



**NDIS Quality
and Safeguards
Commission**

NDIS Quality and Safeguards Commission

Submission

**Joint Standing Committee on the
National Disability Insurance Scheme**

Inquiry into the NDIS Quality and Safeguards Commission

Contents

1. Terms of Reference.....	3
2. Introduction	4
3. A purpose-built model of quality and safeguarding for the NDIS	5
4. Jurisdiction of the NDIS Commission	9
5. Functions and Powers of the NDIS Commission.....	9
5.1. Functions	9
5.2. Powers.....	13
6. NDIS Commission – Regulatory Approach.....	15
7. NDIS Commission – Operationalising the Regulatory Approach.....	23
7.1. NDIS Framework and Practice Standards	23
7.2. Provider Registration.....	25
7.3. NDIS Worker Screening	28
7.4. Complaints handling.....	30
7.5. Provider Reporting Requirements	32
7.6. Regulating Restrictive Practices	35
7.7. Unregistered Providers	39
7.8. Education and Engagement	40
8. Development of the Organisation	41

1. Terms of Reference

As part of the committee's role to inquire into the implementation, performance and governance of the National Disability Insurance Scheme (NDIS), the committee will inquire and report on the operation of the NDIS Quality and Safeguards Commission since it commenced operation on 1 July 2018, with particular reference to:

- a. the monitoring, investigation and enforcement powers available to the Commission, and how those powers are exercised in practice;
- b. the effectiveness of the Commission in responding to concerns, complaints and reportable incidents – including allegations of abuse and neglect of NDIS participants;
- c. the adequacy and effectiveness of the NDIS Code of Conduct and the NDIS Practice Standards;
- d. the adequacy and effectiveness of provider registration and worker screening arrangements, including the level of transparency and public access to information regarding the decisions and actions taken by the Commission.
- e. the effectiveness of communication and engagement between the Commission and state and territory authorities;
- f. the human and financial resources available to the Commission, and whether these resources are adequate for the Commission to properly execute its functions;
- g. management of the transition period, including impacts on other commonwealth and state-based oversight, safeguarding, and community engagement programs; and
- h. any related matters.

About this submission

To assist the Committee with its Inquiry, this submission provides information on:

- the design of the NDIS quality and safeguarding arrangements;
- progress in implementing the arrangements across the country;
- specific elements of the arrangements;
- key areas of focus for the NDIS Commission;
- key areas of activity for the NDIS Commission; and
- immediate priorities for the NDIS Commission.

2. Introduction

The NDIS Commission has just entered its third year of operations, but will not operate nationally until the last remaining jurisdiction – Western Australia (WA) – transitions on 1 December 2020.

The NDIS Commission, the NDIS Quality and Safeguarding Framework (NDIS Framework), and the provisions of the *National Disability Insurance Scheme Act 2013* (NDIS Act) that enable the national arrangements were developed over a considerable period. The design of the arrangements takes account of:

- the observations made by the Productivity Commission in its 2011 report *Disability Care and Support*;
- the ways in which quality and safeguarding had been undertaken in states and territories prior to the NDIS; and
- the responses to a comprehensive consultation on proposed quality and safeguarding measures for the NDIS.

While the NDIS Commission is not yet fully rolled out, and many of the providers it regulates are still ‘transitioned providers’ – that is, still in the process of being fully assessed against the purpose-built NDIS Practices Standards – activity is well-progressed in each of the core and specific functions for which it is responsible.

This submission seeks to provide a picture of what the NDIS Commission was established to do, where it is up to in the rollout of its functions, examples of the work it is doing in those functions and associated activity levels, and some assessment of those aspects of the rollout that are relatively more challenging than others and how the organisation is responding to those challenges.

The NDIS Commission is, of course, heavily involved in responding to COVID-19. Given that the response to the pandemic by Commonwealth agencies is being examined through the Senate Select Committee on COVID-19, the Royal Commission into Aged Care Quality and Safety and through a dedicated hearing of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, this submission does not provide extensive commentary on the NDIS Commission’s critical role in this work.

The NDIS Commission is providing detailed witness statements to the Royal Commission on Abuse, Violence Neglect and Exploitation of People with Disability for its forthcoming hearing on COVID-19, scheduled to take place in the week commencing 17 August 2020. There is some summary material included here as examples of how we work with NDIS participants and providers in specific circumstances.

3. A purpose-built model of quality and safeguarding for the NDIS

The NDIS is Australia's first national scheme for supporting people with disability. It represents a dramatic shift, from a system in which services were delivered under largely block-funded contractual relationships between providers and primarily state and territory governments, to one in which funding is provided directly to people with disability, to exercise choice and control over the supports they receive from a diverse market under the NDIS. The development of quality and safeguarding arrangements for the NDIS, in every feature of their design, is underpinned by the UN Convention on the rights of Persons with Disability (UNCRPD).

In its 2011 inquiry report *Disability Care and Support*, the Productivity Commission provided a high-level assessment on how quality and safeguarding had operated in the world of block-funded supports and considered the implications for a new NDIS, both in terms of the principles that underpinned quality and safeguarding arrangements and the features of those arrangements. In turn, the work of the Productivity Commission underpinned a process – under the auspices of the Council of Australian Governments (COAG) Disability Reform Council – wherein a purpose-built NDIS Quality and Safeguarding Framework was developed, consulted upon, refined and ultimately adopted.

The resulting NDIS Framework is largely given effect – in terms of the Commonwealth's obligations – through amendments to the NDIS Act that were legislated in late 2017 and that establish the NDIS Commission and its functions and powers.

The NDIS Framework seeks to drive improvements in quality and to ensure that safeguards are in place but within a model where people with disability are empowered to act in their own interests, and where their choices are respected and their rights upheld. The NDIS Framework acknowledges that risk is a part of life for everyone. It flows from this that systems of safeguarding that do not acknowledge the dignity of risk can fail those they are intended to support. The NDIS Framework seeks to balance the need to support people with particular vulnerabilities in ways that respond to their particular needs and situations rather than applying a one-size-fits-all approach that seeks to remove a person's right to take risks in the same way that a person without disability would do.

NDIS Framework

As stated above, development of the NDIS Framework (included at [Attachment A](#)) was overseen by the COAG Disability Reform Council, and the Commonwealth, state and territory governments were required to consider a range of options (non-regulatory, self-regulatory, quasi-regulatory, co-regulatory and regulatory) and assess their associated benefits, impacts and costs through consultation and impact analysis. The NDIS Framework was informed by public inquiries into the abuse of people with disability and children in institutional settings, and other NDIS-related policy work.

Governments developed a consultation paper released in February 2015 outlining a range of options for a national quality and safeguarding system which drew on information about existing quality and safeguarding systems in the disability and other relevant sectors in Australia and internationally.

The NDIS Commission understands that consultation on the options involved the following activities between February and May 2015:

- 16 public meetings in capital cities and regional locations in each state and territory;
- seven provider meetings in locations around Australia;
- six workshops with specific stakeholder groups;
- 220 submissions;
- 585 questionnaire responses about particular quality and safeguarding measures;
and
- an online discussion forum.

The NDIS Commission also understands that officials from different jurisdictions engaged in additional targeted stakeholder consultations.

The consultations identified a high level of agreement about most of the quality and safeguarding measures that should be adopted. While stakeholders emphasised the need to focus on developmental measures as the foundation of effective quality and safeguarding, most also considered a high level of regulation necessary, particularly while the market is developing and participants are building their capability to make informed choices about providers.

Stakeholders supported a tiered approach to regulatory requirements for the workforce and providers, with requirements proportionate to the level of risk associated with the type of support provided, and the needs of the participants they support.

Stakeholders also stressed the human rights basis for the NDIS Framework, particularly the need to ensure the rights of people with disability to dignity and respect, and to live free from abuse, neglect, violence and exploitation, as outlined in the UNCRPD. The primacy of choice and control, and the critique of pre-NDIS service models and safeguarding arrangements for their lack of focus on the rights of people with disability, were strong themes of the stakeholder feedback. The full report of the consultation findings is available on the Department of Social Services (DSS) website.

The NDIS Framework was agreed by COAG in December 2016, following which DSS led consultations informing the development of amendments to the NDIS Act to establish the NDIS Commission.

The NDIS Framework at Attachment A consists of measures targeted at individuals, the workforce and providers within developmental, preventative and corrective domains:

- a. Measures in the developmental domain are intended to strengthen the capability of people with disability, the workforce and providers. While these are not regulatory functions, they are included in the NDIS Framework because they are fundamental to supporting quality and safeguarding.
- b. Measures in the preventative domain are intended to prevent harm and ensure quality services are delivered to people with disability.

- c. Measures in the corrective domain are intended to resolve problems, enable improvements to be identified to avoid the same problems recurring, and provide oversight of the system.

