

# **Australian Government response to the Joint Standing Committee on the National Disability Insurance Scheme (NDIS) report: NDIS Quality and Safeguards Commission**

## **Introduction**

The Australian Government welcomes the report from the Joint Standing Committee on the NDIS Quality and Safeguards Commission. The Government is committed to continually improving all aspects of the NDIS and is currently progressing an independent review of the NDIS design, operations and sustainability. Quality and safeguarding arrangements will form part of this review.

Action has been taken in response to many of the recommendations of the Committee. The Government supports 21 recommendations, with recommendations [5](#), [6](#), [7](#), [8](#), [9](#), [17](#), [28](#), [29](#) and [30](#) being referred to the independent review of the NDIS to inform further consideration.

## **Recommendation No. 1**

### **Recommendation**

The committee recommends that the NDIS Quality and Safeguards Commission develop an overarching communications and engagement strategy for building visibility of its work among providers and people with disabilities and engaging in capacity-building activities with participants and providers. The strategy should specifically include: children and young people, Aboriginal and Torres Strait Islander people with a disability, and NDIS participants living in residential aged care.

## **Australian Government Position**

**Supported.**

## **Australian Government Response**

The NDIS Quality and Safeguards Commission (NDIS Commission) put in place a Communications and Engagement Strategy (the Strategy) in May 2021, which covers all stakeholders. The Strategy includes state and territory based engagement plans. A specific strategy for Aboriginal and Torres Strait Islander participants is also in development.

The NDIS Commission is continually reviewing and updating the Strategy to ensure the NDIS Commission is engaging with its stakeholders in the most effective way and that the result of its engagement has a positive impact on the quality of services and safeguards for NDIS participants.

## **Recommendation No. 2**

### **Recommendation**

The committee recommends that the NDIS Quality and Safeguards Commission develop information sharing protocols with states and territories, and, as appropriate, publish these protocols on its website. Information sharing protocols should cover general information sharing and information sharing in relation to specific areas such as worker screening, restrictive practices and residential settings. Where arrangements are already in place, the committee recommends the Commission review these agreements to ensure appropriate clarity around two-way information sharing and to ensure that privacy safeguards are in place.

## **Australian Government Position**

**Supported.**

## **Australian Government Response**

The NDIS Commission has information sharing protocols in place with more than 75 state and territory agencies, for the purposes of information sharing relevant to the functions of the NDIS Commissioner, or the state or territory bodies, as this relates to

safeguards for people with disability. This includes specific protocols directly relating to the functions of the NDIS Commissioner.

Provisions in the *National Disability Insurance Scheme Amendment (Improving Supports for At Risk Participants) Act 2021* came into effect on 29 October 2021, which includes greater protection for NDIS participants through more effective information sharing arrangements. This will include making or amending of Rules that prescribe additional persons or bodies with whom the NDIS Commissioner may share information for the purposes of the National Disability Insurance Scheme Act 2013 (NDIS Act). Information sharing protocols will be revised to reflect new or amended Rules related to information disclosure.

## **Recommendation No. 3**

### **Recommendation**

The committee recommends that the NDIS Quality and Safeguards Commission and National Disability Insurance Agency together develop and publish protocols for coordination and engagement to ensure consistent messaging and clear division of responsibilities.

### **Australian Government Position**

**Supported.**

### **Australian Government Response**

The NDIS Commission and the National Disability Insurance Agency (NDIA) have protocols in place covering a range of operational areas which set out roles and responsibilities, points of engagement, and co-ordination of activities, including:

- complaint handling and reportable incidents
- complex supports
- the transfer and exchange of data and information
- market stewardship and oversight

- regulatory interfaces (provider registration; fraud and compliance; provider service disruptions and emergency response as a result of COVID-19; provider exits, and
- identifying and responding to participants who may be at risk (working draft).

The protocols are directed to staff of the NDIA and NDIS Commission. The NDIA and NDIS Commission have published a Joint Statement on coordination and engagement in relation to participants at risk of harm, arising from the Robertson Review. The Joint Statement can be found at: [www.ndiscommission.gov.au\(Opens external website\)](http://www.ndiscommission.gov.au(Opens external website))

Both the NDIS Commission and the NDIA will continue to work together to update and provide clarity on the division of roles and responsibilities and will jointly undertake a review of the full suite of Operational Protocols to streamline and simplify referral channels and information sharing between the NDIS Commission and the NDIA.

