



## **Joint Standing Committee into NDIS Submission on the Functioning of the NDIS Quality and Safeguards Commission from The Junction Works Limited**

### **Introduction**

I would like to thank the Joint Standing Committee into NDIS for the opportunity to provide information, feedback and solutions to the current implementation issues that have occurred since the establishment of the NDIS Quality and Safeguards Commission on 1<sup>st</sup> July 2018.

The concept of NDIS and the subsequent creation of the NDIS Quality and Safeguards Commission (Q&S Commission) have the full support of The Junction Works (TJW). These two aspirational entities have the capacity to positively influence and change the “lived experience” of people with disabilities for generations to come.

The bipartisan support shown by all levels of government and sides of politics was a demonstration of maturity and consideration of human rights worthy of note in Australian history. This should be applauded.

I have been fortunate to work within the disability environment in senior executive roles for over 30 years. Within these roles I have had the opportunity to meet, speak with and support children and adults with a range of disabilities (e.g. spinal cord injury, autism, acquired brain injury, cerebral palsy and intellectual disability). Over this time I have witnessed the impact of scare funding and dislocated government policy on the provision of essential supports and the impact this has on the lives of children or adults with a disability and their families.

I currently hold State (NSW) and National Board positions for National Disability Services (NDS). NDS is the peak body for over 1,100 disability providers across Australia. In my role I am approached by members articulating concern and frustration on the rollout of the NDIS and Q&S Commission.

From this position of knowledge and experience I believe that my observations and feedback are relevant to improving the current implementation of the Q&S Commission.

Since July 2016, NSW has experience the rollout of NDIS and in July 2018 the establishment of the NDIS Q&S Commission. The disability sector has experience unprecedented change in this time as two bureaucratic agencies established themselves.

The challenge of change has been immense and this process has not been aided by the inconsistent and unclear implementation of the Quality and Safeguarding framework by the officers of the Q&S Commission. It appears that many of the unintended consequences (discussed below) could have been predicted and/or prevented if the timeframe for the roll out of the NDIS and NDIS Q&S Commission had been extended. Pressure to conform to an unrealistic timeframe has laid the foundation for rushed implementation, poor communication and information provision, and inconsistent interpretation of the key requirements under the Q&S legislation.

The Junction Works (TJW) has always complied with the introduction of legislation and implemented programs that reflect the provision of safe, quality services to more than 650 children and adults and their families living in South West Sydney.



In this submission, I will only refer to incidents and events that TJW has been directly involved with, rather than repeat the incidents/issues articulated to me by members of NDS. I will leave those organisations or NDS to present their issues. Please note that I will not be using the names of Q&S Commission staff, NDIS participants or their families in this submission. However if the Joint Standing Committee does require additional clarifying information, then I will provide this.

## Terms of Reference:

### 1. Monitoring, Investigation and Enforcement Powers

Since the establishment of the NDIS Q&S Commission, TJW has proactively participated in the requirements of the framework.

In March 2020 TJW underwent external audit of its services as part of our NDIS Certification process for re-registration, with only one minor area of non-compliance being found.

**Unfortunately, four months later, we are still waiting to be notified by the NDIS Q&S Commission on TJW's registration position.** Excessive delays in completing tasks is a common occurrence across the NDIS Q&S Commission's areas of responsibility. The Registration of Providers is a core responsibility of the Q&S Commission. In this area they have failed to deliver. I am aware that our experience is not isolated and other organisations have had to raise the lengthy delays directly with the Q&S Commissioner.

TJW has taken a position of open transparency and proactively lodged reportable incidents. This position has led TJW to make several reportable incidents over the first two years of NDIS Q&S Commission.

Through these notifications, TJW has direct experience of the *monitoring, investigation and enforcement activities of the NDIS Q&S Commission*. One incident resulted in an investigation being undertaken by a NDIS Q&S Commission Senior Investigator.

The incident was reported on 13<sup>th</sup> March 2019 and involved a staff member dragging a participant across the floor and abrasions occurred on his back. An investigation was initiated by Q&S Commission Staff, soon after.

Independently of the reportable incident being lodged, TJW took industrial action (termination of employee) and reported the incident to the NSW Police. Both processes have been completed. The parents of the NDIS participant were involved in process from the time of the incident and psychological support was organized by TJW and provided to the NDIS participant

As CEO, I attended an interview on 6<sup>th</sup> November 2019 and responded to the questions asked by the senior investigator and colleague.

Since this interview, I have requested a response to the progress of the incident (open/closed) on three occasions. The Senior Investigator is still unable to provide a timeframe and/or decision on the incident. The Senior Investigator's response is that the NDIS Quality and Safeguard Legislation (The Act) has anomalies that does not allow him to complete the investigation.

