

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:** IQ24-000126

**Question asked by:** Jordon Steele-John

**Type of Question:** Spoken.      **Hansard Page/s:** 23-24

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

**Question:**

Senator STEELE-JOHN: Mr Swainson, with due respect, one of the challenges with this legislation is that it is creating rules and process not just for this department, this agency or even this government but for all governments, agencies and departments to come. What matters most to us is what the agency enables, what the legislation enables and what it represents. If you can direct me to a section of this bill or of the act which would prevent the agency from pursuing a participant, as I have said, for payments made to third-party providers in that situation, please direct me to that section. But the evidence that we heard yesterday and my read of this legislation is that you have given yourselves two options for how to pursue a debt. You are saying to us, 'Well, our practice would be that we would not pursue an option of pursuing a participant for a debt incurred by a third party, because that's not our practice.' That may not be your practice, but that doesn't mean your successor couldn't adopt that practice. Again, if you read the robodebt royal commission report or if the department has done so, you will know that it is what is enabled by an act that is important, not what the culture or intention of the particular government is. So can you direct me to such a of the bill where that is made clear?

Mr Swainson: I think the short answer is that there isn't a provision which specifically prohibits the agency from doing or not doing things.

Senator STEELE-JOHN: Why not? You didn't draft it, so this is going back to DSS, I think, but why didn't you do that? That would have been so easy to include. Why is there not a specific prevention against raising a debt against a participant for payments made to a third party?

Ms Shannon: We hear what you're saying. I would like to take that on notice for us to be able to explore it. We have said that we are actively looking at the way that the debt provisions operate, including the possibility of providing advice on strengthening the waiver. As part of that, I would also like to look at the issue that you raise and come back to you. I understand the point you're making and I think it is an important point for us to go and have a look at it. You've made the point about the issue; let us go have a look at what we might need to do to address it. Obviously, that involves unpacking it but also providing advice.

**Answer:**

The National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024 makes no changes to the debt provisions in the Act. The Bill makes changes to section 46 but does not change the interaction between section 46 and section 182.

Section 182 outlines circumstances in which a debt is due to the Agency. This includes where a ‘person does not comply with subsection 46(1) in relation to an NDIS amount’.

Section 46 (as amended by the Bill) will provide that a participant who receives an NDIS amount, or a person who receives an NDIS amount on behalf of a participant, must spend the money on NDIS supports and in accordance with the participant’s plan. Failure to comply with this section by the participant, or another person, results in a debt. This debt is owed by the person who failed to comply with section 46.