



Bills Digest | 4 February 2026

National Disability Insurance Scheme Amendment (Integrity and Safeguarding) Bill 2025

Parliamentary Library
Bills Digest No. 42, 2025–26

Key points

- The [National Disability Insurance Scheme Amendment \(Integrity and Safeguarding\) Bill 2025](#) (the Bill) is the second tranche in the Albanese government's [announced series](#) of NDIS legislative amendments in response to the [Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#) and the [independent review of the NDIS](#).
- The Bill is primarily aimed at strengthening the powers of the [NDIS Quality and Safeguards Commission](#) and will amend the [National Disability Insurance Scheme Act 2013](#) to:
 - strengthen the existing penalty framework through new civil penalties, higher maximum penalties for serious contraventions, and new criminal offences
 - expand the exclusion mechanisms by broadening the categories of people subject to banning orders and increasing penalties for breaching a banning order
 - allow the Commissioner to make orders prohibiting or restricting a person from engaging in certain promotional conduct in connection with the NDIS
 - allow for shorter time periods for when a person must provide relevant information to the Commissioner.
- The Bill also makes several amendments relating to the operation of the National Disability Insurance Agency (NDIA), including introducing a cooling-off period before a person can withdraw from the NDIS.
- Statutory duties for service providers and key personnel were discussed in the consultation paper but have not been included in the Bill.
- The Bill was referred to Senate Community Affairs Legislation Committee on 27 November 2025 for inquiry, with the [final report due 20 March 2026](#).

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Date of introduction: 26 November 2025

House introduced in: Senate

Portfolio: Health, Disability and Ageing

Commencement: Sections 1-3 and Schedule 1 commence the day after Royal Assent.
Schedule 2 commences the 28th day after Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speeches can be found on the [Bill's home page](#), or through the [Australian Parliament website](#).

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the [Federal Register of Legislation website](#).

All hyperlinks in this Bills Digest are correct as of February 2026.

Purpose of the Bill

The main purpose of the [National Disability Insurance Scheme Amendment \(Integrity and Safeguarding\) Bill 2025](#) (the Bill) is to amend the [National Disability Insurance Scheme Act 2013](#) (NDIS Act) to strengthen the powers of the NDIS Quality and Safeguards Commission (the Commission). The amendments will:

- introduce new civil penalties, increased civil penalties (including higher penalties for serious contraventions), and new criminal offences for providers who contravene their obligations under the NDIS Act
- expand the exclusion mechanisms by broadening the categories of people subject to banning orders and increasing penalties for breaching a banning order
- allow the Commissioner to issue orders prohibiting or restricting a person from engaging in certain promotional conduct in connection with the NDIS
- provide the Commissioner the power to issue an evidentiary certificate, that can be used as prima facie evidence in criminal and civil proceedings to establish facts regarding certain registration matters and
- allow for shorter time periods for when a person must provide relevant information to the Commissioner and require providers to provide relevant documentation as part of the registration process.

The Bill will also make several amendments relating to the operation of the National Disability Insurance Agency (NDIA) including:

- introducing a cooling-off period before a person can withdraw from the NDIS
- enabling the NDIA to move to an entirely electronic claiming system for NDIS providers, including allowing the CEO to control and limit the channels through which a claim can be made and
- ensuring that plan variations can result in an increase or decrease in total funding amount in plans.

Background

The Bill is the second tranche in the Albanese government's [announced series](#) of NDIS legislative amendments in response to the [Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#) (Disability Royal Commission) and the [NDIS Review](#). This Bill specifically responds to calls for improved quality and safety regulation protections for NDIS participants.

In announcing consultation for the Bill in October 2024, then [Minister Bill Shorten stated](#) the government's NDIS reforms aim to "significantly increase protections for Scheme participants and workers, as well as improve the quality and safety of supports".

The reforms in the Bill underwent consultation with the NDIS community, with the final [What we heard](#) report made available in June 2025.

Quality and safeguarding in the NDIS

Legislative history of the NDIS Quality and Safeguards Commission

Quality and safeguarding measures for the NDIS were implemented incrementally as the scheme grew. However, the Disability Royal Commission and NDIS Review identified at

different points in time that quality and safeguarding was not up to standard for the care required for people with disability.

In 2013 the NDIS was established as a series of trial sites, with [quality and safeguarding responsibilities](#) held jointly by the NDIA and the relevant state governments (for example see: [2015/16 Victorian Operational Plan Commitment](#)).