Figure 1: Components of the NDIS Framework

Underpinning foundations		
<i>UN Convention on the Rights of Persons with Disabilities; National Disability Strategy 2010–2020; National Disability Insurance Scheme Act 2013</i>		
Components		
Developmental: Building capability and support systems	Preventative: Preventing harm and promoting quality	Corrective: Responding if things go wrong
Individuals: supporting and empowering people with disability		
Providing participants information for decision making Providing accessible information on how the NDIS works, participant rights, providers and complaints processes	Safeguarding participants through planning, implementation and review processes Having formal safeguards in the NDIS planning, implementation and review processes	Responding to complaints NDIS complaints commissioner receiving and responding to complaints about NDIS-funded supports, as well as ensuring that all registered providers have an internal complaints system
Building participants' capability Supporting participants to build knowledge, skills and confidence to exercise choice and control	Funding advocacy services Funding formal individual and systemic advocacy services outside of the NDIS	Responding to serious incidents Providers reporting on and commissioner investigating dangerous situations
Strengthening natural supports Supporting participants to strengthen family and other support networks and participate fully in their community	Supporting self-managing participants Ensuring self-managing participants are equipped to manage their supports	Community visitors Continuing existing state and territory schemes during the transition and conducting a review to evaluate their role in full scheme
<i>Links to information, linkages and capacity building</i>	<i>Links to supported and substitute decision-making (guardianship systems) and National Disability Advocacy Framework</i>	<i>Links to universal protections outside the NDIS (e.g. police, other regulatory and complaints systems)</i>
Workforce: promoting a safe and competent workforce		
Building a skilled and safe workforce Supporting the development of an NDIS workforce with the attitudes and skills that meet the needs of participants	Screening workers Screening workers to help ensure they keep people with disability safe Ensuring workers have the skills for specific roles through provider quality assurance system and registration	Monitoring worker conduct Monitoring through employee screening functions, serious incident reports, complaints and breaches of the code of conduct
<i>Links to Integrated Market, Sector and Workforce Strategy</i>	<i>Links to National Framework for Protecting Australia's Children</i>	
Providers: encouraging safe, innovative, high-quality support provision		
Building provider capacity and best practice Supporting the development of a diverse and sustainable provider market able to meet demand and provide safe and high-quality services	Reducing restrictive practices Ensuring restrictive practices are reduced or eliminated by introducing consistent quality requirements for behaviour support practitioners and relevant providers, and reporting. The senior practitioner will conduct an	Investigating non-compliance with the code of conduct Investigating potential breaches of the code of conduct and taking appropriate action

	educative role in the reduction of restrictive practices	
	Ensuring provider safety and quality Having provider quality requirements proportionate to the type of support offered and the needs of participants, and that builds a culture of continuous improvement. This includes oversight of the NDIS market	De-register or bar as NDIS provider
<i>Links to NDIS Sector Development Fund</i>	<i>Links to National Framework for Reducing and Eliminating Restrictive Practices</i>	

NDIS Act and Rules

The NDIS Act was amended to establish the NDIS Commission and its functions and powers.

The amendments to the NDIS Act commenced on 1 July 2018, allowing for the regulation of NDIS providers in New South Wales (NSW) and South Australia (SA) from that date.

The NDIS Commission's commencement in each state and territory is initiated through bilateral agreements between the Prime Minister and first ministers in each state and territory. These bilateral agreements outline the enduring funding and governance arrangements for the NDIS and, for some jurisdictions, timeframes have been agreed for in-kind funding arrangements to be progressively withdrawn, and supports (and funding responsibility) to transition to the NDIS.

Until the NDIS Commission commences in a state or territory, the National Disability Insurance Agency (NDIA) is responsible for registering NDIS providers operating in that state or territory under Part 3 of the NDIS Act, which includes a requirement for providers to satisfy any existing regulatory requirements in the state or territory in which the provider is operating.

Until the NDIS Commission commences operating in a jurisdiction, NDIS participants, providers of supports and services in that jurisdiction and their workers will continue to be covered by that jurisdiction's existing quality and safeguards systems, and providers registered with the NDIA to provide supports and services in that jurisdiction will remain registered with the NDIA for that purpose.

On 1 July 2019, the NDIS Commission commenced operations in Victoria, Queensland, Tasmania, the Australian Capital Territory (ACT) and the Northern Territory (NT). WA was originally intended to transition on 1 July 2020, but the WA Government determined, as a consequence of representations from some WA providers, to delay commencement until 1 December 2020 so that providers were not dealing with transition during the acute phase of responding to the COVID-19 pandemic.

4. Jurisdiction of the NDIS Commission

The NDIS Commission was created to establish requirements for safe, quality supports and services to be provided under the NDIS, consistent with the principles of the NDIS which focus on the human rights of people with disability.

The definition of an NDIS provider under the NDIS Act includes both registered and unregistered NDIS providers, including:

- providers who receive funding under Chapter 2 of the NDIS Act (for example, NDIA Partners in the Community); and
- pursuant to the *NDIS (NDIS Provider Definition) Rule 2018*, providers of supports to older people with disability receiving continuity of support under the Commonwealth Continuity of Support Programme relating to Specialist Disability Services for Older People.

The NDIS Act does not cover specialist disability supports and services that are provided to a participant by a state, a territory, or the Commonwealth or by a provider engaged or funded by one of these jurisdictions to provide them. They are ‘in-kind supports’ as defined in the *National Disability Insurance Scheme (Plan Management) Rules 2013* and do not fall within the definition of NDIS provider in the NDIS Act.

The providers of these supports and services are not, in respect of that provision, NDIS providers because the supports and services are not funded by the NDIA. For this reason, these supports are not within the jurisdiction of the NDIS Commission, and quality and safeguarding systems are provided by states and territories.

Disability services delivered through other systems, such as health, education and justice, continue to be covered by quality and safeguarding arrangements in those systems.

Other existing complaints and redress mechanisms, including police, fair trading bodies, professional and industry bodies, consumer protection laws and other regulatory and complaints systems continue to be available to both NDIS participants and people with disability outside the NDIS.

5. Functions and Powers of the NDIS Commission

5.1. Functions

The NDIS Commissioner has core functions which are set out in section 181E of the NDIS Act:

- a. upholding the rights of, and promoting the health, safety and wellbeing of, people with disability receiving supports or services, including those received under the NDIS;
- b. developing a nationally consistent approach to managing quality and safeguards for people with disability receiving supports or services, including those received under the NDIS;

- c. promoting the provision of advice, information, education and training to NDIS providers and people with disability;
- d. securing compliance with the NDIS Act through effective compliance and enforcement arrangements;
- e. promoting continuous improvement amongst NDIS providers and the delivery of progressively higher standards of supports and services to people with disability;
- f. developing and overseeing the broad policy design for a nationally consistent framework relating to the screening of workers involved in the provision of supports and services to people with disability;
- g. providing advice or recommendations to the NDIA or the NDIA Board in relation to the performance of the NDIA's functions;
- h. engaging in, promoting and coordinating the sharing of information to achieve the objects of the NDIS Act;
- i. providing NDIS market oversight, including:
 - i. by monitoring changes in the NDIS market which may indicate emerging risk; and
 - ii. monitoring and mitigating the risks of unplanned service withdrawal.

In addition, the NDIS Commissioner has the following functions:

- a. the registration and reportable incidents function (set out in section 181F of the NDIS Act);
- b. the complaints function (set out in section 181G of the NDIS Act); and
- c. the behaviour support function (set out in section 181H of the NDIS Act).

The registration and reportable incidents functions of the NDIS Commissioner are:

- a. the functions conferred on the Commissioner by Division 2 of Part 3A of Chapter 4 (concerning registered NDIS providers);
- b. the functions conferred on the Commissioner by section 73U (concerning approved quality auditors);
- c. to monitor registered NDIS provider compliance with their conditions of registration, including in relation to the screening of workers in accordance with the NDIS Practice Standards;
- d. to provide education, guidance and best practice information to NDIS providers in relation to compliance matters;
- e. the functions relating to the notification and management of reportable incidents conferred on the Commissioner by the NDIS Rules made for the purposes of section 73Z;

- f. to support registered NDIS providers to develop and implement effective incident management systems and to build provider capability to prevent and manage incidents; and
- g. to collect, correlate, analyse and disseminate information relating to incidents, including reportable incidents, to identify trends or systemic issues.

The complaints functions of the NDIS Commissioner are:

- a. the functions relating to the investigation, management, conciliation and resolution of complaints conferred on the Commissioner by the NDIS Rules made for the purposes of section 73X;
- b. to educate people about, and develop resources relating to, best practice in the handling of:
 - i. complaints arising out of, or in connection with, the provision of supports or services by NDIS providers; and
 - ii. matters arising from such complaints;
- c. to build the capability of people with disability to pursue complaints in relation to the provision of supports or services by NDIS providers;
- d. to build NDIS provider capability to develop a culture of learning and innovation to deliver high quality supports and services, prevent incidents and respond to complaints; and
- e. to collect, correlate, analyse and disseminate information relating to complaints arising out of, or in connection with, the provision of supports or services by NDIS providers.

The behaviour support function of the NDIS Commissioner is to provide leadership in relation to behaviour support, and in the reduction and elimination of the use of restrictive practices by NDIS providers, including by:

