



Disability Services and Inclusion Bill 2023

Frequently Asked Questions

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1. Intent of the Bill

Q: Why is there an intention to repeal and replace the *Disability Services Act 1986*?

A: The *Disability Services Act 1986* (the current Act) was established over 3 decades ago. In this time, disability supports and services and the policy landscape they are delivered in has changed significantly.

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. In 2010 the National Disability Strategy 2010-2020 was agreed, followed by Australia's Disability Strategy 2021-2031 (ADS), and the National Disability Insurance Scheme (NDIS) was established in 2013.

Given these developments, the Disability Services and Inclusion Bill 2023 (the Bill) has been drafted to:

- In conjunction with other laws, give effect to the CRPD and other international obligations.
- Provide a clear legislative basis for the Commonwealth to fund certain disability supports and services outside of the NDIS, noting under the ADS, State and Territory also have obligations in relation to supporting people with disability.
- Improve quality and safeguarding requirements for supports and services authorised under this legislation.

Q: How can the intention of the Bill be better understood?

A: The beginning of the Bill, in Part 1, includes objects and guiding principles. 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 the intention of the Bill.

The objects and principles are available in the exposure draft of the Bill on the [DSS Engage website](#). They are located at section 3 and section 4.

Q: How do the objects of the Bill operate in practice?

A: The objects need to be taken into consideration when delivering services and supports under the Act, should the Bill be passed. The Bill authorises funding for a broad range of different supports and services located at section 13(1). The specific application of objects and principles will depend on the activity funded through the legislation. Factors that influence how objects and principles apply include, for example, whether the program involves direct contact with people with disability or not.

Q: Should we be adding the new Act to all our reference material for our policies?

A: Where the Bill is passed by the Parliament, we will provide timely advice to existing providers delivering supports under the current Disability Services Act and to the disability community and representative organisations around implementation. This includes things like what to include in relevant reference materials.

State and territory portfolio legislation that references the current Act will need to be reviewed to determine whether amendments are required should the Bill pass.

Q: When is it anticipated that the new Bill will take effect?

A: The Bill was introduced into the Parliament on 14 September. It has been referred to the Senate Community Affairs Legislation Committee, with a report due by 9 November. Timing of the new Act to take effect depends on passage through the Parliament.

2. Scope of the Bill

Q: How does the Bill achieve better outcomes for people with disability, their families and carers?

A: The Bill reflects the Commonwealth's continued commitment to fund supports and services for the benefit of people with disability, including their families and carers.

The Bill is a contemporary legislative framework that provides clear authority to continue funding existing programs, while allowing a flexible basis from which the Commonwealth can fund new or changed supports and services outside the NDIS in the future.

States and territories continue to have their own legislation to authorise and fund supports and services.

The Bill does not create new services or impact funding levels for existing services. It broadens the options available to fund certain supports and services outside of the NDIS should the Government choose to. For example, a wider variety of support and service categories in the Bill, as well as funding options, mean that the government of the day will have greater flexibility to fund new supports and services to respond to emerging needs and changing circumstances.

More information about the impact the Bill will have on people with disability and service providers is available on the [DSS Engage website](#).

Q: Will the Bill implement new reforms?

A: The Bill provides a clear and single source to continue funding existing supports and services that were funded under the current Act, while giving authority for the Commonwealth to design certain new supports and services outside the NDIS in the future. This means that the Bill provides a platform to fund existing and new supports and services in the future rather than reforming systems in and of itself. Should the Government choose the reform an existing program or service, it would be authorised through the new Act, if passed.

Q: Is there additional funding attached to the implementation or announcement of the Bill?

A: No. Funding for individual programs or services is determined by the Government through budget processes and then appropriated by the Parliament through appropriation bills in the usual way.

Q: How do people apply for supports and services?

A: The Bill provides authority for different ways of funding supports or services (for example grants or procurements) but does not define how people apply for individual programs or services. How people apply for supports and services will continue to be determined by the Government for each individual program or service.

Q: Does the Bill recognise intersectionality?

A: The objects and guiding principles in Part 1 of the Bill describe the general aims of the legislation and provide guidance for actions taken under the Bill.

The objects in the Bill recognise that people with disability may experience compound disadvantage as a result of the intersection of a person's disability with being an Indigenous person or as a result of their age, sex, gender identity, sexual orientation, intersex status, ethnicity, religious belief or cultural or linguistic background, socioeconomic status, experience of past trauma.