In 2015, the [Senate Community Affairs References Committee report](#) into violence, abuse and neglect against people with disability in institutional and residential settings [recommended](#) a specified body for quality and safeguarding in the NDIS beyond the NDIA:

the establishment of a national, independent, statutory protection watchdog that has broad functions and powers to protect, investigate and enforce findings related to situations of violence, abuse and neglect of people with disability (Recommendation 2).

In 2017 the [NDIS Quality and Safeguards Commission](#) (the Commission) was established through the enactment of the [National Disability Insurance Scheme Amendment \(Quality and Safeguards Commission and Other Measures\) Act 2017](#).

Additional legislation to strengthen the role of the Commission was passed in subsequent years:

- 2019: The [National Disability Insurance Scheme Amendment \(Worker Screening Database\) Act 2019](#) provided for the [Commission to host](#) a [national database](#) of NDIS worker screening clearances.
- 2020: The [National Disability Insurance Scheme Amendment \(Strengthening Banning Orders\) Act 2020](#) broadened [the circumstances](#) in which the NDIS Quality and Safeguards Commissioner (the Commissioner) would be able to make a banning order against a provider or person who provides services to people with disability.

Under the NDIS Act and subsequent amendments, the Commission is empowered to [register and regulate](#) NDIS providers, monitor compliance with the [NDIS Practice Standards](#), and investigate complaints and [reportable incidents](#). Legislative amendments broadened the Commission's enforcement powers to include audits, compliance notices, civil penalties, banning orders, and [worker screening](#).

While the changes in this Bill are not limited to the Commission alone, this is the third major legislative amendment related to the powers of the Commission.

Disability Royal Commission 2023

In 2019 the [Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#) (the Disability Royal Commission) was established to examine evidence of systemic abuse and neglect of people with disability, including within NDIS services, and provide recommendations.

Among multiple findings of dysfunction in the system, the [final report](#) identified significant safeguarding failures in the NDIS. The Disability Royal Commission found cases where senior staff of provider organisations did not adequately ensure compliance with NDIS obligations, failing to manage risks or respond to incidents, which contributed to participant neglect, abuse and harm ([Section 10.5, pp. 331–336](#)). These findings underscored the need for tighter regulation, accountable governance, and stronger protections against abuse and exploitation

in the disability sector. Regarding service provider compliance, the Disability Royal Commission stated that:

It is apparent that:

- Governing body members, key personnel and support workers are often not fully aware of their obligations to report incidents to the NDIS Commission, manage and resolve complaints, and identify risks associated with their services.
- Oversight and monitoring by NDIS providers' governing bodies is often inadequate to ensure the quality and safety of services. It can also be inadequate to protect NDIS participants from experiencing violence, abuse, neglect or exploitation. (Section 10.5, p. 333)

Recommendations regarding service provision are found in [Volume 10](#) of the final report, and include Recommendations 10.1 to 10.33. The [Disability Royal Commission Progress Report 2025](#) outlines the government actions that have been completed, or are in planning, in response to the Disability Royal Commission.

In particular, the Bill helps to enact Recommendation 10.25:

Recommendation 10.25

Strengthened monitoring, compliance and enforcement

The NDIS Quality and Safeguards Commission should review its compliance and enforcement policy and in doing so have regard to:

- a. where appropriate, transitioning its primary compliance approach from educational and capacity building strategies to stronger compliance and enforcement activities
- b. increasing its face-to-face engagement with National Disability Insurance Scheme (NDIS) participants who are at greater risk of experiencing violence, abuse, neglect and exploitation, and site visits to speak with providers and workers
- c. increasing the use of its enforcement powers and monitoring tools in relation to NDIS providers that:
 - have a history of non-compliance or repeatedly fail to meet their obligations to provide safe and quality supports and services
 - have demonstrated a disregard for the safety of people with disability
 - have caused serious harm to a person or people with disability
- d. the availability of enforceable undertakings and compliance notices to address non-compliance by NDIS providers (p. 371)

The Bill introduces a stronger penalty framework with higher civil penalties and criminal offences for serious or systemic breaches.

Independent review of the NDIS 2023

In December 2023, the government released the [final report](#) of the [independent review of the NDIS](#) (NDIS Review). The NDIS Review identified various challenges in the Scheme's design and operations, including in oversight of service provision quality.

The NDIS Review made 26 recommendations and 139 associated actions to improve the Scheme's sustainability, integrity and participant experience. It is important to note that the

[NDIS Review](#) envisaged not just stronger regulatory powers for the Commission, but also a reimagining of the Commission’s purview to be expanded to include all disability services, not just disability services funding through the NDIS (Recommendation 17 and Recommendation 19, Action 19.3). The Bill does not enact these recommendations, and the Commission remains focused on NDIS funded services.

