National Seniors AUSTRALIA

20/07/2026

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Aged Care Legislation Amendment (Aboriginal and Torres Strait Islander Aged Care Commissioner and other Measures) Bill 2026

National Seniors Australia (NSA) welcomes the opportunity to make this submission to the inquiry into the Aged Care Legislation Amendment (Aboriginal and Torres Strait Islander Aged Care Commissioner and Other Measures) Bill 2026 (the Bill).

NSA is the peak consumer body representing the interests of all older Australians, comprising a community of nearly 300,000 individuals. This submission focuses on the provisions of the Bill most relevant to the financial and procedural experience of older people navigating the aged care system.

We do not purport to speak on behalf of Aboriginal and Torres Strait Islander people or communities in relation to Schedule 1 of the Bill and confine our comments on that Schedule to matters of general Consumer representation.

NSA supports the position of the National Aboriginal and Torres Strait Islander Ageing and Aged Care Council (NATSIAACC) that First Nations Aged Care reform must remain grounded in Aboriginal and Torres Strait Islander community-led decision-making across the Aboriginal and Torres Strait Islander Aged Care ecosystem.

Summary of recommendations

NSA supports the Bill's overall purpose. We recommend the following changes so older people receive clear information, fair treatment and timely decisions.

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1. Protect people before they are given 'means not disclosed' status.

Schedule 3, Part 9, item 38 would insert section 314AA. The process should allow extra time in reasonable circumstances and require reasonable steps to contact a recorded authorised representative or nominated supporter when the person cannot respond. Notices should explain, in plain language, how this status may affect fees.

The Explanatory Memorandum describes the new two-notice process as totalling 46 days. However, current rule 314A-5(2) prescribes 43 days from the first request. The Bill does not amend this period itself, although the Government may intend to amend the Rules separately.

NSA recommends that the Government confirm the intended total response period and make the necessary amendment to the Rule available before the Bill is passed or commences.

2. Put basic refund rights in the Act.

Schedule 3, Parts 5 and 6 should state how quickly a provider must repay money and require interest to be charged if the provider pays late. Proposed section 273AA allows the Rules to set the refund amount and timeframe but does not expressly mention “interest”. Proposed subsections 285(5), 285A(5) and 286(6) allow the Rules to deal with “interest” but do not require interest to be paid. Current rules 313-5 and 313-10 already provide an interest model for late refunds of refundable deposit balances.

3. Publish the important Rules before the Bill is passed.

The Rules for Schedule 3, Parts 5, 6, 9 and 11 will decide important matters such as when refunds are due, how long a person has to provide financial information and what must be included in a residential care fee notice. Older people should be able to examine these details before the Bill is passed.

4. Prevent internal reviews from continuing without an end date.

Item 54 of Schedule 3, Part 12 changes the 90-day rule for the System Governor decisions listed in items 1 to 19 of the table in section 557. If this amendment proceeds, the person should receive progress updates, notice of their continuing right to apply to the Administrative Review Tribunal and a further target date for the internal decision.

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5. Review the $10,000 exception.

Proposed rule 334-1(2)(a) removes the section 334 notice-and-response process where the difference between the recorded and provider-reported refundable deposit balance is less than $10,000. A smaller difference can still matter greatly to a person with limited assets. The Department should justify the threshold and the other exceptions in the proposed rule 334-1(2).

NSA supports the new notice-and-response process in Schedule 2, proposed section 334, and the restoration of accommodation payment choice in Schedule 3, Part 7.

NSA does not support Part 10 without further explanation and evidence about its effect on consumers

Yours sincerely,

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Schedule 1 — Aboriginal and Torres Strait Islander Aged Care Commissioner

NSA supports establishing a permanent Aboriginal and Torres Strait Islander Aged Care Commissioner within the Aged Care Quality and Safety Commission (Schedule 1, item 15, proposed section 361A). The Explanatory Memorandum states that this implements Recommendation 49 of the Royal Commission into Aged Care Quality and Safety. A permanent Commissioner can provide a dedicated voice within the aged care regulatory system.