The objects and principles in the Bill provide guidance on the aims of supports and services for people with disability. When designing new supports and services in the future, the objects will need to be taken into consideration, including for example, considering compound disadvantage.

Q: Does the Bill enable people from trusted networks, such as friends, carers and family, to be involved in the service delivery environment?

A: The Bill does not specify who is able to deliver the services or supports associated with each service. The specific details of how supports are delivered will continue to be determined as part of the design of an individual program or service authorised under the Bill.

3. Consultation

Q: How has the Department of Social Services consulted with people with disability in the drafting of the Bill?

A: The department held a public consultation between November 2022 and February 2023. This was to explain the intention to repeal and replace the current Act and give people a chance to provide feedback on what the new Act should look like and achieve.

The feedback received in the first consultation, including feedback from people with disability, was used to help draft the Bill so that it took into consideration the needs of people with disability, their families and carers.

The department then conducted a second consultation to explain the exposure draft of the Bill and invite feedback. This consultation included a number of public information seminars to explain the Bill and answer any questions raised. People were invited complete a guided online survey, upload a submission, or both. All consultation materials, including accessible easy read and Auslan video versions were available online on [the DSS Engage platform](#). The final Bill introduced into Parliament reflects a range of adjustments to provisions and language, taking account of feedback received through the second consultation process.

Q: How have the potential impacts and timing of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability and the NDIS Review been considered?

A: The draft Bill has taken into account findings to date of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Disability Royal Commission) and the NDIS Review.

The Bill has been drafted broadly and flexibly to place the government in a better position to respond to recommendations from both the Disability Royal Commission and the NDIS Review in a timely manner. The Bill also strengthens safeguards, which have been a strong focus of the Disability Royal Commission hearings and feedback from the disability community.

4. Interaction with the NDIS

Q: How is the Bill different from the NDIS?

A: The Bill does not amend the *National Disability Insurance Scheme Act 2013* (NDIS Act) and does not affect NDIS payments or plans. The Bill is designed to support the funding of services and supports outside the NDIS and ensure appropriate quality and safeguarding arrangements for such services and supports.

The Bill operates alongside the NDIS Act and other Commonwealth legislation to support the inclusion and participation of people with disability. It also operates parallel to state and territory legislation.

Q: Will the Bill address unmet need outside of the NDIS?

A: The Bill is an enabling legislative framework. The design of new supports and services in the future will be determined by the government of the day based on needs and circumstances.

A more flexible framework, as enabled by the Bill, will create clear authority to fund future supports and services to respond to needs and changing circumstances.

The Disability Royal Commission is due to release its final report by 29 September 2023. The Bill will help to ensure that the Commonwealth is well placed to respond, along with states and territories, to recommendations made by the final report by providing a flexible enabling framework to fund non-NDIS supports and services.

5. Interaction with other legislation

Q: How does the Bill interact with other national legislation?

A: In conjunction with other laws, the Bill gives effect to Australia's international obligations and commitments to people with disability. The Bill is not the sole or primary means to achieve this. Rather, it is complementary to a suite of national legislation including the:

- *Disability Discrimination Act 1992* (DDA)

- *Social Security Act 1991* (Social Security Act)
- NDIS Act and
- *Australian Human Rights Commission Act 1986* (AHRC Act).

The purpose of this Bill is to enable funding for disability supports and services outside of the NDIS. It does not sit in isolation or give effect to international obligations and other legislation on its own. The Bill is part of a broader suite of Commonwealth legislation such as the NDIS Act, the DDA, Social Security Act and AHRC Act, which all contribute to upholding and promoting the rights of people with disability. It complements other national legislation but does so within the scope and objects of the Bill.

For example, the DDA and the AHRC Act are the mechanisms to protect the rights for people with disability in Australia. The Bill, does however, explicitly outline the types of considerations which need to be made when designing new supports and services to complement these other existing frameworks.

It also complements state and territory disability legislation, working to benefit people with disability, their families and carers through the funding of supports and services.

Q: What happens if there are changes to other national laws like the DDA?

A: Considerations about the impact to other laws when changes are made is a standard process when drafting new legislation.

If the Bill is passed by Parliament and is law at the time, any amendments to other complementary national legislation and potential flow on impacts to other legislation, including the new Act, would be considered.

Q: Does the Bill only apply to Commonwealth-funded services, or state or territory-funded too?

A: Only services funded by the Commonwealth are in scope of the Bill. It could apply to states or territories if they are delivering programs utilising Commonwealth funds allocated under the Bill. State and territory-funded services are enabled within the relevant legislative framework of the funding state and territory.