As at January 2026 the Department of Health, Disability and Ageing [states that](#): ‘The Australian Government is carefully considering the recommendations in the final reports of both the NDIS Review and the Disability Royal Commission before providing its responses’.

Consultation on the Bill

In 2024, the Commission [consulted](#) on proposed draft measures to be included in the Bill. The [Consultation paper on NDIS Act \(Bill No. 2\)](#) (Consultation Paper) describes the measures under consideration. Notably, Measures 1 and 2 regarding statutory duties for NDIS providers and key personnel were included in the Consultation Paper but have not been included in the Bill.

These measures are:

Measure 1 – New statutory duty for key personnel of NDIS providers

Description

It is proposed to introduce a new statutory duty for key personnel of an NDIS provider to exercise due diligence to ensure that the NDIS provider complies with the provider’s obligations under the NDIS Act. It is proposed that breach of this duty would attract a civil penalty.

Key personnel of NDIS Providers are already required to comply with these obligations (i.e. NDIS Practice Standard or conditions of registration). The measure intends to consider the circumstances where members of key personnel have responsibility for those obligations and have not exercised due diligence to ensure the provider is complying. ([Consultation paper on NDIS Act \(Bill No. 2\)](#), p. 9)

...

Measure 2 – New statutory duty for NDIS providers

Description

It is proposed to introduce a new statutory duty of care requiring NDIS providers to ensure, so far as is reasonably practicable, that the conduct of the provider does not cause adverse effects to the health and safety of individuals to whom the provider is delivering supports or services while the provider is delivering those supports or services. The duty of care would consider what is reasonably practicable while delivering those supports and services (i.e. what is possible in the circumstances and whether it is reasonable in the circumstances to do all that is possible to ensure health and safety). It is proposed that breach of this duty would attract a civil penalty. ([Consultation paper on NDIS Act \(Bill No. 2\)](#), p. 9)

The originally proposed statutory duties for NDIS providers have clear similarities with statutory duties for aged care providers as introduced by the [Aged Care Act 2024](#).

[Section 179](#) of the Aged Care Act imposes a statutory duty on aged care service providers in language that is identical to that proposed in Measure 2 of the Bill’s consultation paper. Subsection 179(1) states:

A registered provider must **ensure, so far as is reasonably practicable, that the conduct of the provider does not cause adverse effects to the health and safety of individuals to whom the**

provider is delivering funded aged care services while the provider is delivering those services.
[emphasis added]

The ['What we heard' report](#) stated that there was support for strengthening accountability and improving quality and safety of NDIS service provision:

There was strong recognition around the need for reform to ensure a greater focus on strengthening accountability and improving the quality and safety of NDIS supports. Concern was expressed that when NDIS providers do not fulfill their obligations this can have grave and detrimental impacts on NDIS participants' quality of life, health and wellbeing and safety (p. 8)

However, it appears that some stakeholders were vocal about the potential impacts of the proposed statutory duties and criminal penalties, noting a risk that this may disincentivise NDIS providers:

Many stakeholders highlighted potential risks with the proposed measures, particularly in relation to the proposed statutory duties and increased penalties. We heard that there is a risk of more stringent measures, such as new criminal penalties and statutory duties, disincentivising people from entering the disability sector, registering as an NDIS provider or the potential to discourage providers from advertising their services to participants.

There was concern that the reforms may result in greater regulatory burdens on providers. Financial impacts of the changes were also raised with stakeholders referring to the cost of quality including training and supervision to support quality practices. Stakeholders expressed concern about the risk of increased insurance costs and the costs involved to meet obligations. (p. 8)

In its [submission](#) to the Committee inquiry into the Bill, the Northern Territory based Disability Advocacy Service argued that increased compliance burdens may be disproportionately exacerbated for First Nations service providers and noted that it had documented instances of:

1. **Provider withdrawal due to regulatory burden:** Small disability services in remote NT have cited rising compliance costs and regulatory uncertainty (prior to this Bill) as key reasons for closure or service reduction.
2. **Unintended consequences of strict liability:** When providers face criminal or civil liability for documentation errors (even minor ones), they become risk-averse and may deny services or impose unnecessary gatekeeping to avoid exposure.
3. **Inaccessible support coordination:** First Nations participants in Central Australia report difficulty accessing plan coordination support itself a funded NDIS support because there are no local First Nations coordinators, and mainstream coordinators lack cultural safety training.

When the Bill raises penalties without corresponding support for remote providers to meet compliance standards, it may accelerate these harms. (p. 4, references removed)

The government has not made further comment as to whether statutory duties for providers and key personnel will be included in future reforms.

Policy position of non-government parties/independents

At the time of writing no non-government parties or independents have commented publicly on the Bill.