Aside from the excessive length of time to have an open investigation (over 500 days) on an incident that did not require hospitalization, there were more concerning issues that I became aware of during the interview (11<sup>th</sup> November).



It became apparent throughout the interview process that the Senior Investigator and colleague lacked basic knowledge and skills regarding people with a disability and the operation of the NDIS. Whilst the investigators conducted the interview in accordance with their training and experience with NSW Police, they lacked basic knowledge in key areas. This included:

- An understanding that participants are supported in accordance with the complexity of their needs and that NDIS funding was allocated according to the level of support the participant was funded for. For example they asked why the participant did not have an individual staff member assigned to them. The answer was the participant's NDIS plan only allow for one staff member to two participants. TJW has asked for the NDIS plan to be reviewed to include 1:1 support for this particular participant.
- There was no awareness that the participant's disability did not allow them to communicate via speech and other consequences of their disability. They lacked basic knowledge on the needs of people with a disability, nor did they have knowledge on the diversity of support needs required by people with a range of different disabilities with complexity
- The investigators believed that TJW, as the Provider, controlled the participant's NDIS plan. This is not the case. The NDIS plan in this case was controlled by the parents in a "self-managed" option. TJW is not allowed to attend the plan review process unless invited by the participant or their guardian. Hence TJW implements the plan that is approved by NDIA.

The investigators had poor knowledge of both people with a disability and the operation of the NDIS, and the subsequent role of a provider like TJW.

It is hard to comment on the enforcement powers of the NDIS Q&S Commission, as TJW is yet to receive a determination on the above incident. Hence, it is unable to comment if the enforcement matches the incident.

### ***Comment and Solutions***

- NDIS Q&S Commission provide a flowchart / timeline for an investigation process for all parties.
- NDIS Q&S Commission provide feedback on the progress of an investigation to all parties at regular intervals.
- NDIS Q&S Commission Investigators be provided with training / information on the impact of disabilities for NDIS Participants and on the operational complexity of how NDIS functions.

## **2. Responding to Concerns, Complaints and Reportable Incidents**

Many of the issues on this "ToR" are mentioned above, however there has been issues that TJW has responded to that cause concern in the operation / implementation of core responsibilities of the NDIS Q&S Commission.

In one instance, TJW's Executive who monitors our Q&S systems was phoned by a junior officer from NDIS Q&S Commission for failing to lodge a reportable incident (of 'neglect'). The tone of the phone conversation was critical of our ability to identify a reportable incident and threatening. By way of context, the NDIS Q&S Commission had received a phone call from the family member of a



participant residing in a TJW supported accommodation facility. They claimed the resident had left the facility with no supervision and that this indicated neglect. The family member was not present at the incident and was acting on what they had been told by their brother.

The incident was recorded in our internal incident reporting system and a staff member was observing and safeguarding the young man from a short distance at all times, until he calmed down and returned with the staff member to the house. Hence there was no incident of neglect.

The issue of concern is

- Q&S Commission received the information from the family member, who was not present, over the phone
- Q&S Commission concluded that TJW was at fault and should have lodged a reportable incident.
- Q&S Commission representative required TJW to lodge an incident on its portal in a threatening manner. This was done without first seeking information from TJW as to the actual event.
- TJW submitted a reportable incident, with all the documentation and as with the above incident no decision / feedback / apology has been received.

### ***Comment and Solutions***

- NDIS Q&S Commission seek clarifying information prior to threatening providers based on third party assumptions.
- NDIS Q&S staff take a collaborative position with providers to ensure that communication channels remain constructive.
- The NDIS Q&S Commission establish a set of definitions around what it considers to be 'serious injury'; 'abuse' and 'neglect'.
- The NDIS Q&S Commission establish a triage process to enable providers to know whether an incident reaches the 'reportable' threshold.

### **3. NDIS Code of Conduct and the NDIS Practice Standards**

TJW is fully supportive of the NDIS Code of Conduct and Practice Standards. They articulate the intent of the legislation to provide safe, quality services to people with a disability. They also highlight the underlying principle (Human Rights) and seek behavioral change from staff and providers on how they support and engage with people with a disability.

TJW sees these as a significant and necessary requirement to ensure services become more responsive in the future.

Having recently undertaken the Certification process TJW found the experience much more productive and engaging than previous NSW based quality assurance processes.

TJW has implemented a number of training and development activities that ensures that all staff and those new to the sector understand the importance of the NDIS Code of Conduct and Practice Standards.



