
**Response from members of the Disability Research
Community of Practice at the University of
Melbourne to the Australian Government
Department of Social Services Consultation Paper:
*A New Act to Replace the Disability Services Act
1986***

12 February 2023



About this response

This response is submitted by the Melbourne Disability Institute on behalf of members of the Disability Research Community of Practice at the University of Melbourne.

The Melbourne Disability Institute (MDI) is an interdisciplinary research institute at the University of Melbourne, established in 2018. MDI promotes and facilitates collaborative, interdisciplinary research to build the evidence base needed to guide social and disability policy reforms and to advance opportunity and equity for people with disability, their families and carers.

The Disability Research Community of Practice at the University of Melbourne, facilitated by MDI, draws together academics across the university with expertise and interest in disability research and policy to share and mobilise knowledge and resources across disciplines.

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Terminology

This submission is written in person first language (person/people with disability), to align with terminology commonly used by the Australian Government.

Acknowledgement

The Melbourne Disability Institute (MDI) is situated on the unceded land of the Woiwurrung (Wurundjeri) people of the Kulin nation and conducts its activities on Aboriginal land. MDI acknowledges Traditional Custodians' continual care for country and pays respects to Elders past, present and emerging.

Key points

The context

1. We welcome the Australian Government's decision to repeal the Disability Services Act 1986, but we believe that the proposition to replace the Act should be strengthened on four fronts:
 - the *process* of consultation with people with disability to help inform the drafting of new legislation to replace the Disability Services Act;
 - the *purpose* of replacing the Disability Services Act in the current legislative and policy environment;
 - *defining* a 'disability service' in the context of promoting more inclusive universal services;
 - *ensuring* that the definition of disability is contemporary, reflects the social model of disability and has been co-designed by people with disability.
2. We note that the Government's goal is a "new and improved Disability Services Act" to "provide a basis for continued supports and services outside the NDIS for people with disability", and that it is seeking input to ensure the new Act:
 - provides authority to fund services for all Australians with disability, including those who are not eligible for the NDIS, and expands the types of financial mechanisms that can be used
 - sets out key principles for service delivery and ensures authority to continue current service delivery
 - provides flexibility for future improvements in the design and delivery of supports and services, including the authority to make needed changes
 - clearly expresses the rights of people with disability, and outcomes they are entitled to expect
 - includes updated quality and safeguard standards arrangements and requirements, including compliance, reporting, review and complaints mechanisms that align with the best practice for disability services.¹

The process of consultation

3. There are approximately 4.4 million people with disability in Australia. This diverse and intersectional group of citizens consists of 2.4 million people aged under 65 years, and 2 million people aged over 65 years. There are 1.8 million people with disability of working age, representing approximately 11 per cent of Australia's working age population. The prevalence of disability is significantly higher among Australians aged 65 years and over than those under 65. Approximately 570,000 Australians with disability receive individual funding through the National Disability Insurance Scheme (NDIS). People with disability who sit outside the scheme are forced to rely on service systems riddled with inconsistent eligibility criteria, poor or misleading information, unaffordable costs and a lack of availability. Where they can, people fill service gaps with informal support and their own resources. It is essential to build mutually reinforcing legislative scaffolding with scope to meet the changeable and wide-ranging needs of **all** Australians with disability over their life course, while advancing their rights as equal citizens.
4. While the opportunity for input is welcome, the request for public input to inform the drafting of legislation to replace the Disability Services Act – which has no age parameters – requires much clearer information and messaging about a wide range of issues. This information should include who will be affected by the change in legislation, and how proposed new legislation will relate in principle and in practice to the Disability Discrimination Act 1992, the National Disability Insurance Scheme Act 2013, the National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Act 2017, Aged Care legislation, the Social Security Act 1991, health legislation, the National Agreement on Closing the Gap, state and territory government

¹ Consultation paper p2 https://engage.dss.gov.au/wp-content/uploads/2022/11/Consultation_Paper-Disability_Services_Act_Repeal_and_Replace-28Nov.pdf

legislation, and Australia's obligations as a signatory to the UN CRPD. There is also a clear need for much longer timelines for consultation given the complexity of the subject matter and the frequency with which people with disability and their organisations are asked by government for input into reviews and reforms with no or limited resources. This is crucial for all people with disability, but particularly important for people who have an intellectual disability, cognitive impairment or complex communication needs who require additional time and support to enable meaningful engagement. **Given the Act has been in place for thirty years and the need for reform is clear, it is unacceptable to offer such a short period for review and comment.**