Key issues and provisions

Increased penalties and new offences

Certain amendments in Parts 1 and 2 of the Bill implement measure 3 from the [Consultation Paper](#).

The Bill removes notes that make clear that if a body corporate is convicted of an offence under the Act, [subsection 4B\(3\)](#) of the [Crimes Act 1914](#) allows a court to impose a fine of up to 5 times the pecuniary penalty stated. The [Explanatory Memorandum](#) to the Bill (the EM) advises that these notes are being repealed as unnecessary

as the penalty multiplier for offences for when a body corporate is convicted of an offence against a law of the Commonwealth applies automatically, unless contrary intention appears.

Where this Digest discusses maximum penalties, note that the penalty for a body corporate will be 5 times the maximum penalty stated.

New civil penalty provisions

Part 1 of Schedule 1 to the Bill introduces new civil penalty provisions into the NDIS Act. These amendments will provide the Commissioner with the option to pursue a civil penalty for non-compliance with a greater range of provisions, including by employing existing mechanisms such as [infringement notices](#), instead of only being able to refer these matters for criminal prosecution.

[Section 57](#) of the NDIS Act currently provides that it is an offence if a person refuses or fails to comply with a requirement to provide information or documentation that has been requested under sections [55](#) or [55A](#) of the Act. **Items 1-5** of the Bill amend section 57 to introduce a civil penalty provision for the refusal or failure, with the maximum penalty being 60 penalty units (\$19,800), which is double the maximum penalty for the existing offence. (A [penalty unit](#) is currently \$330, but will be indexed on 1 July 2026.)

The Bill will also insert **proposed section 59A** into the NDIS Act which creates a new civil penalty where a person provides the Commissioner with information or a document that they know to be false or misleading. The maximum penalty for breaching this offence is 120 penalty units (\$39,600). While Part 7.4 of the [Criminal Code Act 1995](#) already provides offences in relation to false or misleading statements, information and documents, the amendment will allow the Commissioner to take civil, instead of criminal, action.

[Section 67B](#) currently provides that it is an offence to use or disclose ‘[protected Commission information](#)’ where that use or disclosure is not authorised. The offence has a maximum penalty of 2 years imprisonment or 120 penalty units, or both. **Item 15** amends section 67B to introduce a civil penalty provision (the maximum penalty being 120 penalty units) for non-compliance with this obligation.

[Section 67C](#) provides that it is an offence to solicit the disclosure of protected Commission information from a person (including a Commission officer), regardless of whether protected information is disclosed. The offence has a maximum penalty of 2 years imprisonment or 120 penalty units, or both. **Item 21** amends section 67C to introduce a civil penalty provision (the maximum penalty being 120 penalty units) for non-compliance with this obligation.

Items 22-28 amend [subsections 67D\(1\)—67D\(2\)](#) to create new civil penalty provisions (the maximum penalty being 120 penalty units) that apply where a person offers to supply, or holds themselves out to be able to supply, protected Commission information. The maximum penalty for the equivalent criminal offences is 2 years imprisonment or 120 penalty units, or both. **Item 29** extends the existing exception in subsection 67D(3) to the new civil penalty provisions.

New criminal offences and increased penalties for existing civil penalty provisions

Requirements for registration as an NDIS provider

[Section 73B](#) sets out the requirement to be a [registered NDIS provider](#) in order to provide specified supports. It is currently an offence for a person who is required to be registered under the NDIS rules to provide supports when they are not registered. The maximum penalty for this offence is a civil penalty of 250 penalty units (\$82,500).

Item 33 amends section 73B to repeal the current civil penalty provision and replace it with a fault-based offence, a strict liability offence and a revised civil penalty provision which will apply where a person provides a support, or holds themselves out as being able to provide a support, to an NDIS participant, for which the NDIS rules require them to be registered, and they are not registered (**proposed subsections 73B(2) and 73B(3)**).

The Bill will replace the current civil penalty provision, to provide different maximum penalties for a ‘serious contravention’ by an NDIS provider and other contraventions. The maximum civil penalty for a serious contravention by an NDIS provider will be 10,000 penalty units (\$3,300,000). The maximum offence for other contraventions will remain at 250 penalty units.

The maximum penalty for the new fault-based criminal offence (where the prosecution must prove fault) is 2 years imprisonment, or 120 penalty units (or both).