Schedule 2 – System Modification Rules: natural justice for asset determination

NSA supports new section 334 (Item 24, Part 1 of Schedule 2), which requires the System Governor to give an individual an initial notice, and where necessary, a further notice, inviting submissions before an asset determination is varied or revoked following a provider's report of a change to a refundable deposit or refundable accommodation contribution balance. This corrects a gap in which a consumer's means test outcome could previously shift solely based on provider-reported information, without an opportunity for the individual to respond.

NSA does, however, query the exception in proposed rule 334-1(2)(a), which applies where the difference between the refundable deposit balance recorded in the relevant determination notice and the balance notified by the provider is less than $10,000. Proposed rule 334-1(2) also contains separate exceptions, including where the individual has a means-not-disclosed status, the relevant contribution is zero, the individual has died or left residential care, or another section 334 process is already underway. For an individual with modest assets, a discrepancy of less than $10,000 may still be material.

NSA recommends that the Committee ask the Department to justify both the threshold and the cumulative breadth of these exceptions and consider a lower threshold or a proportionate test.

Schedule 2 Part 2 – Amendments relating to the Aged Care System Modification Rules

The proposed replacement section 317 (Schedule 2, item 10) seeks to better align the setting of individual contribution rates with changes under social security law and programs.

NSA supports aligning contribution rates with social security decisions, given that rates are determined by eligibility for the age pension or the Commonwealth Seniors Health Card (CSHC).

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The proposal to have increases to the contribution rate apply at the start of the next quarter, which aligns with the Support at Home quarterly budgets, while decreases to the contribution rates apply on the day of the change in circumstances. It is also appropriate that changes to contribution rates for ongoing assistive technology take place on the next anniversary entry date, and that similar changes apply to short-term assistive technology and home modifications. Furthermore, we support not increasing contribution rates during periods of short-term services.

Schedule 3 Part 9 – Requesting information for individual contribution rate determinations

Proposed section 314AA (Schedule 3, item 38) creates a two-notice process. If the System Governor does not have the financial information prescribed by the Rules, the System Governor must request it before deciding the person's contribution rate. If the person has not responded within 21 days, the System Governor must send a second written request. The Bill does not state the final deadline. Amended subsection 314A(2) leaves that deadline to the Rules. The Explanatory Memorandum says the process totals 46 days, but current rule 314A-5(2) says 43 days from the first request. There appears to be an inconsistency.

Current rule 314A-5 states that the requested information covers marital status, homeownership, assessable income, and assets. If the information is not provided, the person may be given 'means not disclosed' status.

Under rule 314-45(b), that person is treated as a self-funded retiree for home and community care contributions. For people covered by the general table in rule 314-10(2), the contribution rates are 0% for clinical supports, 50% for independence services and 80% for everyday living services. Different rates may apply to some protected or transitional groups. The means-tested non-disclosed status can also affect access to fee-reduction supplements. The Explanatory Memorandum acknowledges that Parts 5 and 9 may affect what a person must immediately contribute towards care.

An older person may miss a letter because they are in hospital, unwell, living with cognitive impairment or unable to manage formal correspondence without help. Neither the Bill nor the Explanatory Memorandum gives a person a clear right to extra time or requires contact through a recorded representative or supporter.

NSA recommends plain-language notices, reasonable extensions and reasonable steps to contact a recorded authorised representative or nominated supporter where appropriate and lawful. The Government should also confirm the total response period and update rules 314-15(5) and 314A-5(2) so that they refer to the proposed section 314AA.

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Schedule 3 Parts 5 & 6 – Refunding overcharged contributions and overpaid fees

NSA supports the purpose of the proposed section 273AA (Schedule 3, item 15) and the amendments to sections 285, 285A and 286 (items 18 to 28).

The Explanatory Memorandum states that Part 5 is intended to require refunds of overcharged individual contributions, and Part 6 deals with overpaid resident fees and contributions. Proposed section 273AA requires a provider to refund an overpaid individual contribution in accordance with the Rules. The amendments to sections 285, 285A and 286 allow the Rules to specify when other fees or contributions may or must be refunded.

