

National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024 [Provisions]

Public Hearing – 25 July 2024

ANSWER TO QUESTION ON NOTICE

Department of Social Services

Topic: National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024 [Provisions]

Question reference number: IQ24-000132

Question asked by: Jordon Steele-John

Type of Question: Spoken. **Hansard Page/s:** 57

Date set by the Committee for the return of answer: 31 July 2024

Question:

Senator STEELE-JOHN: Could you take on notice whether you considered any other language in your drafting of the legislation. There are a number of areas where you're still looking to make amendments to the bill, and I would suggest that this is one that should be given additional consideration.

Ms Shannon: We can talk to the Office of Parliamentary Counsel about that.

Answer:

The department worked closely with the Office of Parliamentary Counsel (OPC) to draft the National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024. The use of the term 'class' in the Bill is consistent with Commonwealth legislation and is a term used across Commonwealth legislation as a categorising concept.

Commonwealth legislation must be interpreted and drafted in accordance with the *Acts Interpretation Act 1901* and the *Legislation Act 2003*. These both refer expressly to a 'class' of persons.

Section 33 of Acts Interpretation Act provides:

(3AB) If an Act confers on a person or authority the power to make an instrument (except a legislative instrument, a notifiable instrument or a rule of court):

- (a) specifying, declaring or prescribing a matter; or
- (b) doing anything in relation to a matter;

then, in exercising the power, the person or authority may identify the matter by reference to a class or classes of matters.

Note: This provision has a parallel, in relation to legislative instruments, and notifiable instruments, in section 13 of the *Legislation Act 2003*.

(3AC) For the purposes of subsections (3A) and (3AB), **matter** includes thing, person and animal.

Section 13 of the Legislation Act provides:

(3) If enabling legislation confers on a person the power to make a legislative instrument or notifiable instrument:

- (a) specifying, declaring or prescribing a matter; or
- (b) doing anything in relation to a matter;

then, in exercising the power, the person may identify the matter by referring to a class or classes of matters.

(4) For the purposes of subsection (3), *matter* includes thing, person and animal.

The term 'class' has an established meaning at law. It was intentionally selected to allow maximum flexibility to prescribe participants by way of certain characteristics, for example their location, their age or the types of supports they receive. A participant may fall within many different classes, depending on their unique characteristics, which would not be possible if a different word was used.