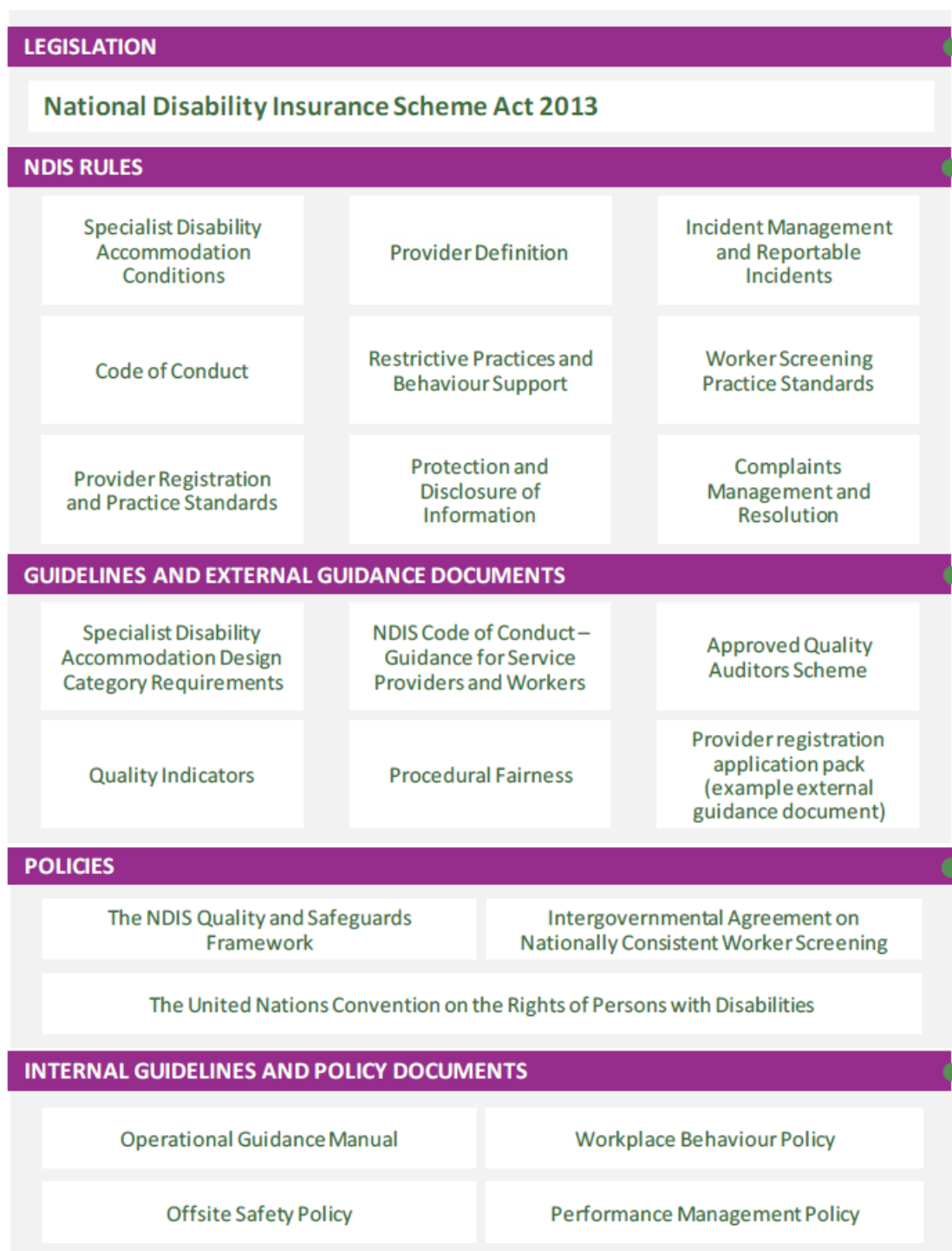
- a. building capability in the development of behaviour support through:
 - i. developing and implementing a competency framework for registered NDIS providers whose registration includes the provision of behaviour support assessments and developing behaviour support plans; and
 - ii. assessing the skills and experience of such providers against the competency framework;
- b. developing policy and guidance materials in relation to behaviour supports and the reduction and elimination of the use of restrictive practices by NDIS providers;
- c. providing education, training and advice on the use of behaviour supports and the reduction and elimination of the use of restrictive practices;
- d. overseeing the use of behaviour support and restrictive practices, including by:

- i. monitoring registered NDIS provider compliance with the conditions of registration relating to behaviour support plans; and
 - ii. collecting, analysing and disseminating data and other information relating to the use of behaviour supports and restrictive practices by NDIS providers;
- e. undertaking and publishing research to inform the development and evaluation of the use of behaviour supports and to develop strategies to encourage the reduction and elimination of restrictive practices by NDIS providers;
- f. assisting the states and territories to develop a regulatory framework, including nationally consistent minimum standards, in relation to restrictive practices:
 - i. in line with the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector; and
 - ii. consistent with the UNCRPD adopted in New York on 13 December 2006.

The NDIS Commissioner's functions and powers are supported by the NDIS Rules.

Figure 2 below represents relevant legislation and key guidance and policy documents for the NDIS Commission.

Figure 2: NDIS Commission legislation, guidance and policies



5.2. Powers

The NDIS Act provides the NDIS Commissioner with a range of compliance and enforcement powers.

People appointed by the NDIS Commissioner as inspectors and investigators have, respectively, monitoring powers (section 73ZE of the NDIS Act) and investigation powers (section 73ZF of the NDIS Act) under the *Regulatory Powers (Standard Provisions) Act 2014* that can be used to determine whether the provisions of the legislation are being complied with.

The NDIS Act creates offences that attract civil penalties, including for the following:

- a. providing a support under a participant's plan without being registered to provide that support despite registration being required to provide that support (section 73B of the NDIS Act);
- b. knowingly providing false or misleading information in an application for registration (section 73D of the NDIS Act);
- c. failing to comply with a condition of registration (section 73J of the NDIS Act);
- d. contravening the NDIS Code of Conduct (section 73V of the NDIS Act);
- e. causing detriment or threatening to cause detriment to another person because of the person making a protected disclosure of information (section 73ZC of the NDIS Act);
- f. failing to comply with a compliance notice (section 73ZM of the NDIS Act); and
- g. breaching a banning order (section 73ZN of the NDIS Act).

Under section 73ZK of the NDIS Act, each civil penalty provision can be enforced by the NDIS Commissioner through an order for a person to pay a pecuniary penalty for the contravention of the provision.

In addition to seeking civil penalties, the NDIS Commissioner has a broad range of sanction powers available, including:

- a. applying conditions of registration (section 73G of the NDIS Act);
- b. compliance notices (section 73ZM of the NDIS Act);
- c. suspension of registration (section 73N of the NDIS Act);
- d. revocation of registration (section 73P of the NDIS Act);
- e. banning orders (section 73ZN of the NDIS Act);
- f. infringement notices (section 73ZL of the NDIS Act);
- g. applying for injunctions (section 73ZQ of the NDIS Act); and
- h. accepting enforceable undertakings (section 73ZP of the NDIS Act).

If a registered NDIS provider poses a danger to the health, safety or wellbeing of a person with disability, the NDIS Commissioner can immediately suspend the registration of that provider for up to 30 days pending consideration of whether the provider's registration should be revoked. The provider's registration can be suspended more than once.

The NDIS Commissioner may also issue a compliance notice or banning order preventing the provider (or a worker employed or otherwise engaged by a provider) from providing any NDIS supports or services either for a specified period or indefinitely.

The NDIS Commissioner has established an NDIS Provider Register pursuant to section 73ZS of the NDIS Act. The NDIS Commissioner is empowered to publish a range of information about providers on the NDIS Provider Register, including regulatory action taken against providers. If a provider's registration is subject to a condition or has been suspended, or if a person is subject to a compliance notice or banning order, the NDIS Act requires that this information be published on the NDIS Provider Register.

The NDIS Commissioner's monitoring, compliance, investigation and enforcement powers are proportionate and comparable to other Commonwealth regulators. Some of these powers are conferred by provisions of the NDIS Act that operate in conjunction with the *Regulatory Powers (Standard Provisions) Act 2014*. That Act contains a set of uniform regulatory powers and arrangements for Commonwealth bodies that, to quote the Act, "must be triggered by another Act" in order to be available to those bodies.

The NDIS Commission also has powers to gather information and to inquire into matters.

6. NDIS Commission – Regulatory Approach

The UNCRPD, the NDIS Framework and the NDIS Act provide the foundations of the NDIS Commission's regulatory approach.

Under the NDIS Act, the NDIS Commission is responsible for implementing a regulatory environment that promotes the rights of people with disability and strengthens the NDIS market. Figure 3 below outlines the NDIS Commission's vision, purpose, regulatory outcomes and regulatory functions.

Figure 3: NDIS Commission's regulatory approach



The NDIS Commission works with people with disability, their families, carers and advocates to empower them to speak up against abuse, neglect and harm. The NDIS Commission assists people with disability by supporting them in resolving complaints they have regarding an NDIS support or service, and if required, to access appropriate support and assistance, including through information providers, advocacy organisations, interpreters and accessible information available on the NDIS Commission’s website, for example: www.ndiscommission.gov.au/participants/support-for-participants/participantpack.

The NDIS Commission works with NDIS providers to improve their ability to provide safe and high quality supports and services to people with disability, and to meet the NDIS Code of Conduct, and if registered, their conditions of registration.

Serious incidents and allegations, including abuse and neglect, must be reported to the NDIS Commission by registered NDIS providers. The NDIS Commission oversees the management of incidents, including reportable incidents, by NDIS providers and responds to non-compliance both in the context of the obligation to notify reportable incidents, and if issues are evident in a provider’s approach to managing incidents.

For registered providers, a new national set of NDIS Practice Standards apply. These Standards set out the quality and competency expectations for the delivery of supports and services in the NDIS. The Practice Standards are modular, with particular Standards applying depending on the supports and services that a provider is registered to deliver. The Practice Standards are set out in the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*.

Each Standard defines outcomes relevant to an NDIS participant’s experience in the supports and services. The NDIS (Quality Indicators) Guidelines 2018 provide the detailed indicators for each Standard.

Together, the NDIS Code of Conduct (for all NDIS providers and workers) and the Practice Standards (for registered NDIS providers) set out minimum and nationally applicable expectations for conduct and practice in the NDIS. Provider compliance with the NDIS Code of Conduct, and any applicable NDIS Practice Standard and conditions of registration, are monitored through all of the NDIS Commission’s regulatory functions (described below) and are overseen by the NDIS Commission’s Compliance and Enforcement Committee.

The NDIS Commission’s published Compliance and Enforcement Policy included at [Attachment B](#) provides an overview of the NDIS Commission’s compliance and enforcement strategy.

Regulatory priorities

The NDIS Commission, is a new regulator; NDIS participants and providers are learning about the NDIS Commission’s functions and the new regulatory arrangements for providers and workers. To support awareness of the new arrangements, the NDIS Commission identified the following regulatory priorities for 2019-20:

- a. educating and informing participants, providers and others about their respective rights and responsibilities under the NDIS Act and associated Rules;

- b. monitoring providers' compliance with obligations to prevent, manage and report serious incidents;
- c. assessing the suitability for registration of NDIS providers and their key personnel, targeting action on providers that have been the subject of adverse findings or enforcement action by other authorities;
- d. directing compliance and monitoring activities to providers where trends in complaints and reportable incidents notifications indicate possible risk of harm to participants;
- e. developing a knowledge base, and prevention strategy for avoidable deaths of people with disability; and
- f. use of infringement notices to address provider non-compliance with obligations such as record keeping, and complaints and incident management.

