



# NDIS Commission Registration Roundtable Discussion Starter

## Purpose

The National Disability Insurance Scheme (NDIS) Quality and Safeguards Commissioner Ms Tracy Mackey (the Commissioner) is providing this discussion starter paper to attendees of a Roundtable being held on Monday 21 March 2022. The Roundtable has been convened to gather insights into the Commissioner's function to register NDIS providers, particularly current registration practice and arrangements. The Roundtable will contribute to the approach taken by the Commissioner to make improvements and changes to the function following the NDIS Quality and Safeguards Commission's (NDIS Commission's) experience during its first three years of operation.

The Roundtable will be the first of many discussions on NDIS registration, including with the NDIS Commissioner's Consultative Committees, to ensure a range of voices are heard on this component of the Commissioner's functions, particularly the voices of people with disability.

The purpose of this paper is to:

- kick start discussion about issues currently impacting registration
- explore possible adjustments to registration arrangements
- provide background on the current arrangements for the registration of NDIS providers where they are required to be so
- provoke a conversation about the risk-based approach to registration, and
- inform future NDIS regulatory arrangements.

## Context

The NDIS gives effect to Australia's obligations under the UN Convention on the Rights of Persons with Disabilities (UNCRPD).

The NDIS is designed to support the independence and social and economic participation of people with disability, by providing supports necessary to enable people to realise that independence and participation, and to exercise choice and control in their lives, including how the supports they require are delivered.

When accessing supports and services in the NDIS, people with disability can expect to receive high quality and innovative supports, and to be protected and prevented from experiencing harm. They

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can also expect to exercise their rights to choose the way in which their supports are delivered, including by whom.

The NDIS Commission is an independent Commonwealth agency established to improve the quality and safety of NDIS supports and services. The NDIS Commission regulates all NDIS providers using a risk-based approach that is proportionate to the scale of providers, breaches of compliance and is responsive to an expanding market that has previously not been subject to regulation of oversight in any systemic way.

Registration, together with the NDIS Code of Conduct, are the central mechanisms that enable the Commissioner's regulation of NDIS providers.

The NDIS market comprises a wide range of providers – registered, unregistered, organisations and sole traders, commercial businesses and not-for-profit organisations.

As at 31 December 2021, there were 18,336 providers registered with the NDIS Commission, 8,784 of which were active in the previous three months<sup>1</sup>. 11,115 of these were organisations and 7,221 are registered as sole traders<sup>2</sup>.

During its first 3 years of experience implementing its regulatory functions, and through feedback from stakeholders, the NDIS Commission has identified areas where the current arrangements could be adjusted to strengthen protections for participants, while enabling them to exercise their rights, choice and control over the NDIS supports and services they need.

The NDIS Commission has already made a series of adjustments to registration arrangements since its commencement by:

- Removing disproportionate regulation for small businesses delivering only low risk supports
- Making adjustments to the NDIS Practice Standards, including new Standards to address risk to NDIS participants
- New measures to monitor changes to supports that impact the safety of people with disability
- Reducing the number of audits required by some registered NDIS providers, to a single mid-term assessment, and
- Directing proportionality in auditor assessment approaches, particularly for regional, remote, and smaller providers.

The NDIS Commissioner has recently commenced work on a five-year Future State plan for the NDIS Commission, which will be designed with input from staff, participants and providers.

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<sup>1</sup> Activity is determined by the claims that a provider made directly to the NDIA. This assessment will not include any supports they provided to NDIS participants paid through plan managers or directly by NDIS participants.

<sup>2</sup> NDIS Commission Activity Report: 1 July-31 December 2021, [Activity Report: 1 July 2022 to 31 December 2022](https://www.ndiscommission.gov.au/activity-report-1-july-2022-to-31-december-2022) ([ndiscommission.gov.au](https://www.ndiscommission.gov.au))

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The Commissioner's first Own Motion Inquiry is underway into aspects of Supported Accommodation. That Inquiry, which will report to the Commissioner in mid-2022, will consider how best to promote the continuous improvement amongst NDIS providers of these supports and the delivery of higher standards in supported living arrangements. This may include consideration of changes to the way in which these supports are regulated by the Commissioner.

