



Australian Government
Department of Social Services

Disability Services and Inclusion Bill 2023

Summary of the Bill to repeal and replace the Disability Services Act 1986

DSS June 2023





Introduction

The Department of Social Services (the department, we, us, our) is preparing the Disability Services and Inclusion Bill 2023 (the Bill). If the Bill is passed, it will repeal and replace the *Disability Services Act 1986* (the current Act). This means that if the Bill is passed, it will become the new Act to authorise funding for disability supports and services outside of the National Disability Insurance Scheme (NDIS).

The current Act was established in 1986. It gives the Commonwealth the power to fund a range of disability services and programs. It also regulates the certification of service providers and sets out the standards that they must meet.

Disability supports and services have changed since the current Act began more than three decades ago. In 2008, the United Nations Convention on the Rights of Persons with Disabilities (CRPD) was adopted, followed by the Optional Protocol to the CRPD in 2009.

Australia is moving toward a unified and national approach to building inclusion for people with disability. This started with the National Disability Strategy 2010-2020 and the establishment of the National Disability Insurance Scheme (NDIS) in 2013. This work is continuing with Australia's Disability Strategy 2021-2031.

The Bill will provide a clear basis for the Commonwealth to continue funding certain disability supports and services outside of the NDIS.

Between November 2022 and February 2023, we held a public consultation to explain our plans and give everyone a chance to tell us what the new Act should look like and achieve. You can find more information about our first consultation on the [DSS Engage website](#). This feedback was used to help us draft the Bill and to take into consideration the needs of people with disability, their families and carers.

We are now doing a second consultation to explain the Bill. We want to learn what people think about the Bill and how it will affect people with disability, their families and carers. After we hear feedback, we may make further changes to the Bill before it is considered by Parliament.

Summary of the Bill

The Bill broadens the Commonwealth's authority to fund a range of supports and services for all people with disability. This includes those who are not eligible for the NDIS. Importantly, this Bill will not change or affect the NDIS or disability support pension paid under social security law.

The Bill provides a way to continue funding existing supports and services, while giving authority for the Commonwealth to design new services in the future to better support people with disability, their families and carers. Unlike the *National Disability Insurance Scheme Act 2013* (NDIS Act), the Bill does not provide supports or services directly to people with disability.

To protect people with disability and their families and carers, the Bill seeks to improve the quality of service providers and safety for people with disability. The Bill also protects personal privacy.

In our first consultation, we heard that getting the language right is important. The Bill will use contemporary terminology and descriptions of people with disability. It will use respectful and inclusive language.

Parts of the Bill

The Bill is divided into 5 parts. Key parts are expanded on below, along with what some of them mean for people with disability and for providers of disability supports and services.

The 5 parts of the Bill include:

1. Part 1 – Preliminary – Framework and goals of the legislation.
2. Part 2 – Funding arrangements - Funding options, including the types of supports and services that can be funded under the Bill.
3. Part 3 – Code of conduct and certificates of compliance - Quality and safeguarding arrangements to keep people with disability safe when receiving supports and services under the Bill.
4. Part 4 – Information management - Arrangements to keep your information safe.
5. Part 5 – Miscellaneous – Administration of the Bill.

Part 1

Objects and principles

The objects and principles are listed at the beginning of the Bill. The objects describe the general aims of the legislation while principles provide guidance for actions taken under the Bill.

If there is any doubt about the purpose of parts of the Bill, the objects and principles will help to explain what was intended.

We asked for views on principles and objects in our first consultation. Based on feedback, we have made a number of changes.

The feedback included:

- using modern language in the Bill which considers human rights and person-centred approaches to supports and services
- shifting the aims of supports and services to focus on capacity, experience, empowerment, potential and goals for people with disability
- mentioning Australia's obligations under international law, including the CRPD
- making the objects and principles consistent with other laws like the NDIS Act and the *Disability Services (Principles and Objectives) Instrument 2018*.

