NDIS rules about complaint and incident management ensure regular auditing and further inquiry into complaints by the NDIS Quality and Safeguards Commissioner.

The Bill relies on the Department of Social Services to both design the rules and oversee compliance with those rules. Embedding robust oversight in the Bill would ensure that there is clarity and transparency on the proposed complaint handling and incident management requirements and their oversight at the time that the Bill is being considered by Parliament. If these mechanisms are instead embedded in a disallowable legislative instrument, that would also enable scrutiny by Parliament – but the instrument should still be explicit on important questions of detail as to the complaint handling and incident management requirements, how they will be overseen by the Department and any sanctions that can be applied as a part of oversight.

Yours sincerely

Iain Anderson
Commonwealth Ombudsman

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