Regulatory priorities for the current year are being adjusted to take account of the specific issues that have arisen through the management of the COVID-19 pandemic.

Regulatory functions

The NDIS Commission's regulatory approach is informed by its six core regulatory functions, further described below. For each of these functions a summary is provided of key activities since establishment, noting any particular highlights or challenges.

Registration

- a. The NDIS Commission assesses whether organisations, practitioners and key personnel in organisations that provide services and supports are suitable to deliver supports and services in the NDIS. The *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* prescribe the requirements that applicants and registrants need to meet to be registered as a provider and to deliver specialist supports, such as behaviour support, in the NDIS.
- b. The NDIS Commission's registrations function involves:
 - i. determining the registration of providers to deliver services and supports to people with disability under the NDIS according to legislative and other regulatory requirements;
 - ii. supporting providers to undertake the registration process, including facilitating access to suitably qualified auditors to undertake assessments against practice standards; and
 - iii. monitoring registered providers' compliance with conditions of registration.
- c. This function helps the NDIS Commission to achieve the third regulatory outcome referred to in Figure 3 above – to only register suitable providers and practitioners to operate in the NDIS market.

Education and communication

The NDIS Commission builds the capacity and capability of providers and participants, including encouragement of positive behaviour and reducing restrictive practices.

The education and communication function of the NDIS Commission aims to build the capacity of participants, so they understand their rights, the role and function of the NDIS Commission and how the NDIS Commission ensures a high-quality and safe service environment. The NDIS Commission also aims to build the capacity and capability of providers, and to ensure that they are well informed about their obligations under the NDIS Code of Conduct, conditions of registration, obligations in delivering behaviour support and any changes in policy or practice promulgated by the NDIS Commission.

This function involves:

- a. commenting on observed practice and inquiring into matters that may require attention;
- b. providing best-practice guides and training, including publishing guidance materials with examples of good and poor practice;
- c. delivering targeted education campaigns that build the capability of service providers and behaviour support practitioners in identified focus areas;
- d. delivering targeted engagement and communications campaigns that build the knowledge and awareness of participants, providers and behaviour support practitioners;
- e. building provider capability to prevent and respond to serious incidents and complaints through education and engagement; and
- f. supporting providers to adopt best-practice approaches to positive behaviour support and ensuring they have access to specialist expertise, guidance and educational resources. d. This function helps the NDIS Commission to achieve regulatory outcomes 1, 2 and 4 in Figure 3 above.

Behaviour support

The NDIS Commission oversees the use of behaviour support strategies and restrictive practices. When fully implemented, the NDIS Commission's behaviour support function will involve:

- a. developing and maintaining the Behaviour Support Capability Framework (at Attachment C) which will ensure that high-quality practitioners deliver behaviour supports by assessing providers and practitioners against the capability domains;
- b. overseeing behaviour support practitioners and implementing providers who use behaviour support strategies and restrictive practices;
- c. providing best-practice advice to practitioners, providers, participants, families, and carers;

- d. receiving and reviewing provider reports on the use of restrictive practices;
- e. responding to the unauthorised use of restrictive practices through monitoring reportable incidents; and
- f. reporting publicly on the level of use of restrictive practices and effectiveness of reduction strategies.

The NDIS Commission works with practitioners and providers to implement strategies that reduce the occurrence and impact of behaviours of concern and reduce and eliminate the use of restrictive practices.

This function will also improve the capability of the sector through research and education to share best-practice advice with practitioners, providers and participants, their families and their carers.

Complaints and incidents

The complaints and incidents functions of the NDIS Commission involve:

- a. responding to, resolving, investigating and managing complaints, and referring matters to other relevant authorities when required;
- b. responding to, investigating and overseeing the management of reportable incidents, taking regulatory action where appropriate and referring matters to other relevant authorities when required;
- c. supporting the resolution of complaints between providers and participants, when possible, and providing an escalation pathway when needed;
- d. reviewing and sharing complaints data to identify systemic issues to be addressed and drive improvement actions through provider reporting on complaints and compliance activity;
- e. reporting publicly on the number, types and causes of complaints and the outcomes of complaints-handling processes;
- f. receiving and assessing reportable incidents, managing notifications of reportable incidents from providers, and referring matters to other relevant authorities as required;
- g. reviewing and sharing reportable incident data to identify systemic issues to be addressed and driving improvement actions through provider reporting on reportable incidents and compliance activity;
- h. reporting publicly on the level of reportable incidents and prevention strategies; and
- i. overseeing the use of restrictive practices through provider reporting.

The NDIS Commission responds to complaints about NDIS supports and services and has the powers necessary to use the information received about serious incidents and the use of restrictive practices to safeguard participants and improve the quality of service provision in the NDIS.

Through this function, the NDIS Commission supports providers to:

- a. improve their complaints resolution approaches;
- b. use complaints information to improve their practice;
- c. improve the way they manage serious incidents with the objective of preventing future incidents; and
- d. reduce or eliminate their use of restrictive practices.

This function also contributes to participants understanding their rights and building their capability to make complaints and enables other stakeholders (such as advocates, community visitors and workers) to make complaints and ensure issues can be addressed when participants are unable or unwilling to make a complaint.

This function helps the NDIS Commission to achieve the regulatory outcome 4 in Figure 3 ~~2~~ above – to prevent harm to participants and improving the quality of services by ensuring legislative obligations and registration conditions are complied with.

Compliance and enforcement

The NDIS Commission takes compliance and enforcement actions in relation to its functions, including:

- a. determining and taking the most appropriate regulatory response to non-compliance and/or emerging issues that require proactive compliance monitoring;
- b. determining levels of provider compliance with conditions of registration (if registered), NDIS Practice Standards, the NDIS Code of Conduct and other quality and safeguard requirements when they apply;
- c. using information-gathering powers to investigate instances of potential non-compliance;
- d. determining and taking the most appropriate regulatory response to non-compliance;
- e. exercising influence, authority and statutory tools to compel compliance with conditions of registration (if registered), NDIS Practice Standards, the NDIS Code of Conduct and other quality and safeguard requirements; and
- f. taking protective and punitive action in serious cases of persistent and high-risk non-compliance.

Through the use of its sources of intelligence – audits, reports of reportable incidents, complaints – the NDIS Commission monitors NDIS provider and worker compliance with the NDIS Code of Conduct and in addition, if registered, conditions of registration.

The NDIS Commission manages complaints and reports of non-compliance in accordance with registration conditions and the NDIS Code of Conduct, and other quality and safeguard requirements, where they apply.

Where appropriate, the NDIS Commission initiates compliance and enforcement action against providers to secure compliance. If compliance cannot be secured, the NDIS Commission can remove a provider from the market.

This function is focussed on preventing poor service delivery and protecting participants from harm. More broadly, compliance and enforcement action ensures public confidence in the NDIS and the conduct and services delivered by NDIS providers and their workers.

The compliance and enforcement functions of the NDIS Commission achieve regulatory outcomes 4 and 5 in Figure 3 above—to prevent poor service delivery by ensuring legislative obligations and registration conditions are met and to take appropriate enforcement measures to manage risk.

Market and regulatory oversight and risk

The NDIS Commission is establishing its processes and systems so that it will be able to identify, categorise, assess and manage systemic risks to protect and prevent people with disability from experiencing harm that arises from poor-quality or unsafe supports or services provided under the NDIS.

Its market and regulatory oversight and risk function will involve:

- a. identifying, monitoring and responding to intelligence on emerging risks based on a range of data sources, including compliance data, data collected through complaints, reportable incidents and restrictive practices reporting, and data collected through external stakeholders, such as NDIA, other regulators, and state and territory governments;
- b. determining the most appropriate proactive and reactive regulatory responses that are proportionate to the level of risk identified across the NDIS system;
- c. monitoring changes in the NDIS market which may indicate emerging risk and monitoring and mitigating the risks of unplanned service withdrawal; and
- d. identifying gaps in the market for disability support services.

This function achieves regulatory outcome 6 in Figure 3 above—to reduce regulatory risk (that might lead to non-compliance) through efficient, effective and transparent regulatory activities.

Partnering with external stakeholder and regulatory bodies

Recent inquiries into abuse and neglect of people with disability conducted by governments, Ombudsmen and others have emphasised the need to build linkages between systems to ensure reports of abuse, violence and neglect of a person with disability are thoroughly investigated, responses are coordinated and systemic issues are identified and addressed.

For the NDIS Framework and the NDIS Commission to work effectively and efficiently, the NDIS Commission and broader mainstream protections and safeguards need to interface seamlessly together to support people with disability. Under the NDIS Framework, States and Territories remain responsible for worker screening units and authorisation arrangements for restrictive practices.

The NDIS Act and the *National Disability Insurance Scheme (Protection and Disclosure of Information Commissioner) Rules 2018* enable the NDIS Commission to share information with other bodies (such as child protection agencies and industry complaints bodies) to ensure a thorough coordination of regulatory and other responses, especially where vulnerable people may be at risk of harm.

There are also several Australian government agencies that will be a source of information and will support the NDIS Commission to improve the quality of supports and to ensure safe environments for all NDIS participants. These agencies include the Australian Health Practitioner Regulation Agency, the Australian Securities and Investments Commission, the Australian Competition and Consumer Commission and the Department of Health. The NDIS Commission agreed high-level information sharing principles with states and territories, see [Attachment D](#). These principles underpin specific agency-to-agency information sharing agreements that the NDIS Commission is settling with relevant organisations around the country. The NDIS Commission has identified around 134 individual organisations with which it will enter into formal agreements.

At the time of writing, 35 of these are executed, 20 are awaiting signature by the NDIS Commission's partner agencies, and the remainder are in the process of being finalised. In the lead up to Western Australia's transition, draft agency-to-agency agreements will be negotiated.

It is important to note that these arrangements are intended to systematise information sharing between the NDIS Commission and the relevant state and territory agencies; where signed agreements are not in place, information sharing can still occur under the relevant provisions of the NDIS Act.

