ASU Submission

Australian Government

Aligning regulation across aged care, disability support and veterans' care

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The ASU

The Australian Services Union ('**ASU**') is one of Australia's largest unions, representing approximately 135,000 members. Relevantly, we cover members in the community and disability services sectors (including mental health and aged services) and in local government home and community care ('**HAC**').

Executive summary and recommendations

The aged care, disability, and veteran's services sectors serve distinct groups of people with different needs. Any reform should serve the unique needs of the aged, veterans and people with a disability, by ensuring that the correspondingly distinct skills and responsibilities for workers are recognised and valued. These distinctions need to be maintained in any regulatory reform.

Recommendations

1. Disability, aged care and veterans' care are distinct sectors serving different and distinct groups of people. Regulation should be appropriate to the needs of each sector and the people they serve.
2. Regulatory alignment is not a priority. Reform should focus on measures to value and encourage the acquisition of the unique skills required by workers within each sector. Workers with qualifications and experience in different sectors should be treated as multi-skilled workers.
3. Any alignment should be cautious. Previous reforms have misaligned regulation across sectors to the detriment of clients (for example, mental health and the NDIS).
4. Exploring regulatory alignment is premature. Any action should wait until the Disability Royal Commission and the Royal Commission into Defence and Veteran Suicide issue their reports.
5. If alignment does proceed, reform should focus on protecting vulnerable people with alignment of the registration conditions for providers, principal officers and owners. There should be strict scrutiny and information-sharing about the fitness of operators of care services to ensure that bad actors cannot continue to operator in different sectors.

Disability Sector

The NDIS was established as a scheme for the provision of supports and services chosen and controlled by people with disability participating in the scheme. Alignment risks diminishing the responsiveness of the NDIS to the needs of people with disability. Disability/NDIS sector stakeholders have not identified regulatory alignment with the aged care and veteran sector as a priority. Any change to the NDIS and its regulatory framework should be informed by the experience of NDIS participants and front-line workers, it is contrary to the principles of the NDIS to embark upon significant change to the NDIS without wide consultation with people with disability.

The human rights of people with disability are the guiding principles of the NDIS and its regulatory framework. Relevantly, the NDIS Quality and Safeguard Framework was developed in consultation with people with disability, and with input from frontline workers, advocates, and service providers. The Framework consists of NDIS practice standards, codes of conduct, rules, guidelines and policies for the provision of all NDIS supports and services.

The NDIS regulatory framework does not include an accreditation process like that underpinning the aged care quality and safety framework. The NDIS consists of both registered and non-registered providers. All registered NDIS providers must comply with the NDIS Practice Standards (a system of standards and quality indicators).

The NDIS Code of Conduct (the Code) is a clear set of enforceable obligations that inform workers and service providers of their obligations to people with disability in the provision of NDIS supports and services. The Code references people with disability and their rights, it also sets expectations for safe and quality standards of practice and ethical behaviours for workers in the delivery of NDIS supports and services.

The risk of aligning the Code to reflect all three sectors is that the references to people with disability will disappear from the Code and people with disability will no longer be the focus of this set of enforceable obligations that reduce risk to and increase protection of people with disability from abuse, violence, neglect and exploitation.

The unique elements of the NDIS sector are recognised in the recently released NDIS Capability Framework which was developed by the NDIS regulator to define the skills, knowledge and capabilities workers need to deliver a wide range of services and supports when working with NDIS participants.

The Framework recognises the diversity and complexity of services and supports provided to people with a disability from a wide demographic and age range, and with a range of different and often specialised support needs, including:

- people with psychosocial, sensory, cognitive, and/or physical disability, including those with multiple disabilities;
- people with acquired brain injury;
- children and adolescents with disability;
- adults with disability (up to 65 years, older in some circumstances);
- Aboriginal and Torres Strait Islander people with disability;
- LGBTQIA+ people with disability; and
- culturally and linguistically diverse people with disability.

