



**Joint Standing Committee on the NDIS**  
**Inquiry into the NDIS Quality and Safeguards Commission**  
**Answer to Question on Notice**

Reference: SQ20-000058

## Complaints received and resolved

27 August 2020

Hansard Page: Written

### Question:

*[In relation to SQ20-000050]:*

1. How many 'open' and 'closed' complaints are there for each 'issue category' (that is, Provider practice; Provider policies and procedures; Worker conduct or capability; and Alleged abuse and neglect)?
2. How long are complaints generally open for? Please provide the average time, as well as lower and upper bound figures.
3. What is the average time taken before a complaint is 'closed'?
4. Please provide a detailed breakdown of the circumstances in which the Commission would take no action in relation to a complaint, with examples.  
*Note: In the Table: Recorded outcome per complaint issue – closed complaint, 47.3 per cent of complaints are recorded as '16(3)(a) – take no further action'.*
5. What does 'giving assistance' under paragraph 16(3)(b) of the *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018* (Complaints Rules) usually involve?
6. What does a 'resolution process' under paragraph 16(3)(c) of the Complaints Rules involve?
7. Please provide data on requests to 'reconsider a decision', including:
  - a. What kind of complaints are they?
  - b. How many are affirmed?
  - c. How many are altered?
  - d. How many go to the Ombudsman?

**Answer:**

1. Open and closed complaints by issue type (1 July 2018 - 30 June 2020)

Category	Open	Closed	Total	%
Provider practice	725	3,514	4,239	52%
Provider policies and procedures	376	1,218	1,594	20%
Alleged abuse and neglect	243	781	1,024	12%
Worker conduct or capability	324	987	1,311	16%
<b>Total</b>	<b>1,668</b>	<b>6,500</b>	<b>8,168</b>	<b>100%</b>

20%      80%

2. Length of time complaints are open (1 July 2018 – 30 June 2020)

**Average time open:** 71 days

**Median time open\*:** 49 days

**Lower range:** Closed same day

**Upper range:** 504 days

*\*Median is also supplied as outliers can skew the average*

3. Average time taken to close complaints (1 July 2018 – 30 June 2020)

**Average time taken to close:** 68 days

**Median time taken to close\*:** 47 days

*\*Median is also supplied as outliers can skew the average*

4. Section 16(3)(a) of the *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018* (Complaints Rules) provides that the Commissioner can take no further action, or defer taking action, on the issue on the basis that section 17 applies to the issue. Section 17 further provides that the Commissioner **may** decide to take no further action in relation to a complaint, or issue raised in the complaint, if the Commissioner is satisfied that one or more of the following apply:

(a) the complaint was not raised in good faith;

*The complainant was not acting honestly and fairly, or was making deliberate misrepresentations when making the complaint.*

(b) the complaint or issue has been, or is being, dealt with under this instrument;

*The same complaint or issue has been or is already being dealt with under the Complaint Rules.*

(c) the complaint has been withdrawn under section 18;

*Section 18 (1) of the Complaints Rules permits a complainant to withdraw their complaint at any time by advising the Commissioner orally or in writing or by any other means appropriate in the circumstances.*

*Sections 18(3) and (4) provide the NDIS Commission may continue to deal with a complaint even though the complainant has withdrawn it, after considering the wishes of the person or person with disability affected by an issue raised in the complaint; the health, safety or welfare of any person with disability affected by an issue raised in it and whether the complaint may have been withdrawn on the basis of victimisation, coercion or duress.*

- (d) a person with disability affected by an issue raised in the complaint does not wish the issue to be considered by the Commissioner;

*The NDIS Commission must consider the health safety and welfare of any person with disability affected by an issue, and also consider whether the person with disability has been subject to victimisation, coercion or duress when deciding to take no further action (17(2)).*

- (e) the complaint or issue is better dealt with by another person or body;

*Another complaint handling or investigative body has expertise, powers or resolution options better suited to the issues.*

- (f) there is insufficient information about the complaint, the issue or the complainant to take any further action;

*The complaint is so lacking in detail that no inquiries can be made – for example, no date, location or name/s.*

- (g) having regard to all the circumstances, further action in relation to the complaint or issue is not appropriate or warranted.