Figure 4: NDIS Commission stakeholders



7. NDIS Commission – Operationalising the Regulatory Approach

7.1. NDIS Framework and Practice Standards

NDIS Code of Conduct

A new NDIS Code of Conduct was established by the *National Disability Insurance Scheme (Code of Conduct) Rules 2018* to set minimum expectations and conduct expected of all NDIS providers (registered and unregistered) and workers employed or otherwise engaged by NDIS providers (including volunteers).

The NDIS Code of Conduct is an important mechanism to promote safe and ethical service delivery. It can have both a preventative effect (by clearly setting out expectations of providers, and empowering participants) and a corrective effect (by providing a mechanism for taking action against providers who engage in unacceptable conduct from the NDIS market).

The NDIS Code of Conduct sets out the expectations of all NDIS providers and workers in the course of delivering NDIS supports and services to participants. Every provider and worker supporting participants in the NDIS is Code covered and it is a condition of registration under section 73F of the NDIS Act that a registered NDIS provider is subject to the NDIS Code of Conduct. In addition, the NDIS Commission has applied the NDIS Code of Conduct to its staff through a policy issued by the Commissioner under the *Public Service Act 1999* (Public Service Act).

The Department of Social Services led a national public consultation process on a draft NDIS Code of Conduct in May 2017 and received 109 submissions which informed the final version of the *National Disability Insurance Scheme (NDIS Code of Conduct) Rules 2018*.

The NDIS Commission has published facts sheets and guidance for NDIS participants, providers and workers about the NDIS Code of Conduct. The NDIS Commissioner has also applied the NDIS Code of Conduct to NDIS Commission staff through a policy issued under the Public Service Act.

The NDIS Commission's regulatory approach described above outlines how compliance with the NDIS Code of Conduct is monitored and managed in the context of the NDIS Commission's regulatory functions.

NDIS Practice Standards

The NDIS Practice Standards are a set of modular standards which are part of the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* operationalised through the NDIS Commission's registration processes. The NDIS Practice Standards were developed to provide for additional quality and competency standards proportionate to both the risk inherent in a service delivery model, and the scale of an organisation.

All registered NDIS providers and applicants for registration as a registered NDIS provider, that are delivering (or propose to deliver) higher-risk, more complex supports will be required to gain third party quality assurance certification audits against the relevant practice standards. The support categories, applicable standards and assessment process is described in Part 6, Division 1 of the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*.

The NDIS Practice Standards include a core module with standards:

- a. relating to the rights of participants and responsibilities of providers;
- b. provider governance and operational management; and
- c. the provision of supports.

In addition, specific practice standard modules apply to the following supports:

- a. high intensity daily personal activities (module 1);
- b. specialist behaviour support (module 2);
- c. implementing behaviour support plans (modules 2A);
- d. early childhood supports (module 3);
- e. specialised support coordination (module 4); and
- f. specialist disability accommodation (module 5).

Module 6 of the NDIS Practice Standards also include a 'lighter touch' verification process designed specifically to minimise the regulatory burden on individual providers for supports considered lower risk and/or who are already subject to professional regulation as a requirement of doing business.

This includes regulation through AHPRA and other professional bodies that provide regulatory oversight of the professions included within the NDIS Commission's published verification guidelines at: www.ndiscommission.gov.au/document/1051.

The NDIS (Quality Indicators) Guidelines 2018 provide the detailed indicators for each of the NDIS Practice Standards. Certification and verification audits against applicable practice standards are undertaken by auditing bodies accredited by the Joint Accreditation System of Australia and New Zealand (JAS-ANZ) and approved by the NDIS Commission.

Audit processes are governed by the NDIS (Approved Quality Auditors Scheme) Guidelines 2018, including the approval process for approved quality auditors who will conduct the audits.

The development of the NDIS Practice Standards was overseen by a Technical Reference Group led by the Department of Social Services with representation from states and territories, the Commonwealth Department of Health, the NDIA, and stakeholders from Disabled People's Organisations Australia, National Disability Services, Children and Young People with Disability Australia. The NDIS Practice Standards were also developed in partnership with the Attendant Care Industry Association.

The draft NDIS Practice Standards were tested via a national audit pilot with sample of NDIA registered providers nominated by states and territories.

7.2. Provider Registration

All NDIS providers are regulated by the NDIS Commission but not all are required to be registered. Under section 73B of the NDIS Act, the NDIS Rules may require that specified classes of supports provided under participants' plans are to be provided only by NDIS providers who are registered. Section 7 of the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* requires that the following providers be registered:

- a. specialist disability accommodation providers;
- b. specialist behaviour support providers; and
- c. providers implementing regulated restrictive practices.

The NDIA is responsible for determining funded supports in a participants plan and the way in which the plan is managed under Chapter 3 of the NDIS Act. If the funding for supports or service is managed by the NDIA, under Part 2 of Chapter 3 of the NDIS Act, a participant can only access services from registered providers. If a participant's funding for supports or services is managed by a plan management provider, the plan management provider must be registered.

The trigger for the NDIS Commission to commence in a state or territory is that state or territory agreeing to become a participating jurisdiction for the purpose of quality and safeguarding and for the Commonwealth Minister to make an instrument giving effect to that agreement under section 10A of the NDIS Act. When the NDIS Commission commences in a state or territory, the *National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018* enable providers with an existing registration with the NDIA to be migrated to the NDIS Commission as registered NDIS providers.

Those providers will be issued with a certificate of registration from the NDIS Commission that sets out conditions of registration, including the period that the transitioned registration will remain in force. To retain a registration, a transitioned provider must commence a new application process with the NDIS Commission before the date that the registration is in force lapses.

To apply for or renew registration with the NDIS Commission, providers must undergo a suitability assessment (by the NDIS Commission) and an audit against the NDIS Practice Standards that are relevant to their activities in the NDIS. There are two audit pathways based on registration group(s) and whether the provider is an individual, partnership or body corporate.

Verification audits relate to lower risk supports provided by individual operators who are not trading as companies and are designed to independently verify:

- a. the person's qualifications (for example a license, or a registration to enable the person to practice such as through AHPRA, or other regulated professions);

- b. the NDIS specific requirements around complaints handling and incident management; and
- c. risk management and competency to work with NDIS participants.

Certification involves assessment against the core NDIS Practice Standards and any specialist standards that may be applicable to certain registration groups or activities. Further information on the practice standards and code is provided in Section 112 below.

The NDIS Commission is responsible for approving audit firms which are accredited under agreement with the Joint Accreditation Systems of Australia and New Zealand and trained by the NDIS Commission on the *National Disability Insurance Scheme (Approved Quality Auditors Scheme) Guidelines 2018* (Auditors Guidelines) and the NDIS Practice Standards. Auditors determine the scope and approach to undertaking the audit in accordance with the Auditor Guidelines.

The NDIS Commission is monitoring the implementation of the new registration arrangements and process, including taking feedback from providers. The obligation to undertake the audit rests with the provider. They engage an auditor suitable to their needs and pay the costs of the audit. This is an important aspect of the process, which is designed to embed quality and safety in the practice of providers, rather than purely satisfy the NDIS Commission that certain benchmarks have been met.

Another key part of the registration process involves the NDIS Commission assessing the suitability of service providers and key personnel to become or continue to be registered to operate in the NDIS, as described in 73(1)(d) of the NDIS Act and defined in sections 9 and 10 of the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*.

An overview of the registration process with guidance for NDIS providers is at [Attachment E](#).

Interaction with the Australian Health Practitioner Regulation Agency (AHPRA)

AHPRA is the national body with responsibility for the registration of health practitioners and supports State and Territory boards to regulate health professions, including allied health professionals such as psychologists, occupational therapists, physiotherapists and podiatrists. According to AHPRA's website, it:

- a. manages the registration and renewal process for health practitioners and students around Australia;
- b. manages investigations into the professional conduct, performance or health of registered health practitioners (except in NSW and Queensland);
- c. works with the Health Complaints Commissions in each state and territory to make sure the appropriate organisation deals with community concerns about individual, registered health practitioners;
- d. supports the state and territory boards in the development of registration standards, codes and guidelines.

There are two main differences in the approach taken by AHPRA compared with the NDIS Commission:

- a. The Health Practitioner Regulation National Law essentially establishes ‘protected titles’ to ensure that only registered health practitioners who are suitably trained and qualified are able to use those titles. The registration process assesses the qualifications, experience, criminal history and professional indemnity insurance arrangements of individual practitioners. It does not register or regulate corporate entities established by health practitioners, nor does it consider the activities of the practitioner outside the health context, and particularly the ability of the practitioner to work with a person with a disability to achieve their personal outcomes and goals within the context of the NDIS.
- b. The NDIS Commission’s provider registration process is proportionate, applying regulation commensurate to risk. For individual practitioners where there are existing regulatory arrangements such as through AHPRA, recognition of this is embedded in the registration design. If a provider seeking registration with the NDIS Commission is associated with a corporate entity, the NDIS registration process also:
 - i. applies the NDIS Practice Standards – outlined in Part 6 of the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* – which enable an assessment of the systems in place to deliver services to prevent harm and promote the rights of NDIS participants to receive safe and quality supports; and
 - ii. includes a suitability assessment of key personnel (defined in section 11A of the NDIS Act).

A comparison between the regulatory arrangements of the NDIS Commission and AHPRA as they relate to individual practitioners providing supports commensurate to their professional qualifications is at Attachment F.

Since commencing in 2018, the NDIS Commission has:

- transitioned 21,189 registered providers – 9,703 from NSW and SA in Year 1, and 11,486 in Year 2 from Victoria, Queensland, Tasmania, ACT and NT;
- established, in partnership with the Joint Accreditation Scheme of Australia and New Zealand (JAS-ANZ) the auditing scheme associated with registration;
- approved 15 auditing bodies to operate within the scheme;
- trained 517 auditors;
- completed 1,548 registrations of new providers (to 31 Dec 2019);
- to assist in the response to the COVID-19 pandemic, used provisions of the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* to require registered providers to notify the NDIS Commission of matters connected to the pandemic that might affect the provision of supports to people with disability who are NDIS participants;

- used its information gathering powers to undertake compliance activities related to the use of restrictive practices and also to the provision of supports with daily personal activities – together, these activities have targeted just under 3,000 providers;
- modified the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* to ensure that the streaming of providers into either a ‘verification’ or ‘certification’ audit is driven by the level of risk related to supports rather than the legal character of the entity providing them.

