

Friday 10 February 2023

Senator the Hon Anne Ruston
Minister for Families and Social Services
PO Box 6100
Senate
Parliament House
CANBERRA ACT 2600

RE: Physical Disability Australia's (PDA's) Response to the *A New Act to Replace the Disability Services Act 1986* Consultation Paper

Dear Minister,

Thank you for the extended opportunity to provide a response to the *A New Act to Replace the Disability Services Act 1986* consultation paper¹. What follows are our answers to the questions posed therein. We hope you find them to be thought-provoking, informative and compelling.

1: Do you agree with the proposed objects for the new Act? What other objects should be included in the new Act?

PDA agrees with most of the proposed Objects of the new Act however, we feel point (c) is too narrow and should also commit to ensuring the basic personal support, appropriate accommodation and equipment needs of **all** people with disability (as they are defined) are met².

Also with regard to point (c), we think that sup-point (ii) should be altered to not fall into the trap of pre-supposing that all people with disability want employment and are capable of working in jobs that are personally fulfilling. Furthermore, we feel that point (c) should also include a commitment to an adequate income through social security payment programs, such as a 'social wage' to ensure increased independence; as per UN Convention on the Rights of People with Disability (CRPD) Article 28³.

2: Do you agree with the proposed approach to the target group? How do you think the target group should be defined?

PDA is in full support of the new Act recognising the 'Social Model' of disability and that the social and economic disadvantage many people with disability experience is as much due to society's lack of accommodation to this groups needs as it is to their collective impairments.

With regard to the suggestion that the new Act also acknowledge so-called 'intersectional' disadvantage as a result of persons with disability's co-membership with other socially marginalised groups (specifically the LGBTIQ+, indigenous and

¹ https://engage.dss.gov.au/wp-content/uploads/2022/11/Consultation_Paper-Disability_Services_Act_Repeal_and_Replace-28Nov.pdf

² This point is expanded upon in our answer to question 3 below.

³ <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-28-adequate-standard-of-living-and-social-protection.html>

Culturally and Linguistically Diverse identities), PDA believes that it is important for the new Act to target the attitudinal, environmental, institutional, community and communication barriers that people face because they have physical, intellectual and/or sensory impairments as well as acknowledging that people with disabilities (like all people) have sexual and cultural identities that should be acknowledged. Addressing barriers related to these other attributes a person with disability may have needs to be a whole-of-government approach, in that, removing these non-disability barriers should be in the objects of other Acts and addressed by those Department of Social Services branches whose mandates include reducing the discrimination and barriers faced by people with these attributes generally.

3: Do you agree with our suggested principles for avoiding duplication and requiring coordination? What other principles do you think should apply?

With regard to the new Act's perceived need to ensure service duplication is avoided, and the need for careful assigning of responsibility for the provision of the "services and supports provided under the Act", the first thing that needs to be acknowledged is that, despite the large number of state and territory support schemes, **many people with disability receive no support at all**. This is because each scheme carefully defends its eligibility parameters and asserts that the responsibility for providing some, if not all, support services, accommodation and equipment lies with another agency.

Therefore, PDA is very supportive of a coordinated approach to the assignment of responsibility in the provision of supports to people with disability... provided the responsible agencies have the capacity to meet the basic needs of all eligible applicants on an equitable basis and in a timely fashion. We say this because many schemes lack the mandate of the NDIS – to provide supports, accommodation and equipment entitlements to **all** eligible applicants.

For example, the My Aged Care scheme (that people with disability older than 65 years can access) reportedly has over 100,000 Home Care Package applicants who have been assessed as eligible waiting for a package to become available⁴

As such, duplication of services is less of a problem in desperate need of avoidance; than adequacy of service supply across the variety of schemes charged with meeting the needs of people with disability.

This could be solved with a gaps-based scheme that has the resources to provide services to those people with disability who have to wait for a scheme with limited capacity to provide them and to those who are denied by all. If this is what is meant by "services and supports provided under the Act", then this should be made clear both in the Objects of the Act and in the section dealing with what exactly the "services and supports provided under the Act" are (see our response to Question 6 below).

Such an approach would go a long way in fulfilling Australia's obligations with regard to Article 19 of the CRPD⁵

⁴ <https://www.careabout.com.au/aged-care/waiting-times>

⁵ <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-19-living-independently-and-being-included-in-the-community.html>

4: Do you think the new Act should include a definition for disability? Do you have any additional comments?

PDA thinks it is important to define disability so that a clear distinction is made between those who are eligible for the services and supports the Act is supposed to provide and those who are outside its purview. That being said we do not approve of the sample definition proposed in the discussion paper.

We are particularly concerned about the number of criteria that a person with a disability must meet given that the draft definition requires a person to meet all of them.

When you apprehend (for example) that many people who are recognised as having physical disabilities that impact their capacity with regard to “mobility” and “self-care”, do not experience an impact to their “capacity for social or economic participation”. Indeed, many PDA members have both physical impairments **and** gainful employment and a valued place in their communities. These people need to be recognised as having a disability (according to the Act), despite their successes.

Furthermore, the suggested criteria that “the person [be] likely to require support under the National Disability Insurance Scheme [NDIS] for the person’s lifetime” is problematic because it effectively eliminates a vast number of people with disability who have been and will be denied access to the NDIS because they are over the age of 65 years, or because they are not deemed impaired enough by NDIA employees and Administrative Appeals Tribunal members.

PDA strongly advises that the definition of disability be rewritten in consultation with **all** the members of the Disability Representative Organisation Program⁶.

5: How do you think quality and safeguarding arrangements should be managed by the new Act?

