

6 November 2020

Joint Standing Committee on the NDIS

Department of the Senate

PO Box 6100

Parliament House

Canberra, ACT 2600

Dear Chair,

Inquiry into the NDIS Quality and Safeguards Commission - Questions on Notice

Thank you for the opportunity to provide responses to Questions on Notice. We apologise for the delay in providing these.

Question 1:

- *In 2018, Inaugural Commissioner Grahame Head gave a speech to CEDA:*

“We’re able to take a range of actions including deregistration, banning orders or seeking the application of civil penalties so we really do have a comprehensive tool kit. We have comprehensive regulatory powers and functions, and real regulatory teeth.”

Do you agree with these comments?

On paper, the Commission seems to have appropriate regulatory powers, primarily through the operation of the *Regulatory Powers (Standard Provisions) Act 2014*.

However, the powers available to any regulatory body are only as effective as the body exercising them. Put simply, the powers are only effective if they are being used and the Commission must ensure that it builds proactive, accessible and transparent processes to facilitate efficient and comprehensive investigations. It must also ensure that it is visible and engenders trust amongst Participants and their support networks

In addition, the powers are relevant only to compliance and enforcement and we would argue that the Commission needs to take a multi-faceted approach to improving quality and safety. This is discussed in more detail in our response to Question 2.

We are also concerned that some gaps remain. For example, concerns have been raised that there is minimal coverage of health services in the standards of the Commission.¹

Question 2

- *What impact is the Commission's current complaint-handling processes having?*

With the Commission only having been in operation since July 2019, it is difficult to assess its performance to date. As at 20 October 2020, there are just under 50 items recorded in the Commission's register of actions but little information regarding the nature and severity of the complaint.

There is little information available regarding the number of complaints, the visibility of the Commission, understanding of the Commission's role and trust amongst Participants, nor the timeliness and responsiveness of the Commission's investigations. We recommend that the Commission be required to publically report on metrics relevant to these issues to ensure there is appropriate transparency and accountability of their work.

The Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability also heard evidence relevant to this issue, with witnesses highlighting the limits of a compliance based approach to measuring quality in the delivery of disability services and the unreliability of paperwork and staff self-reporting as a way of monitoring quality.²

*"a compliance-based approach may be unlikely to uncover the more subtle abuses which appear in people's everyday lives, due to its concentration on the measurement of policy and procedure more than implementation and engagement"*³

The importance of any quality assurance system including observation of practice by well-trained auditors was also highlighted.⁴

This evidence tends to suggest that the Commission must not focus solely on a traditional compliance and enforcement approach. Proactive observation, training, education and support for providers should all be part of the Commission's approach.

Question 3

- *What impact is 'uberisation' of the disability workforce having?*

The push for individual working arrangements arguably makes the Commission's job more difficult as there will be a larger number of smaller providers to regulate. It also makes training and supervision more difficult, with there being less formal and informal mentoring of new entrants to the workforce.

¹ Disability Royal Commission "Report on Public Hearing 4" at 107.

² Disability Royal Commission, 'Report on Public Hearing 3' at 324.

³ Disability Royal Commission 'Statement of Sally Antoinette Robinson', 29 November 2019 at 68.

⁴ Disability Royal Commission 'Statement of Christine Bigby', 1 December 2019 at 37-39

Further, insecure working arrangements are likely to be unattractive to many disability workers, or potential members of that workforce. This may create a workforce vacuum, likely to be filled with inexperienced, under skilled and under paid workers, with obvious consequent risks for quality and safety.

Much has been made of the principle of 'choice and control' in this context and the need to provide flexibility for Participants. However, we would argue that 'choice and control' can only be properly exercised in the context of a properly skilled and regulated workforce and the safety of vulnerable Participants cannot be compromised.

This concern is also shared by the wider disability community. The Disability Royal Commission heard evidence from several witnesses that casualisation of staff reduces safety for residents of group homes.⁵

Question 4

- *Your submission outlines several case studies. How are these issues impacted by the Commission?*

As noted, it is difficult to assess the effectiveness of the Commission at this early stage. Obviously the case studies demonstrate failures in the system that the Commission would ideally prevent and, at the very least, punish.

Question 5 (raised in transcript by Senator Steele-John)

- *If possible, please provide examples of best practice quality and safety regulation in other injury insurance schemes?*

We have consulted widely and unfortunately do not believe that the quality and safety regulatory frameworks in other Australian schemes could be considered best practice.

We note that the Victorian Disability Worker Scheme was launched in July 2020 and regulates the both registered and unregistered disability workers in Victoria. While it is too soon to assess the effectiveness of the scheme, it could provide a helpful comparison.

Please do not hesitate to contact us if we can be of further assistance.

Kind Regards

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⁵ Disability Royal Commission, 'Report on Public Hearing 3' at 308.