The level of guidance required by providers has been a significant element of managing transition. In the lead up to transition in each state of territory, the NDIS Commission

- conducted roadshows for providers in multiple locations in each state and territory and through webinar presentations;
- communicated directly with each transitioning providers on multiple occasions;
- provided transitioning providers with information resources related to their obligations and the key processes the NDIS Commission would be using.

Notwithstanding this, providers have continued to need considerable assistance in understanding their obligations and the NDIS Commission’s role. This is in part due to the significant difference for many providers who, in the past, have principally been regulated through their block funding agreements. Even where providers have been regulated under statutory arrangements, those arrangements often differ significantly from those in the NDIS Act and, hence, represent a material change for providers in what they need to do to comply.

7.3. NDIS Worker Screening

The NDIS Framework recognises a national approach to NDIS worker screening as being important to reducing the risk of harm to people with disability from the people who work closely with them.

It was agreed that states and territories will remain responsible for managing worker screening while the main roles for the NDIS Commission in this area include:

- a. building and hosting a National Worker Screening Database;
- b. monitoring compliance with the national worker screening policy for registered NDIS providers, once the national new NDIS worker screening scheme is implemented;
- c. sharing Commission misconduct and enforcement information with states and territories; and
- d. communicating the new policy, particularly to providers and self-managing participants.

An Intergovernmental Agreement (IGA) on Nationally Consistent Worker Screening for the NDIS was made in 2016 between the then Prime Minister and state and territory first ministers, in which all governments agreed to implement the new worker screening arrangements.

The *National Disability Insurance Scheme (Practice Standards – Worker Screening) Rules 2018* currently operate in all jurisdictions that have transitioned; that is, all states and territories other than Western Australia.

WA will transition on 1 December 2020. Under these Rules, states and territories determine how worker screening will operate in their respective jurisdictions until the national scheme commences on 1 February 2021.

The NDIS Commission has completed the development and build of the database it is hosting. It was ready to commence the national scheme in advance of the nationally agreed revised start date of 1 July 2020. That revised date was deferred to 1 February 2021, as not all states and territories were able to meet the 2020 date.

The NDIS Commission is currently fine-tuning the worker screening information sharing arrangements between it and individual states and territories.

When the national arrangements commence next year, states and territories will undertake screening activities, applying nationally consistent policy on what comprises a screen. They will determine whether workers (that is, all workers delivering NDIS supports and services with more than incidental contact with people with disability as well as other key personnel, for example chief executive officers) are cleared to work in the NDIS.

Clearances will be portable and workers will be able to work across Australia following a clearance in any particular jurisdiction. In addition to criminal history information, the new worker screening process will consider a range of other intelligence available to screening units, including:

- a. national criminal history information held by law enforcement agencies, including expanded criminal history information where relevant;
- b. disciplinary and misconduct information supplied by the NDIS Commission to worker screening units, including any adverse and substantiated findings of formal investigations (such as in relation to breaches of the NDIS Code of Conduct in response to a complaint or reportable incident), and compliance actions by the NDIS Commission including banning orders;
- c. additional circumstances information held by law enforcement agencies about the circumstances of an offence or alleged offence where available;
- d. civil penalties;
- e. international criminal history;
- f. domestic violence and child protection orders and/or related information;
- g. information in relation to an applicant's previous Working With Children Checks, Working With Vulnerable Persons Checks or other worker screening process;

- h. state-based reportable or notifiable conduct schemes, such as from State Ombudsman and Complaints Commissions and professional associations;
- i. employer or other professional records/information, including professional references; and
- j. court and tribunal records.

Employers, including registered providers and self-managed participants, will be able to use the national worker screening database to check the clearance status of their workers.

There will be limited personal information held in the database, as the primary purpose of the database will be to enable employers to confirm whether a screening unit in any state or territory has cleared a particular worker.

The screening units will constantly monitor the status of workers and use new information to update a workers' status at any time.

AHPRA worker screening arrangements

According to the AHPRA website, it conducts Australian criminal history checks and obtains a criminal history report on behalf of an applicant before they are registered.

An international criminal history check is required in circumstances where an applicant declares that they have resided in a country other than Australia, for a period exceeding six months when aged 18 years of age or more, or if an applicant or practitioner has declared a criminal history in a jurisdiction outside of Australia.

7.4. Complaints handling

The NDIS Commission has a broad remit in relation to complaints regarding NDIS providers under its jurisdiction. The NDIS Commission has established working arrangements with Commonwealth and state and territory complaints and regulatory bodies for those that have already transitioned, and is working to develop arrangements in Western Australia in advance of 1 December 2020.

Anyone can make a complaint about NDIS supports and services. This includes participants, family members, workers, providers, advocates or community visitors, professionals and members of the community.

A complaint can be made about NDIS providers and their workers to the NDIS Commission, whether or not they are registered with the NDIS Commission. Complaints can be made to the NDIS Commission through the Commission's website, phone, in person or by any other means to facilitate communication of the issues raised in a complaint.

All NDIS registered providers are also required to have internal complaint management systems in place that comply with the *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018* and the NDIS Commission has published guidance for providers to support best practice in the handling of complaints.

The role of the NDIS Commission in fulfilling its complaints handling function is to:

- a. help people with disability to understand their rights and what they should expect of providers;
- b. empower people with disability to speak up and actively participate in the resolution of a complaint;
- c. enable other stakeholders (such as advocates and workers) to make complaints and ensure issues can be addressed when people with disability are unable or unwilling to make a complaint;
- d. build the capacity of providers to manage and learn from complaints;
- e. ensure that quality and safety issues are appropriately managed; and
- f. enable the identification of systemic issues and driving improvement actions.

The *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018* set out how the NDIS Commission may deal with a complaint, including working with the complainant, a person with disability affected by an issue raised in a complaint, the NDIS provider or a person employed or otherwise engaged by the NDIS provider to:

- a. provide advice and assistance in relation to the complaint or issue;
- b. where possible and appropriate, assist the persons involved in the complaint to come to a mutually agreed resolution;
- c. require the NDIS provider to which the complaint or issue relates to examine and attempt to resolve the complaint or issue and report back to the Commission;
- d. request the complainant, the NDIS provider and any other person to participate in a conciliation process;
- e. require the NDIS provider to undertake remedial action in relation to the complaint or issue and report back to the Commissioner; or
- f. take any other action that the Commissioner considers is appropriate in the circumstances.

The NDIS Commission operates a 'no wrong door' approach, and supports the appropriate 'warm referral' of complaints to other bodies, in consultation with the person making the complaint and the person with disability affected by the issue raised in a complaint.

The NDIS Commission seeks to resolve complaints in a way that achieves the most timely, proportionate and appropriate outcome for people making complaints and affected people. This may be achieved by the NDIS Commission supporting complainants to resolve their complaints directly with an NDIS provider.

Sometimes, the issues raised in a complaint are better handled through compliance action, including investigation. This includes where a serious concern is identified or there are risks to people with disability, such as allegations of abuse, assault or neglect.

Unlawful conduct and criminal matters is referred to the appropriate authorities and the NDIS Commission may continue to handle elements of the complaint that are not being managed by police.

The NDIS Act also includes whistleblower protections (outlined in Division 7, Part 3A) for certain persons who make a complaint or disclose information to the NDIS Commission or an NDIS provider. Persons protected include a person with disability receiving a support or service from an NDIS provider and their families, advocates, and employees of an NDIS provider. This is intended to respond to concerns raised during the NDIS Framework consultation process and in earlier inquiries into the sector that people are reluctant to report allegations and incidents of abuse out of fear of retribution.

This helps to ensure that protected persons are not victimised because they have made a disclosure about an NDIS provider.

In the first year of its operations, the NDIS Commission received 1,422 complaints from two jurisdictions. In the first six months of this financial year, the NDIS Commission had received 2,022 complaints from across the seven jurisdictions now participating in the national arrangements. Information on these complaints and other NDIS Commission activity data is in the report at [Attachment G](#).

The NDIS Commission will in the coming weeks finalise and release its activity data for the entire past financial year. This will provide baseline data on complaints from Victoria, Queensland, Tasmania, the NT and the ACT. It will allow a year-on-year comparison for New South Wales and South Australia.

The NDIS Commission will be able to provide further commentary on this activity during the course of the Joint Select Committee's current inquiry.

7.5. Provider Reporting Requirements

Ongoing Registration Reporting Requirements

The registration of each registered NDIS provider is subject to the condition set out in section 13 of the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* to notify the Commission of a change of circumstances that materially affects the provider's ability, or the ability of any of the provider's key personnel, to provide the supports or services the provider is registered to provide. In addition, providers have reporting obligations under the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018* and *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018*.

Reportable Incidents

Registered NDIS providers must have in place internal management and reporting arrangements to ensure that incidents are recorded, and that actions are taken to prevent recurrence.

Registered NDIS providers are also required to report the following incidents or allegations occurring in connection with the provision of NDIS supports or services pursuant to section 73Z of the NDIS Act:

- a. the death of a person with disability; or
- b. serious injury of a person with disability; or
- c. abuse or neglect of a person with disability; or
- d. unlawful sexual or physical contact with, or assault of, a person with disability; or
- e. sexual misconduct committed against, or in the presence of a person with disability, including grooming of the person for sexual activity; or
- f. the use of a restrictive practice in relation to a person with disability, other than where the use is in accordance with an authorisation (however described) of a State or Territory in relation to the person.