*The NDIS Commission may decide that after considering the entirety of the situation, further action on the complaint or issue is not suitable or justified.*

5. Where a complaint is closed under section 16(3)(b), the NDIS Commission must give advice and assistance to the complainant, the person with disability affected by the issue and the NDIS provider to which the issue relates.

Advice and assistance usually involves phone and/or email contact with the parties to a complaint with the purpose of supporting the complainant to resolve their complaint directly with the NDIS provider without the Commissioner's ongoing formal involvement. In some cases the complaints officer will assist them to find a satisfactory resolution of the complaint and in some cases the complaints officer may provide advice on the issues in dispute and decide the parties are able to pursue and resolve the matter without the complaints officer's further intervention.

6. Section 20(1) of the Complaints Rules provides that if the Commissioner decides to undertake a resolution process in relation to a complaint or an issue raised in a complaint, the Commissioner may:

- (a) 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 Commissioner; or

- (b) request the complainant, the NDIS provider and any other person to participate in a conciliation process; or
- (c) provide advice to the NDIS provider in relation to the complaint or issue; or
- (d) require the NDIS provider to undertake remedial action in relation to the complaint or issue and report back to the Commissioner; or
- (e) take any other action the Commissioner considers appropriate in the circumstances.

When taking action under section 20(1), the Commissioner may do one or more of the following:

- (a) review documents;
- (b) visit the location at which the supports or services are provided by the NDIS provider;
- (c) visit the offices of the NDIS provider;
- (d) discuss the complaint or issue with the complainant, the person with disability affected by the issue, the NDIS provider or any other person;
- (e) request information relating to the issues raised by the complaint from any person.

7a. Reconsiderations by complaint issue type (1 July 2019 to 30 June 2020)

Primary Category	Total	%
Provider practice	20	56%
Worker conduct or capability	7	19%
Provider policies and procedures	7	19%
Alleged abuse and neglect	2	6%
<b>Grand Total</b>	<b>36</b>	<b>100%</b>

7b/c. Reconsiderations upheld (1 July 2019 to 30 June 2020)

Type	Total	%
Original Decision Upheld	17	46%
New Resolution Reached	6	16%
Reconsideration Withdrawn	4	11%
Reconsideration Deemed New Complaint	4	11%
Reconsideration Still Open	5	14%
<b>Total</b>	<b>36</b>	<b>100%</b>

7d. Of the 36 reconsideration requests received, the NDIS Commission is aware of one complainant who raised their concerns with the Commonwealth Ombudsman.



**Joint Standing Committee on the NDIS**  
**Inquiry into the NDIS Quality and Safeguards Commission**  
**Answer to Question on Notice**

Reference: SQ20-000059

## Regulatory Powers

27 August 2020

Hansard Page: Written

### Question:

[In relation to SQ20-000052]:

1. Are the powers under the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act) the only 'unannounced spot check' or monitoring-type powers that the Commission has?
2. What was the original intention of these powers when the Commission was established?
3. What leads the Commission to consider exercising these powers?
4. What is the process for requesting a warrant to exercise powers under the Regulatory Powers Act? How long does this usually take?
5. What kind of documents are retrieved when an authorised person from the Commission enters premises under a warrant? Between who are the interviews held?
6. Of the nine occasions that monitoring powers under the Regulatory Powers Act were exercised, what were the outcomes?
  - a. How many staff were involved in the exercise of powers on these occasions?

