

3 October 2024

Committee Secretary  
Senate Standing Committees on Community Affairs  
PO Box 6100  
Parliament House  
Canberra ACT 2600

## **Re: Aged Care Bill 2024**

The Neurological Alliance Australia (NAA) welcomes the opportunity to make a submission to the Senate inquiry on the Aged Care Bill 2024.

This submission focusses on two key areas of concern that will impact people affected by the conditions represented by the members of the NAA.

1. Legislating eligibility for aged care services for some people with disability aged under 65 (Section 58)
2. Removal of criminal sanctions for aged care providers from the legislated duty of care (Section 179).

### **Legislated eligibility for aged care services for some people with disability aged under 65**

Section 58 of the Aged Care Bill 2024 provides specific eligibility for aged care services for people with disability who are aged 50 - 64 years who are (a) from First Nations backgrounds, (b) homeless or (c) at risk of homelessness. These services include residential aged care and home care.

As the [Department of Health and Aged Care website](#) states, "Australia's aged care system supports older people and is not meant for people younger than 65. Aged care should be a last resort for people younger than 65 and in limited, special circumstances."

Further, it states that, "The [National Disability Insurance Scheme](#) (NDIS) supports people younger than 65 to [live in the community or other suitable settings](#)."

AIHW reports show that people who are aged 50 - 64 years who are (a) from First Nations backgrounds, (b) homeless or (c) at risk of homelessness do experience poorer health outcomes and premature death compared to the rest of the community<sup>1,2</sup>. They are in greater need to access services and support, which, as stated above, should be provided by the NDIS. This would ensure a level of funding of services and support more appropriate to their needs than can be provided through the aged care system.

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<sup>1</sup> <https://www.aihw.gov.au/reports/australias-health/indigenous-health-and-wellbeing>

<sup>2</sup> <https://www.aihw.gov.au/reports/australias-health/health-of-people-experiencing-homelessness>

Significant effort across the Commonwealth, states and territories governments is in place to support the achievement of the Royal Commission into Aged Care Quality and Safety target of 'no people under the age of 65 living in residential aged care by 2025'.<sup>3</sup>

This is on top of significant advocacy efforts over many years by disability organisations to stop young people with disability having to live in nursing homes.

The Aged Care Bill has no provisions to ensure that people with disability in residential aged care will have their disability needs met nor that aged care providers will be required to offer individualised services to people with disability.

There is a real risk that more younger people with disability will be living in aged care facilities because of the new eligibility criteria - such as the risk that these new provisions will increase the pressure on hospitals to discharge people with disability to residential aged care whenever the person does not have an identified home to return to. We do not want this to become the default pathway nor to be seen as the only solution. We need to improve the system so that people with disability get the supports they need and more NDIS services are available.

If an NDIS participant does choose to live in an aged care facility they should be fully funded by the NDIS for the disability services they need. For those who are not NDIS participants, the current negotiations on Foundational Supports should include funding to care for the needs of people who do not meet eligibility for the NDIS.

There are many challenges for residential aged care providers offering both aged care and NDIS funded services. It may surprise the Committee to learn that:

- NDIS participants living in aged care are subject to the aged care means and assets tests - something that does not apply to any other NDIS participant, and
- providers who are currently delivering this 'dual system' care to NDIS participants in aged care must do so with significantly less funding than providers who are delivering the same level of care in the community.

If these NDIS participants were to be directly funded by the NDIS for their care in residential aged care they would be able exercise a greater degree of independence, choice and control and, through their NDIS plans, consider and achieve their life goals.