PDA has long held the view that the large number of quality and safeguarding arrangements, schemes and authorities leave many gaps that expose people with disability to safety risks and poor quality services and equipment. An example of this is that the jurisdiction and sector based worker screening programs allow people who should not be working with **any** vulnerable person to continue to pose a threat by simply moving from one sector and/or jurisdiction to another.

With regard to the quality of disability services and the safeguards in place to protect people with disability, the NDIS Commission has an adequate framework⁷ in place... but it only applies to services and products supplied under the NDIS. Similarly, the Aged Care Quality Standards⁸ only apply to Aged Care providers and workers. This leaves many people with disability who receive supports outside these systems vulnerable, even though they may be covered by child protection and general consumer protection laws.

It should also be noted that while strong quality and safeguarding frameworks exist for many vulnerable people, the agencies that oversee them – such as the NDIS Quality and Safeguards Commission and the Aged Care Commission – are for the

⁶ As listed here: <https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/consultation-and-advocacy/national-disability-peak-bodies>

⁷ <https://www.dss.gov.au/disability-and-carers/programs-services/for-people-with-disability/ndis-quality-and-safeguarding-framework-0>

⁸ <https://www.agedcarequality.gov.au/providers/standards>

most part paper tigers; they issue lots of stern words for potential transgressors but impose little meaningful disciplinary action when it is revealed that NDIS participants and aged care recipients have been mistreated.

Ideally, PDA would like to see all the existing quality and safeguarding frameworks and standards combined into a nationally applicable vulnerable persons services and equipment standard (and an adequately resourced agency be created to enforce these standards) that would cover everyone in receipt of Australian and jurisdictional Government supports whether that be through the NDIS, My Aged Care, jurisdiction and church owned Education and Health Departments, or other schemes designed to assist those in need.

6: Do you agree with the supports and services listed in the Discussion Paper? What other kinds of supports and services should be included in the new Act?

The list of the type of supports that would be authorised if not delivered by the Australian Government covers many aspects of life, but it does not clearly include the services most people with disability need first and foremost: personal care/support, and adequate assistive technology. This may be covered by “independent living”, “recreation” and “accommodation support” but this is unclear. The nine dot points provided in the Discussion Paper provide no details about what would actually be provided in each of the life areas listed.

PDA believes that the new Disability Services Act needs to ‘bite the bullet’ and commit to ensuring every Australian living with disability has access to a reasonably anticipated and quantified base level of support regardless of whether or not they are eligible for the NDIS.

As such, the sections dealing with what exactly are the “services and supports provided under the Act” needs to be carefully elucidated with regard to the proposed service areas of accessibility, accommodation support, advocacy, employment and training, independent living, information and education, recreation, respite care, and research, development and data collection so that people with disability understand what they are entitled to.

PDA would welcome the opportunity to be involved in drafting this section of the new Disability Services Act.

7: Do you consider it necessary to retain separate provisions for employment services and rehabilitation employment program, or could they be combined?

In February 2022, PDA made a submission to the *Shape Your New Disability Employment Support Program* consultation paper⁹ in which we argued that “the time has come for the siloed approach to employment services for people with disability to end. We would like to see people with disability being offered employment support by mainstream employment providers in the first instance.”¹⁰ We hope the Australian Government heeds this advice and dispenses with the plan to develop a separate

⁹ <https://engage.dss.gov.au/wp-content/uploads/2021/11/Consultation-Paper-New-Disability-Employment-Services-Model.pdf>

¹⁰ <https://engage.dss.gov.au/wp-content/uploads/2022/02/PDA-Response-to-Employment-Consultation-Paper-01Feb22.pdf>

employment support program for people with disability and extends this philosophy to clients of the rehabilitation employment program.

Comments: If you have any other comments, suggestions, concerns, or thoughts about our plans for the new Act, please let us know.

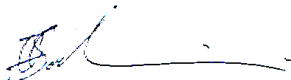
PDA is in favour of the Australian Government's plan to repeal and replace the *Disability Services Act 1986* as the *NDIS Act 2013* has delivered, on an entitlement basis, the services and supports many people with disability have been denied for many years. PDA hopes the Australian Government takes this opportunity to start meeting the needs of those people with disability excluded from the NDIS because they are over 65 years and/or not deemed to have a significant enough impairment on a similar open-ended entitlement basis. This will mean, of course, that the Aged Care sector and many other support programs will need significant boosts to their funding if they are to deliver this outcome.

In conclusion

We hope you seriously consider the key recommendations of this submission; that the Australian Government ensure:

- The Objects of the new *Disability Services Act* commit to delivering the basic personal support, appropriate accommodation and equipment needs of **all** people with disability (as they are defined);
- They work with all DRO Program members to –
 - Review and rewrite the definition of disability; and
 - The list of services and supports to be delivered under the new Act;
- They implement an all-encompassing Vulnerable Persons Quality and Safeguarding Framework and (adequately resourced Commission to replace the ineffectual NDIS and Aged Care Commissions); and
- They look into rolling disability and rehabilitation employment supports into mainstream employment support services.

Yours sincerely



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Physical Disability Australia



Simon Burchill
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About Us

Physical Disability Australia (PDA) is a national peak membership-based representative organisation run by people with physical disability for people with physical disability. PDA was founded 25 years ago and we have over 1,000 members from all Australian States and Territories. Our purpose is to:

- Remove barriers through systematic advocacy to all levels of government to enable every Australian living with a physical disability opportunities to realise their full potential;
- Proactively embrace and promote difference and diversity for an inclusive society; and

- Actively promote of the rights, responsibilities, issues and participation of Australians with physical disability.