On 9 March 2021, the Department of Social Services published the NDIS Market Roles and Responsibilities document, which outlines the role of governments in supporting and developing the NDIS market and sets out NDIS market responsibilities. This includes the responsibilities of NDIS Commission and the NDIA as well as Disability Reform Ministers, the Department of Social Services and states and territories. The document can be found at: [www.dss.gov.au](http://www.dss.gov.au)

## **Recommendation No. 4**

### **Recommendation**

The committee recommends that the Commission review its approach to publishing information on compliance activities to ensure that:

- information on compliance activities is easily accessible to providers, as well as participants and their families and advocates; and
- sufficient detail regarding breaches and compliance activity is provided to allow providers and participants to understand the nature of relevant breaches in order to improve provider practice and build confidence in the Commission's compliance activities.

## Australian Government Position

**Supported.**

## Australian Government Response

The NDIS Commission publishes information about formal compliance and enforcement actions on the NDIS Provider Register in accordance with requirements under the Section 73ZS of the NDIS Act and Part 5 of the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*.

Compliance and enforcement actions on the NDIS Provider Register can be accessed from the Quick Links on the home page of the [NDIS Commission website\(Opens external website\)](#).

Provisions in the *National Disability Insurance Scheme Amendment (Improving Supports for At Risk Participants) Act 2021* came into effect on 29 October 2021. The Bill strengthens provisions for publishing compliance activities on the NDIS Provider Register to enable participants and their carers to be informed consumers in the market.

The NDIS Commission published policies for all compliance and enforcement powers in early 2022. The policies can be found at: [www.ndiscommission.gov.au](http://www.ndiscommission.gov.au)([Opens external website](#))

The NDIS Commission updated its website, to make information about its activities more accessible for people with disability, families and other stakeholders.

## Recommendation No. 5

### Recommendation

The committee recommends that the NDIS Quality and Safeguards Commission review its compliance and enforcement model to determine how to incorporate increased proactive approaches, in particular, regular, face-to-face contact with vulnerable participants and visits to service providers sites. The review should expressly consider:

- the current use of the Commission's monitoring and investigation powers under the Regulatory Powers (Standard Provisions Act) 2014; and

- the role of Community Visitor Schemes in assisting the Commission to carry out its functions.

## **Australian Government Position**

**Referred to NDIS Review.**

## **Australian Government Response**

For most of the period since the NDIS Commission commenced on 1 July 2018, the NDIS Commission's ability to engage in face-to-face contact with participants has been limited by the COVID-19 pandemic. While continuing to work within the limitations arising from the COVID-19 pandemic, the NDIS Commission has considered its approach to enhance face-to-face contact with participants in the course of undertaking all functions particularly relating to compliance, monitoring, behaviour support and engagement.

NDIS Commission staff undertake a range of activities which involve face to face contact with people with disability and visits to locations where supports and services are delivered. As part of the continued evolution of the work of the Commission, opportunities for enhanced monitoring and site visits are being incorporated in the exercise of the Commission's current legislative responsibilities.

In addition, the NDIS Commission's strategic plan, includes a significant focus on direct engagement across all NDIS Commission functions with people with disability.

The Australian Government's independent review of the NDIS will also be an opportunity to look more broadly at improved outreach and proactive engagement with at risk participants.

The NDIS Commission and the NDIA have also worked together to enhance face-to-face contact with participants in the course of each agencies respective functions. The NDIS Commission has a Site Visit policy, and is consulting through the NDIS Commissioner's consultative committees on a policy position to *Identifying and responding to risks to NDIS participants*.

# **Recommendation No. 6**

## **Recommendation**

The committee recommends that the Australian Government revisit its 2018 review into community visitor schemes and explore amendments to the National Disability Insurance Scheme Act 2013 to establish a national community visitor scheme to be overseen by the NDIS Quality and Safeguards Commission.

## **Australian Government Position**

**Referred to NDIS Review.**

## **Australian Government Response**

The Australian Government's independent review of the NDIS will provide an opportunity to look at improved outreach and proactive engagement with at risk participants, including the role of state and territory CVS.

The Commonwealth is working with states and territories to examine opportunities to strengthen outreach models (including CVS) as per Objective 3 of Australia's Disability Strategy (ADS) Safety Targeted Action Plan (TAP), released on 3 December 2021. Disability Reform Ministers discussed outreach and visitation approaches to improve participant safety at its meeting in October 2022 and agreed the NDIS review could consider further.

# **Recommendation No. 7**

## **Recommendation**

Unless and until the National Disability Insurance Scheme Act 2013 is amended to establish a national community visitor scheme, the committee recommends that:

- the Australian Government consider expanding the functions of the NDIS Quality and Safeguards Commission to include coordination and support for state and territory-based Community Visitor Schemes to report on matters affecting NDIS participants; and

- the Australian Government through the Disability Reform Council, ensure that federal, state and territory governments work together to ensure that each jurisdiction has a community visitor scheme that can report to the NDIS Quality and Safeguards Commission on risks to NDIS participants.

