



NDS Submission to the Regulatory Impact Statement Social Services Regulations 2023

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About National Disability Services

National Disability Services (NDS) is the peak body in Victoria and Australia for non-government disability service providers, with over 270 members in Victoria and more than 1100 members nationally. We provide information and networking opportunities to our members and policy advice to State, Territory and Commonwealth governments. NDS has a diverse and vibrant membership, comprised of small, medium, and larger service providers that deliver direct and indirect support to people with disabilities. Our members collectively offer the full range of disability services; from supported independent living and specialist disability accommodation services to respite, therapy, community access and employment.

Introduction

NDS is committed to improving the disability service system to ensure it better supports people with disabilities and their families and carers and to building a more inclusive community. NDS is also committed to promoting and driving continuous improvement in service quality and business sustainability. We strongly support all disability services being subject to a robust quality and safeguarding framework, based on human rights principles.

NDS welcomes the opportunity to comment on the Regulatory Impact Statement, Social Services Regulations 2023 (the RIS). We also appreciate the opportunity for NDS to be represented on the Social Services Regulation Taskforce.

This submission is informed by consultation with NDS members, who have provided examples of the possible effects and costs of the proposed regulations on their organisations.

NDS is supportive, in principle, of the broad aims of the reform, including simplifying existing regulation of social service sectors, reducing red tape, and introducing an independent regulator which is separate from the Department of Families, Fairness and Housing (DFFH). We also represent a sector largely regulated by the national NDIS Quality and Safeguarding Commission, and want any state based regulation to align well with this national framework.

General Comments

NDS has concerns about the potential for increased regulatory burden under the proposed regulations. Most notably, the impact of duplicative regulation if the new Victorian social services regulatory framework does not recognise and is poorly aligned with the NDIS (National Disability Insurance Scheme) Quality and Safeguarding framework.

Our key concern is that the burden of additional regulation will drive some disability services to withdraw services from Transport Accident Commission (TAC) or Workcover clients. A number of providers have flagged this outcome. This would be a distressing outcome, and not in the interests of these clients.

Furthermore, we are concerned that for those organisations which choose to engage with multiple regulatory systems, the burden resulting from poor alignment between systems leads to diversion of resources from direct services, loss of productivity, and staff frustration potentially impacting on morale and retention.

NDS appreciates that there are limited legislative safeguarding provisions under the *Transport Accident Act 1986* or the *Workplace Injury Rehabilitation and Compensation Act 2013* to support TAC and WorkSafe clients with a disability. Therefore, the TAC and WorkSafe do not have any regulatory levers to require service providers to rectify unsafe practices. In addition, the Human Services Regulator currently has no oversight of the majority of disability service providers funded by the TAC and WorkSafe.

In practice, for providers to be eligible to provide disability services to TAC clients and WorkSafe injured workers, they must be an [accredited provider](#) of disability services with another relevant government organisation, such as the NDIS Quality and Safeguarding Commission or the DFFH. Attendant care providers and those providers who deliver activities such as Community Access and Case Management funded by the TAC and WorkSafe are predominantly regulated by the NDIS. So, whilst these providers are subject to a formal regulatory framework, a regulatory gap exists at a client level for non-NDIS participants. This means there may be limited ability to address matters of safety and quality for individual clients that access these services.

In consultations with our members, disability service providers which are registered with the NDIS and providing services funded to TAC and WorkSafe clients have informed NDS that the regulations would have a disproportionate impact on providers that only deliver services to a small number of clients. For example, there are approximately 300 TAC and WorkSafe disability providers. Approximately 84 per cent of TAC attendant care providers have ten or less clients. Approximately 60 per cent of WorkSafe providers support less than five clients, with the average number of clients per provider being three.

A number of disability providers have warned us that the increase in costs and administrative time associated with the proposed new regulations may result in them having to review their provision of services to TAC and WorkSafe clients, and potentially exiting the sector, thus negatively impacting on service user choice and access to services.

NDS understands that the objectives of the Act and the regulations are to protect the rights of service users and minimise risks of harms caused by abuse and neglect in connection with the delivery of social services. Equally, they are to promote and support the delivery of safe and effective social services. Therefore, the greater protections that the Act and the regulations provide to service users must be balanced against the impact on providers and the sector who provide the services and the potential for negative impacts on some clients from service withdrawals.