The purpose of replacing the Disability Services Act

5. Research suggests that there is a clear and urgent need for Australian governments to ensure that people with disability without individual NDIS funding have access to services and support to maintain their wellbeing and the wellbeing of their families.² The support they need may include both disability-specific and universal services, which are covered by different legislation. This group encompasses people who fall outside the scheme's eligibility criteria due to their age or the nature of their disability, as well as people who may be eligible for individual NDIS funding who face barriers to successfully applying for entry to the scheme. Support needs may be exacerbated for those living in places where affordable and accessible services, technology, housing and employment opportunities are limited. In this arena, decisions about where, when and to whom services are delivered are commonly driven by market-based principles. This frequently creates perverse incentives for cost-shifting until a crisis forces government intervention.
6. We note in the consultation paper that "where a person is eligible for supports or services under more than one piece of legislation, the agencies and providers involved should work together with the person to coordinate the supports and services, avoid duplication, and ensure alignment with the person's goals." There are important lessons to draw from efforts to operationalise this principle under the National Disability Insurance Scheme Act 2013 through the Applied Principles and Tables of Support (APTOS). Issues arising from blurred and fluid boundaries between the NDIS and other service systems are well-documented in academic research, stakeholder investigations and reports, government reviews, Royal Commissions, the media and the courts.³ Rather than emphasising possible duplication, we would suggest that gaps are much more likely to emerge and persist when respective roles and responsibilities between jurisdictions and/or policy areas are not clear or are contested and, especially, when person-centred practices are not used to guide decisions. Shifting priorities, accountability and interaction between business, civil society and the state in designing and delivering services and support to people with disability call for overarching stewardship from government, underpinned by co-design. A range of levers to achieve desired outcomes across jurisdictions, robust and timely data collection and analysis, and whole-of-government commitment to disability inclusion are also all required.
7. A new Act intended to maintain supports and services outside the NDIS for people with disability should drive cohesive action across government beyond traditional disability services, with transparent monitoring and evaluation of services, supports and initiatives enabled or funded under the Act and related legislation. Mapping the level and impact of investment in services and supports for people with disability across government will highlight gaps in service provision, unmet need, and duplication of effort, and pinpoint key leverage points in the service ecosystem where governments could improve support and inclusion for all Australians with disability. Monitoring and evaluation must be done in conjunction with people with disability and their representative organisations.

² Olney, S., Mills, A. & Fallon, L. (2022). *The Tier 2 tipping point: access to support for working-age Australians with disability without individual NDIS funding*. Melbourne Disability Institute, University of Melbourne <https://apo.org.au/node/319016>

³ Parliament of Australia 2019 Joint Standing Committee on the National Disability Insurance Scheme: Inquiries https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme; NDIS Review <https://www.ndisreview.gov.au/>; Productivity Commission (2017), *National Disability Insurance Scheme (NDIS) Costs* <https://www.pc.gov.au/inquiries/completed/ndis-costs#report>; Olney, S. & Dickinson, H. (2019), *Australia's New National Disability Insurance Scheme: Implications for Policy and Practice*, Policy Design and Practice 2(3) pp275-290. doi:10.1080/25741292.2019.1586083

Defining a ‘disability service’ in the context of promoting more inclusive universal services

8. Australia’s Disability Strategy 2021–2031 urges all Australians to ensure people with disability can participate as equal members of society, and states that success “rests in a whole-of-community response, inclusive of business, the non-government and services sectors and individuals.”⁴ This paradigm shift, in light of historic and persistent discrimination and marginalisation of people with disability in Australian social and economic life, will hinge on coordinated legislation and system architecture across the Strategy’s seven priority areas. Universal services exist in each of these areas.
9. We encourage the Australian Government to seize this opportunity to reframe ‘disability services’ in legislation from a parallel service system for citizens with disability to mechanisms at both an individual and systemic level to change structures, policies and attitudes that marginalise people with disability in society and the economy. We also encourage the Government to consider levers and mechanisms to promote genuine and meaningful inclusion. This would entail rethinking the name of the new Act, steering away from ‘Disability Services’ towards support and authentic inclusion.