## **Australian Government Position**

**Referred to NDIS Review.**

## **Australian Government Response**

The NDIS Commission can receive complaints from any person about NDIS supports and services across Australia. In addition to receiving complaints from people with disability, their family members and others, the NDIS Commission receives complaints from community visitors.

The NDIS Commission values the contribution of community visitors to quality and safeguarding in the NDIS. The NDIS Commission regards the complaints it receives from community visitors as 'expert' complaints. That is, they are complaints made by people who have experience in recognising and raising quality and safety issues in disability services, and who are likely to have already attempted the local resolution of issues.

The NDIS Commission has in place information sharing arrangements with community visitors programs where these exist in states and territories for the purpose of assisting the NDIS Commissioner in undertaking their functions under the NDIS Act, specifically where CVS are involved in visiting locations where NDIS participants receive NDIS supports and services.

The *2018 Review of Community Visitor Schemes* called for states that do not have schemes to consider establishing a scheme, and for states and territories to work together to achieve greater national consistency around the design of CVS'.

The Commonwealth supported these recommendations, although states and territories have responsibility for their implementation.

The Australian Government's independent review of the NDIS provides an opportunity look more broadly at improved outreach and proactive engagement with at risk participants.

It is important to note that the scope of CVS functions within relevant jurisdictions is often broader than people with disability who may be participating in the NDIS and



operate in the context of disability systems which reflect the arrangements that were in place prior to the person centred funding arrangements under the NDIS.

## **Recommendation No. 8**

### **Recommendation**

The committee recommends that the NDIS Quality and Safeguards Commission urgently review agreements with state and territory bodies responsible for Community Visitor Schemes to ensure there are clear protocols in place regarding:

- the scope and authority to oversee the provision of NDIS services; and
- two-way data and information sharing between Community Visitors and the Commission.

### **Australian Government Position**

**Referred to NDIS Review.**

### **Australian Government Response**

This recommendation will be explored as a part of the independent review of the NDIS.

## **Recommendation No. 9**

### **Recommendation**

The committee recommends that the Australian Government conduct a review of provider registration requirements, with a view to removing unnecessary burden while preserving quality and safety. The review should consider:

- the adequacy of the current graded requirements for small providers and providers which have met quality and safeguarding provisions as part of other registration processes
- the classification of certain supports as 'high-risk' for the purposes of requiring registration (for example, early childhood supports)

- the impact of registration requirements in specific areas of workforce shortages, such as behaviour support, and other allied health, and in regional rural and remote areas; and
- the adequacy of guidance for providers about the registration process.

## **Australian Government Position**

**Referred to NDIS Review.**

## **Australian Government Response**

The NDIS Commission closely monitors the regulatory impact of the Framework on providers. In 2019, the NDIS Commission made amendments to the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*, which came into effect from January 2020 to remove a disproportionate regulatory impact on smaller businesses delivering lower risk supports.

In early 2022, the NDIS Commissioner moved to engage with stakeholders regarding registration including convening a Registration Roundtable in March 2022. A Discussion Starter paper and a Meeting Summary paper are both available on the NDIS Commission's website at [www.ndiscommission.gov.au](http://www.ndiscommission.gov.au) ([Opens external website](#))

The Australian Government's independent review of the NDIS provides a further opportunity to consider registration requirements under the NDIS.

In addition, the department and the NDIS Commission are continuing to work with the Department of Health to identify opportunities to streamline registration across the care and support sector where it is sensible to do so and does not diminish protections for NDIS participants.

## **Recommendation No. 10**

### **Recommendation**

The committee recommends that the Australian Government review the costs of registration audits for providers, with specific reference to the cost implications for smaller providers and providers in regional, rural and remote locations.

## Australian Government Position

**Supported.**

## Australian Government Response

Registration audits provide an important oversight mechanism for the NDIS Commission, with audits of higher risks supports involving site visits and interviews with people with disability as well as their workers.

The NDIS Commission regularly reviews the costs of registration audits for providers and is working with JAS-ANZ (the Joint Accreditation System of Australia and New Zealand) to establish agreements with approved audit bodies to provider audit costings to the NDIS Commission. The NDIS Commission has guidelines for approved quality auditors that set out how audits are to be scoped and conducted. The NDIS Commission amended the requirements for Approved Quality Auditors in January 2020 to enable providers required to undergo witnessing of service delivery to seek exemption for a range of audit components in light of the COVID-19 pandemic, including provisions for remote auditing and minimum auditors.

