

16 December 2024

NDIS Quality and Safeguards Commission

**Via email** [consultation@ndiscommission.gov.au](mailto:consultation@ndiscommission.gov.au)

To whom this may concern,

**Consultation on proposed legislative reforms to strengthen the regulatory powers of the NDIS Commission**

The Aged & Community Care Providers Association (ACCPA) appreciates the opportunity to contribute to this consultation on the proposed regulatory reforms to be introduced via changes to the NDIS Act.

ACCPA is the national organisation representing providers of aged care to older Australians, delivering retirement living, seniors housing, residential care, home care, community care and related services.

We acknowledge there are NDIS participants also receiving aged care services, including in residential aged care. We also note the relationship between the aged care and disability sectors, including workers who deliver care to both NDIS participants and older people.

ACCPA provides feedback to this consultation to support consideration of the disability and aged care interface, as it relates to the NDIS.

**Harmonisation of regulation**

**R1 Harmonisation with regulatory requirements and penalty frameworks under aged care legislation should be actively considered as NDIS regulatory reforms are progressed; any regulatory requirements applying across both or either sectors should be appropriate, reasonable, and not create undue compliance burden.**

Broadly, ACCPA believes that harmonisation of regulation across the NDIS and aged care would benefit both care recipients and service providers operating across both sectors.

It is acknowledged that the aged care and disability sectors are not homogenous, each with different contextual considerations and reform trajectories. However, consistency with regulatory requirements and penalty frameworks under aged care legislation – where relevant and not to the detriment of providers in either sector – would support clearer expectations for providers and workers operating or working across both sectors.

For example, we note the proposal for new statutory duties for NDIS providers and key personnel of NDIS providers. Breaches of these duties will attract civil penalties. If statutory duties are introduced under the NDIS Act, they should be accompanied by civil penalties (as currently proposed) – as is the case for the statutory duties under the new Aged Care Act,<sup>1</sup> due to come into effect on 1 July 2025.

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<sup>1</sup> See *Aged Care Act 2024*, section 179 (registered provider duty) and section 180 (duty for certain responsible persons).

When the exposure draft of the new Aged Care Act was first introduced – which originally proposed criminal penalties for breaches of the statutory duties – ACCPA heard examples across Australia of directors either resigning from governing bodies or withdrawing their applications to sit on a governing body. We also heard that aged care workers were concerned and unwilling to take on a role that would see them fall within the proposed definition of responsible persons or be subject to excessive civil penalties that do not apply in similar sectors.

We also acknowledge the intention to introduce other measures to bolster the penalty framework, with the availability of higher penalties for failing to comply with the NDIS Act as well as new civil penalty provisions and criminal offences. This includes a criminal offence for serious failure to comply with conditions of registration. We note this is not consistent with what will be introduced for aged care providers under the new Aged Care Act, as there is no equivalent criminal offence under this legislation for breaches of conditions of registration.

Harmonisation should be actively considered as NDIS regulatory reforms are progressed. It is also important that any regulatory requirements applying across both or either sector are appropriate, reasonable, and do not create undue compliance burden. Lastly, to sustain workforce viability across the care and support economy, any penalties imposed should be applied proportionately and only when necessary – with the severest of penalties reserved only for the most egregious conduct.

Please contact Anne Liddell, Head of Policy, at [anne.liddell@accpa.asn.au](mailto:anne.liddell@accpa.asn.au) and Keelie Bormann, Senior Policy Advisor, at [keelie.bormann@accpa.asn.au](mailto:keelie.bormann@accpa.asn.au) if you have any questions or would like to discuss this submission.

Yours sincerely

**Roald Versteeg**

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