The updated objects aim to ensure, among other things, that the Bill gives effect to Australia's obligations under international human rights treaties, including the CRPD. This means that the department and service providers will have to consider how to implement these conventions in practice.

The revised principles will recognise that people with disability have the same rights as other members of society regardless of the origin, nature, type and degree of disability.

They will acknowledge an individual's right to respect for human worth and dignity. The principles will also recognise individual capacities for physical, social, emotional and intellectual development.

What does this mean for me?

When supports and services are funded under the Bill, we must take care to ensure they are designed with people with disability or by people who can adequately represent the interests of people with disability. This will help to ensure people with disability receive the supports and services they need. With a focus on human rights and safe, quality and person-centred service delivery, the objects and principles in the Bill provide guidance on the aims of supports and services for people with disability, their families and carers.

That is the purpose of these principles and objects.

What does this mean for providers?

This part of the Bill shows providers why we are funding them and what we think is important. We want providers to understand human rights and to give people with disability, their families and carers person-centred supports and services.

Definition of 'disability' and target group

In the first consultation, we asked if the Bill should include a definition of 'disability' and how the target group for the Bill should be defined.

Several definitions for 'disability' were suggested, including alignment with terms used in other Acts. One approach generally supported was to use words similar to the definition of 'disability' in the CRPD.

A wide range of feedback was received about whether or not to include a definition of 'disability' and a specific target group. Based on the mixed feedback, the Bill will not define 'disability' or limit supports and services funded under the Bill to a specific target group. The Bill will allow funding of supports and services for all people with disability, including those who do not have a permanent disability and are not eligible for the NDIS.

This means that individual supports and services funded under the Bill may still be designed for specific target groups to ensure everyone's needs are met.

What does this mean for me?

The current services people with disability, including their families and carers, are receiving will not be changing as a result of the Bill. Current supports and services can continue to be accessed as they are within scope of this Bill.

The broad nature of the Bill means that we will have more flexibility in designing and operating new supports and services. We can make sure that the people who need support are able to get it and that it will meet their needs.

What does this mean for providers?

The current supports and services delivered by providers will not be changed by Part 1 of the Bill.

Part 2

Part 2 of the Bill sets out the funding options available to fund supports and services for people with disability.

Service categories

The Bill will allow funding for supports and services in a wide range of categories, including:

- accessibility
- accommodation
- advocacy
- capacity building
- education
- employment
- independent living
- information
- recreation
- research and evaluation
- respite care.

The Bill will also allow the Minister to expand on these categories to make sure that we can address supports and services required to meet the needs of people with disability in the future.

The current Act only allows for funding of services through grants. Other forms of financial arrangements are excluded. This does not reflect how disability supports and services are provided today and limits the kinds of programs that the Commonwealth can provide.

The Bill will expand funding options to include other arrangements for funding supports and services. This will ensure that funding is not limited to financial grants and includes other options.

The Bill requires providers to have suitable complaints and incident reporting systems. These requirements already apply to existing providers through their grant agreements. Placing these in the Bill will make our requirements clear and more visible.

In addition, providers who are subject to a banning order under the NDIS Act will not be eligible to receive funding under the Bill.

What does this mean for me?

The Bill does not affect the current services people with disability are receiving. We can continue funding those services and make improvements to them. The Bill will allow a wider range of supports and services to be funded in the future.

Supports, services and payments outside of the scope of the Bill, such as NDIS Plans and disability support pension, will not be affected.

A wider variety of support and service categories and funding options does mean that we have more flexibility to fund new supports and services to respond to emerging needs and changing circumstances.

What does this mean for providers?

Under the Bill, current programs will generally continue to operate under their current Act until the existing grant agreement ends. This will mean minimal disruption for existing providers, arrangements and for people with disability.

As new providers are engaged or existing providers enter new funding agreements, they will become subject to the Bill.

Providers are already required to manage complaints and incidents. However, these requirements will now be in the Bill as a funding condition rather than solely in grant agreements.

Part 3

Part 3 of the Bill establishes an updated framework for quality and safeguarding measures including a mandatory Code of Conduct for all service providers. Feedback from the first consultation showed broad support for increased alignment with other care and supports sector quality and safeguarding systems, including the NDIS.

