

Aged & Community Care Providers Association
Suite 2, Level 2, 176 Wellington Parade,

East Melbourne, VIC 3002
ABN 19 659 150 786

17 May 2024

Senator Marielle Smith
Chair, Legislation Committee
Inquiry into National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024
Senate Standing Committee on Community Affairs
community.affairs.sen@aph.gov.au

Dear Senator Smith

RE: Inquiry into National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024

The Aged and Community Care Providers Association (ACCPA) thanks the Senate Standing Committee on Community Affairs Legislative Committee for the opportunity to make a submission to the Inquiry into the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024*.

ACCPA has previously provided a [submission](#) to the *NDIS Review What we have heard Report* in September 2023, where we made several recommendations aimed at improving participant experience and NDIS sustainability. ACCPA has previously provided a [submission](#) to the *NDIS Review What we have heard Report* in September 2023, where we made several recommendations aimed at improving participant experience and NDIS sustainability.

ACCPA is the national Industry Association for aged care providers offering retirement living, seniors housing, residential care, home care, community care and related services. We work to unite aged care providers under a shared vision to enhance the wellbeing of older Australians through a high performing, trusted and sustainable aged care sector.

We acknowledge there are many NDIS recipients receiving aged care services, by providers who deliver residential aged care and providers who deliver both aged care funded home care services and disability services. We also note the relationship between the aged care and disability sectors, including workers who deliver care to both NDIS recipients and older people.

ACCPA provides feedback to the Inquiry to encourage consideration of the disability and aged care interface, as it relates to the NDIS.

Dual regulation and the importance of harmonisation of regulation across the care and support economy

R1 That an Inquiry by the Senate Community Affairs Committee be held into the NDIS, disability and Aged Care interface.

On 1 December 2020, aged care providers who had NDIS recipients in residential aged care, were automatically registered as a NDIS provider under the *National Disability Insurance Scheme Act 2013* (NDIS Act). Prior to this, they were exempt from the requirements of NDIS legislation given their coverage under the Aged Care Act 1997 as per Rule 7(4) and (5) of the National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018.

While we understand the rationale of the shift to include NDIS recipients in residential aged care facilities under NDIS legislation, there was an expectation that the Government would deliver on its commitment to reform the care sector and harmonise regulation across aged care, disability, and veterans' care.

Aged & Community Care Providers Association
Suite 2, Level 2, 176 Wellington Parade,

East Melbourne, VIC 3002
ABN 19 659 150 786

Since this change, little has been done to alleviate the dual regulatory burden on aged care providers who provide care to NDIS recipients. Issues include dual standards, auditing, registration, worker screening and reporting of serious incidents and restrictive practices. These similar requirements result in duplicative effort, inefficiencies, and additional administration costs - as a result of two separate Commissions setting similar standards and requirements. In relation to home care, some aged care providers deliver aged care funded services and disability services, (including those funded by the NDIS), using a shared workforce.

We also note the establishment of the National Care and Support Economy Taskforce, led by the Department of Prime Minister and Cabinet. Whilst the remit of the taskforce includes 'reviewing regulations to determine where streamlining can occur while ensuring there are adequate safeguards to protect clients.'¹ it is yet to deliver on a strategy.

ACCPA believes that harmonisation, and streamlining of, regulations across the NDIS and aged care would benefit both recipients and service providers. We also note that aged care providers would welcome any reconsideration of NDIS regulatory requirements until such time as harmonisation is achieved.

New definition of 'NDIS supports' which will provide a clear definition for all participants of the authorised supports that will be funded by the NDIS and those that will not

R2 That the development of any rules to replace APTOS considers the disability and aged care interface and relationship with reform of aged care funded services, in particular the Support at Home program.

R3 That the Government consider the recommendations related to the disability and aged care interface in the NDIS Review Final Report to ensure appropriate engagement and consultation across the disability and aged care sectors.

R4 That relevant Government Ministers and their agencies work collaboratively to ensure current reform across the disability and aged care functions of Government are well understood and working in harmony (including in reference to the awaited Government response to the NDIS Review Report).

Item 14 of the Explanatory Memorandum notes that it '*will allow NDIS rules to be made that narrow the scope of these constitutionally valid supports to those that are appropriately funded by the NDIS.*' It also notes that, '*As an interim measure, until new rules are made under paragraphs 10(b) and/or (c), APTOS will be incorporated to determine what is and is not a NDIS support (see item 124). Reliance on the APTOS is a transitional measure that will only be in place until new NDIS rules can be made. These rules will be developed with States and Territories as a priority.*'

ACCPA notes that APTOS refers to '[The Applied Principles and Tables of Support to Determine the Responsibilities of the NDIS and other Service Systems](#)' and includes Section 11 on Aged Care. If APTOS is to be incorporated under new rules, it is important that the interface with the aged care system is considered, particularly given the aged care reform known as Support at Home will include home modifications, goods, equipment and assistive technology for those eligible for aged care funded services.