Significantly, within the broader regulatory context of the NDIS, there are a range of measures that will inform the future direction of the Commissioner's functions, including the role of registration:

- The NDIS Quality and Safeguards Framework (the Q Framework) will be reviewed in 2022. That Review, which will be led by the Department of Social Services, will report to the Minister for the NDIS, and Disability Ministers around Australia on any changes that are needed to the Framework since it was agreed by all Governments in 2017.
- The Joint Standing Committee into the NDIS completed its Inquiry into the NDIS Commission in December 2021. It made recommendations about the regulatory approach taken by the Commission and some aspects of registration.
- The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability will report in 2023 and is expected to make recommendations about quality and safeguards in the NDIS.
- The Australian Government has also committed to work on ways to better align regulation across the aged care, disability and veterans' care sectors where providers and workers are engaged across sectors.

## NDIS Registration

NDIS providers are regulated through either or both:

- the NDIS Code of Conduct, which applies to all providers of NDIS supports, and all persons employed or otherwise engaged by an NDIS provider; and
- the requirements to obtain and maintain registration as a registered NDIS provider, applicable to registered NDIS providers.

Where providers are required to be registered, the manner in which this occurs is proportionate to the risk inherent in the supports and services to be delivered, the scale of the provider, and the number of participants they support, and whether there is other regulation already in place.

### Registration under the NDIS Commission is based on risk

The NDIS Commission's approach to registration is underpinned by the principles of the Framework. The Framework sets out a risk-responsive regulatory system, which recognises that risk of harm is experienced differently by individuals, and that regulatory tools for mitigating risk must be responsive.

The Framework seeks to maximise a person's capacity to exercise choice and control and attempts to ensure that the regulatory mechanisms for preventing harm are based on the likelihood of harm

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occurring (risk) and its severity, and the impact this will have on their rights, choice, control and dignity.

The NDIA support planning process is the point at which arrangements for the management of participant funding is determined, and, by extension, whether or not the providers they choose need to be registered.

- Participants whose plan is managed by the National Disability Insurance Agency (NDIA) can only receive supports from a registered NDIS provider<sup>3</sup>.
- Plan managers must be registered to manage the funding of supports under NDIS participants' plans<sup>4</sup>.
- Providers must also be registered to deliver certain higher risk support types to any participant: specialist disability accommodation, development of behaviour support plans, and for the implementation of regulated restrictive practices through any support type<sup>5</sup>.

Self-managing NDIS participants and participants who use a plan nominee, or a registered plan manager can access supports or services from either registered or unregistered providers, except support types that require a provider is registered. This was an important part of the design of the Framework, enabling participants' choice and control over the supports and services they use, and from who they receive them, depending on their decisions about management of their NDIS funding.

## Questions

- Considering the rights of participants to choice and control, what services and supports should require registration?
- What considerations should the Commissioner have in this regard?

## Registration requirements

For providers that register with the NDIS Commission, during the registration application process they must select one or more "registration groups" depending on the supports they provide. The registration groups selected determine which NDIS Practice Standards apply to the provider.

The NDIS Practice Standards are modular and address both generic and specialist aspects of practice specific to the environment of the NDIS. Each standard is defined by an outcome statement that focuses on the experience of the participant. Each standard is supported by a series of quality indicators that set out how the outcome might be achieved, again focussing on the participant.

A provider delivering supports and services that present a higher level of risk to participants must meet a comprehensive set of standards for governance of the organisation, rights of participants,

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<sup>3</sup> Section 33(6) National Disability Insurance Scheme Act 2013

<sup>4</sup> Section 42(2) National Disability Insurance Scheme Act 2013

<sup>5</sup> Section 7(1)-(3) National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018

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the way supports are provided and the environment in which they are provided. Providers delivering certain support types considered to present further risk are assessed against additional supplementary standards.

Providers delivering only relatively lower risk supports, including because industry professional practice requirements are in place, are assessed against a limited set of standards focused on management of complaints, incidents and risks to participants.

### *Question*

- Are the current classes of support the right basis for determining risk? How else might risk be determined?

### **Independent audits are required**

The independent quality audit arrangements are an important design feature established through the Framework. The provider based requirement to engage third party auditors approved by the NDIS Commission places the responsibility for quality with providers. It is a mechanism to support providers in embedding practice that focusses on the experience of participants.