## **Comment and Solution**

- TJW has invested many resources (staff / finance) to ensure the importance of the Code of Conduct and Practice Standards are front of mind for all staff and embedded in practice. The NDIS Q&S Commission itself requires Registered NDIS providers to “actively promote a culture that does not tolerate abuse, neglect or exploitation, and focuses on **continuous upskilling, education and training for workers.**”  
Source: <https://www.ndiscommission.gov.au/providers/worker-screening>
- The concern is that the current NDIS pricing algorithm only factors in one day of training per staff member per year. If there is a desire by the NDIS Q&S Commission to develop a well-trained workforce to deliver quality services within the framework of the Code of Conduct and Practice Standards, there will need to be a solution to how ongoing training is to be funded.
- It is not apparent that NDIA identifies training in the Code of Conduct and Practice Standards as an area of their responsibility. This may be an area that respective States / Territories identify as their stewardship responsibility for their respective residents.
- Alternately the NDIS Q&S Commission should lobby the Commonwealth and State/Territories to the allocation of funding to specifically invest in the development of the disability workforce.

## **4. Provider Registration and Worker Screening**

As mentioned TJW welcomes the new registration process. It is comprehensive and engenders cultural and behavioral change within the sector. This is a good approach.

There is, however, room for improvement and change. These include:

- All providers (inclusive of sole-traders and for-profit companies) should demonstrate their compliance to the Code of Conduct and Practice Standards and undertake registration. Covering all registered providers would add a level of confidence to NDIS participants and their families.
- All providers, not just Registered Providers, should be required to participate in the Worker Screening process for key personnel and risk-assessed roles.
- The move from transitional State-based worker screening to a national program, agreed to by the Commonwealth and States on 1 July 2018, should be accelerated.

## **5. Transition Period and impact of Commonwealth/State Oversight**

This “TofR” is important as there has been a number of areas where the intersection of the NSW State Government and NDIA and the Q&S Commission have created unintended negative consequences for people with a disability, families and providers.

The division of responsibility between NSW mainstream and intersecting government departments (e.g. Health and Education) continues. The same chestnut (who pays?) still provides a barrier to



- accessing mainstream health, particularly mental health services and access to affordable psychiatric care, and the provision of appropriate support for a person with a disability admitted to hospital; and
- education services including the provision of transport to and from school for students attending Special Units within NSW schools.

It is my belief that the NSW Government has functionally withdrawn from the role of “stewardship” of NSW residents with disability. The withdrawal from the provision of direct services through ADHC / FACS has decreased the strength and capability within the NSW disability sector.

I acknowledge that the process of transitioning NSW government services is not part of this inquiry, however the three tranches of transference of government services has not been implemented successfully and is leading to a reduction in service capacity / availability to NSW residents with a disability, for instance the withdrawal / reduction of “in-home community support” by Australian Unity, and the diminishing clinical / allied health services being offered by The Benevolent Society. Furthermore those providers that acquired the supported accommodation from ADHC / FACS are struggling with the industrial and financial consequences of the transfer.

**There is also no government department or entity in NSW that has carriage of the “provider of last resort” role nor responsibility for monitoring when NSW providers are failing under inadequate pricing.** By having no presence, the NSW Government is abrogating its responsibility to their residents.

Conversely, there are areas in which the NSW government has decided to remain involved, yet these areas create unintended consequences that impeded the functionality and efficiency of the NDIS environment. The main area of concern is the role played by the NSW Government in overseeing the restrictive practice authorisation process.

I have attached a document that outlines the various roles of each player in the process. The unintended consequence is that due the requirements of the four government agencies / departments the approval of restrictive practices or the development of positive behavior support plans is impeded by bureaucratic barriers.

If each step is currently followed any NDIS funding identified for the creation and implementation of a Behavior support plan is extinguished long before the plan is achieved. Hence the desired outcome of a better support system from the person with the disability is impeded by government interference and barriers.

### ***Comment and Solution***

- This process needs to be streamlined to allow the creation of solutions and the removal of restrictive practices in the lives of people with a disability. The NSW government should remove itself from the process and allow a more streamlined national system to be created by NDIA and NDIS Q&S Commission.

## **Conclusion**

The creation of NDIS and the NDIS Q&S Commission are welcomed by TJW and the broader sector. Notwithstanding the current pricing and operational complexities of NDIS and the creation of a bureaucratic culture within NDIS Q&S Commission, **there is an opportunity to improve the**



**service delivery sector through the engagement of providers, and NDIS participants in the co-design of solutions to ensure that NDIS does deliver on its aspirational promise.**

The Junction Works is willing to participate in discussions to identify solutions that will enable the NDIS and NDIS Q&S Commission to become more responsive and provide greater positive impact than their current positions.

**Chris Campbell**

Chief Executive Officer

The Junction Works Limited

**29<sup>th</sup> July 2020**