We also draw attention to the *Final Report of the Independent Review of the National Disability Insurance Scheme* ("NDIS Review Report"), which was released on 7 December 2023.² In particular, Recommendation 2 states: *Increase the scale and pace of change in mainstream and community inclusion and accessibility and improve the connection between mainstream services and the NDIS.*

¹ Department of Prime Minister and Cabinet, *Care and Support Economy Taskforce Terms of Reference*, 28 May 2023, <https://www.pmc.gov.au/resources/care-and-support-economy-taskforce-terms-reference>

² Professor Bruce Bonyhady AM and Ms Lisa Paul AO PSM Co-chairs, *Independent Review of the National Disability Insurance Scheme*, [Working together to deliver the NDIS Independent Review into the National Disability Insurance Scheme Final Report](#), 7 December 2023.

Aged & Community Care Providers Association
Suite 2, Level 2, 176 Wellington Parade,

East Melbourne, VIC 3002
ABN 19 659 150 786

The Report notes challenges that remain unresolved between the NDIS and the aged care systems (among other systems e.g. child protection and mental health).³ It further states that the NDIS and aged care system were meant to work together, but identifies that under current legislation a participant cannot access more intensive aged care supports (including 24/7 nursing care offered in residential aged care settings) after the age of 65 without giving up their NDIS support. The Report references the Royal Commission into Aged Care Quality and Safety, which noted there is more funding per person in the NDIS than in the aged care system. This means older Australians with a disability are not necessarily accessing the services that best meet their needs.

The Report refers to the Disability Support for Older Australians (DSOA) program, which was established for those ineligible for the NDIS due to age. It is highlighted that the DSOA is similar to the NDIS, however having two systems leads to inconsistencies, inefficiency and unfairness. For example, two residents in the same home can have different funding arrangements and their care cannot be effectively coordinated.⁴

In particular, we note Action 2.11 “The Australian Government should implement legislative change to allow participants, once they turn 65 to receive supports in both the NDIS and the aged care system concurrently and clarify when aged care supports are reasonable and necessary” and Action 2.12 “The Australian Government should implement legislative or process change to allow access to the NDIS for Disability Support for Older Australians program participants”.⁵

On Action 2.11, the Report notes the National Disability Insurance Agency, and the aged care system, should introduce a new joint model of cooperation, including a shared assessment model. A shared assessment model should ensure greater choice for older participants. It also states that this requires the Australian Government to change the clause in section 29(1)(b) of the *National Disability Insurance Scheme Act 2013* to allow participants over the age of 65 to have expanded access to aged care system supports, including residential aged care, while remaining eligible for complementary NDIS supports.⁶ We call on the Government to consult with the aged care sector on this action, in particular.

On Action 2.12, the Report indicates that once all remaining DSOA participants have moved to the NDIS or aged care system, DSOA should cease.⁷

³ Ibid, p.67

⁴ Ibid, p.70

⁵ Ibid, p.78 - 79

⁶ Ibid,p.76

⁷ Ibid. p.77

Aged & Community Care Providers Association
Suite 2, Level 2, 176 Wellington Parade,

East Melbourne, VIC 3002
ABN 19 659 150 786

The Report also indicates that the NDIS and the aged care system should ensure NDIS participants aged 65 and over receive the most effective and efficient supports for ageing related needs. It further states that by bringing DSOA clients into the NDIS, the proposed approach to 24/7 living supports (see Action 8.1) will be able to operate effectively for all residents in a house, ensuring equity and dignity for older Australians with disability.⁸

ACCPA welcomes Action 2.11 and provide in principle support for further consideration by Government. We believe that any emerging legislation related to NDIS holistically consider the NDIS Review Report and the interface of two major systems affecting older people with a disability, or who acquire a disability over the aged of 65.

The fact that both systems are currently undergoing major reforms is a further reason to ensure both government functions are working in tandem to support older people with a disability as they age. It is important that the relevant Ministers and related agencies work collaboratively on the recommendations of the NDIS Review Report as they relate to the intersection of aged care and disability.

Thank you again for the opportunity to make a submission to the Inquiry into the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024*.

We look forward to further engagement on the progress of NDIS-related legislation, particularly as it relates to aged care.

Yours sincerely

Roald Versteeg
General Manager, Policy and Advocacy
Aged & Community Care Providers Association

⁸ Ibid, p.73