6. International obligations

Q: How does the Bill interact with Australia's international obligations?

A: The Bill does not give effect to international obligations in and of itself. It describes the kind of considerations that need to be made when designing new supports and services and makes transparent these considerations.

The Bill operates in conjunction with other national legislation. This means it works alongside a broader legislative framework in Australia to achieve better outcomes for people with disability.

7. Definitions and supports and services under the Bill

Q: Why was ‘disability’ not defined in the Bill? How can the community be assured that disability due to episodic conditions such as psychosocial disability will continue to be eligible for supports under this Bill?

A: In the first consultation, the department asked if the Bill should include a definition of ‘disability’. A wide range of feedback was received about whether or not to include a definition of ‘disability’. This included suggestions for several definitions for ‘disability’, including alignment with terms used in other Acts, and concerns about narrow prescriptive definitions that could exclude people with disability.

Based on the feedback, a decision was taken that the Bill will not define ‘disability’. This allows for greater flexibility as to who services are designed for. This means the Bill will allow funding of supports and services for a wide range of people with disability, including those who do not have a permanent disability and are not eligible for the NDIS and those with compound disadvantage. It will be up to the supports and services funded under the Bill to define who is eligible for the services, and this will depend on the objectives of these individual supports and services.

Q: How were the services which may receive funding determined?

A: The services in the Bill which may receive funding are located at section 13(1) of the Bill and were based on ensuring that existing services and supports could continue to be funded and also informed by consultation and support needs for non-NDIS disability supports and services. The Bill will allow funding for supports and services in a wide range of categories, including:

- accessibility
- accommodation
- advocacy
- capacity building
- carer
- community inclusion
- counselling
- education
- employment
- independent living
- information
- recreation
- respite care
- research and evaluation

Service categories are defined broadly in the Bill to allow for flexibility in the design of supports and services in the future and to allow the government of the day to respond to emerging needs and changing circumstances for non-NDIS supports and services.

The Bill also allows the Minister to expand on these categories if required ensure the supports and services needed to address the needs of people with disability can be met in the future.

Q: Will transport be included as part of any of the categories?

A: The department understands that safe access to transport is a crucial part of everyday life. States and territories are primarily responsible for the delivery of transport services. The Act is broad enough that should the government decide in the future to design a program related to accessible transport, it would be possible.

Q: Does the Bill apply to people who provide psychosocial disability services under Medicare (e.g. Psychologists, Occupational Therapists, Social Workers)?

A: If a practitioner is providing services funded under the new Act, once the Bill is passed, they will be bound by this Act while providing those services. The Act will not regulate practitioners for services not funded under the Act.

This Bill is for an Act that will enable the department to fund programs for people with disability. Examples of the types of programs that could be funded under this Act include, but are not limited to, Disability Employment Services (DES); and advocacy services such as the National Disability Advocacy and Disability Representative Organisation programs. The Act will enable funding to providers for services authorised by the Act. Only services provided or funded programs authorised by the new Act will receive funding.

Q: What will be the impact of the new Bill on the DES program?

A: DES is presently funded through the current Act. Transitional arrangements will be put in place to ensure providers can maintain current arrangements until the end of their activity period.

The Code of Conduct will apply to providers from the passage of the Bill. These requirements are largely already built into agreements and expectations of providers.

8. Code of Conduct

Q: Who investigates concerns for a potential breach of the Code of Conduct?

A: The Code of Conduct in the Bill will set 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. The Code of Conduct in the Bill will align with the NDIS Code of Conduct.

A public Code of Conduct will also show people with disability, their families and carers what they can expect from service providers funded under this legislation.

As is the current arrangement, if a complaint is made about a program funded by the department, it will be assessed and investigated, including referral to other agencies as appropriate. Under this legislation, departmental officers would investigate the complaint, including consideration of whether a breach of the Code of Conduct has occurred.

A breach of the Code of Conduct is a breach of a statutory funding condition. If there is a breach of a statutory funding condition, the Minister (or where delegated the department, may take one of the following actions:

- terminate the funding agreement, arrangement or grant;
- vary the funding agreement, arrangement or grant, including by imposing terms and conditions and by reducing the amount of money to be paid; and
- publish information about the failure on a website maintained by the department.

More information about terms and conditions in funding agreements is available at section 14 of the exposure draft of the Bill.

Q: How will you assess compliance with the Code of Conduct? Will providers need to submit extra information?

