National Seniors AUSTRALIA

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

National Seniors Australia (NSA) welcomes the opportunity to comment on the Government amendments inserting Schedule 4 into the Aged Care Legislation Amendment (Aboriginal and Torres Strait Islander Aged Care Commissioner and Other Measures) Bill 2026 (the Bill), following government amendments.

NSA is the peak not-for-profit consumer peak body representing the interests of all older Australians and comprises a community of over 300,000 individuals. NSA undertakes research, policy development and advocacy across health and aged care, retirement income, cost of living and healthy ageing. As this is the second inquiry into this Bill, NSA will limit this submission to the proposed additional review pathway in the new Part 4A of Chapter 2 of the Aged Care Act 2024.

NSA supports an additional human review safeguard where an automated home support classification or priority decision does not appropriately reflect an older person's ageing-related circumstances. However, the pathway should be accessible, timely, clinically informed and capable of correcting both individual decisions and recurring problems in the assessment system.

Summary of recommendations

1. **Replace the seven-day request period to 28 days**.
2. **Give registered supports and advocates a clear right to ask the relevant assessment organisation to ask an additional review referral,** with a prompt response explaining whether a referral will be made.
3. **Set a maximum timeframe for deciding an additional review, with an expedited process** where there is an immediate risk to safety, carer sustainability, discharge from hospital or the person's ability to remain at home.

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4. **An entry decision reviewer should have appropriate clinical and aged care assessment expertise.** A reviewer should have relevant aged care assessment expertise or be required to obtain substantive clinical input where the issues are clinical, functional or cognitive.
5. **Expressly permit the reviewer to consider new and relevant evidence**, including information from the older person, carer, GP, allied health professional or other clinician, rather than relying solely on the material that produced the disputed decision.
6. **Broaden the pathway so that it can address circumstances that were technically captured by the Integrated Assessment Tool (IAT)** but were not adequately reflected in the resulting classification or priority category.
7. **Ensure a successful review does not disadvantage the person in allocation or waiting-list position** because time was spent correcting the original decision.
8. **Place core safeguards in the Act**, publish draft Rules and guidance before commencement, and publicly report review activity and outcomes so recurring issues can be used to improve the IAT, classification and prioritisation arrangements

Taken together, these recommendations are intended to ensure the additional review pathway operates as a practical consumer safeguard rather than another administrative layer. NSA supports the intent of Schedule 4 and the introduction of human oversight where automated decisions may not adequately reflect an older person's circumstances.

However, for the pathway to work effectively, it must provide reasonable access, timely decisions, appropriate clinical input, consideration of relevant evidence and sufficient transparency to ensure lessons from individual reviews are used to improve the assessment, classification and prioritisation system over time.

Yours sincerely,



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Expanded review channel welcome, but further reforms needed

We welcome further review options, which may allow people to receive the care and appropriate funding reflecting their needs. An approved needs assessor should be able to request a review, in addition to the current review rights for individuals and registered supporters.

Ideally, this review channel should be the last resort for a properly functioning assessment system. An aged care assessment should meet individuals' needs in the first instance, not depend on assessors' or supporters' willingness to identify when an outcome is insufficient and lodge a review. We hope the new aged care system will be reformed and refined to ensure older people get the support they need without needing this review mechanism. We discuss the broader Support at Home system later in this submission.

Recipients of care need clarity on what is being reviewed and who is conducting the review

Individuals and assessors seeking a review must understand what a review of a decision involves and who conducts it.

It should be made clear that the decision of the System Governor, the Secretary of the Department of Health, Disability and Ageing, has been arrived under advice from officers within the Department. It should be made clear that the persons or unit within the Department undertaking the review are different from those making the original assessment decision. This will give people requesting the review greater confidence that it has been dealt with fairly.

There should also be clarity on how the review is conducted, including what information is considered as part of the review. This is important given this section of the Supplementary Explanatory Memorandum to the Bill:

> "For clarity, evidence that would not be considered material includes general dissatisfaction with an individual's expected wait time, service pricing and other financial circumstances. While an individual may be impacted by these matters, the person requesting the review must demonstrate there are ageing-related circumstances pertaining to the individual that are relevant to the decision but were not used in the automated decision-making process."

Those involved in a review should also be made aware of any further review rights, beyond the System Governor.

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There should also be regular public reporting of the number of reviews requested, statistics on the time taken to complete reviews, and the outcomes of reviews.

Short timeframes to request review (7 days)

Proposed section 90B sets out that a request for the review must be given to the System Governor within 7 calendar days of the prescribed entry decision being made, though additional time may be allowed. The period runs form the making of the decision, not the day the individual is notified or has had a reasonable opportunity to understand the outcome.

In our view, this timeframe is unreasonably short for individuals to receive the decision, consider their position, complete the required forms, and lodge the request for review.