### Answer:

1. Authorised persons from the NDIS Quality and Safeguards Commission (NDIS Commission) can attend any premises and exercise monitoring powers, either with the consent of the occupier or through the execution of a monitoring warrant issued under section 32 of the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act). The NDIS Commission's ability to use this provision of the Regulatory Powers Act is enlivened through section 73ZE of the *National Disability Insurance Scheme Act 2013* (NDIS Act). Any person appointed by the Commissioner for the NDIS Commission as an 'inspector' is an authorised person for the exercise of monitoring powers.

Apart from these powers, the NDIS Act gives the Commissioner the power to do all things necessary or convenient to be done for, or in connection with, the performance of his or her functions and the function of the NDIS Commission's officers is to assist the Commissioner in the exercise of those functions (sections 181(D)(5) and 181(B)). In the ordinary course of the NDIS Commission's regulatory activities, its officers visit NDIS providers' premises and premises where NDIS supports and services are being provided to participants. These visits can be for a range of purposes, including responding to a report of an incident, identifying whether restrictive practices are being used in the provision of NDIS services, dealing with a complaint, assessing compliance with the NDIS Act and educating providers about their obligations.

2. One of the NDIS Commissioner's core functions in section 181E of the NDIS Act is to secure compliance with the NDIS Act through effective compliance and enforcement arrangements, including through the monitoring and investigation functions conferred on the NDIS Commissioner by Division 8 of Part 3A of Chapter 4. Division 8 establishes a compliance and enforcement framework for monitoring compliance with the NDIS Act and taking action to enforce compliance. Section 73ZE (which deals with monitoring powers), and section 73ZF (which deals with investigative powers) both trigger the Commonwealth's standard suite of provisions in relation to the use of these powers.

The entirety of Part 3A of Chapter 4 of the NDIS Act is subject to monitoring. This means that inspectors from the NDIS Commission can use these powers to assess the compliance of all NDIS providers against the requirements of the NDIS Code of Conduct, and assess the compliance of registered NDIS providers against their conditions of registration, including adherence to requirements imposed on them by the NDIS Rules. The NDIS Rules cover a broad range of obligations on registered NDIS providers including the imposition of NDIS Practice Standards, requirements to notify the NDIS Commissioner of Reportable Incidents and the need to have an effective complaints management system. The powers enable inspectors to enter a premises, to search, examine and inspect the premises and anything in it, and take extracts and make copies of documents.

3. A wide range of tools, methods and powers are available to the NDIS Commission. The NDIS Commission's Compliance and Enforcement Policy outlines that the use of these tools will be determined on a case-by-case basis, and that monitoring powers will be used to help prevent people with disability from experiencing harm arising from poor quality or unsafe supports or services.

A monitoring activity, such as a site visit or regular contact with people working in the NDIS market, may assess compliance with the NDIS Act generally or may target particular responsibilities or obligations. This will help the NDIS Commission to make decisions about any further regulatory actions or support that may be necessary. The monitoring powers can also be used to determine whether information, given to the NDIS Commission in compliance with, or in purported compliance with Part 3A, is correct.

4. To obtain a monitoring or investigation warrant under the Regulatory Powers Act requires the NDIS Commission to prepare the warrant instrument and an affidavit containing sufficient information to justify the granting of the warrant by a Magistrate. Taking into account time to prepare the necessary documentation and internal processes, and the availability of a Magistrate to consider the application for a warrant, a warrant can be obtained within five to 10 business days.

5. Under a monitoring warrant, only extracts or copies of documents can be 'retrieved'. To date, the types of documents authorised officers of the NDIS Commission have sought when executing monitoring warrants include NDIS provider communication books, risk assessment documents related to NDIS participants, operational policies and procedures, medication charts related NDIS participants, incident management reports, and participant progress notes. To date, execution of monitoring warrants have involved questioning of key personnel of NDIS providers, workers employed or engaged by the NDIS provider, and in some cases where appropriate NDIS participants. To date, the NDIS Commission has not executed an investigation warrant.
6. Of the nine occasions that monitoring powers under the Regulatory Powers Act were exercised, the outcomes were:
  - *records inspected and interviews conducted*: four occasions – between two and three staff involved on each occasion;
  - *evidence obtained for taking regulatory actions*: two occasions – four staff involved on each occasion;
  - *Regulatory action taken*: one occasion – two staff involved; and
  - *No regulatory action taken due to consent to enter being given*: two occasions – two staff involved on each occasion.