### **Statutory Duty of Care**

The Aged Care Royal Commission recommended (Rec 14) a statutory duty of care for aged care providers.<sup>4</sup> The *Exposure Draft of the Aged Care Bill*<sup>5</sup> contained criminal and

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<sup>3</sup> Retrieved from: <https://www.dss.gov.au/disability-and-carers/programmes-services/for-people-with-disability/younger-people-with-disability-in-residential-aged-care-initiative>

<sup>4</sup> Retrieved from: <https://www.health.gov.au/sites/default/files/documents/2021/05/australian-government-response-to-the-final-report-of-the-royal-commission-into-aged-care-quality-and-safety.pdf>

<sup>5</sup> Retrieved from: <https://www.health.gov.au/sites/default/files/2023-12/exposure-draft-aged-care-bill-2023.pdf>

civil penalties for providers guilty of serious breaches of their duty of care, as well as provisions for compensation for users of aged care services who suffer harm as a result.

The negotiations between the Government and the Opposition resulted in the removal of these criminal sanctions for breaches of provider duty of care from the Bill. The duty of care in the Bill now only includes a civil penalty for providers.

Removing criminal sanctions will mean providers will face lesser penalties for breaches of their duty of care to their clients and residents and is a fundamental weakening of the safeguarding framework recommended by the Aged Care Royal Commission.

### **Inequity between the Aged Care System and the NDIS**

The provisions in the new Aged Care Act regarding what registered providers can ask older people living with disability to pay towards the cost of their aged care highlights the inequity between the Aged Care system and the NDIS.

We believe that NDIS eligibility should be assessed solely by reference to the person's disability, regardless of age and the NAA will continue to advocate, through its *Count Us In* campaign<sup>6</sup>, for an end to age discrimination related to funding to support people with disability aged over 65 years.

### **Improve Aged Care, Health and Disability sector integration**

The issues described above highlight the urgent need to improve the interface between the Aged Care, Health and Disability sectors to improve care, rather than allowing programs that should be funding services for younger people with disability to 'cost shift' to the aged care system.

The NAA will continue to advocate, through its *Count Us In* campaign<sup>7</sup> for:

- current gaps in funding and services to be identified and addressed
- referral services to operate effectively
- movement of people between these sectors to be person-centred, equitable, and safe.

Yours sincerely,



Rohan Greenland  
**Chief Executive Officer, MS Australia**  
**Chair, Neurological Alliance Australia**

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<sup>6</sup> <https://neurologicalalliance.org.au/count-us-in/>

<sup>7</sup> <https://neurologicalalliance.org.au/count-us-in/>

*Admission*

Anne Wilson

**Chief Executive Officer, Emerge Australia**  
**Deputy Chair, Neurological Alliance Australia**

*The Neurological Alliance Australia is an alliance of 36 not-for-profit peak organisations representing adults and children living with progressive neurological or neuromuscular diseases or neurological disorders in Australia.*

- *The Alliance was established to promote improved quality of life for people living with these conditions and increased funding to support research.*
- *To read more about the work of the Alliance, its members and our six pressing areas of need, please visit: <https://neurologicalalliance.org.au/count-us-in/>*
- *Overseas studies indicate as many as 1 in 3 people live with a neurological condition, the leading cause of illness and disability worldwide<sup>8</sup>, with an annual impact on the Australian economy of over \$100 billion<sup>9</sup>.*
- *These conditions represent around 14% of NDIS participants<sup>10</sup>.*
- *According to the AIHW Australian Burden of Disease Study 2023, neurological conditions are one of the five leading disease groups causing burden in 2023<sup>11</sup>.*

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<sup>8</sup><https://www.who.int/news/item/14-03-2024-over-1-in-3-people-affected-by-neurological-conditions--the-leading-cause-of-illness-and-disability-worldwide>

<sup>9</sup> Based on an aggregation of data from organisations who have commissioned economic impact studies

<sup>10</sup> Based on an aggregation of neurological 'primary disability groups' in the NDIS quarterly reports

<https://www.ndis.gov.au/about-us/publications/quarterly-reports>

<sup>11</sup> Retrieved from Australian Burden of Disease Study 2023, About - Australian Institute of Health and Welfare ([aihw.gov.au](http://aihw.gov.au))