Possible duplication

Most disability organisations undertake work for the NDIS, and if they are registered, they are subject to comprehensive regulation by the NDIS Quality and Safeguarding Commission. This regulation includes independent audits against standards and strict reporting requirements. NDS would like to formally highlight the importance of mutual or unilateral recognition of the NDIS Practice Standards and Code of Conduct within the new Victorian Social Services regulatory framework in order to avoid duplicative reporting and auditing requirements.

Furthermore, all Specialist Disability Accommodation (SDA) providers under NDIS are required to be registered, and adhere to a suite of SDA standards, and any SDA

properties must meet the SDA Design Standard to ensure the properties are appropriately designed and built to meet the needs of people with disability.

For example, the Standards and corresponding service requirements (as outlined below) have a key focus on safe service delivery in a broad sense, including concepts of cultural safety and inclusion, Aboriginal cultural safety and inclusion, and psychological and emotional safety as well as concepts of avoiding physical harm such as abuse, neglect and exploitation. They also focus on service user agency, dignity, respect, and human rights and promote a safe service environment supporting service user safety, health and wellbeing.

Although the regulatory guidelines will be created by the Regulator the six Standards have already been established by the Act and some preliminary work has been done by the Department signaling the direction these guidelines may take.

Figure 1 outlines the six Social Service Standards.

Figure 1: Social Services Standards under the Social Services Regulation Act

Standard	Description
Safe service delivery	Services are safely delivered based on assessed needs
Service user agency and dignity	Social services are person-centred and they respect and uphold service user rights and agency
Safe service environment	Services are provided in a safe, secure and fit-for-purpose environment
Feedback and complaints	Service users are supported to provide feedback, complaints or concerns about service safety
Accountable organisational governance	Effective governance and organisational systems support safe delivery of social services
Safe workforce	Social services are delivered by a workforce that has knowledge, capability and support to deliver safe services with care and skill

Similarly, the NDIS Code of Conduct requires workers and providers who deliver NDIS supports to:

- act with respect for individual rights to freedom of expression, self-determination, and decision-making in accordance with relevant laws and conventions
- respect the privacy of people with disability
- provide supports and services in a safe and competent manner with care and skill
- act with integrity, honesty, and transparency
- promptly take steps to raise and act on concerns about matters that might have an impact on the quality and safety of supports provided to people with disability
- take all reasonable steps to prevent and respond to all forms of violence, exploitation, neglect, and abuse of people with disability
- take all reasonable steps to prevent and respond to sexual misconduct.

In addition, the NDIS Practice Standards set out the rights of participants and the responsibilities of providers that deliver supports and services to them.

Person – centred supports

Outcome: Each participant accesses supports that promote, uphold and respect their legal and human rights and is enabled to exercise informed choice and control. The provision of supports promotes, upholds and respects individual rights to freedom of expression, self-determination and decision-making.

Individual values and beliefs

Outcome: Each participant accesses supports that respect their culture, diversity, values and beliefs.

Privacy and Dignity

Outcome: Each participant accesses supports that respect and protect their dignity and right to privacy.

Independence and informed choice

Outcome: Each participant is supported by the provider to make informed choices, exercise control and maximise their independence relating to the supports provided.

Violence, Abuse, Neglect, Exploitation and Discrimination

Outcome: Each participant accesses supports free from violence, abuse, neglect, exploitation or discrimination.

As mentioned above DFFH has undertaken some preliminary work in this area. In the *Consultation paper - Registration as a social services provider*, the service standards outlined seem to mirror these NDIS Practice Standards and some cases may not go as far.

The key elements of the NDIS registration requirements go directly to assessing the suitability of the provider and its key personnel, the suitability of premises and qualifications and skills of staff, for the purpose of promoting and ensuring safe services are provided to service users as similar to those outlined in the new regulatory scheme.

Therefore, if taken in conjunction with the NDIS registration system, the new system may cause unnecessary duplication.

Costs to service providers of registration

The regulatory changes introduced by the Act and the proposed regulations are expected to have financial impacts on service providers, because of the need to adjust systems, policies and procedures to transition to the new scheme. While most providers will experience minimal cost to transition to the new scheme, it is expected that the burden for complying with the new Social Services Standards will be substantial for those who do not have existing systems and processes in place to meet the new requirements.

Providers currently registered under the *Disability Act (2006)*, the *Children, Youth and Families Act (2005)* and the *Supported Residential Services (Private Proprietors) Act (2010)* will be automatically registered under the new scheme from 1 July 2024, and those registrations will be ongoing.

One-off registration costs will be borne by around 250 TAC and WorkSafe disability service providers, new providers and any existing provider that expands its scope of services.