Code of conduct

A Code of Conduct sets a minimum standard for all service providers. It tells providers what behaviours are required of them, their key personnel and staff. Providers will be responsible for ensuring that their staff comply with the Code of Conduct. A public Code of Conduct will also show people with disability, their families and carers what they can expect from these people and entities.

We intend that the Code of Conduct will largely mirror the NDIS Code of Conduct. This will make it easier for providers to meet requirements and focus on service delivery, which will benefit people with disability who receive supports and services.

Consistent with the NDIS, providers will not be audited against the Code of Conduct but are required to follow it. The Code of Conduct can form the basis for complaints, reports of wrongdoing or other incidents whether made to the provider or to the department. Providers who do not uphold the Code of Conduct may have their funding reduced or funding arrangements terminated.

The Code of Conduct will be set out in a legislative instrument. This means it can be revised as needed. This will ensure flexibility in establishing and updating regulatory requirements and creating future improvements in the design and delivery of supports and services.

Certification

The Bill provides for certification against quality standards. While the Code of Conduct applies to all providers, certification will only be required for providers who deliver certain services. The Secretary will decide whether providers must be certified to deliver each support or service. When making funding decisions, we must consider the type of support or service and the risk involved, in particular any risks to people with disability.

Consistent with the current Act, provider certification will be made against the National Standards for Disability Services (NSDS). The Bill also allows the Minister to make additional and more specific standards by legislative instrument in the future if appropriate.

A number of providers operate across multiple sectors and are subject to overlapping requirements.

For example, some providers deliver services regulated under both the NDIS Act and the current Act. This means they are required to meet different requirements under both systems.

The Bill will allow other standards, such as the NDIS Practice Standards, to be recognised for the purposes of certification. For example, if a provider holds certification to demonstrate that they meet the NDIS Practice standards, they will not have to be certified against the NSDS as well. This will make it easier for providers to comply with the standards, and free up time and resources to provide services for people with disability.

What does this mean for me?

The supports and services received by people with disability, including their families and carers, will continue to be subject to quality and safeguard checks to ensure

they are person-centred and appropriately delivered. Most importantly, it will ensure that supports and services are delivered in a safe way.

The Code of Conduct will help clarify the behaviour and service standards people with disability should expect from providers.

What does this mean for providers?

All service providers funded under the Bill will be required to comply with the Code of Conduct and put this into practice in their delivery of supports and services for people with disability. Providers will also have the responsibility to ensure that their workers and key personnel are complying with the Code of Conduct.

Current service providers will continue to be subject to the existing certification requirements for the duration of their existing grant agreements.

For new and renewed supports and services, the Secretary will determine whether provider certification is required after considering the level of risk involved in service delivery. Certification may require demonstrating compliance with the NSDS or may be based on certification or compliance under other relevant standards.

Part 4

Part 4 of the Bill deals with information management to ensure that your personal information is kept secure and only used for purposes specified in the Bill.

Part 4 will safeguard the privacy of people with disability, their families and carers by setting out how personal information collected in delivering supports and services will be handled, including by providers. The Bill will limit how information can be used or disclosed, and create a criminal offence where information is disclosed unlawfully.

Part 5

Part 5 of the Bill contains sections which help make the Bill operate. This includes options for the Minister or Secretary to pass on some of their powers to Senior Executive Service (SES) employees in the department.

To ensure flexibility and to clarify how different parts of the Bill operate, rules can be made by the Minister as required or permitted by the Bill. The rules are legislative instruments that can be disallowed by Parliament.

Providing feedback

The draft Bill is now available online.

A survey with questions about the different parts of the Bill is available online. This is to make sure that we get the Bill right for people with disability, their families and carers.

Comments are welcome from anyone. First and foremost, we seek comments from people with disability, but also from family members, carers, advocates, service providers, peak bodies and representative organisations. You can share your own views, or provide feedback on behalf of someone else.