

## Draft Bill for the new Aged Care Act (2023)

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**Date:** 12<sup>th</sup> February 2024

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I consent to the publishing of my submission.

### **Personal History:**

I had a spinal injury in the 1970s which resulted in partial paralysis (Incomplete tetraplegia). I have been using a wheelchair since that time.

### **Summary of points highlighting the discriminatory nature of the drafted Act and the Consultation Paper (2)**

1. Forced entry into Aged Care.
2. The Act is based on the Federal move to legislate to discriminate as contained in the NDIS legislation.
3. The draft Act discriminates against those with a disability who were forced into the Aged Care System
4. Recommendation 72 of the Royal Commission into Aged Care Quality and Safety (RCACQS).
5. Differences in the delivery of the NDIS and the Aged Care system.
  - a. Personal Experience
    - i. Purchasing assistive technologies. (Time, suggestions from the Provider [Let's Get Care] to rent).
    - ii. Processing of assistive technologies (Lack of action and understanding)
    - iii. Lack of training of Care Managers/Care Navigators (from service providers) in the disability area.
    - iv. A focus on Aged Care that ignores the needs of someone with a disability, including the hiring of OTs with limited experience in the disability Sector.
6. The drafted Act is a significant case of 'Othering'.
7. Ignoring the respect and opportunities that come from the legal right to make choices in the context of the of the Dignity of Risk.
8. A significant case of discrimination based on age.
9. Contravention of the UN Rights of person with a Disability

### **Point One – Forced Entry**

Many Australians with a disability were forced into the Aged Care system because they missed out on accessing disability support through the NDIS because of their age and the extended roll out of this program. I live on the Gold Coast, which was one of the last postcodes to deliver on the NDIS. Had I lived elsewhere in Australia, I would have been able to access this support.

These individuals were receiving some disability support for State and Federal based programs. Both State and Federal were lessened or ceased as a result of the introduction of the NDIS.

If I did not have a disability, I would not be in the Aged Care system.

### **Point Two – The Discrimination resulting from the NDIS Act 2013.**

The road to this drafted Act was an act of discrimination in itself. The inclusion of ‘permission to discriminate’ against those with a disability who missed out on the NDIS is in itself a significant instance of ageism, ableism, exclusion, stereotyping, marginalization, prejudice, disempowerment, patronization and disrespect, all of which fall from the creation of the inherent systemic barriers created by this Act, an ‘Act of discrimination’. In fact, this scenario is a perfect example of the multifaceted nature of discrimination, emphasizing the importance of awareness, inclusivity and respect for all individuals regardless of age and/or disability. The drafted Act under discussion must be rewritten to emphasize awareness of those with a disability forced into the aged care system not because of their age, but because of their disability.

### **Point Three - The Draft Act Discriminates**

Many Australians with a disability were forced into accessing their disability supports because they could not access NDIS support because of their age. These, in many cases like my own, would not have needed to access this support had they not a disability.

The language of the exposure draft Consultation Paper No 2. (and the drafted Act in itself), provides clear evidence of discrimination, if not intent to discriminate, against those with a disability who were forced into accessing their disability support through the Aged Care system. The evidence of this act of intended discrimination is as follows:

- The language of both the Consultation Paper (No 2) and the Act itself, ignores the implications of having a disability and being forced into the Aged Care System.
- In the drafted Act there are 13 instances of the use of the word ‘disability’. Eight refer to the NDIS, two refer to sectors involved in the area of disability and **ONLY ONE** refers to a person having a disability.
- In the Consultation Paper (No 2), there are 4 instances of the use of the word ‘disability’, two of which refer to the NDIS; One refers to the research report released by the Royal Commission into Violence, Abuse, Neglect and Exploitation of people with(a) disability, and the final one is a reference on p 28 of this paper.
- The language used to define accessing services as ‘funded aged care services’ repeatedly discriminates against those who were forced into the aged care system solely because of their disability. This language permeates the whole document and must be amended. (cf suggestion No 1)

### **Point Four- Recommendation 72 of the final report of the RCACQS**

“The Commissioners also recommend measures be taken to ensure every person receiving aged care who has a disability can access equivalent supports to those that would be available under the NDIS for people aged under 65 with the same or similar conditions.”

Recommendation 72

The drafted Act in question has no evidence of measures to be taken to meet this recommendation. This must be included in the Act under a specific heading (cf Suggestion No 2). It must be included in the Act now, otherwise it could be inferred, as was stated by a Commissioner, with words to the effect that ‘if we wait long enough, those who missed out on the NDIS and were forced into the Aged Care System will die out’. I was on the conference call during which this statement was made.

