SUBMISSION TO THE LEGISLATIVE AFFAIRS COMMITTEE- NDIS AMENDMENT (INTEGRITY AND SAFEGUARDING) BILL

Claire-Louise McCrackan

Submission to the Senate Committee
National Disability Insurance Scheme Amendment (Integrity and Safeguarding) Bill 2025
(Refer also: Explanatory Memorandum)

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1. About this submission

I write as the CEO of Carers and Advocates Australia Pty Ltd, and as a person with lived experience. I also write informed by the experiences of participants, families, workers and providers across a range of circumstances.

My intent is to assist the Committee to strengthen safeguards, restore public trust and improve outcomes—without further destabilising a market already under significant strain.

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2. Executive summary

I support the Bill's stated intent to strengthen integrity and safeguarding. The NDIS must protect participants from violence, abuse, neglect, exploitation and fraud.

However, I am concerned the Bill leans heavily on increasing penalties and expanding regulatory powers, without first fixing the structural conditions that create risk in the first place. An integrity response that relies primarily on bigger penalties is a blunt instrument—like reaching for a bigger hammer without having a nail.

Safeguarding and risk management cannot operate without accurate knowledge of participant needs, clear boundaries around capacity and decision-making, and a competent, stable workforce. If we increase penalties while the foundational system remains inconsistent, fragmented and under-skilled, we risk:

- discouraging transparent handover between providers (defensive practice);
- accelerating provider exits and market collapse; and
- worsening participant outcomes through reduced service availability and continuity.

Finally, any integrity framework must apply to all parties with decision-making power—including the NDIA. Integrity cannot be achieved by scrutinising providers alone while the Agency remains effectively insulated from equivalent scrutiny, accountability and consequences.

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3. Foundational failures that must be addressed

In my view, the NDIS is currently being regulated and legislated as if it is functioning, when it is not. Before further punitive regulation is layered onto the sector, four foundational points of failure must be addressed:

1. **Capacity, "choice and control", and boundaries**
   Choice and control is essential—but it becomes a safeguarding risk where capacity is impaired, fluctuating, or poorly assessed, and where responsibility is not matched to decision-making. Providers cannot carry all responsibility while being compelled to follow choices that create foreseeable risk to the participant or the workforce.
2. **The "medical anomaly"**
   The NDIS correctly moved away from a purely medical model, but disability is intrinsically connected to medical realities. The current system often behaves as though clinical knowledge is optional. It is not. Many participants require supports that sit at the intersection of human rights and health.
3. **A casualised, under-qualified support workforce**
   We cannot continue to run a high-risk system for vulnerable people as if it were a gig-economy domestic labour hire market and expect excellence in outcomes. Safeguarding fails where the workforce is not trained, stable, supervised and professionalised.
4. **A registration and quality assurance system that does not reliably reflect competence**
   Current registration processes largely formalise systems on paper, not competence in practice. They can add cost and administrative burden without consistently producing higher quality or safer outcomes.

If these fundamentals are not addressed, increasing penalties will not deliver the reform the community expects.

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4. Core reform priorities I urge the Committee to consider

I recommend the Committee treat the following as priority reforms alongside (and in many respects, before) penalty expansion:

4.1 Professionalise and stabilise the workforce

- Introduce a **nationally standardised qualification pathway** for disability support work (tiered career structure), incorporating:
  - human rights and safeguarding,
  - clinical literacy (medication awareness, infection control, pressure injury prevention, escalation),
  - practical care skills, and
  - trauma-informed practice.
- Establish **mandatory registration of disability support workers** (not just providers), with enforceable standards and ongoing requirements.

- Ensure **sustainable pricing and funding settings** that allow providers to employ, train, supervise and retain staff (otherwise regulation becomes a "set up to fail").

4.2 Run the medical and human rights models together

- Human rights are non-negotiable. But **clinical realities must be integrated**, not excluded. Participants are being harmed by preventable deterioration, avoidable complications and missed health care because the system lacks clinical competence and coordination.

4.3 Strengthen supported decision-making with legal protection

- Australia urgently needs a **Mental Capacity Act / supported decision-making framework** with clear thresholds, protections and safeguards against coercion.
- Capacity should be treated as **spectrum-based and decision-specific**, not as an "all or nothing" label.

4.4 Make effective risk management possible

- Mandate **safe, lawful information handover** between outgoing and incoming providers where service consent exists, with NDIA/NDIS as a party to this obligation.
- Provide for **structured care continuity / crisis planning** for high-risk participants (e.g., emergency plans and contingency arrangements).

4.5 Address business model viability to prevent market collapse

Providers are already subsidising care, absorbing administrative burden, and operating under financial strain. If market conditions continue to deteriorate, the result will be provider exits, workforce depletion, and ultimately reduced participant safety and choice.

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5. Comments on the Bill

5.1 Schedule 1 – Amendments relating to the Commission (penalties and regulatory powers)

The Bill and Explanatory Memorandum make clear that Schedule 1 is designed to expand the Commission's compliance and enforcement toolkit and strengthen deterrence.

I support strong action against serious wrongdoing. However, I raise the following concerns and recommendations:

A. Penalties without system repair risk "lazy reform"

Increasing penalties can appear decisive, but if applied without fixing workforce competence, information sharing, and clear expectations, it becomes performative rather than protective. Stronger penalties will not substitute for the absence of a robust, workable safeguarding framework.