NSA recommends a 28-day period from notification of the prescribed entry decision, with discretion to extend time in appropriate circumstances, these timeframes should align with existing review timeframes. A longer default period would not prevent assessors from escalating obvious cases immediately; it would simply reduce the risk that a person loses access to the additional safeguard because the problem was identified late.

The Bill should also impose a timeframe on the review decision itself. Proposed section 90D requires acknowledgement of a request as soon as practicable, while proposed section 90F requires notice within 14 days after the review decision has been made. Neither provision sets a maximum period within which the reviewer must actually decide the matter.

NSA recommends that the Act set a clear maximum decision period, supported by an expedited pathway where delay creates a material risk to the person. Urgent handling should be available where, for example, the person's safety is at risk, a carer arrangement is breaking down, hospital discharge depends on supports being available, or the person may otherwise be unable to remain safely at home.

Reviews should be clinically informed and able to consider new evidence

Proposed subsection 90D(3) already provides an important separation safeguard, the System Governor must review the decision personally or use a departmental delegate who was not involved in making the original decision. NSA supports that separation, but the legislation does not require the system governor or department delegates to have clinical or aged care assessment expertise.

The Supplementary Explanatory Memorandum states the Department intends to use a multidisciplinary team with clinical and non-clinical staff and a clinical governance framework.

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That intent should be reflected in the legislation or Rules framework so that cases involving complex, functional, cognitive or carer circumstances receive appropriate care.

The review must also be able to look beyond the same record that produced the disputed outcome. Proposed subsection 90E(3) requires the reviewer to have regard to relevant material on which the original decision was based and permits consideration of matters prescribed by the Rules. It does not expressly guarantee that the reviewer may consider new clinical, functional or social information.

NSA recommends that the ACT or Rules expressly permit relevant evidence, including updated information from individual, carers, general practitioners, allied health professionals and other clinicians. This is particularly important where a condition fluctuates, information (such as level of cognitive impairment) was not well captured during the assessment, informal care arrangements are unstable, or important evidence becomes available shortly after the original decision.

Details to be set in Rules

Several requirements to request a review are to be set out in the Rules, including:

- Setting conditions on the decisions that can be subject to additional review (Section 90A)
- The circumstances under which a request can be made (Section 90B)
- The requirements a request for a review must comply with (Section 90B)
- Set the matters that an entry decision review may have regard to (Section 90E)

While acknowledging the legislative necessity to set certain details out in regulations rather than legislation, we are concerned about the level of detail on how the proposed additional review option would operate. Rules setting out requirements are not available which should be considered as part of this inquiry.

Changes to assessment is only part of reforms required

The Supplementary Explanatory Memorandum indicates that a request must demonstrate ageing-related circumstances relevant to the decision that were not used in the automated decision-making process. That formulation risks being too narrow.

A material circumstance may have been recorded in the IAT or aged care record but still not have been adequately reflected in the classification or priority outcome. For example, information about cognitive impairment, behavioural systems, the sustainability of informal

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care or risks in the home may be present in the assessment record but have insufficient effect on the resulting decision.

The IAT assessment should be understood as one part in the process of accessing in-home aged care. The assessment process can and should be improved, but without broader improvements this will not deliver the "world class aged care system" older Australians deserve.[1]

Before the IAT is used, older people are waiting too long for an assessment. Once the assessment is completed, older people enter the Support at Home Priority System waitlist to receive their approved level of care. In the most recently publicly available reports (up to March 2026), there were 100,191 people who had yet to be offered ongoing funding[2] plus 53,718 people who had received interim funding of 60% of their approved level.[3]

How long older people wait for their approved level of care depends on a points system, with 74.9% of people on the lowest level 'Standard', which at the time had a wait time of 7-8 months, with a further 23.4% at 'Medium', with a wait of 6-7 months.[4] Once funding is allocated, at the fixed budget levels set by the outcome of the assessment, individuals then have to find providers with capacity to provide the care they need in the areas they live, at the rates that providers are free to set as they see fit, since the government further delayed the planned price caps until sometime in the future.[5] Beyond clinical care, individuals pay part of these costs through co-contributions. These co-contributions even apply to people receiving the full rate of the age pension, if they are newly entering the Support at Home system.

Reforms to the IAT are important, but they should not be considered in isolation; doing so risks making the system worse.

If people are given higher classifications, but the funding for the Support at Home system is not increased, this would likely lead to even longer wait times. If budgets are further limited, as with the interim budgets, this may reduce the waitlist but leave people unable to pay for the care they are assessed as needing. The additional review pathway should therefore apply where relevant circumstances were not used, were not adequately considered, or were not appropriately reflected in the outcome. This would better match the purpose of a human safeguard for exceptional or atypical cases, without converting the pathway into a general appeal against waiting times, prices, or financial settings.