In early 2022, the NDIS Commission commenced engagement with key stakeholders on registration design, including with the Commissioner's Disability Sector and Industry Consultative Committees. This has included further consideration of the approach to, and cost of, audits and auditing in the NDIS.

The NDIA also conducts an Annual Pricing Review, which examines (through engagement with participants, providers and community and government stakeholders and targeted research), whether the existing NDIS price control framework (pricing arrangement and price limits) continue to be appropriate or should be modified. The 2021-22 review commenced in September 2021, and was finalised in late June 2022. From 1 July 2022, price limits for all NDIS supports delivered by disability support workers increased by 9 per cent, including a 2 per cent temporary loading in 2022-23. The price limit increase took into account a range of wage and cost pressures, including the costs associated with quality and safeguarding to ensure that they are appropriately recognised in the pricing arrangements. The outcomes of this review are available at [www.ndis.gov.au\(Opens external website\)](https://www.ndis.gov.au/opens-external-website)

# Recommendation No. 11

## Recommendation

Following the above review, the committee recommends that the NDIS Quality and Safeguards Commission, in consultation with providers and auditing bodies, establish and publish clear guidelines for determining registration audit costs.

## Australian Government Position

**Supported.**

## Australian Government Response

The NDIS Commission publishes guidelines, the *National Disability Insurance Scheme (Approved Quality Auditors Scheme) Guidelines 2018*, for approved quality auditors that set out how audits are to be scoped and conducted in accordance with requirements in the NDIS Act and the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*. The NDIS Commission encourages providers to seek quotes from more than one auditor to get the best value for their audits.

An important aspect of certification audit is in the inclusion of people with disability in the audit. Approved quality auditors are required to engage directly with a sample of people with disability as part of the registration audit. The cost of the audit includes this engagement and costs are therefore proportionate to the scale of the provider.

In March 2022, the NDIS Commission developed additional guidance for auditors to drive greater consistency and the collection of input from participants to audits, and framing evidence in the context of the participant experience.

# Recommendation No. 12

## Recommendation

The committee recommends that the Australian Government develop a strategy for increasing the number of people with disability who are involved in registration

auditing. This strategy should be co-designed with people with disabilities, their families and advocates, and the disability sector.

## **Australian Government Position**

**Supported.**

## **Australian Government Response**

The NDIS Commission has commenced engagement with key stakeholders on registration design, including with the Commissioner's Disability Sector and Industry Consultative Committees. This has included further consideration of the approach to audits and auditing.

People with disability are an integral part of the registration auditing for certification style audits involving higher risk services, such as supported accommodation, day activities and personal care supports. There is a requirement for audits that assess the extent to which providers meet the required NDIS Practice Standards, including direct engagement with a sample of NDIS participants and their supporters using the services and supports being audited. Providers are also required to demonstrate how their quality management systems incorporate feedback from people with disability to promote continuous improvement.

The NDIS Commission is putting in place mechanisms to further strengthen the voice of participants within the audit process. The *National Disability Insurance Scheme (Approved Quality Auditors Scheme) Guidelines 2018* includes provision for the inclusion of people with disability as 'consumer technical experts'. The NDIS Commission has released a \$4 million grant to establish the consumer technical experts' model.

The project will require a co-design element with people with disability and organisations representing their interests. The grant recipient and details were announced on 30 June 2022 and are available at: [www.ministers.dss.gov.au/media-releases/8416](https://www.ministers.dss.gov.au/media-releases/8416)(Opens external website)

# **Recommendation No. 13**

## **Recommendation**

The committee recommends that the NDIS Quality and Safeguards Commission, within 3 years of the commencement of the national worker screening arrangements, evaluate:

- the adequacy and effectiveness of these arrangements in promoting safety and quality for NDIS participants, in particular, NDIS participants who receive supports from unregistered providers; and
- the impact of worker screening arrangements on the NDIS provider market.

## **Australian Government Position**

**Supported.**

## **Australian Government Response**

A review of the worker screening arrangements 3 years after implementation is provisioned within the Intergovernmental Agreement on Nationally Consistent Worker Screening for the NDIS, which commenced from 1 July 2018 and came into force in each jurisdiction as Parties signed the agreement. Worker screening was implemented nationally from 1 February 2021 with the Northern Territory commencing on 1 July 2021. The NDIS Commission and state and territory worker screening authorities' actively monitor the performance of worker screening arrangements pending further review.