Aside from the use of monitoring powers on the nine occasions above NDIS Commission officers engage in a range of ways with NDIS providers in the context of compliance and investigative activities. This may include compelling the provision of information under section 55A of the NDIS Act, imposing conditions on registered NDIS providers under section 73F of the NDIS Act, and requiring providers to initiate actions under various Rules, including for example the *NDIS (Incident Management and Reportable Incidents) Rules 2018*.

In addition to site visits associated with compliance and investigations activities, NDIS Commission officers also engage directly with participants and providers in the course of exercising the Commissioner's functions, including supporting participants with complaints, advising on positive behaviour support strategies, and a range of other engagement activities that involve direct contact with both people with disability and providers.



**Joint Standing Committee on the NDIS**  
**Inquiry into the NDIS Quality and Safeguards Commission**  
**Answer to Question on Notice**

Reference: SQ20-000060

## Deaths reported to the NDIS Commission

27 August 2020

Hansard Page: Written

### Question:

[In relation to SQ20-000054]:

1. Were the 431 notifications outside the 24-hour timeframe a breach of 73J of the *National Disability Insurance Scheme Act 2013* (NDIS Act), which requires registered NDIS providers to comply with conditions of registration?
  - a. If yes - how many of these breaches were considered for a penalty to be applied?
  - b. Why wasn't a penalty applied?  
*Note: Question Reference SQ20-000055 states that the Commission issued one penalty in the period 1 July 2018 to 31 July 2020.*
2. What does the phrase 'in connection with provision of NDIS supports and services' mean in the context of reporting the death of an NDIS participant?
3. What happens after a death is reported? Does the Commission investigate a death?

### Answer:

1. The NDIS Quality and Safeguards Commission's (NDIS Commission) Compliance and Enforcement Policy (available at: [www.ndiscommission.gov.au/document/666](http://www.ndiscommission.gov.au/document/666)) details the NDIS Commission's approach to non-compliance and the range of considerations it makes in exercising each of the regulatory responses available under the *National Disability Insurance Scheme Act 2013* (NDIS Act).

These considerations contribute to the responsive and proportionate approach to regulation that the NDIS Commission takes, applying the strongest actions to the most serious issues and breaches.

With this approach in mind, the NDIS Commission commits to utilising the most appropriate and proportionate regulatory response in the circumstances, including the issuance of infringement notices.

In some instances, compliance and enforcement action is not warranted. This may occur when the NDIS Commission receives multiple notifications of a death regarding the same participant, or where further information reveals that the death of the person with disability did not occur in connection with the provision of NDIS supports and services.



The NDIS Commission has commenced a compliance strategy targeting their compliance with incident management, prevention and notification requirements under the *NDIS (Incident Management and Reportable Incidents) Rules 2018*, and conditions of registration.

As a result of this strategy, the NDIS Commission has commenced compliance action against a number of providers where systemic non-compliance with incident reporting obligations have been identified. The NDIS Commission will continue to take appropriate and systematic action as non-compliance is identified.

2. The phrase 'in connection with' is intended to be broad. It covers incidents that:
  - may have occurred during the course of supports or services being provided;
  - arise out of the provision, alteration or withdrawal of supports or services; and/or
  - may not have occurred during the provision of supports but are connected because it arose out of the provision of supports or services.

Whether a reportable incident occurs in connection with the provision of services and supports also depends on the nature and extent of the services being provided.

The phrase 'in connection with' does not mean that the registered NDIS provider directly caused the incident but simply there was some link between service provision and what happened to the person with disability.

3. Upon receiving a notification regarding the death of a person with disability, the NDIS Commission will commence an immediate review and will ensure the safety of other participants.