The NDIS Practice Standards establish what quality in the NDIS market is. They are framed around what ‘each participant’ will experience when receiving support from a provider. While an audit against the Standards forms part of a registration application, ongoing compliance with them, and continuous improvement against them is also an obligation. The NDIS Commission publishes guidelines which set out how approved quality auditors must scope and conduct an audit<sup>6</sup>.

The scope of an audit depends upon the supports the provider registers to deliver, being either:

- **a certification audit** for more complex supports that involve higher risk to the person with disability. This type of audit involves site visits, and direct feedback from NDIS participants; or
- **a verification audit** which is a desktop audit of the qualifications of an individual practitioner and how they will manage complaints, incidents and risks to participants. It takes account of regulation by other bodies.

The distinction between a certification audit and a verification audit is intended to reflect the differing levels of risk associated with particular types of supports and services and providers. In these ways, the regulatory mechanisms of the NDIS Commission have been designed to be risk-responsive and person-centred, with measures tailored to the strengths, needs and circumstances of participants that increase or decrease risks, and the risks inherent in certain types of supports.

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<sup>6</sup> National Disability Insurance Scheme (Approved Quality Auditors Scheme) Guidelines 2018

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The NDIS Commission monitors the costs of audits. The median cost of a verification audit is \$1000, and a certification audit, \$6000. Certification audits vary greatly depending on the scale of a provider and the number of participants and workers that are involved.

### Questions

- Is a further segmentation or a tiered approach to registration desirable, beyond the current requirements for a verification or certification audit? For example, should there be different levels of verification audits with differing requirements for compliance with NDIS Practice Standards depending on risk levels of supports provided and/or existing registration or professional certifications?

Providers who are new to the NDIS and not yet delivering supports and services will undertake a provisional audit. The Commission applies conditions that the remaining elements of assessment, such as participant interviews and site visits, must be undertaken within a certain period, and if not done the provider may be in breach of their registration and the Commission may take action accordingly, such as moving to revoke registration.

The NDIS Commission has observed a significant number of new providers seeking to enter the NDIS market, many of whom have limited or no experience in supporting people with disability. For such providers, the NDIS Commission uses powers available to it under the *National Disability Insurance Scheme Act 2013* (the NDIS Act) to seek information from providers to supplement a standard registration application, to inform its assessment of the capability of the provider.

Further information on the registration requirements and process for providers is at **Attachment A – Introduction to provider registration**.

### Questions

- Are there differences in how the registration process might operate for existing providers and those who are new to the NDIS market?
- Are there other ways in which the differing levels of risk associated with particular types of supports and services and providers could be assessed?
- What types of registration groups would be fit-for-purpose for a risk-responsive regulator?

### Proportionality

One of the key design principles which guided the establishment of the NDIS Commission was that the NDIS Commission would adopt a proportionate approach to regulation and the management of non-compliance by assessing the available information about the performance of a provider, and responding in a way that is reasonable and appropriate for each circumstance. It is intended that strategies for reducing harm will be weighed against the likelihood of harm occurring and its severity, and the impact this will have on choice and control.

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Registration requirements and the NDIS Practice Standards apply in proportion to the size, scale and type of supports and services a provider delivers, and any other regulatory oversight that might be in place. As such, a provider with only a few workers and a small number of participants would only be required to present a certain level of evidence to meet the registration requirements, compared to a national provider with a large workforce and many participants.

## Registration as an indicator of quality

In this initial stage of the NDIS Commission's operation the registration period for NDIS providers is three years. This period was established to enable the Commission to see how providers engaged with the registration process and the NDIS Practice Standards, during the period of transition. To maintain registration an NDIS provider must submit a new registration application before the period for which the registration is in force concludes. An audit is required for each registration application. The NDIS Act does not prescribe the period of a registration and over time the period for registration will adjust as the Commission's understanding of risks of compliance, for individual providers, and for providers registering for particular types of supports develops.