The maximum penalty for the [strict liability](#) offence (where the prosecution does not need to prove fault) is 60 penalty units. The [EM](#) provides that these offences and penalties are based on what is recommended in [A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers](#) and ‘availability of a strict liability offence is necessary to safeguard participants and to ensure the integrity of the regulatory Scheme.’ (pp. 8–9)

Increased penalties for serious contraventions

In the [Consultation Paper](#), the Department noted that ‘there is a gap between the penalties that apply under the NDIS regulatory framework and those that apply under other regulatory frameworks such as workplace health and safety.’ (p. 10).

In addition to the amendment to the civil penalty in section 73B discussed above, **items 35-39** of the Bill will introduce higher civil penalties (with a maximum penalty of 10,000 penalty units) for the following existing civil penalty provisions in the NDIS Act where there is a ‘serious contravention’ by a provider:

- [Section 73D](#): where an NDIS provider provides false or misleading information or documents in an application for registration and this amounts to a ‘serious contravention’. The maximum civil penalty for situations which do not amount to a ‘serious contravention’ and may involve any person, rather than only applying to an NDIS provider, will also be increased, from 60 to 120 penalty units.
- [Section 73J](#): where there is a ‘serious contravention’ by a registered NDIS provider in breaching a condition of registration
- [Section 73V](#): where there is a ‘serious contravention’ by an NDIS provider in failing to comply with the NDIS Code of Conduct
- [Subsection 73ZC\(1\)](#): where there is a ‘serious contravention’ by an NDIS provider of the requirement to not intentionally cause detriment to another person
- [Subsection 73ZC\(2\)](#): where there is a ‘serious contravention’ by an NDIS provider of the requirement to not threaten to cause detriment to another person where the person making the threat intends to cause, or is reckless as to causing, the other person to fear the threat will be carried out and the threat is made because that person has disclosed protected information
- [Subsection 73ZM\(3\)](#): where there is a serious contravention by an NDIS provider in contravening a compliance notice.

A contravention of a provision is a ‘serious contravention’ where the conduct involves a ‘significant failure’ or is part of a ‘systemic pattern of conduct’ (**proposed subsection 11B(1)**, at **item 31**). As noted in the [Explanatory Memorandum](#), ‘[t]he concepts of ‘significant failure’ and ‘systemic pattern of conduct’ are consistent with the same concepts used in aged care (see [subsections 19\(1\)-\(2\)](#) of the Aged Care Act).’ (p. 7)

Proposed subsection 11B(2) provides that the conduct of an NDIS provider or a member of its [key personnel](#) involves a ‘significant failure’ if the conduct represents a significant departure from the conduct that could reasonably be expected, having regard to the requirements that NDIS providers and their key personnel are subject to under the Act.

Proposed subsection 11B(3) sets out the matters that must be considered when determining whether the conduct of an NDIS provider or its key personnel is part of a ‘systemic pattern of conduct’:

- the number of times the provider’s or key personnel member’s conduct has not complied with a provision of the Act (the ‘relevant contraventions’)
- the period over which the relevant contraventions occurred
- the number of individuals affected by the relevant contraventions

- the provider's or key personnel member's response, or failure to respond, to any complaints about the relevant contraventions.

Changes to banning orders

Expansion of banning orders

[Section 73ZN](#) of the NDIS Act allows the Commissioner to impose banning orders. A banning order prohibits or restricts a person, either permanently or for a specified period, from engaging in, providing or being involved in the provision of specified activities, supports or services in the NDIS market. According to the [Commission's Banning Order Policy](#), 'Banning orders are considered the NDIS Commission's most serious compliance and enforcement tool and will therefore only be appropriate for the most serious cases of poor conduct.' (p. 4) Banning orders that are in force must be included on the [NDIS Provider Register](#), with details of the identity of the provider as well as information in respect of the banning order.

Subsection 73ZN(1) allows for banning orders to be made against past and present NDIS providers where:

- a person has had their registration as an NDIS provider revoked
- a person has been convicted of an offence involving fraud or dishonesty or becomes insolvent or
- where the Commissioner reasonably believes that the person:
 - has contravened, is contravening or is likely to contravene the NDIS Act
 - has been or is likely to become involved in the contravention of the NDIS Act by another person
 - is not suitable to provide or be involved in the provision of supports or services to people with disability or
 - in the case of an NDIS provider, there is an immediate danger to the health, safety or wellbeing of a person with disability if the person continues to be an NDIS provider.

Subsection 73ZN(2) expands the application of banning orders to a person who is or was previously a worker for an NDIS provider, or a person who is or was previously a member of the key personnel of an NDIS provider.