In most cases, the death of the person will be expected and from natural causes. In those cases of expected deaths, where there are no underlying risk factors, it is anticipated that the NDIS Commission will be able to review the notification and make an assessment in a relatively short time.

However, a significant number of matters remain open, as more information about the cause of death may be required, including information from the relevant state or territory coroner. The coronial process can take many months.

When a death is reported, the NDIS Commission and providers work with police, coroners and other regulatory bodies that may be involved.

The NDIS Commission requests and reviews information and documents about the actions taken by the NDIS provider prior to the death, at the time of death, and after the death. The purpose of this review is to identify any factors that may have contributed to the death of the participant.

In some matters, where initial information raises questions about the conduct/actions of the provider or workers, the NDIS Commission may commence its own investigation.

If the actions of a provider or worker are found to have contributed to a death, there is a range of compliance and enforcement actions that the NDIS Commission can take.



**Joint Standing Committee on the NDIS**  
**Inquiry into the NDIS Quality and Safeguards Commission**  
**Answer to Question on Notice**

Reference: SQ20-000061

## **Travel expenditure**

27 August 2020

**Hansard Page:** Written

### **Question:**

*[In relation to SQ20-000053]:*

1. What are the 'official purposes' that travel is undertaken for?
2. What proportion of travel expenses would have been expended on the 9 exercises of the Commission's Monitoring Powers under the Regulatory Powers Act?
  - a. Please provide a breakdown of travel expenses for individual Commission employees.
3. Which employees use the lounge membership?

### **Answer:**

1. In relation to SQ20-000053, amounts of the travel in 2018-19 and 2019-20 related to the establishment of the NDIS Commission across all states and territories, excluding Western Australia.

Travel during this period included major engagement activities, including roadshows and communication with people with disability, NDIS providers, peak bodies, advocates and state and territory government organisations such as:

- two rounds of roadshows for providers in each of the five states and territories transitioning to the NDIS Commission from 1 July 2019, which were attended by 2,758 people – this followed on from a similar program that had been rolled out in New South Wales and South Australia the year before;
- NDIS Commission senior staff presented at major events, including:
  - the annual VALID Having a Say conference (Victoria);
  - National Disability Services (NDS) state conferences and national annual CEOs forum;
  - various quality and safeguarding meetings and workshops (organised by NDS);
  - BIG Thinking Symposium: 'NDIS – The next big challenge to your business: Implementation of NDIS Quality and Safeguards Commission and Practice Standards' (Queensland);

- Speak Out conference (Tasmania);
- Disability Advocacy Resource Unit: Advocacy under Pressure conference (Victoria); and
- National Disability Advocates forum, which brought advocates from around the country to a two-day national forum in Melbourne (Victoria).

The NDIS Commission estimates that during 2019-20, NDIS Commission staff presented at events attended by more than 17,500 stakeholders.

2. The proportion of travel expenses undertaken by the NDIS Commission's Investigations staff for the highly specific purpose of the exercise of the NDIS Commission's monitoring powers – where a monitoring warrant was in place under the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act) – was 0.85 per cent. This figure represents a small proportion of overall travel related to monitoring and enforcement activities conducted by the NDIS Commission.
  - a. The average travel expense per employee for the nine trips referred to in this question was \$672.33.
3. During the 2019-20 financial year, the NDIS Commission funded four NDIS Commission employees' airline lounge memberships. The NDIS Commission considers airline lounge memberships for travellers undertaking regular air travel for NDIS Commission business. Each new membership or renewal is for 12 months at a time.



**Joint Standing Committee on the NDIS**  
**Inquiry into the NDIS Quality and Safeguards Commission**  
**Answer to Question on Notice**

Reference: SQ20-000062

## **Infringement Notices**

27 August 2020

**Hansard Page:** Written

### **Question:**

1. In relation to answer to question Reference: SQ20-000055, which confirms that the NDIS QSC has only issued one penalty to a provider, can you confirm that this penalty was the \$12,500 penalty issued to Integrity Care on 21 May 2020?
2. Why haven't more penalties been issued?
3. What was the intention of the powers to issue penalties when the Commission was established?
4. What is the process for issuing a penalty?
5. How many providers have been considered for a penalty but not had one issued? What types of breaches have been committed in these cases? What are the usual reasons the provider does not receive a penalty?