B. Risk of discouraging critical handover and disclosure

If providers fear penalties for any failure without being equipped with the information necessary to manage risk, the predictable outcome is defensive practice:

- less candid incident reporting,
- reduced openness during transitions, and
- reluctance to accept higher-risk participants.

Recommendation: Include explicit legislative and operational mechanisms to support **mandatory handover**, and protect good-faith disclosures made for the purpose of safeguarding participants.

C. Due process and proportionality

Where criminal allegations or serious sanctions are proposed, due process must be clear and operationalised to avoid premature punitive consequences that later prove unfounded.

Recommendation: Ensure guidance and safeguards are explicit around sequencing, thresholds, and procedural fairness—particularly where penalties may be large and reputational impacts are irreversible.

D. Provider register and banned list must be reliable and current

The Bill strengthens and restructures the NDIS Provider Register.

Recommendation: The register must be genuinely **up to date, accessible and authoritative**, including a clear, current list of banned persons and entities. A safeguarding system fails if participants and providers cannot reliably determine who is prohibited.

E. Misrepresentation and branding

Recommendation: Introduce meaningful penalties for **unregistered providers using the NDIS logo** or representing themselves in a way likely to mislead participants about registration status.

In addition, there must be independent education about the difference between “registered” and “unregistered” providers. In my view, in a safeguarding system of this scale and risk profile, the continued existence of broad unregistered provision warrants reconsideration.

F. Citizenship / residency and offshore control

Recommendation: Consider limiting ownership/control of NDIS provider entities to **Australian citizens or permanent residents**, with onshore governance requirements, to improve accountability and enforcement.

G. Screening and security clearances

Recommendation: Any person working with people with disability—across any role—should be subject to appropriate worker screening and security checks, with **no exceptions**.

5.2 Schedule 2 – Amendments relating to the NDIA (withdrawal, claims, plan variation)

The Bill introduces a 90-day cooling-off period for withdrawal and changes to claiming processes, among other operational measures.

I generally support safeguards that prevent coerced or unsafe withdrawal. However, I recommend the following:

A. Withdrawal safeguards should include welfare and capacity considerations

If a participant is withdrawing and is considered higher risk, there must be a practical safeguarding response beyond correspondence.

Recommendations:

- Where risk indicators exist, require a **welfare check** (e.g., via police or appropriate safeguarding pathways).
- Where a participant has a legally appointed guardian, **only the guardian** should be able to finalise withdrawal.
- Provide follow-up communication after withdrawal (e.g., at 6 months) and, where appropriate, inform the participant's GP (with consent and lawful basis).

B. Electronic claiming must not become a barrier or destabiliser

Integrity gains from electronic claiming are understandable.

Recommendation: Implementation must include practical transition support, clear timeframes, and contingency arrangements so that legitimate providers—particularly smaller services—are not forced out by administrative change.

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6. NDIA accountability must be part of integrity and safeguarding

Integrity cannot be one-sided. The NDIA should not be without scrutiny or consequence.

At present, providers are increasingly exposed to penalties and enforcement while simultaneously being denied the information and system settings necessary to discharge their duty of care. This is not how any other risk-managed sector operates.

6.1 "Reasonable expectations" in insurance and legal proceedings

In any court setting—civil or criminal—or when assessed by a reasonable insurer, baseline expectations would include:

- vetted and screened personnel,
- qualifications aligned to task risk,
- clear documentation and handover, and
- supervision and governance.

Yet the disability support environment has often operated as though these fundamentals are optional, while providers carry liability and face escalating penalties. This is not sustainable or fair, and it will accelerate market failure.

6.2 Providers are subsidising care and being pushed out

Many providers are already operating at or near a loss while attempting to maintain participant safety and continuity. If compliance costs and penalty exposure increase without changes to pricing, workforce, and NDIA processes, providers will exit—and the market will collapse. When the market collapses, participants lose services, workers leave, and safeguarding gets worse, not better.

Recommendation: Establish a clear, enforceable framework of NDIA obligations relevant to safeguarding and integrity—particularly regarding:

- timely plan decisions and payments,
- timely provision of critical participant information (lawfully),
- consistent and practical operational guidance, and
- accountability mechanisms when Agency failures contribute to foreseeable harm.

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7. Safeguarding must include state and territory responsibility

Finally, safeguarding cannot be achieved if public scrutiny is directed only at Commonwealth systems and private providers, while state and territory governments remain outside the accountability frame.

Australia's disability ecosystem includes health, mental health, education, housing, justice, child protection, and guardianship systems. Where state systems continue to rely on institutional or congregate arrangements, or where people remain in segregated settings, the goals of the NDIS and deinstitutionalisation are undermined.

I ask the Committee to consider how this reform agenda interacts with state responsibilities—and why public scrutiny is not equally applied to state and territory governments where institutionalisation and segregated systems persist (including, as raised publicly in South Australia and elsewhere).

Recommendation: Introduce transparent national reporting and accountability for:

- numbers of people living in institutional/congregate disability settings,
- pathways and timelines to transition to community living, and
- safeguards and oversight of those settings during transition.

8. Closing

I recognise the seriousness of abuse, neglect, exploitation and fraud in the NDIS. Strong enforcement is necessary against serious wrongdoing. But enforcement alone is not reform.

If the Commonwealth wants real integrity and safeguarding, it must also build the enabling conditions that make safe practice possible: workforce professionalisation, lawful information sharing and handover, supported decision-making protections, and shared accountability—including NDIA accountability and state responsibility.

Thank you for the opportunity to make this submission.

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