



**Allied Health
Professions
Australia**

Level 1, 530 Little Collins St
Melbourne VIC 3000
ABN 60 083 141 664

P +61 3 9909 7768
E office@ahpa.com.au

www.ahpa.com.au

Ms Pothida Youhorn
Committee Secretary
Senate Community Affairs Legislation Committee

Via email: community.affairs.sen@aph.gov.au

16 July 2021

Dear Ms Youhorn

Inquiry into the National Disability Insurance Scheme Amendment (Improving Supports for At Risk Participants) Bill 2021

Allied Health Professions Australia (AHPA) thanks the Joint Standing Committee on the National Disability Insurance Scheme (NDIS) for the opportunity to make a submission on the above Bill.

AHPA is committed to ensuring that people with disability can access safe and high-quality supports, and we have previously engaged extensively with the development and rollout of the NDIS Quality and Safeguarding Framework and the establishment of the NDIS Quality and Safeguards Commission.¹

AHPA supports the rationale of the Bill as outlined in the Explanatory Memorandum. It is essential that the provisions of the National Disability Insurance Scheme Act 2013 ('the Act') afford strong protections to NDIS participants from abuse and other forms of harmful non-compliance by providers and other relevant persons.

In our view, it is therefore eminently appropriate that these functions of the Act are enhanced by strengthening the Commissioner's compliance and enforcement powers, and enabling effective information sharing across government authorities or with any prescribed person or body.

¹ See eg AHPA's Submission to the Joint Standing Committee Inquiry into the operation of the NDIS Quality and Safeguards Commission (August 2020).



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Accordingly, AHPA supports Items 1-14, 22, 25-37, 39-47 and 49-51 of the Bill. However, while sympathetic to the rationale underpinning Items 15-21, 23-24 and 38,² we believe that the changes that would be achieved by these items are not far-reaching enough. This is because under the current legislation the amendments only apply to registered providers or, in some contexts, only workers employed or otherwise engaged by registered providers.

It has consistently been AHPA's view that all NDIS providers should be held to the same standards. At present, providers of supports under a self-managed plan are not required to be registered with the NDIS.³ The consequence is that the more rigorous standards embedded in the Act, including compliance with NDIS Practice Standards,⁴ maintenance of a complaints management and resolution system,⁵ and incident management,⁶ do not apply to those providers.

This discrepancy has been condemned previously by other submitters,⁷ and by the Australian Greens in the Senate Community Affairs Legislation Committee Inquiry into the NDIS Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017.⁸ Australian Labor Party Senators in that Inquiry also raised concerns while recognising participants' right to choice and control over selection of providers.⁹ The Tune Review also noted, albeit in the primary context of recommending that plan management be subject to the same safeguards and risk assessment as those required of self-managing participants, concerns from submitters that having access to an unregistered provider:

² We have no comment to make on Items 47-48 because they technically follow from Items 15-19 and 21 respectively. We have no comment to make on Item 50 to the extent that it technically follows from Item 38.

³ Sections 14 and 33(6) of the Act, cf ss 33(6), 73E.

⁴ Sections 73F and 73T.

⁵ Sections 73F and 73W.

⁶ Sections 73Y and 73Z.

⁷ Senate Community Affairs Legislation Committee Report on the NDIS Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017 (November 2017), 2.11, 2.46-2.47.

⁸ Senate Community Affairs Legislation Committee Report on the NDIS Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017 (November 2017), Additional Comments by Australian Greens Senators, 1.48-1.51.

⁹ Senate Community Affairs Legislation Committee Report on the NDIS Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017 (November 2017), Additional Comments by Australian Labor Party Senators, 1.20-1.28.



‘arguably exposes participants to greater risk of abuse, neglect or exploitation – particularly as the additional protections put in place for registered providers are not required of unregistered providers.’¹⁰

Further, while other aspects of the NDIS regulatory framework such as the NDIS Code of Conduct and some of the Act’s compliance and enforcement provisions apply to both registered and unregistered providers,¹¹ overall, protection of participants from harm by unregistered providers relies more heavily upon the Code of Conduct, which, being part of the NDIS Rules, is delegated legislation and so less subject to public scrutiny.¹²

This two-tiered protection regime is arguably inconsistent with the Objects and Principles of the Act.¹³ We further note that the Robertson Review recommendations informing the current Bill are concerned not only with strengthening regulatory protections and enforcement, but also with ‘filling the gaps’ where protection is at present weakest or absent. Although Ms Ann-Marie Smith died in the context of receiving disability support from a registered provider, Recommendation 1 remains apt:

‘The Commission should act to identify earlier those people with disability who are vulnerable to harm or neglect. Every stage of decision-making, including corrective regulation, should be alive to factors indicating that a participant may be vulnerable to harm or neglect. . . The Commission and the NDIA should have a freer and two-way flow of information for this purpose.’¹⁴

AHPA has submitted previously to this Committee that it is imperative to develop a more streamlined system that limits opportunities for providers or practitioners to slip through gaps in systems or to be

¹⁰ David Tune, *Review of the NDIS Act 2013: Removing Red Tape and Implementing the NDIS Participant Service Guarantee*, December 2019, 7.71.

¹¹ Section 73V; ss 73ZE-73ZR.

¹² The Senate Standing Committee for the Scrutiny of Bills (‘Scrutiny Committee’) report on the NDIS Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017 expressed concern in relation to the legislative status of the Code (JSC Progress Report September 2017, 2.131-2.146). This concern was also raised by several submitters to the Senate Community Affairs Legislation Committee Inquiry into the Bill (see fn7, 2.1-2.29). The Scrutiny Committee’s concern centred on the fact that significant matters addressed in the Code would then not be set out in primary legislation and so would not be subject to the same level of scrutiny. AHPA acknowledges that in 2017 the Code itself was yet to be incorporated into the Rules, but we submit that it should remain a concern that any amendments to the Code will still be subject to a lower level of public scrutiny.

¹³ Sections 3(1)(a), (ga) and (i); s 4(6).

¹⁴ *The Independent review of the adequacy of the regulation of the supports and services provided to Ms Ann-Marie Smith, an NDIS Participant, who died on 6 April 2020* (the Robertson Review dated 31 August 2020).



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sanctioned under one scheme and yet operate under another.¹⁵ By the same token, registration requirements should not be so onerous that they entail unnecessary duplication and excessive costs.

Participants should not be forced to choose an unregistered provider in the face of limited availability of registered providers, and NDIS participants' right to be safe from harm must not be traded off against their right to choose and control their supports.

—

Yours sincerely

Claire Hewat
Chief Executive Officer

¹⁵ AHPA, Submission to the Joint Standing Committee Inquiry into the operation of the NDIS Quality and Safeguards Commission (August 2020).