### **Answer:**

1. At the time of the response to SQ20-000055, the NDIS Quality and Safeguards Commission (NDIS Commission) had issued one infringement notice. This infringement notice was issued to Integrity Care (SA) Pty Ltd on 21 May 2020. The amount payable by Integrity Care (SA) Pty Ltd was \$12,600.

The NDIS Commission has issued an infringement notice to another registered NDIS provider on 22 September 2020. The provider has until 20 October 2020 to pay the amount payable in this notice, which is \$12,600.

2. The NDIS Commission's Compliance and Enforcement Policy (available at: [www.ndiscommission.gov.au/document/666](http://www.ndiscommission.gov.au/document/666)) details the NDIS Commission's approach to non-compliance and the range of considerations it makes in exercising each of the regulatory responses available under the *National Disability Insurance Scheme Act 2013* (the NDIS Act).

These considerations contribute to the responsive and proportionate approach to regulation that the NDIS Commission takes, applying the strongest actions to the most serious issues and breaches. The compliance and enforcement actions taken by the NDIS Commission to date are indicative of this approach.

With this approach in mind, the NDIS Commission commits to utilising the most appropriate and proportionate regulatory response in the circumstances, including the issuance of infringement notices. At this time, the NDIS Commission has determined that the issuance of an infringement notice was appropriate in the two instances referred to above.

The NDIS Commission, particularly within the first 12 months of its operations in each transitioning state and territory, has sought to ensure that providers are aware of their obligations and take action where non-compliance has been identified. In addition, the NDIS Commission has taken a range of other regulatory actions in relation to identified non-compliance, including through the issuing of compliance notices and warning letters.

3. NDIS Commission's Infringement Notice Policy (available at: [www.ndiscommission.gov.au/document/1296](http://www.ndiscommission.gov.au/document/1296)) details the NDIS Commission's approach to the use of infringement notices and the legislative framework within which infringement notices can be issued.

The intention of the powers to issue infringement notices is to provide an efficient way of dealing with non-compliance, without a matter needing to go to court. The recipient of an infringement notice may pay the amount, thereby discharging their liability for non-compliance with the NDIS Act. The amount payable under an infringement notice will be less than the maximum amount that a court could order a person to pay if it found that the provision was breached.

This is supported by the explanatory memorandum to the National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017, which stated with respect to the introduction of section 73ZL of the NDIS Act:

Consistent with Commonwealth guidelines for infringement notice schemes and the Regulatory Powers Act, infringement notices may be used to deal with less serious and less factually complex contraventions, where initiating court proceedings would be disproportionately costly (see Chapter 6 of the Australian Government Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers).

4. The provisions relevant to the NDIS Commission's use of infringement notices are section 73ZL of the NDIS Act and Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014*.

The Commissioner of the NDIS Commission, or his or her delegate, may give a person an infringement notice if he or she believes on reasonable grounds that a particular civil penalty provision of the NDIS Act has been breached.

The Commissioner must give the infringement notice within 12 months of the alleged breach. The notice can only relate to an alleged breach of one provision of the NDIS Act – either for a single breach of that provision, or multiple breaches of a provision that required a person to do something within a particular period or before a particular time.

The penalty amount in each infringement notice will depend on whether it is for single or multiple alleged breaches of a provision, and whether the recipient is an individual or body corporate. The NDIS Commission is unable to change the amount of the penalty.

Once the Commissioner has issued an infringement notice, the recipient has 28 days to pay the penalty amount. If the penalty amount is paid, the recipient is discharged of any liability relating to the single breach of a provision, or multiple breaches of a provision of the NDIS Act.