The Bill does not provide all the practical protections a consumer needs. Proposed subsection 273AA(2) allows the Rules to set the circumstances, amount and timeframe for a refund, but it does not expressly mention interest.

Proposed subsections 285(5), 285A(5), and 286(6) allow the Rules to cover interest but do not guarantee that they do so. The Explanatory Memorandum gives no maximum refund period and no guaranteed right to interest.

The current rules 313-5 and 313-10 already set out when interest is paid on a late refund of a refundable deposit balance and how it is calculated. NSA recommends using this as a model: the Act should guarantee a refund deadline and interest thereafter, while the Rules set the operational details and rates. The interest charge should mirror the Base Interest Rate (BIR)and the minimum permissible interest rate (MPIR) for residential aged care or a similar calculation for payments[1].

Schedule 3 Part 11 – Residential care fee advice letters

NSA supports proposed section 337B (Schedule 3, Part 11, item 47). It allows the Rules to require the System Governor to notify a resident or provider about residential care fees, contributions and accommodation amounts.

The Explanatory Memorandum says the purpose is to notify people when changes to means-tested amounts, subsidies or supplements change what they pay. However, the Rules will decide when a notice is required and what it must say.

NSA recommends that every notice clearly state the amount, why it changed, the date it applies, any backdated effect, how to question or review it, and where to get help. This aligns

[1] Base interest rate (BIR) and maximum permissible interest rate (MPIR for residents aged care.

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with NSA's long-standing position that consumer-facing aged care communications should be written to be genuinely understood by older people and their families.[2]

Schedule 3, Part 12 – Timeframes for internal review

Item 54 of Schedule 3 would add paragraph 565(1)(c). For System Governor decisions listed in items 1 to 19 of the table in section 557, an internal review would no longer be automatically treated as confirming the original decision simply because 90 days have passed.

This may help an older person who wants to wait for the internal review rather than immediately go to an external review. The Explanatory Memorandum confirms that the person can still apply to the Administrative Review Tribunal after 90 days. However, the amendment does not set a new deadline for completing the internal review. An older person who continues waiting could therefore face an open-ended delay.

NSA recommends regular written progress updates, a clear notice at 90 days explaining the right to external review, and a further target date for the internal decision. The Committee should also ask why this change applies only to decisions on items 1 to 19 of section 557.

Schedule 3 Parts 7 and 10 – Accommodation payments and means testing

NSA supports Part 7. Item 29 repeals subparagraph 294(1)(ca)(ii). The Explanatory Memorandum says this restores a person's choice, while waiting for a means assessment, to pay accommodation costs through a refundable deposit, a daily payment or a combination of both. This gives consumers more flexibility.

NSA does not support Part 10, which excludes asset testing of amounts payable as a refundable deposit, in the absence of clear evidence of its effect on consumers.

Item 42 would insert subsection 330(12A). For aged care means testing, it switches off the temporary disregard in subsection 1118(2) of the Social Security Act 1991 for proceeds that a person intends to use to pay a refundable deposit. The note to proposed subsection 330(12A) states that those proceeds will not be disregarded when calculating the person's assets. However, the Explanatory Memorandum also states that Part 10 makes refundable deposits assessable for aged care means testing on entry to residential care.

In plain terms, money intended for a refundable deposit may still be counted as an asset until it is paid. This could increase the person's assessed assets and what they are asked to contribute.

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[2] NSA Current Affairs, Proper Communication Key to Dealing with Older Patients, 2024.

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NSA asks the Committee to obtain worked examples for pensioners and part-pensioners and details of any transitional or hardship protections before supporting this measure.

Conclusion

NSA supports the Bill's overall objectives, establishing a permanent, independent Aboriginal and Torres Strait Islander Aged Care Commissioner, and strengthening the operation of the Aged Care Act 2024 through system modifications and other measures in Schedules 2 and 3.

Our recommendations are intended to ensure that the consumer protection provisions in Schedule 3, several of which address issues NSA has raised in previous submissions, are revised and available for scrutiny before the Bill passes, rather than left to be finalised afterwards.

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