Subsection 73ZN(2A) provides that a banning order can also be issued to a person that the Commissioner reasonably believes is not suitable to be involved in the provision of specified supports or services to people with disability. This applies to a person who has never been an NDIS provider, or been a member of the key personnel of an NDIS provider, or worked for an NDIS provider. However, as noted by the [Explanatory Memorandum](#), this provision only enables the person to be prohibited or restricted from 'being involved in the provision of specified supports or specified services to people with disability'. (p. 25) In discussing Measure 6 in the [Consultation Paper](#), the government noted that 'the NDIS market has a number of people operating as business advisors, consultants and auditors, who are highly influential in the direction and operation of NDIS service providers' (p. 12). Banning orders cannot be imposed on such people under current section 73ZN, as they do not provide services or support to people with disability.

Item 80 amends section 737N to expand who can be issued a banning order to include **(proposed subsection 73ZN(2C))**:

- a person who has made an application under [section 73C](#) for registration as a registered NDIS provider, that has not been finally determined (**proposed paragraph 73ZN(2C)(a)**)
- an approved quality auditor (**proposed paragraph 73ZN(2C)(b)**)
- a person who is employed or otherwise engaged by, or is a member of the key personnel of, a person mentioned in either of the above dot points (**proposed paragraph 73ZN(2C)(c)**)
- a person involved in providing services that enable or facilitate the provision of supports or services for people with disability (**proposed paragraph 73ZN(2C)(d)**) and
- a person involved in providing services that involve assisting with, or advising on, applications under section 73C for registration as a registered NDIS provider (**proposed paragraph 73ZN(2C)(d)**).

A banning order can only be issued to these persons where one of the following applies **(proposed subsection 73ZN(2B))**:

- the Commissioner has revoked the registration of the person as a registered NDIS provider
- the Commissioner has revoked the approval of the person to be an approved quality auditor
- the person is convicted of an offence involving fraud or dishonesty
- the person becomes an insolvent under administration or
- the Commissioner reasonably believes that one or more of the following has occurred:
 - the person has contravened, is contravening, or is likely to contravene the NDIS Act
 - the person has been involved in, or is likely to become involved in, a contravention of the NDIS Act by another person
 - in the case of a person involved in providing a service as mentioned in **proposed subsection 73ZN(2C)(c) or (d)** (see above)—that the person is not suitable to be involved in the provision of that service, having regard to any matters prescribed by the NDIS rules (**proposed subparagraph 73ZN(2B)(c)(iii)**) .

NDIS rules are made by the Minister by legislative instrument under [section 209](#) of the NDIS Act. There are 4 categories of rules requiring different levels of consultation or agreement with the states and territories. For example, Category A rules are those that relate to significant policy matters with financial implications for the Commonwealth and states/ territories, or which interact closely with relevant state and territory laws, and so the agreement of all jurisdictions is required for the making of these rules. Under **item 83**, rules made for the purposes of **proposed subparagraph 73ZN(2B)(c)(iii)** will be Category D rules and will require consultation (but not agreement) with the states/territories. The rules will be subject to disallowance.

The [Explanatory Memorandum](#) states:

... it will not be open to the banning order to prohibit any specified activity; **rather, the activity in question will have to relate to the provision of NDIS supports or services or otherwise to something that is enabled or permitted under the Act** such as the auditing of a person's capacity

to meet applicable standards and thereby become a registered NDIS provider. (p. 26) [emphasis added]

However, it is envisaged that '[s]pecified activities that may be prohibited or restricted in a banning order could include engaging in NDIS audits and misleading or predatory provider consultancy practices' ([Explanatory Memorandum](#), pp. 25–26).

New penalties for failing to comply with a banning order

Currently a person who breaches a banning order (including a condition of the order) is subject to a maximum civil penalty of 1,000 penalty units (subsection 73ZN(10)).

Items 42-43 repeal the current provision and insert **proposed section 73ZNA** which provides for both civil and criminal penalties for breaching a banning order. **Proposed subsection 73ZNA(2)** creates a fault-based offence of failing to comply with a banning order, with a maximum penalty of imprisonment for 5 years or 300 penalty units (\$99,000), or both.

Proposed subsection 73ZNA(3) provides a strict liability offence for the same conduct, with a maximum penalty of 150 penalty units (\$49,500).

The Bill will also replace the existing civil penalty provision, with serious contraventions by an NDIS provider being subject to a maximum penalty of 10,000 penalty units, and all other contraventions being subject to a maximum penalty of 1,000 penalty units.

Power to issues anti-promotion orders

Part 4 of Schedule 1 allows the Commissioner to make anti-promotion orders which prohibit or restrict a person from engaging in 'regulated promotional conduct' as specified in the order. Failure to comply with an order is subject to a maximum civil penalty of 250 penalty units.