Should the recipient choose to not pay a penalty amount, the full range of administrative and enforcement responses remain available to the NDIS Commission, including seeking civil penalties.

5. On a number of occasions, the NDIS Commission has considered issuing an infringement notice to a provider, but not had one issued. In these circumstances, it was alleged that these providers had engaged in conduct in contravention of sections 73B and 73J of the NDIS Act:
  - a. 73B – delivering disability supports and services for which it is required to be registered, but was not registered for; and
  - b. 73J – failure to comply with conditions of registration, through failures to comply with requests for information issued by the NDIS Commissioner and failing to notify the NDIS Commissioner of a reportable incident.

In these circumstances, it was determined that other compliance tools provided a more appropriate regulatory response in order to remedy the providers' non-compliance. This was due to the factors present, including voluntary action taken by providers to remedy the non-compliance, the nature of non-compliance being systemic and technical evidentiary issues.



NDIS Quality  
and Safeguards  
Commission

**Joint Standing Committee on the NDIS**  
**Inquiry into the NDIS Quality and Safeguards Commission**  
**Answer to Question on Notice**

Reference: SQ20-000063

## **Impacts of COVID-19 on participants and providers**

27 August 2020

**Hansard Page:** Written

### **Question:**

1. Is the Commission considering the use of advanced analytics or any other review to assess whether there has been a 're-institutionalisation by stealth' of participants in SIL settings, under the cover of the COVID-19 pandemic?
2. To what extent have providers been “locked out” of providing supports to participants (for example, participation in day programs, outings and job programs) during the COVID-19 pandemic? How has this affected choice and control for participants and their families?

### **Answer:**

1. Since the outset of the pandemic, the NDIS Quality and Safeguards Commission (NDIS Commission) has taken steps to increase its oversight of changes to NDIS supports and services provided by registered NDIS providers in all settings, by introducing specific notification requirements in relation to COVID-19 on 24 March 2020.

These requirements require registered providers to notify the NDIS Commission of certain changes and events that they experience as a result of COVID-19, such as an inability to continue to provide supports to participants, changes in available workforce or a COVID-19 infection in a participant or a worker.

The NDIS Commission has also used its complaints and reportable incidents functions to monitor the experience of NDIS participants experience, particularly during periods of restrictions arising from Public Health Orders.

The NDIS Commission has developed an integrated central data and analytics capability whose work spans data management and includes developing methods for the use of the NDIS Commission’s data in enabling proactive safeguarding. The Data and Analytics group supports the NDIS Commission to report on, and progressively evaluate, short-term outputs and mid and longer-term outcomes. It is intended that findings from these reports will support the prioritisation of future research and will inform the NDIS Commission of emerging trends and issues.

2. It is a condition of registration that NDIS providers comply with all relevant state and territory laws, including public health orders. In some cases, the ceasing of certain supports has been necessary to abide by state and territory public health orders and reduce risks to participants.

The NDIS Commission has been monitoring providers who have notified that they have ceased supports on a temporary or permanent basis as a result of COVID-19. Many changes to services have related to temporary cessation of supports or changes in the method of delivery of supports, including to comply with state and territory restrictions that affected these types of activities. The NDIS Commission has issued a number of Provider Alerts to advise NDIS providers of their obligations with regard to continuity of critical supports and consulting participants on any changes to services and supports.

Participants can also decide whether or not they want to continue to receive certain supports during the pandemic, where these are able to be delivered. The NDIS Commission encourages anyone to make a complaint about an NDIS support or service where a participant has had unjustified restrictions to their choice and control, over and above the necessary changes in accordance with public health orders and advice.

As at 10 September 2020, the NDIS Commission has undertaken four investigations and 27 compliance matters concerning COVID-19 and potential breaches of provider conduct. Many of these include instances where providers are alleged to have failed to enable participants to make informed choices around service provision, or where providers have failed to ensure continuity of supports to participants.