Ensuring the definition of disability is contemporary and co-designed

10. We also encourage the Australian Government to work with people with disability and their representative organisations to establish an appropriate definition of people with disability which fits Australia in the 21st century. Disability can arise from intellectual, physical, sensory or psychosocial impairments and it is not uncommon for people with disability to have multiple impairments. However, the primary construct of disability should be based on the social model of disability rather than the medical model and should draw on international work such as the biopsychosocial model and the International Classification of Function, Disability and Health developed by the World Health Organisation.

Recommendations against each question in the consultation paper

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

Recommendation 1: The new Act should include a clear statement of where the objects of the new Act sit in relation to the objects of the NDIS Act for people with disability aged under 65, and aged care legislation for people with disability aged 65 and over.

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

Recommendation 2: The process of defining the target groups and parameters for rationing access to services and support under the new Act should be led by people with disability.

Recommendation 3: The new Act should reference the social model of disability, the biopsychosocial model, the UN Convention on the Rights of Persons with Disabilities and acknowledge people’s intersectional identities and diverse needs and circumstances.

⁴ Department of Social Services (2021), *Australia’s Disability Strategy 2021-2031*, p1

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

Recommendation 4: The principles for requiring coordination should acknowledge and address service gaps in addition to avoiding duplication.

Recommendation 5: The principles for avoiding duplication and requiring coordination must draw on lessons from efforts to operationalise the National Disability Insurance Scheme Act 2013. They delegate responsibility for service coordination to agencies and providers operating in a complex web of legal, governance and management structures and competing priorities. This model requires careful stewardship across government, underpinned by co-design with people with disability, negotiation of agreed goals, levers to achieve desired outcomes across jurisdictions, robust data, and transparent mapping, monitoring and evaluation of services, supports and initiatives accessed by people with disability. This should be done at both a local and a centralised level with clear lines of accountability.

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

Recommendation 6: People with disability should lead discussion around language and determining eligibility for support under the Act.

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

Recommendation 7: Government should avoid duplicating existing standards and mechanisms for enforcing standards in legislation wherever possible, but build clear lines of accountability for monitoring and enforcement into the new Act to mitigate risk. Any harmonisation of existing frameworks (such as between disability and Aged Care) should consider unintended consequences and ensure any changes result in improved quality and standards rather than drive towards the lowest common denominator. People with disability must lead development of monitoring and enforcement frameworks.

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

Recommendation 8: We urge the government to seize this opportunity to reframe 'disability services' in legislation from a segregated service system for citizens with disability to mechanisms to support and protect their inclusion in universal services and activities like housing, education, health, employment, training, and recreation.

Recommendation 9: Continued investment in advocacy, research and data collection is crucial to understanding if and how people with disability outside the NDIS are finding the support they need, the ripple effects of legislative and policy change, and key leverage points for change in service systems that could improve the lives of people with disability.

Recommendation 10: A monitoring framework must be established to monitor implementation and impact of the Act and to ensure government and the community are held to account for access to supports and services. This framework should include publicly available reporting to ensure transparency. People with disability must lead the development of the framework and all ongoing monitoring.

Recommendation 11: The new Act should not only outline an expectation of accessible and inclusive universal services but should also establish an expectation that services should be co-designed with people with disability. Co-design should include any determinations of eligibility and funding.

Recommendation 12: In re-examining the scope and provision of disability supports and services, we urge the government to consider mechanisms to encourage the development of services led by people with disability. This should include prioritisation of funding to develop, establish and operate such services.

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

Recommendation 13: The Act must include scope for radical reform of segregated employment services for people with disability, injury or health conditions. These services are under review. In the meantime, provisions for employment services and rehabilitation employment services could be combined.

Recommendation 14: Provisions for employment services under a new Act should support a coherent funding and regulatory regime across government jurisdictions that rewards collective action focused on identifying and creating sustainable employment opportunities for people with disability, both at a local level and at scale, noting that the labour force participation rate for people *without* disabilities has risen sharply over the last 30 years while the participation rate for people with disability has declined.

Recommendation 15: The Act should include services to employers to support hiring, retention and career development of people with disability beyond formal DES services. This should include services that support workplace adjustments.

Recommendation 16: The Act should expand the definition of training from employment support to general post school education and training. There should also be greater recognition of the role of placements, volunteering and support for people with disability establishing microenterprises, social enterprises or small businesses.