The Minister will have the power to make rules (subject to disallowance) prescribing 'regulated promotional conduct', which must be conduct that involves promoting, advertising or marketing matter related to (or which purports to relate to) supports or services for people with disability, or NDIS providers. Before making such rules, the Minister must be satisfied that the conduct undermines the [objects of the NDIS Act](#) or the [principles listed in section 4](#).

An order could be made against any person, regardless of whether they are an individual, NDIS provider, or body corporate. The order may apply generally or be limited in application, be made subject to specified conditions, and be permanent or for a specified period.

Before imposing an order, the Commissioner must provide the subject of the order the opportunity to make submissions. The order must not commence until 7 days after it is given to the person, unless the Commissioner is satisfied that the order should take effect earlier to protect the health, safety or wellbeing of a person with disability (in which case, the order will take effect the day after the order is given to the person, to ensure appropriate safeguards are in place).

The Commissioner will have the power to vary or revoke an order, either on their own initiative or where an application has been made by the subject of the order (**proposed section 73ZOC**). A person will be able to seek review of a decision to have an anti-promotion order made against them, or a decision to vary or revoke an order (**item 77**).

In explaining the rationale for these new powers, the government has provided examples of where businesses are engaging in ‘exploitative and inaccurate advertising’:

For example, there are shopping coupons that deliberately mislead NDIS participants (and the public) about how NDIS funds can be used. These practices have been seen in many NDIS services but most often for Short Term Accommodation. An example of this practice is false claims advertising holidays “paid by NDIS” where participants are encouraged to “bring your family for free accommodation”.

Additionally, some providers are making exaggerated claims about potential Specialist Disability Accommodation (SDA) profits and aggressively marketing investment opportunities with annual profits of 10% to over 20%. Marketing that leads investors to believe they will be able to make healthy profits can have a negative impact in the SDA market, potentially leading to vacant homes built in the wrong places or designed without understanding the level of demand. This practice harms both investors and individuals relying on SDA. ([Consultation Paper](#), p. 11).

Through [consultations](#) some stakeholders raised concerns about the potential for overlap with the role of other regulators (p. 14). This includes the Australian Competition and Consumer Commission which investigates [false or misleading claims](#) made by businesses which do not comply with the [Australian Consumer Law](#) (ACL). The government has argued that ‘antipromotion orders would complement, not displace, existing requirements under Australian Consumer Law’ and ‘the conduct that is subject to an antipromotion order as prescribed in the NDIS rules developed for this purpose will not unduly impact or overlap with the ACL.’ ([Explanatory Memorandum](#), pp. 21–22). Similar to [restrictions for advertising therapeutic goods](#), promotional content in connection with the NDIS will need to comply with the ACL and the new requirements.

Changes to information gathering powers

Delegation of the power to make rules to the Commissioner

The [National Disability Insurance Scheme Amendment \(Improving Supports for At Risk Participants\) Act 2021](#) inserted provisions into the NDIS Act which allow rules to specify which bodies, and for what purposes, information held by the Commission can be disclosed (paragraph 67A(1)(db)). Currently these rules must be made by the Minister.

Item 91 of Schedule 1 to the Bill will allow the Minister to delegate this power to the Commissioner which ‘should lead to more information sharing across agencies that play a role in safeguarding NDIS participants and people with a disability from harm.’ ([Explanatory Memorandum](#), p. 32). Some stakeholders have ‘expressed concern about the NDIS Commission being able to make decisions or changes to its information access and sharing without effective consultation.’ ([‘What we heard’ report](#), p. 21) For example, the Queensland Alliance for Mental Health stated that:

While these powers were introduced under the last Bill, their expansion requires careful consideration. There are significant concerns about the appropriate level of oversight and accountability for such broad-ranging powers. ([‘What we heard’ report](#), p. 21)

The [‘What we heard’ report](#) noted that ‘Several stakeholders proposed a requirement for the NDIS Commission to consult on any rule changes under this power.’ (p. 21) Section 17 of the [Legislation Act 2003](#) provides that rule-makers (including, in this case, the Commissioner)

must undertake appropriate and reasonably practicable consultation before making a legislative instrument. However, section 19 of that Act provides that a failure to consult does not affect the validity or enforceability of a legislative instrument.

Shorter period to comply with a notice to produce information/documentation when requested by the Commissioner

Section [55A](#) of the NDIS Act requires a person (other than a prospective participant or a person receiving supports or services from an NDIS provider) to provide information or documentation where requested by the Commissioner with respect to certain matters. When requesting this information or documentation, a written notice must be given to the person specifying the time period in which the person must produce the information or documentation. Currently this must be at least 14 days from the date the notice is given. A notice may also require a person to appear at a specified time and place to answer questions, which also must be at least 14 days after the notice is given.

