



12 July 2021

Committee Secretary
Senate Standing Committees on Community Affairs
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Parliament House
Canberra ACT 2600

via email: community.affairs.sen@aph.gov.au

Re: Inquiry into the National Disability Insurance Scheme Amendment (Improving Supports for At Risk Participants) Bill 2021

On behalf of AnglicareSA, thank you for the opportunity to contribute to the important work of this inquiry.

The safety and wellbeing of South Australians living with a disability is paramount.

Following the recent Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, along with the deeply distressing circumstances surrounding the death of Ms Ann-Marie Smith, we welcome any further protections and safeguards that provide additional security for at-risk National Disability Insurance Scheme (NDIS) participants.

However, this must be balanced with new measures that are practical in implementation and allow our workforce to focus on participant care, without overly burdensome administrative requirements or undue privacy concerns.

Similarly, registered providers must be able to operate within full knowledge of how any proposed changes are applied and that any publicly available information is fair and balanced.

In this vein, we are pleased to provide feedback on key elements of this legislation, as outlined below.

Banning Orders

Existing provisions allow for Banning Orders on all or specific services as well as individuals who either are delivering, or are seeking to deliver, services under the NDIS.

Under these proposed amendments, power to apply changes to NDIS rules with respect to Banning Orders will be delegated from the Minister for the National Disability Insurance Scheme (the Minister) to the Commissioner, NDIS Quality and Safeguards Commission (the Commissioner). This enables both set the criteria for which a Banning Order may apply and impose that Banning Order based on the criteria established.

We appreciate these amendments aim to give more flexibility to the Commissioner and relevant bodies to protect at-risk NDIS customers. However, these amendments would provide significant powers enabling the Commissioner to impose civil penalties and vary the penalty amount.

We would appreciate the opportunity to further understand the details of Banning Orders that may be applied and how these penalties will be adjusted by the Commissioner and relevant bodies.

These amendments also canvas imposing a banning order subject to Specified Conditions. Similarly, we would appreciate the opportunity to understand how these new powers will be used.

Key Personnel

As part of the service provider registration, key personnel are identified within each registered organisation, which may include board members and senior executives.

These amendments reiterate and strengthen measures for key personnel to be subject to Banning Orders in specific circumstances. AnglicareSA endorses these new measures, which requires accountability at all levels of a registered organisation.

Our understanding is that Banning Orders in such circumstances would still apply even if the key personnel member resigned. To this extent, these amendments offer limited scope for providers to demonstrate their effectiveness in dealing with breaches of the NDIS standards, and either prevent a future banning order being applied, or have it revoked or conditions changed.

While there is a clear need for external accountability, AnglicareSA believes there should be scope for internal issues to be resolved, where appropriate.

We note that the timeframes associated with dealing with banning orders pertaining to key personnel are not clear. We would appreciate clear timelines on how such matters are investigated and resolved.

Access to and Use of Evidence Supporting Historic Breaches

Another key theme of the proposed legislation centres on expanding provisions to allow the Commissioner to seek information on past events and include such information in the determination or issuing of either Compliance Notices or temporary Banning Orders.

The ability to seek information on or investigate past events and take them during deliberations pertaining to notices or bans, would be supported by AnglicareSA.

However, we note that the context within which these past events have occurred could be quite different to how existing business processes and systems have been adapted or applied.

AnglicareSA would appreciate more clarity in the NDIS rules and guidance material around how the Commissioner may assess such information and apply sanctions that exists within their expanded powers.

Greater Flexibility in the Sharing of Information Between Bodies

We note the legislation provides greater scope for information sharing between the

Commissioner and the National Disability Insurance Agency (NDIA), relevant state and territory bodies, and other bodies as prescribed.

In principle, we believe these proposed amendments are sensible, and align with the values of stakeholders within the disability sector.

The amendment also proposes to lower the threshold pertaining to the type of information that may be shared. This is achieved by replacing the caveat of a serious threat to an individual's life, health or safety, and instead focussing on preventing or lessening a threat (whether that is immediate, current or in the future).

Once again, it will be important for providers to be able to see how these assessments are conducted in practice. Registered organisations will require a clear understanding of the decision-making processes and delegations within the Commission, Agency and relevant bodies that are considered in the sharing of such information.

The majority of registered service providers are committed to ensuring that potential threats are appropriately documented and shared. The safety of customers and our employees is crucial. We want to ensure our employees are safe in their workplaces, which can include customer's homes.

However, these changes could result in significant additional administrative burden for all stakeholders, yet there is not necessarily any allowance for this in any of the funding arrangements that exist.

NDIS Provider Register

These amendments expand the information that must be published in relation to the NDIS Provider Register.

This would include information around banning orders which already exist. We note that, along with aforementioned changes to the issuing of Banning Orders, this poses a risk of distorting a provider's status.

For example, Banning Orders pertaining to key personnel who have since left the organisation may still be showing on the Register but are not relevant in the context of current operations. This may distort a provider's perceived quality and, as an unintended result, may not create a balanced or fair representation to participants.

Critically, the proposed legislation provides that the NDIS Provider Register will no longer be considered as protected Commission information. That is, individuals would no longer be covered by existing privacy laws.

The immediate impact is that information pertaining to individuals named in any current or historic Banning Order may become publicly available. However, this is dependent on any subsequent regulations that may be set relating to the level of detail that could need to be published.

While we firmly acknowledge the appetite, by relevant bodies, individuals and families as well as the community, for this detailed disclosure, we must consider the direct impact on the health, safety and wellbeing of the workforce. This public disclosure may hinder an individual's ability to find or be offered work even if the banning or restriction has since expired.

This is similar to the public disclosure of any compliance notices issued, which also would potentially include details of the individual worker or key personnel member involved.

The NDIS space is rapidly evolving and changing to meet the needs of our participants, their families and communities.

We appreciate the Federal Government's ongoing response to issues within the sector, particularly those contained within this proposed legislation.

Once again, thank you for the opportunity to contribute to this inquiry. We look forward to continuing to partner with governments, agencies and relevant bodies to ensure safety, quality and choice for NDIS participants.

Yours sincerely,

Ian Byrne
Executive General Manager – Disability Services