The timeframes for reporting and the information required to be submitted to the NDIS Commission is outlined in the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018*, with related resources available for providers on the NDIS Commission's website.

The requirement to report incidents to the NDIS Commission does not replace obligations to report suspected crimes to police and other relevant authorities.

The NDIS Commission is focussed on building provider capacity to prevent and respond appropriately to incidents and to engage and support people with disability impacted by an incident throughout the process.

The NDIS Commission will also review reportable incident data to identify systemic issues to be addressed, and report publicly on the trends and patterns in reportable incidents, and best practice strategies to improve the quality of supports and services and prevent harm to people with disability. In its activity report for the first six months of the last financial year, the NDIS Commission had received 69,397 reports of reportable incidents, see [Attachment G](#).

Approximately 94 per cent of reports of reportable incidents over the period 1 July to 31 December 2019 are reports of unauthorised use of restrictive practices. Approximately 97 per cent of reports of unauthorised use of restrictive practices relate to chemical and environment restraints that are routinely used and where each instance is required to be reported to the NDIS Commission. At the time of writing this submission, the NDIS Commission has a compliance exercise underway to determine what is driving these numbers. Specifically, the NDIS Commission is seeking to understand: the drivers for why there continues to be significant – and indeed increasing – reporting of the unauthorised use of restrictive practices in New South Wales and South Australia where the NDIS Commission has had jurisdiction for two years and, hence, where providers have had ample opportunity to respond to the new requirements.

Anecdotally, some providers report challenges in sourcing behaviour support practitioners, and some have indicated issues with a lack of funding in plans. The NDIS Commission is keen to determine whether these or other matters are creating genuine impediments to compliance and, if so, work to address these issues so that there is rapid and full compliance with these obligations on the part of registered providers.

When providers are complying fully with their obligations to have behaviour support plans and associated authorisations in place, the NDIS Commission would expect a dramatic reduction in the number of reportable incidents, and for those reports it does receive to typically relate to single, emergency uses not ongoing uses.

A copy of the notices to which providers in NSW and South Australia are subject are at [Attachment H](#); related correspondence signalling similar action later this year in other jurisdictions is at [Attachment I](#).

The NDIS Commission expects to be able to provide the Joint Standing Committee with insights gained through this exercise during the course of its current inquiry into the NDIS Commission.

The remaining 6 per cent of reports of reportable incidents relate to the categories of serious incidents, or allegations of serious incidents, that must be reported to the NDIS Commission. Where those matter relate to alleged criminal conduct, the NDIS Commission ensures that the Police or other relevant authority (such as the relevant child protection agency in a state or territory) is notified. The NDIS Commission oversees the provider's management of the incident in accordance with the provider's incident management system and, depending on whether there appears to be either a breach of registration obligations, may also conduct its own investigation.

Additional Reporting on the use of restrictive practices

In addition to reporting incidents involving the use of unauthorised restrictive practices, there are additional ongoing monthly reporting requirements for providers implementing restrictive practices under a positive behaviour support plan. Those reporting requirements are described in the *NDIS (Restrictive Practices and Behaviour Support) Rules 2018*.

NDIS Commission compliance activity and reporting

The NDIS Commission has published six-monthly and annual activity reports since it commenced operating. Until all jurisdictions have transitioned, data holdings will be insufficient to identify trends and issues across the NDIS system, or to move beyond static data and enable deeper data analytics. However, the NDIS Commission has improved the comprehensiveness of information and the quality of that information in each report to date and will continue to do so. This reflects its maturation and also the focus on data and analytics within the organisation.

The expectation is that the NDIS Commission will be able to comment on matters such as:

- participant experience, including issues and risks impacting participants and the effectiveness of the system to prevent and appropriately respond (system effectiveness);
- the effect of the NDIS Commission's regulatory activities on reducing risk of harm to participants (regulatory impact); and
- market changes and areas where improvements are required to deliver progressively higher standards, identifying areas for education, guidance and best practice information (market composition).

As referred to earlier in this submission, the most recent activity report is attached to this submission ([Attachment G](#)) and the full year report for 2019-20 will be completed and released soon and will be available for this Joint Standing Committee Inquiry.

That report will show quite significant levels of work in the compliance activity now that the Commission has been operational in two jurisdictions for two years and has completed its first year of operations in a further five. The report will show that the NDIS Commission has initiated around 700 compliance actions since it commenced operations, including over 200 investigations.

7.6. Regulating Restrictive Practices

Consistent with the UNCRPD, Commonwealth, state and territory governments endorsed the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector (Restrictive Practices Framework) in 2014. The Restrictive Practices Framework outlines high-level guiding principles (such as human rights and a person-centred approach), and core strategies, including use of data to inform practice and workforce development.

These human rights principles and strategies informed the approach taken in the NDIS Framework and the new arrangements for behaviour support under the NDIS, and align with the commitment of all Australian governments to reduce and eliminate the use of restrictive practices in disability services and with Australia's obligations under the UNCRPD.

While jurisdictions have all agreed to the Restrictive Practices Framework, they have taken different approaches to regulating the use of restrictive practices and use of different definitions. Some have included provisions to regulate the use of restrictive practices in their disability services or guardianship legislation. Others have set out high-level principles and objectives in legislation and policy, which are relevant to but do not specifically address the use of restrictive practices. Aside from authorisation arrangements, some jurisdictions have introduced reporting requirements around the use of restrictive practices and have senior practitioners with statutory functions that include developing guidelines and monitoring the use of restrictive practices.

Under the NDIS Framework, it was agreed that Commonwealth legislation would set out the key principles and obligations of providers around the use of restrictive practices in the NDIS, including that the intervention is the least restrictive response available, is used only as a last resort, and that the risk posed by the proposed intervention is in proportion to the risk of harm posed by the behaviour of concern.

It was agreed that relevant state and territory legislation will specify any conditions that must be met for the use of a restrictive practice to be approved in a positive behaviour support plan. This means that, at a minimum, a decision to include a restrictive practice in a positive behaviour support plan must be consistent with State and Territory authorisation arrangements. States and Territories may enact (or amend) separate laws that provide mechanisms for seeking approval to include restrictive practices in a behaviour support plan. Recent examples of legislation introduced or amended in states and territories include the *National Disability Insurance Scheme (Authorisations) Act 2019* (NT).

It was also agreed that national consistency is a key element of the NDIS Framework and is something that should also apply across jurisdictions' approval arrangements. However, given the highly complex interactions between Commonwealth, state and territory legislation and the coverage of this legislation in terms of other service sectors in jurisdictions, it was agreed that the aim will be for jurisdictions to continue (and make amendments as necessary), or review their current arrangements for full Scheme, with a view to working towards national consistency over time. The NDIS Commission has, as part of its behaviour support functions in section 181H of the NDIS Act, a role in assisting the States and Territories to develop a regulatory framework, including nationally consistent minimum standards in relation to restrictive practices.

The NDIS Commission has led work to support the achievement of national consistency as a priority. A set of draft principles for nationally consistent regulation of the use of restrictive practices has been developed and is now supported by all states and territories with the exception of Queensland, which has supported in principle ([Attachment J](#)). States and territories have completed assessments of their systems against those draft principles and, by the end of this calendar year, will have completed roadmaps to achieve the application of those principles in each jurisdiction.

The NDIS Commission's legislative framework regulates NDIS providers by imposing conditions of registration on providers delivering specialist behaviour support services and providers implementing behaviour support plans that contain regulated restrictive practices (irrespective of the state or territory arrangements for authorisation) which is nested in a positive behaviour support framework.

The *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018* recognise that states and territories may authorise or permit use of a restrictive practices and impose conditions of registration on NDIS providers in relation to the use of *regulated restrictive practices*. A restrictive practice is defined in the NDIS Act to mean any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability. A *regulated restrictive practice* is defined for the purposes of the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018* to mean if it is or involves any of the following:

- a. *seclusion*, which is the sole confinement of a person with disability in a room or a physical space at any hour of the day or night where voluntary exit is prevented, or not facilitated, or it is implied that voluntary exit is not permitted;
- b. *chemical restraint*, which is the use of medication or chemical substance for the primary purpose of influencing a person's behaviour. It does not include the use of medication prescribed by a medical practitioner for the treatment of, or to enable treatment of, a diagnosed mental disorder, a physical illness or a physical condition;
- c. *mechanical restraint*, which is the use of a device to prevent, restrict, or subdue a person's movement for the primary purpose of influencing a person's behaviour but does not include the use of devices for therapeutic or non-behavioural purposes;
- d. *physical restraint*, which is the use or action of physical force to prevent, restrict or subdue movement of a person's body, or part of their body, for the primary purpose of influencing their behaviour.

- e. Physical restraint does not include the use of a hands-on technique in a reflexive way to guide or redirect a person away from potential harm/injury, consistent with what could reasonably be considered the exercise of care towards a person.; and
- f. *environmental restraint*, which restrict a person's free access to all parts of their environment, including items or activities.

The *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018* impose conditions of registration on providers delivering specialist behaviour support or implementing regulated restrictive practices which are designed to provide safeguards for people with disability and include:

- a. a requirement for a person with disability to have a behaviour support plan developed that contains contemporary, evidence-based, person-centred strategies to address their needs;
- b. a person with disability, their family members, carers and guardians and other relevant people (such as their independent advocates) must be consulted when a behaviour support plan is being developed;
- c. the person with disability must be given details of any intention to include a restrictive practice in a behaviour support plan, in an appropriately accessible format;
- d. the behaviour support practitioner must consult with the service providers who may use a regulated restrictive as part of a behaviour support plan;
- e. a restrictive practice may only be used when it has been authorised in accordance with any relevant State or Territory authorisation process (if there is one);
- f. a restrictive practice may only be used as a last resort in response to risk of harm to the person with disability or others;
- g. the restrictive practice must be the least restrictive response possible in the circumstances;
- h. the restrictive practice can only be used for the shortest possible time to ensure the safety of the person with disability or others; and
- i. providers using a restrictive practice must report regularly to the NDIS Commission so the use of restrictive practices can be monitored with a view to their reduction and elimination.