A: The Code of Conduct will not attach auditing requirements. The Code of Conduct broadly reflects requirements generally included in contracts and agreements. Setting out the expectations clearly in a single document will help to ensure consistency and transparency, both for supports and service providers, and for people with disability and their family and carers.

The Bill provides that terms and conditions set out in relation to funding arrangements or grants may contain obligations to report on alleged or actual breaches of the code of conduct, as well as action taken in response to those alleged or actual breaches.

If a complaint or allegation about a provider of a program funded under the legislation is raised, the department will investigate further, including if a breach of the Code of Conduct has occurred.

Q: Who will the Code of Conduct apply to and who will need to be certified?

A: The Code of Conduct will apply to anyone receiving funding under the Act to deliver any support or service. Rules for Code of Conduct compliance will be set out in a legislative instrument.

If an activity is determined to be a ‘regulated activity’, anyone providing services under that activity will need to be certified against standards. There will also be a legislative instrument to prescribe the kinds of eligible activities to be ‘regulated activities’ as determined by the Secretary of the Department of Social Services.

9. Certification and ‘regulated activities’

Q: How will it be determined whether an activity is a ‘regulated activity’?

A: While the Code of Conduct applies to all providers, certification will only be required for providers who deliver certain services that are determined to be a ‘regulated activity’. The Secretary will determine which supports or services, or activities will require certification based on the level of risk involved in service delivery.

Providers undertaking a ‘regulated activity’ must hold a certificate of compliance under sub-paragraph 9(1)(a)(i) or be covered by a determination under sub-paragraph 9(1)(a)(ii). This reflects that some eligible activities may have a higher risk associated with them.

For example, an eligible activity that does not involve any direct close supports with people with disability may be determined to be sufficiently low risk that a certificate of

compliance is determined not to be necessary. A research program may be an example of this. Other activities, including those involving direct contact or interaction with people with disability, would be more likely to require a certificate of compliance.

Q: What standards will providers be required to gain certification against?

A: Consistent with the current Act, provider certification will be made against the National Standards for Disability Services (NSDS). These will be set out in a legislative instrument.

The NSDS focus on:

- rights
- participation and inclusion
- individual outcomes
- feedback and complaints
- service access
- service management.

The Bill allows the Minister to make additional and more specific standards by legislative instrument in the future if appropriate. This aim is to achieve flexibility to respond to changing circumstances and ensure the standards are contemporary.

Q: How does the Bill improve regulatory alignment for service providers?

A: A number of providers operate across multiple sectors and are subject to different regulatory arrangements. In addition to the Code of Conduct, which will be aligned with the NDIS code of conduct, the Bill allows other standards, such as the NDIS Practice Standards, to be recognised for the purposes of that activity's certification requirements, if determined to be appropriate for the services delivered under the Act.

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 then may require demonstrating compliance with the NSDS or may be based on alternative compliance requirements.

Q: In instances where more than one organisation is involved in the delivery of a Commonwealth funded program, would all delivery partners be required to hold a compliance certificate?

A: If the service is designated as a 'regulated activity' then yes, all delivery partners delivering that activity will be required to hold a certificate of compliance.

Whether an activity is a regulated activity which requires certification will be determined by the Secretary. This decision will be based on consideration of the kind of activity, including the level of risk to people with disability.

If the activity is a 'regulated activity', all service providers delivering that support or service will be required to hold a certificate of compliance. If the activity is not a 'regulated activity', service providers and key personnel will still be required to abide by the Code of Conduct with auditing requirements not attached. This is a similar approach to the NDIS, where if providers are not registered they still need to comply with the Code of Conduct, even though there are no auditing requirements attached.

10. Privacy and secrecy provisions

Q: Will secrecy provisions align in the new Act and provide the same protections for program participants?

A: The secrecy provisions in the Bill can be found at sections 27-29. The secrecy provisions protecting the information of 'program participants' (such as people with disability) are more extensive under the Bill than under the current Act.

Under the current Act, the information protection provisions were not universal, and only applied to some services. Under the Bill, the secrecy provisions will apply to information collected for the purposes of all services. The secrecy provisions in the Bill protect the personal information of all 'program participants' and, similar to the current Act, make it a criminal offence to use or disclose protected information in an unauthorised manner.

Q: Does the information management under the Bill include a provision for the government to collect and release data to the sector to help with service planning?

A: The government will be able to gather and release 'relevant information'. There will be a legislative instrument setting out the purposes for which the government can provide information to state or territory officials. This ensures that there is transparency around the purposes for which information can be shared.