



20 December 2024

Dear Commissioner Glanville and Associate Commissioner Wade,

Re: Consultation on proposed quality and safeguarding amendments to the NDIS Act (Bill No. 2)

Inclusion Australia is the national peak organisation representing the rights and interests of Australians with an intellectual disability and their families. Founded 70 years ago in 1954, our mission is to work with people with an intellectual disability, their families and our members to make positive change.

Our strength is in our national representation and our connection to our community. We have a member organisation in every state and territory across Australia:

- ACT Down Syndrome and Intellectual Disability (ACT DSID)
- Council for Intellectual Disability (NSW)
- Developmental Disability WA (DDWA)
- Inclusion Northern Territory (Inclusion NT)
- Parent to Parent (P2P, Queensland)
- South Australian Council on Intellectual Disability (SACID)
- Speak Out Advocacy (Tasmania)
- Victorian Advocacy League for Individuals with Disability (VALID).

Thank you for the opportunity to provide feedback on the proposed amendments as part of NDIS Act (Bill No. 2) quality and safeguard amendments.

This submission has been endorsed by Down Syndrome Australia.

Background

We strongly agree with the need for legislative changes to enable many of the NDIS Review's recommendations about registration to be co-designed and implemented.

However, we wish to flag some potential unintended consequences the proposed legislative changes for some people with an intellectual disability and families who use self-directed supports, such as the service-for-one model.

Service-for-one is a term that was developed by VALID and Inclusion Australia to cover a unique disability service model in Australia. A service-for-one is an alternative to the mainstream group-based disability service provider system, which has failed many people with an intellectual disability over many years. A service-for-one is often set up by families to organise and provide support for people with complex support needs and multiple disabilities.

Families typically developed services-for-one after trying a range of other options. This has enabled the family member with disability to receive the level of tailored and individualised supports they need, provided in a way that centres their needs and preferences. There is [more information about this model available on our website](#).

We are a strong proponent and defender of the service-for-one model. We have seen, and firmly believe in, its ability to provide truly person-centred supports to people with an intellectual disability, especially people who have higher support needs who are often even further marginalised. Many of those people and their families have had to fight hard to find an alternative to group-based disability services, in which many people have experienced violence, abuse, neglect and trauma. For many people who we represent, the impact of this trauma is ongoing.

On 11 December 2024, we held a formal consultation about NDIS Reform Bill No. 2 with the Family Reference Group. This group began as a service-for-one Community of Practice of families who run a service-for-one with their family member. There were 4 participants who took part in the consultation. This submission draws on their feedback, and includes quotes from participants.

Potential challenges to the viability of services-for-one

We agree that the current registration process for services-for-one is not fit-for-purpose and does not reflect their unique situations. We recently [provided feedback to the NDIS Review Registration Taskforce](#) on this matter and called for the co-designing of a more suitable registration process that is proportionate while still upholding the highest levels of participant safety and well-being. We are aware that further consultation (and later, co-design) of these processes is forthcoming, and we look forward to having input to their design and implementation in due course.

“I think in all of this, there needs to be like an overriding consideration that what they're proposing needs to be able to be demonstrated, that it's going to be useful for the participant, not just for the NDIS.” –Family Reference Group member.

In relation to the enabling legislation, we are concerned that the proposed changes to the penalty framework and statutory requirements would make services-for-one less viable for many families.

In particular, we are concerned that families running a service-for-one could be severely penalised by inadvertently failing to comply with conditions of registration or hamstrung by increased cost and administrative requirements.

For example:

- The Taskforce's Advice handed to Government in July 2024 stipulated that sole traders who provide some 'high risk supports' (like restrictive practices or behaviour support) would be required to have Advanced Registration under their proposed model.
- While there is typically a reduction and even an elimination of restrictive practices in a service-for-one model, this can take time to happen, and there are cases where these practices must continue to be utilised.
- While the Taskforce anticipated that most other sole traders would require Basic Registration, some supports are regarded as being on their own high risk. So far, it seems these will not be treated in proportion to the nuanced risk profiles associated with different providers.
- The reasons for this, as stated by the Taskforce, are to avoid a loophole of a provider exploiting participants under the guise of a 'self-directed support' without undergoing more robust registration requirements.
- Given that some 'high-risk' supports, like behaviour support, are practiced by sole traders employed in a service-for-one, a number of existing services-for-one would be compelled under this approach to seek Advanced Registration.

"It is making the assumption that the risk level is the same [in a SIL provider setting and a service-for-one] when it's not ... and the Disability Royal Commission backed this up 100%" –Family Reference Group member.

- In these cases, and as a result of the legislative changes discussed in the consultation paper, there is a significant risk that the level of compliance required by the highest tier of registration would:
 - a) Place a disproportionate administrative burden on families running a service-for-one, where there are different practices and different levels of understanding around compliance requirements.

- b) Create situations where families running a service-for-one may inadvertently attract severe penalties for failing to comply with Advanced Registration standards that are not reflective of their unique situation or proportionate to the work they are doing.
- c) Disincentivise the commencement or continuation of some services-for-one, regardless of its benefits to the person receiving those supports. This would potentially force some people with very high support needs back into mainstream, group-based disability services if a service-for-one is no longer viable due to the registration requirements and legislative context.

Recommended safeguards to legislate the protection of choice and control

“We need the NDIA to work with us [to improve quality and safeguards in services-for-one]—not doing to us.” –Family Reference Group member.

There is still work to be done across our community to ensure consistently safe and high-quality care is provided to people with disability, and to bring a level of visibility and accountability to providers that does not currently exist.

However, **we must ensure that any legislative change and forthcoming changes to registration categories and requirements make services-for-one more viable, not less.**

“We don’t want [the changes] to make a whole new bureaucracy” –Family Reference Group member.

We believe any legislative change should enable opportunities to:

- Co-design a regulatory approach that is proportionate to the unique elements of a service-for-one
- Support innovation for existing services-for-one and support the establishment of new services-for-one around the country
- Promote best practice standards, recognition, management and mitigation of conflicts of interest
- Increased participant safeguarding and promotion of participants’ rights and autonomy.

To achieve this, we believe **a right to review civil penalties for non-compliance for those providers who fall into the ‘self-directed supports’ category must be legislated** as part of Bill No. 2.

We see this as a necessary safeguard to protect choice and control and ensure services-for-one remain viable in the new registration system as it develops.

We appreciate the thorough and ongoing consultation process undertaken by the NDIS Commission. We look forward to continuing to work with you to ensure the changes to legislation and forthcoming registration approaches uphold the highest levels of participant safety and wellbeing while also protecting the individualised approaches, choice and control.

Kind regards,

A handwritten signature in purple ink, appearing to read 'Catherine McAlpine', is positioned above the printed name.

Catherine McAlpine

CEO, Inclusion Australia