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Office of the CEO

Ms Sophie Dunstone
Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
Via email: LegCon.Sen@aph.gov.au

Dear Ms Dunstone,

Thank you for your letter of 14 February 2024, regarding the Senate Standing Committee on Legal and Constitutional Affairs inquiry into Administrative Review Tribunal Bill 2023 (ART Bill) and related bills [Provisions].

The National Disability Insurance Agency (NDIA) worked closely with the Department of Social Services as the Portfolio lead, to support the Attorney-General's Department in the development of the ART Bill and provisions.

The NDIA supports the ART Bill that will establish a new ART to be user-focused, efficient, accessible, and independent. The ART Bill will further support the NDIA's current reform agenda to make the appeals process participant-centred. Since May 2022, the NDIA has implemented significant reform through a participant-centred approach to alternative dispute resolution. These reforms have significantly reduced the number of appeals in the Administrative Appeals Tribunal (AAT) and improved National Disability Insurance Scheme (NDIS) participants' experience during the external review process. Further details about these reforms are outlined below.

Accessibility

The NDIA supports the focus of the proposed ART on accessibility for all applicants, including accessibility and responsiveness to the diverse needs of people with disability.

The NDIA has received extensive feedback from the disability community that the ART needs to be accessible for people with disability who exercise their appeal rights. The NDIA has also received feedback from the disability community on the value of having members and conference registrars with lived experience. The NDIA is committed to working with the ART on accessibility more broadly, particularly in relation to arrangements under Practice Directions for the NDIS jurisdictional area.

Guidance and Appeals Panel

The NDIA supports the establishment of the Guidance and Appeals Panel (GAP) by Part 5 of the ART Bill as a mechanism to review matters which raise an issue of significance to administrative decision-making and to make guidance decisions.

The NDIA sees a unique opportunity to leverage the GAP to support consistent decision making across the ART and policy and practice changes in the NDIA. Noting the nature of decisions and the NDIA's participant-centred approach to dispute resolution, very few matters in the first decade of the NDIS have been appealed to the Federal Court resulting in a lack of guidance decisions on many key issues for the Scheme.

The NDIA looks forward to working closely with the ART to clarify GAP thresholds and processes for referrals of matters to the new Panel.

Practice Directions

The NDIA supports the inclusion of proposed section 36 that expressly provides the President powers to make a Practice Direction in relation to accessibility and responsiveness to people with a disability, and people who have experienced or are at risk of trauma.

The NDIA adopts a co-design approach to change and policy development to ensure disability community perspectives are represented. The NDIA recommends that the Practice Direction for the NDIS Division of the ART is co-designed with the NDIA and the sector, and regularly reviewed to ensure the Directions remain fit-for-purpose.

Litigation Guardians

The ART Bill at proposed Section 67 allows the appointment of a suitable litigation guardian by the Tribunal even when there may be another representative or nominee. The inclusion of litigation guardians will support NDIS participants to engage fully in the ART process where they may not otherwise under the current AAT process. The NDIA is aware of the recommendations of the Disability Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability of 29 September 2023 regarding supported decision-making and will continue to support alignment between that report and cross-government reforms, and the amendments to litigation guardians in the ART Bill.

NDIA-led improvements to its alternative dispute resolution program

The NDIA has made significant improvements in its dispute resolution program through a range of key initiatives, including an early assessment approach to incoming AAT applications, accelerated caseload reviews, and the Independent Expert Review (IER) trial. These initiatives have significantly reduced the flow of new NDIS participants and prospective participants seeking appeals through the current AAT. Alternative dispute resolution approaches may also be beneficial in Practice Directions of the new ART.

In the context of the Scheme's complex and discretionary legislation, this has also included support for representation and participants, as well as representatives of the NDIA in the AAT. This has led to historically high resolution of matters through alternative dispute resolution, rather than decisions following hearing.

The NDIA is continuing to take forward key reform across the alternative dispute resolution program, including establishing an Enhanced Early Assessment Gateway for AAT matters without briefing external lawyers, an in-house legal capability uplift to ensure NDIS participants have direct engagement with an internal lawyer where possible, and improving quality assurance, governance, and contract managements for external legal services.

These initiatives will strengthen the NDIA's capability and drive continuous improvements in its decision making to better inform operational and policy reform across the NDIA. These initiatives will also ensure the NDIA is well placed to implement the new reforms from the ART Bill.

I look forward to the Committee's recommendations from this inquiry.

Yours sincerely

Rebecca Falkingham
Chief Executive Officer
National Disability Insurance Agency

06 March 2024