Providers of specialist behaviour support and providers implementing behaviour support plans are required to be registered by section 7 of the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* and meet practice standards and outcomes described in Schedules 1, 3 and 4 of those Rules.

As mentioned above the NDIS Commission has led work to develop nationally consistent regulation in restrictive practice. The NDIS Commission has undertaken other significant work in relation to behaviour support including:

- Development of Positive Behaviour Support Capability Framework – this is an Australian first in stipulating capability domains for behaviour support providers/practitioners. Pilot project commence before final roll-out
- Development of a Behaviour Support Plan Quality Evaluation Tool II (BSPQEII). This is a validated instrument to assess quality of behaviour support plans. Internal inter-rater reliability has been established and it is a tool used to internally to assess quality of plans. The NDIS Commission is planning to train behaviour support providers on the use of the tool early 2021.
- Funded National Disability Services via a 2-year grant to promote understanding of restrictive practices and compliance, and community of practice leaders forums to improve better practices (topics selected by providers have included trauma-informed care).

Further work still under development includes:

- Creation of a Restrictive Practice Self-Evaluation Tool to be made available to behaviour support practitioners and providers to assist their understanding restrictive practice and compliance requirements.
- Development of Practice Guides and Practice Alerts in response to the *Scoping review into the causes and contributors to deaths of people with disability in Australia* undertaken by Professor Julian Trollor (University of NSW), which was commissioned by the NDIS Commission.
- Conducting a Cochrane Review and publication of Evidence Summaries to synthesise international and national research data on the effectiveness and harms of all pharmacological agents used to manage behaviours of concern in children and adults with autism. Attachment J describes the new arrangements for regulated behaviour support and regulated restrictive practices, including chemical and physical restraint.

An important part of the NDIS Commission's role in behaviour support is to provide leadership in relation to behaviour support and in the reduction and elimination of the use of restrictive practices by NDIS providers.

The NDIS Commission has developed a Positive Behaviour Support Capability Framework (PBS Capability Framework) in accordance with section 181H(a) of the NDIS Act to assess the skills and capability of specialist behaviour support practitioner as part of the registration process. A copy of the PBS Capability Framework is provided at Attachment C.

This follows an extensive period of consultation with the sector and with state and territory governments. The next steps include the development of a resource tool-kit for self-assessment against the capabilities, and an NDIS Commission verification and audit process.

The NDIS Commission is continuing to develop resources for participants and providers to raise awareness of the new arrangements for reducing and eliminating the use of restrictive practices in the NDIS.

7.7. Unregistered Providers

Not all providers in the NDIS are required to be registered. The NDIS is designed to maximise choice and control for people with disability. The NDIS Act provides a range of mechanisms to facilitate choice and control, including the ability for NDIS participants to manage their own NDIS plans. 'Self-managing' and plan managed participants can source supports from providers who are not registered. These providers are referred to here as 'unregistered'.

The NDIS Code of Conduct expressly requires all NDIS providers, including unregistered providers to:

- a. act with respect for individual rights to freedom of expression, self-determination and decision-making in accordance with applicable laws and conventions;
- b. respect the privacy of people with disability;
- c. provide supports and services in a safe and competent manner, with care and skill;
- d. act with integrity, honesty and transparency;
- e. promptly take steps to raise and act on concerns about matters that may impact the quality and safety of supports and services provided to people with disability;
- f. take all reasonable steps to prevent and respond to all forms of violence against, and exploitation, neglect and abuse of, people with disability; and
- g. take all reasonable steps to prevent and respond to sexual misconduct.

The NDIS Commission has extensive powers over unregistered providers, including:

- a. through the NDIS Code of Conduct, a breach of which can result in penalties up to \$52,000 for individuals and \$260,000 for companies;
- b. investigating complaints about unregistered providers; and
- c. a flexible range of penalties and sanctions, including compliance notices, civil penalties, enforceable undertaking and ban orders and the ability to direct a provider to go through the registration process in order to provide supports.

A ban order prohibits or restricts a provider (or person employed or otherwise engaged by a provider) from engaging in specified activities and can be used to prevent a provider from operating in the NDIS and providing any supports or services to NDIS participants.

A breach of a ban order can result in penalties of up to \$210,000 for an individual and \$1,050,000 for a company.

The NDIS Commission works with other investigative and regulatory agencies to facilitate information sharing regarding suspected misconduct by NDIS providers, for example AHPRA and the NSW Health Care Complaints Commission.

When the new national worker screening arrangements commence, participants can request that unregistered providers have an NDIS Worker Screening Check if they are delivering or planning to deliver NDIS supports and services to them.

7.8. Education and Engagement

Education and engagement strategies are an important part of the NDIS Commission's approach to undertaking its regulatory functions and working to support the empowerment of people with disability.

The early focus of the NDIS Commission's work has been to ensure that:

- people with disability who are NDIS participants understand that the role of the NDIS Commission, how it can support them, and how they can contact it;
- providers understand how their transition to the national arrangements is being undertaken;
- providers understand their obligations under the NDIS Act and Rules;
- workers understand what is expected of them under the NDIS Framework and how they can ensure that people with disability who are participants live free from neglect, abuse, violence and exploitation; and
- advocates are aware of the NDIS Commission's role and operations in each state or territory where it has commenced operations.

To this end, the NDIS Commission has undertaken a range of specific initiatives:

- Participants are advised directly when the NDIS Commission becomes active in the state or territory in which they reside – participants can then order the resources they would like in the format that best suits them.
- The 'If you need to speak up, speak to us' social media campaign seeks to build upon that basic information to encourage people with disability, and those in their close circles, to complain to the NDIS Commission if they are concerned or unhappy about something they are experiencing associated with their supports.
- The Worker Orientation Module is a very significant resource that has seen dramatic uptake across the sector (around 250,000 people have completed it already) – the 90-minute online module takes people through an orientation to the NDIS, the NDIS Code of Conduct and other important matters.
- Two national workshops have been conducted for advocates since the NDIS Commission started, with a further one planned for early in 2021.
- Providers have been able to access information on transition through face-to-face roadshows, Provider Packs containing simple information about registration and other matters, direct correspondence on several occasions from the NDIS Commissioner.
- Providers get ongoing information and advice through Provider Alerts, Fact Sheets and webinars on specific matters.
- Throughout the COVID-19 pandemic, providers have received regular targeted information and resources to assist them to support people with disability

appropriately and to meet their obligations – 23 provider alerts have been issued and four fact sheets dealing with issues such as infection control training, access to and use of Personal Protective Equipment, and the use of restrictive practices.

- In response to the *Scoping review into the causes and contributors to deaths of people with disability in Australia* undertaken by Professor Julian Trollor on behalf of the NDIS Commission, a range of resources are in development to deal with issues connected to the preventable deaths of people with disability – a suite of resources dealing with mealtime management will complement related changes to the NDIS Practice Standards.

8. Development of the Organisation

Commission Budget

In the 2019-20 Budget the NDIS Commission was allocated \$220 million over four years from 2019-20 to 2022-23.

Table 1 below provides the details of the \$220 million allocation.

Table 1: PAES 2019-20 over four years from 2019-20 to 2022-23

	2019-20 \$'000	2020-21 \$'000	2021-22 \$'000	2022-23 \$'000	Total \$'000
NDIS Quality and Safeguards Commission					
Departmental Funding	46,115	51,566	50,711	48,226	196,618
Equity Contribution	4,069	-	-	-	4,069
Administered Funding - subsidies for provider registration	4,833	4,445	4,507	4,575	18,360
Administered Funding - strategy & engagement	900	500	-	-	1,400
Total	55,917	56,511	55,218	52,801	220,447

Royal Commission

The 2019-20 Budget also contained a new measure for the NDIS Commission in relation to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. The NDIS Commission was provided with \$1.418 million per year for 2019-20, 2020-21 and 2021-22.

COVID-19 Response Package

In the July 2020 Economic and Fiscal update, the NDIS Commission received \$2.6 million for 2019-20 and \$3.6 million for 2020-21 to recognise the NDIS Commission's additional support to individuals and service providers impacted by COVID-19.

Commission staffing

As at 30 June 2020, the NDIS Commission had a workforce of 300, comprising 221 employees and 79 contractors.

Of our 221 employees, 219 (99.1 per cent) are ongoing employees, with 0.9 per cent engaged on a non-ongoing basis.

As at 30 June 2020, the NDIS Commission had an Average Staffing Level (ASL) of 211.75. This is 24.85 below the ASL cap of 236.6 reported in the 2019-20 PBS. The NDIS Commission's staffing level was managed to support establishing the WA office.

As at 30 June 2020, the NDIS Commission's workforce comprised:

	Ongoing	Percentage	Non-ongoing	Percentage	Total
Full Time Employees	200	66.67%	4	1.33%	204
Part Time Employees	17	5.67%	-	-	17
Contractors	-	-	79	26.33%	79
Total Workforce	217	72.33%	83	27.67%	300

Of our workforce, 191 (or 63.7 per cent) were engaged in a frontline function such as registration, a state or territory office, investigations or compliance teams, and 109 (or 36.3 per cent) are in support functions such as legal services, behaviour support practice, complaints handling strategy or corporate roles in our national office.

Organisational Structure

The NDIS Commission's organisational structure reflects the needs of the NDIS Commission's regulatory framework. Frontline staff include the registration team and state and territory offices. Each state and territory office has a representation of key functions, including complaints and reportable incidents. Larger states include behaviour support practitioners, investigators and compliance officers.

Responsibility for specialist advice is provided from relevant functions organised in national office. National office also accommodates the NDIS Commissioner, the Senior Practitioner, the Complaints Commissioner, the Registrar and corporate functions.



NDIS Quality
and Safeguards
Commission

NDIS Quality and Safeguards Commission Structure

As at 25 May 2020