[1] Minister Butler speech at the National Press Club – 22 April 2026 | Department of Health, Disability and Ageing
[2] Support at Home program data report 1 January – 31 March 2026 | AIHW Gen Aged Care Data
[3] Community Affairs Legislation Committee 2026_06_02 | APH
[4] Support at Home program data report 1 January – 31 March 2026 | AIHW Gen Aged Care Data
[5] Strengthening consumer protections for older Australians | Department of Health, Disability and Ageing

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A Review should not cause the older person to experience additional delays

Proposed section 90F allows an additional review decision to take effect on the day it is made or on a later day specified in the notice, provided that day is not earlier than the day the original prescribed entry decision took effect. This provides some capacity to preserve the original decision date when a decision is varied or substituted.

NSA recommends that the legislation and Rules go further and make clear that a person should not lose allocation priority, queue position or otherwise solely because time was required to correct the original classification or priority decision.

Where the additional review produces a more favourable outcome, administrative systems should preserve the person's original relevant date wherever that is needed to avoid disadvantage.

Essential safeguards should not be left entirely to the Rules

Schedule 4 leaves significant elements of the pathway to delegated legislation. The Rules may prescribe additional conditions on which decisions are eligible for review under section 90A, circumstances that must apply before a request can be made under section 90B, requirements for the request, and matters or procedures relevant to the review under section 90E.

Some flexibility is reasonable, particularly while the pathway is new. However, Rules should not be able to narrow a safeguard in ways that materially reduce who can access it or what a reviewer can consider. Core consumer protections - including reasonable access to referral, the ability to provide relevant new evidence, review timeframes and urgent handling - should be clear in the Act or in Rules available for Parliamentary and stakeholder scrutiny before commencement.

Schedule 4 is proposed to commence on 11 January 2027. NSA recommends that draft Rules, the approved referral form, and the review guidelines be published well before commencement to allow assessment organisations, advocates, and older people to understand how the pathway will operate.

Review outcomes should be transparent and used to improve the system

The value of the additional review pathway is not limited to correcting individual decisions. It can also identify patterns showing where the IAT, classification methodology or prioritisation mechanism does not work well for particular circumstances.

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NSA recommends public reporting at least quarterly on the number of requests, requests taken that should not have been made, review completion times, outcomes (affirmed, varied or substituted), broad reasons for successful reviews, and the types of classification or priority decisions involved. Reporting should be de-identified and designed to identify systemic issues rather than individual cases.

The Department should also publish how it uses review findings to improve assessment, classification and prioritisation. This would be consistent with section 25 of the Aged Care Act, which describes a system that is transparent, responsive to risk and committed to continuous improvement.

Interaction with existing reconsideration rights

The additional review pathway is not an appeal and should be described clearly as an additional review. It does not replace the existing reconsideration and Administrative Review Tribunal pathways in Chapter 8. Proposed section 90G preserves the ability to seek reconsideration of the original prescribed entry decision and pauses the relevant Chapter 8 timeframe while the additional review is underway.

Consumer information should explain this interaction in plain language, including that the additional review decision itself is not the decision reconsidered under Chapter 8. This is important so that an older person does not mistakenly believe that using the additional review pathway exhausts their review rights.

Commencement and transition

The new pathway is proposed to apply prospectively to prescribed entry decisions made on or after commencement. NSA recognises the administrative difficulty of reopening all earlier decisions, but people assessed immediately before 11 January 2027 should not be left uncertain about what options remain available.

Before commencement, the Department should publish clear transition guidance explaining when reassessment, Chapter 8 reconsideration or another mechanism is available for people with recent pre-commencement decisions. Government should also consider whether a targeted transitional arrangement is warranted for recent cases where strong evidence shows the classification or priority outcome does not reflect the person's needs and no later reassessment has occurred.

The additional review pathway is only one part of the Support at Home response

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NSA's comments in this supplementary submission are focused on Schedule 4. Correcting classification and priority decisions is important, but it will not by itself resolve broader Support at Home pressures such as access delays, interim funding, service availability, pricing and participant contributions. Those matters should continue to be addressed through the separate policy and parliamentary processes examining Support at Home.

The additional review pathway can nevertheless make a practical contribution if it is designed as a fast, accessible and clinically credible correction mechanism and if its outcomes are used to improve the underlying assessment system.

Conclusion

NSA supports introducing an additional human review safeguard for prescribed home support classification and priority decisions.

The pathway will be strongest if it combines assessor expertise with meaningful consumer access, adequate time to identify a problem, timely government decision-making, clinically informed review, consideration of relevant new evidence and transparent system learning.

The central objective should be straightforward, where an automated outcome does not appropriately reflect an older person's ageing-related circumstances, there should be a practical way to correct it without creating another layer of procedural difficulty.

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