The registration of a provider is subject to conditions. There are common conditions of registration set out in the NDIS Act. The Commissioner can also impose other conditions at the time of registration, or later, for example to require the provider to do certain things that might improve quality or reduce identified risk, or enhance compliance<sup>7</sup>. The requirement to be registered brings about obligations<sup>8</sup> to:

- comply with Commonwealth, state and territory laws
- demonstrate compliance with the NDIS Practice Standards for a provider's relevant registration groups (which are determined by the types of services and supports a provider delivers), including through a quality audit
- comply with the NDIS Code of Conduct and support the provider's employees to meet its requirements
- have an in-house complaints management and resolution system to record and manage any complaints a provider receives, and support NDIS participants or other relevant concerned parties to make a complaint
- have an in-house incident management system, and notify the NDIS Commission should a reportable incident occur
- fulfil worker screening requirements and ensure all workers have been screened
- if applicable, meet the behaviour support requirements, including reporting the use of restrictive practices to the NDIS Commission, and
- undertake a provider and key personnel assessment about suitability to operate in the NDIS<sup>9</sup>.

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<sup>7</sup> Section 73G *National Disability Insurance Scheme Act 2013*

<sup>8</sup> Section 73F(2) *National Disability Insurance Scheme Act 2013*

<sup>9</sup> Sections 9 and 10 *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*

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The NDIS Commission is seeking to get to a state where the conditions of a provider's registration signals that an NDIS provider is a provider of choice. Also where providers view the registration and audit cycle as an important part of their continuous quality improvement.

### *Questions*

- Do participants (and their supporters) use registration as an indicator of quality when selecting providers?
- How might registration be used by providers as an indicator of quality?
- In what ways do the current registration and audit arrangements support providers to deliver better quality services and supports to participants?

### **Role of participants in Registration**

Currently, part of the audit against the standards for higher risk services includes interviews with a sample of participants. The sample is determined by the scope of audit based the number of participants that a provider supports. Participant engagement does not occur in a verification audit.

The NDIS Practice Standards require providers to have certain mechanisms to engage with and receive feedback from the participants that they support. These obligations are assessed at the point of registration, during the mid-term audit and also through the Commission's complaints and reportable incident functions. The Commission's ongoing monitoring of providers through all its functions also provides a voice for people with disability into the performance of the provider that they choice to deliver their supports.

### *Questions*

- How else might participants and their families be involved in the registration process?
- Are there other possible ways in which participant feedback might be captured to inform the audit and/or registration decisions?

### **Observations about the current registration arrangements**

As the NDIS market is still developing, it is likely that ongoing iterative adjustments will be required to find the right balance between providers' obligations relative to risk, and enabling participants' choice and control within the market. Several adjustments have already been made, as discussed previously, and further adjustments will continue to be made, informed by stakeholder feedback and relevant reviews underway.

The Joint Standing Committee (the Committee) on the NDIS tabled its final report in November 2021 on its Inquiry into the NDIS Commission. One aspect of the inquiry was to examine the adequacy and effectiveness of provider registration and worker screening arrangements, and recommended that a review of provider registration requirements be undertaken, with a view to removing unnecessary burden while preserving quality and safety, to consider:



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- the adequacy of the current graded requirements for small providers and providers which have met quality and safeguarding provisions as part of other registration processes
  - the classification of certain supports as 'high-risk' for the purposes of requiring registration (for example, early childhood supports)
  - the impact of registration requirements in specific areas of workforce shortages, such as behaviour support, and other allied health, and in regional rural and remote areas; and
  - the adequacy of guidance for providers about the registration process.

The Committee also made recommendations regarding a review of registration audit costs, developing clear guidelines for providers and auditing bodies on determining registration audit costs, and developing a co-designed strategy for increasing the number of people with disability who are involved in registration auditing.

Additional observations and feedback about where targeted adjustments could occur include in relation to:

- Reports of time and effort for providers who deliver services across sectors and wish to (or are required to) be registered or required have professional memberships in multiple sectors. This is currently being considered in the context of the Government's work on Regulatory Alignment across aged care, disability support and veterans' care, but may also apply more broadly.
- Scope to consider different arrangements for the registration and audit of new entrants to the market who have not previously delivered services or supports to NDIS participants to acknowledge their immaturity while providing appropriate protections for participants.
- Current registration groups (classes of supports) continuing fitness for purpose as a basis for considering risk to participants as the NDIS matures.

## *Questions*

- What could the Commission do to provide added confidence to participants about the quality and safety of supports and services delivered by either registered or unregistered providers?
- What mechanisms could be used by the Commission to apply and monitor provider obligations, while maintaining participants right to choose?