As outlined in the RIS, for these service providers costs incurred from registration are expected to result from time, effort and costs incurred by service providers in understanding the requirements, collating and providing all the information required for registration, developing, updating or renewing governance and operational management structures and policies, and updating training and other materials to ensure staff have knowledge of, and capacity to comply with the Standards.

Services have flagged that they will weigh up these costs, both financial and in terms of staff resources, in determining if the value of TAC or Workcover funding justifies the investment in an additional regulatory system. A number of NDS members have flagged that they have withdrawn from TAC services in recent years due to current TAC pricing. Additional costs due to this new regulation may further sway some providers to exit supporting TAC and Workcover clients.

Regional Services

NDS has particular concerns about the impact of the new regulatory system on regional providers, and especially on smaller, not for profit providers. We note that there are a number of Victorian areas with recognised 'thin markets' for disability services, creating significant access problems for people with a disability.

For example, a regional provider of employment supports for NDIS and TAC funded clients noted that duplicative regulatory requirements would force them to cease providing employment for TAC funded clients as the work and resources needed to comply with a separate quality system and audit process for a small number of clients would be far too costly. As previously mentioned, there may also be an increased cost burden for small-scale service providers that only provide certain services to one or two users.

As noted above, some providers have ceased supporting TAC or Workcover clients in recent years, and in the example mentioned above NDS is aware that one of the TAC

clients of this provider is currently having to travel from a regional town 85 kilometers away for supports. If this provider chooses to exit the market, this client will face even more limited options.

Focus on Continuous Improvement

Continuous improvement is not mentioned in the Act's Purposes and although referenced in the Objects of the Regulator, there is almost nothing in either the Act or Draft Regulations that elaborates on how continuous improvement will be encouraged, supported, monitored or promoted. For providers who are already regulated under the NDIS, this does not present an issue. However, for those new to regulation, there is little or no incentive to strive for continuous improvement through existing quality assurance processes.

NDS believes that the organisations and staff in scope for the Regulations are motivated to undertake quality work and achieve good outcomes for clients. We would like to see a strong emphasis on education, prevention and sharing of good practice by the Regulator. We would also like to see a real emphasis on measures to encourage continuous improvement.

Ongoing Sector Input and Consultation

NDS remains concerned that the new regime relies too heavily on the discretion of the Regulator, without an appropriate support and engagement framework. There are, for example, no advisory or consultative mechanisms prescribed in the Act, unlike comparable regulatory schemes. NDS has appreciated being represented on the Social Services Regulation Taskforce and would like to see continuation of such involvement.

NDS also recommends that any ongoing consultative bodies providing advice to the Regulator include representation of clients, including people with lived experience of disability.

Establishment of an ongoing advisory body, representative of the sector, will ensure the Regulator remains abreast of any emerging issues and impacts on the sector and

clients, and will provide a route for sector feedback and input. Such a body will help ensure the effectiveness of the new Regulatory framework.

Support for implementation

In the context of the new regulations imposing additional requirements on service providers, NDS recommends that all organisations subject to this new regulation be supported with a modest grant to be used towards staff training and system amendments and upgrades to ensure adherence to the new requirements.

Conclusion and Recommendations

NDS acknowledges the professionalism and consultative manner that the DFFH has demonstrated and appreciates its willingness to work with stakeholders like NDS to make sure the new regulatory system benefits the disability sector.

However, the impact of and greater protections that the Act and the regulations provide to service users under the regulations must be balanced against the impact on providers and the sector who provide services.

NDS recommends that the Victorian government:

1. Acknowledge that NDIS registration for disability services represents adherence to a comprehensive suite of quality standards and processes, and this is reflected in all requirements of the Regulator.
2. In regard to registration, NDS recommends that the Regulator accept NDIS registration as registration under the new regulatory scheme. If this is not possible, then NDS recommends that the Regulator create a streamlined application procedure which requests the same information as that required for NDIS registration.
3. In regard to registration of properties used for supported accommodation, it is recommended that any NDIA registered SDAs be taken as compliant, given that such properties will have met the extensive SDA requirements of the NDIS.
4. In regard to incident reporting it is recommended that the information to be provided should mirror the information required by the NDIS Quality and

Safeguarding Commission, again to avoid unnecessary regulatory burden and administrative cost.

5. Establish ongoing consultative mechanisms to enable the Regulator to receive advice and input from service providers and clients.
6. Develop mechanisms and processes to encourage continuous improvement in service delivery.
7. Provide grants to all providers in scope to assist in preparing for implementation of the new regulatory requirements.

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