This Framework is the latest in a number of reforms to the NDIS. These reforms are a response to calls for change from NDIS participants, the regulator, disability advocates, front-line workers and/or service providers.

The regulatory alignment of the aged, disability and veteran sectors may benefit those providers that provide services in two or more of the three sectors, however, the convenience of providers should not be the driver of changes to the regulatory systems. While some aged care providers may also provide services across the disability and veterans sector, the majority of NDIS providers do not.

People with disability fought long and hard to ensure that they have choice and control of the services and supports they consume. It is imperative that people with disability remain at the centre of any changes to the NDIS and its regulatory system.

A change for the convenience of aged care service providers cannot come at the expense of people with disability. The disability/NDIS sector is distinct with a number of features that are unique to the sector, it needs to be underpinned by a regulatory system that has been developed in line with its distinct features and is capable of improving the safety of people with disability.

Further, there is a genuine expectation that the Disability Royal Commission (like the Aged Care Royal Commission) will make recommendations to strengthen regulation and increase protections for NDIS participants and other consumers of disability services and supports. It is premature to make changes to the NDIS before the sector has the benefit of the Royal Commission's report, findings and recommendations.

Mental health – a misalignment case study

The mental health sector has been wrongly aligned with the disability sector through the NDIS threatening the quality of care and the sustainability of the sector. There is a fundamental mismatch between the mental health's recovery model and the social model of disability that underpins the NDIS. Practically, NDIS funding does not meet the needs of the mental health sector.

Many people with mental health conditions are ineligible for the NDIS, because they will recover from their condition. But the NDIS has become the dominant source of funding for mental health services. NDIS pricing assumes that entry-level mental health work is equivalent to entry level disability support worker. However, entry-level employees in mental health tend to perform work that aligns with level 4 or 5 in the SCHDS Award (as opposed to Level 2 for disability services). There is now a 'recovery coach' role in the NDIS system (SCHDS Level 4), but there is little scope for career progression in mental health services.

Case Studies:

Anglicare

In November 2018, Anglicare SA made 43 mental health care workers who worked with high-needs NDIS participants redundant. These employees were classified at Level 4 of the Award.

Anglicare offered the employees the opportunity to apply for new roles classified at level 2. For most affected employees, this was a pay cut of approximately $300 per week.

Anglicare explained that the redundancies were necessary because NDIS funding did not account for the high level of skill and experience required for mental health care work.

Mental Health Community Support Services (MHCSS)

MHCSS was the largest psychosocial program in Victoria and the majority of workers were employed in funded roles. As a result of NDIS defunding, the vast majority of MHCSS roles in Victoria, over 1000 jobs, were made redundant.

Home and Community Care

The services provided under the Commonwealth Home Support Program (CHSP) and Home Care packages (HCP) performed by Community Care Workers provide services to enable elderly Australians to maintain their independence and remain at home. This work presents unique challenges, including working with clients at the end of their lives.

The emphasis of HAC work on client consent, choice, and involving clients in goal-setting requires workers to gain the confidence and establish and maintain positive working relationships with clients and their families and be responsive to their needs. The goal is to build confidence, so clients don't need ongoing services. This requires well-developed interpersonal skills and sensitivity.

Entry level services under CHSP include a range of domestic supports from housework to shopping, escorted shopping, and meal preparation all of which must be delivered in a manner that supports people to live as independently as possible. The CHSP program requires that all Community Care 'must use a wellness, re-ablement or restorative care' (Australian Government Department of Health, 2021) approach. Workers therefore must focus on working with rather than doing for.

Home Care Package services range from entry level through to high care, including nursing, physiotherapy, respite, and assistance with social connection. They include a range of intimate services including help to do the following;

- bathing, showering, toileting
- dressing/undressing
- getting in and out of bed
- hair-washing and shaving
- assisting with medication

HCP services evolve with the care needs of the client including dementia and end of life care. Community Care workers deliver services when client needs are complex and changing, monitoring the need to review care plans according to changing welfare and health needs. Community Care Workers above are required to have a Certificate III in Individual Support (Ageing, Home and Community).