#### **Point Five - Differences in the delivery of the two systems.**

There are substantive differences in the delivery systems of the NDIS and the Aged Care systems, in my experience. These include: - With the Aged Care System -

- Knowledge of issues associated with disability.
  - There is no commitment in the Aged Care System to train Care Managers and other staff employed by the numerous providers.
- A lack of capacity to respond to urgent needs.
  - Following a fall, I needed to shower outside with a hose, because my care manager was unable to comprehend and respond to my needs in a timely manner.
- Planned purchase of significant assistive technologies
  - In the Aged care system, I could not access the urgent purchase of a specifically designed wheelchair. In my 50 years of using wheelchairs, I have always had specifically designed chairs.
  - I was informed that I had to wait until I had the funds available before approval could be given to order the chair.
  - I was informed that I could ‘rent’ a wheelchair, which is evidence of a high level of ignorance of what it is to live for a long period of time in a wheelchair.
- I was forced to ‘beg’ for support for assistive technologies.
- Over a period of time there were significant changes to what I could fund that met my needs based on my disability. These changes saw the removal of services /products.
- There is an obvious lack of commitment to understand what it is to live with a disability because there is no commitment to do this in the draft legalization. This omission means that there is no commitment to those who live with a disability and who were forced into the Aged Care system. Such an omission could easily be challenged in court under an act of discrimination.

#### **Point Six - The drafted legislation is a significant case of ‘Othering’.**

Definitions of ‘othering’ include:

**Othering** is a phenomenon in which some individuals or groups are defined and labelled as not fitting in within the norms of a social group.

**Othering** in the context of disability refers to the process by which people with disabilities are viewed or treated as fundamentally different from or less than non-disabled people. This

perspective is often rooted in societal attitudes, cultural norms, and systemic structures that marginalize, exclude, or devalue individuals based on their disabilities. Othering can manifest in various ways, from overt discrimination and exclusion to subtle biases and assumptions that influence how people with disabilities are perceived and treated in daily life, policy, and practice. (Chat GPT)

**Consequences include:** Devaluation, Stereotyping, Segregation, invisibility and paternalism.

The drafted act is a significant case of 'othering' those with a disability by omission, making those with a disability who were forced into the Aged Care system, invisible. (cf above)

### Point Seven – The Dignity of Risk

The ignorance that comes from not:

1. Addressing this cohort (those with a disability) of those receiving support through the Aged Care system because of their disability.
2. Committing to training and development within provider organizations around what it is to live with a disability. This MUST be included in the Act. (CF Suggestion No 3)
3. Overtly naming this cohort, and setting out clear expectations as to how their disability needs can be met in the Act as per recommendation 72 of The Royal Commission into Aged Care).

will result in a powerlessness within this specific cohort of people with a disability. As a consequence of this, we will not have opportunities to exercise our 'dignity of risk' or have our disability needs met.

### Points Eight and Nine

The existence of this draft of the act blatantly discriminates against those forced into the Aged Care system because of their disability and their age.

Yet other ways in which the current drafted Act discriminates against those who were forced into the aged care system include:

1. The processes used to access funding through the aged care system comes from the assessment processes which openly focus on age and do not reflect the specific needs of different disabilities.
2. The denial of the urgency for support that comes from acquiring a disability for those over the age of 65. I had to wait months before I was allocated a level of funding.
3. Under the current legislation, those over the age of 65 who acquire a disability CANNOT access support through the NDIS.
4. Under the current legislation, someone with a disability who is forced into the age care system has access to **limited** funding support. This is particularly relevant when accessing allied health and assistive technologies. For example:
  - a. My wheelchairs cost \$14 000.00
  - b. My Braun Chair Lifter cost \$17 000.00 (approx.)
  - c. Annual costs for allied health cost \$11 284.00
  - d. A bathroom modification costs up to \$25 000.00
  - e. Potential cost for hand controls \$12 000.00
  - f. Self-Care costs (catheters et al: \$6500.00 per annum)

- g. Annual cost for Home assistance \$8250.00 etc etc.
- h. I have to wait until funds are 'saved up' before I can consider purchasing. This is not the case for those under the NDIS.
- i. Package management \$7228.00 per annum
- j. Package Care management \$1820.00 per annum.

Summary/Overview for 12 months	Running Balance
Income Level Four \$59 593.55	\$59 593
Minus Management fees \$9 048.00	\$50 545
Minus regular fees per annum \$26 034	\$24 510
Minus potential assistive technologies (a&b)	\$31 00 00
Funds available for planned assistive technologies	<b>-\$6 490</b>

**Conclusion;** My current funding package is not suitable as a direct result of being in the Aged Care System. Potentially, I will have to delay the purchase of assistive technologies, allied health support, and/or home modifications. I have to approach the support I get with a saving mentality. This mentality means I have to be conservative in the purchase of my supports, in case I am faced with a significant expenditure.

Mark Hunter

16 February 2024

#### SUGGESTIONS:

1. The language in the Act be changed where it mentions 'funded aged care services' to be inclusive of those who were forced into the aged care system because of their disability and their inability to access the NDIS. For example
  - a. 'Funded aged care services or funded disability services, assistive technologies or support.'
2. **"Part X – Actions to meet Recommendation No 72 of the Royal Commission into Aged Care**  
The following processes are to be used to ensure measures be taken to ensure every person receiving aged care who has a disability can access equivalent supports to those that would be available under the NDIS for people aged under 65 with the same or similar conditions."
3. **Part 4 - Obligations of registered providers etc and conditions on registration of registered providers.**
  - a. **Division 3 – Care workers employed under the Aged Care Act**
    - i. All care workers must undergo professional development that will ensure they meet the needs of those who are in the Aged Care System because of their disability.

- ii. *(This program to be developed, and assessed in consultation with individuals with a disability and those who already provide services to those with a disability (eg Spinal Life Australia)).*