Items 85-88 amend [section 56](#) to provide that the Commissioner may specify a shorter time period when giving a notice, or an earlier time to appear, where the Commissioner reasonably believes that not specifying the shorter period or earlier time would significantly increase the risk of serious harm to a participant and the shorter period or earlier time is reasonable in the circumstances.

As acknowledged in the [Explanatory Memorandum](#), ‘The shorter period to comply with a notice to produce represents a deliberate departure from the requirement that a person be given a minimum of 14 days to comply with such a notice in *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*.’ (p. 30) The rationale for this requirement is that a lesser time period would not adequately provide a person with enough time to respond to such a request:

Depending on the circumstances, a person/corporation may need to examine a large quantity of records to identify the information or documents required to be produced under a notice. Contingencies such as ill-health, the pressures of running a business and the potential need to seek legal and/or business advice mean that 14 days is considered the minimum time in which a response can reasonably be expected. **This is especially important where criminal penalties attach to non-compliance.** ([A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers](#), p. 85) [emphasis added]

The government has argued that the shorter time period:

... is considered appropriate to ensure that the Commissioner can obtain timely information to inform the appropriate regulatory action and safeguarding response in circumstances where the Commissioner reasonably believes that to not do so would significantly increase the risk of serious harm to a participant. ([Explanatory Memorandum](#), p. 30)

Shorter period to produce information/documentation as a condition of registration

[Section 73F](#) of the NDIS Act provides that a registered NDIS provider must, as a condition of registration, provide the Commissioner, when requested specified information within the specified timeframe. Currently, that timeframe cannot be less than 14 days.

The Bill will amend section 73F to expand this requirement to include providing documents when requested by the Commissioner. The Bill will also allow the Commissioner to specify a

shorter period of time for compliance where the Commissioner reasonably believes that not specifying the shorter period would significantly increase the risk of serious harm to a participant and the shorter period is reasonable in the circumstances. The [Explanatory Memorandum](#) provides guidance on what would constitute a ‘reasonable belief’:

In forming a ‘reasonable belief’, the Commissioner must take into account whether the requested information and/or documents can reasonably be provided within the shorter timeframe and whether there is evidence that a 14-day period would significantly increase the risk of harm to NDIS participants. (p. 31)

As with the above amendments, these changes would be contrary to the guidance set out in *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*. Some stakeholder raised concerns about the lack of information on how this power would be used and ‘suggested that the NDIS Commission provide clear guidance on what sort of documents would be requested, and in what situations these powers would be used.’ ([‘What we heard’ report](#), p. 19) Concerns were also raised about potential privacy impacts for participants where documents contained sensitive information ([‘What we heard’ report](#), p. 19).

Other amendments

Changes to the process for withdrawing from the NDIS

Currently [section 29](#) sets out the circumstances where a person ceases to be a participant in the NDIS. These include where a person notifies the CEO of the NDIA in writing that they no longer wish to be a participant. **Items 1 and 2** of Schedule 2 to the Bill will amend section 29 to require a person to make a request to the CEO to no longer be a participant. Upon receipt of the request, the CEO must notify the person in writing that they have received their request and include information:

- about the consequences of ceasing to be a participant in the NDIS
- about how to cancel the request and
- explaining that the person will be taken to withdraw as a participant if the request is not cancelled before the end of a specified period (the cooling-off period). This period must not be less than 90 days and can be extended by the CEO.

The CEO may approve the methods to be used by participants to advise the CEO that they wish to withdraw from the Scheme.

Plan variations

Currently [section 47A](#) of the Act provides the circumstances in which the CEO may vary a participant’s plan, including the permitted variations for [old and new framework plans](#). A plan may be varied on the request of a participant or on the CEO’s own initiative.

Items 11 and 12 of Schedule 2 to the Bill amend section 47A to provide that the CEO’s power to vary a participant’s plan (both old and new plans) in subsection 47A(1) can involve an increase or decrease in the total funding amount (as defined in section 9 of the NDIS Act). The [Explanatory Memorandum](#) (p. 41) suggests that these amendments have been included to avoid any doubt that the CEO could not already decrease the total funding amount as part of a plan variation.

The [Explanatory Memorandum](#) to the [National Disability Insurance Scheme Amendment \(Participant Service Guarantee and Other Measures\) Bill 2022](#) (which inserted section 47A into the NDIS Act) noted that that ‘the intention is that any variation will be for the benefit of the participant’ and ‘would occur where the variation does not require a reduction or significant increase to the level of NDIS funding’ (p. 20).

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ISSN 1328-8091