Major increases to penalties and criminal offences planned for NDIS providers

28 October 2024

Minister for the National Disability Insurance Scheme and Government Services the Hon. Bill Shorten MP has today announced the second part of NDIS legislation Getting it Back on Track Bill, which will significantly increase protections for Scheme participants and workers, as well as improve the quality and safety of supports for all participants.

The proposed new law will radically strengthen the deterrence and compliance powers for the NDIS Quality and Safeguards Commission (the Commission) to take action to lift the quality of NDIS supports and safety for participants.

Critically, penalties for providers will increase from a maximum of $400,000 to in excess of $15 million when a participant is hurt or injured under the providers care.

This will bring the maximum penalty for harming an NDIS participant into line with the maximum penalty for harming a worker. Currently, under WHS legislation the value of a worker's 'life' is valued at 38 times the value of an NDIS participant's.

For the first time in the Commission's history, the proposed legislation will also give it the power to refer providers for criminal prosecution, for example, where there is a serious failure to comply with registration conditions.

New criminal offences will help ensure penalties represent a credible deterrent against unscrupulous behaviour which in turn will prevent harm to people with disability and improve the quality of supports and services.

The proposed legislation, expected to be tabled in Parliament, following consultation and the release of an exposure draft, includes measures to:

- Impose stricter regulatory requirements and stronger penalties and criminal offences for those doing the wrong thing
- Strengthen information gathering powers to improve monitoring and compliance of NDIS providers and others; and
- Expand the scope and application of banning orders to also include people operating in other critical areas of the NDIS, such as auditing and consulting activities.

The proposed legislation implements recommendations from the Independent NDIS Review to ensure the watchdog has the powers to proactively and effectively regulate the NDIS.

It builds on the Albanese Government's record investments in the watchdog's resources and registration reforms already underway to significantly increase protections for Scheme participants and workers, as well as improve the quality of supports.

“These changes are well overdue to ensure the watchdog has the powers it needs to keep dodgy providers out of the NDIS for good,” Minister Shorten said.

“The independent NDIS Review and the Disability Royal Commission recommended strengthening the NDIS Commission’s powers through more active monitoring, compliance and enforcement.

“The changes will increase the transparency and accountability of providers and expand banning powers, which currently only relate to providers, so they can be applied to bad actors who are operating in all areas of the NDIS.”

Consultation on the proposed changes in NDIS Bill No.2 will begin immediately and ramp-up in scale in November 2024. This will include formal submissions and questionnaires, Ministerial roundtables, stakeholder workshops and webinars, as well as targeted engagement with the Disability Reform Ministerial Council, participants, state and territory disability officials, disability representative organisations, advocates, and provider peak bodies.

The NDIS Bill No.2 amendments are part of the Albanese Government’s reforms to strengthen safeguards, elevate human rights of people with disability, contribute to the sustainability of the Scheme and stop rorting by dishonest players.

The changes are a response to emerging and long-standing quality safety and integrity issues within the NDIS, and will mean NDIS participants receive higher standards of support and services over time.

“It will deliver strong measures to deter aggressive commercial practice by providers that exploits NDIS participants and erodes scheme sustainability.

“Through ongoing engagement, consultation and communication, we will work closely with state and territory governments and the disability sector to ensure these reforms deliver better quality services and safeguard NDIS participants and their families.”

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