# **Recommendation No. 14**

## **Recommendation**

The committee recommends that the NDIS Quality and Safeguards Commission work with states and territories to resolve delays in NDIS worker screening including by promoting consistency across jurisdictions in relation to the ability of workers to commence work under supervision once their employer has endorsed their screening application.

## **Australian Government Position**

**Supported.**

## **Australian Government Response**

States and territories are responsible for undertaking screening of people seeking clearances to work in NDIS supports and services. The Commonwealth will continue to draw to the attention of states and territories any delays in NDIS worker screening clearances and their impact on workforce availability.

## **Recommendation No. 15**

### **Recommendation**

The committee recommends that the NDIS Quality and Safeguards Commission progress as a matter of urgency the work of its new Complaints Function Advisory Committee to remove barriers to accessing the complaints process for participants, including specific barriers faced by participants who are Aboriginal and Torres Strait Islander people with disabilities, and participants with intellectual disabilities or cognitive impairments. In particular, the committee recommends that the Commission consider measures to simplify the complaints process.

## **Australian Government Position**

**Supported.**

## **Australian Government Response**

The NDIS Commission's Complaints Function Advisory Committee (the Committee) was established in October 2021.

The Committee has an advisory role to the NDIS Commission on the matters identified in this recommendation. The NDIS Commission will consider the Committee's advice in addressing the barriers associated with making a complaint and to ensure the process of making a complaint is 'simple, safe and supportive'.

In June 2022, the membership of the group was expanded to include First Nations and CALD representatives to advise broadly on the complaints function and

specifically in relation to barriers for accessing the complaints process for people with disability from Aboriginal and Torres Strait Islander and CALD heritage.

The NDIS Commission's Complaints Commissioner is also leading work to improve the complaints handling process to make it easier for anyone to make a complaint. This will include information and education to raise awareness of the complaints process and grow capacity and confidence in the complaints mechanism.

## **Recommendation No. 16**

### **Recommendation**

The committee recommends that the Commission work with the new Complaints Function Advisory Committee to establish and publish formal guidance and protocols with respect to:

- informing complainants of the progress of their complaints
- the role of advocates in the complaints process
- timeframes for responding to complaints; and
- review and verification of evidence from providers who are the subject of a complaint, including the circumstances in which it is appropriate to provide information from a provider to a complainant for comment.

### **Australian Government Position**

**Supported.**

### **Australian Government Response**

The NDIS Commission has work underway to address this recommendation, consistent with the work outlined in the NDIS Commission's submission to the Joint Standing Committee on the National Disability Insurance Scheme in September 2021. The NDIS Commission has used the Complaints Function Advisory Committee in its advisory capacity to progress this work.

In late 2021, the NDIS Commission piloted its first feedback survey for complainants as part of the implementation of the Complaints Function Quality Assurance



Framework. The survey was designed to gauge complainants' experience of the complaints handling process and their views of their complaint outcome.

The Complaints Functions Advisory Committee provided input and advice on the design of the standard survey and an Easy English version. The trial identified several areas for improvement, which can be reflected in any future survey, as well as areas for improvement in the NDIS Commission's handling of complaints.

The current work to improve the complaints handling process will include the creation and introduction of:

- a streamlined national process which will support the early, responsive resolution of complaints
- a national early response team, which will include a dedicated intake and triage function
- a safeguarding unit to ensure that safeguards are swiftly activated where required
- a National Policy and Performance team, which will focus on establishing consistency in our processes and practices, training and quality assurance.

## **Recommendation No. 17**

### **Recommendation**

The committee recommends that the Australian Government allocate specific funding to advocacy organisations to assist complainants in their dealings with the NDIS Quality and Safeguards Commission. This funding should be in addition to existing funding provided through the National Disability Advocacy Program.

### **Australian Government Position**

**Referred to NDIS Review.**

### **Australian Government Response**

This recommendation will be explored as a part of the independent review of the NDIS.

# Recommendation No. 18

## Recommendation

The committee recommends that the Commission establish appropriate referral pathways with advocacy organisations, Community Legal Centres and State and Territory Legal Aid Commissions to ensure participants who are particularly vulnerable are supported through complaint and investigation processes. This process should be developed through a codesign process with people with disability, their families and representative bodies and advocacy organisations.

## Australian Government Position

**Supported.**

## Australian Government Response

The National Disability Advocacy Program already provides funding to assist people with disability with complaints including complaints relating to the NDIS and the NDIS Commission.

The NDIS Commission has established information sharing protocols, and arrangements with state and territory based advocacy organisations to assist people with disability who wish to have the support of an advocate, or legal representation to access such support. There is provision for such referral within the *National Disability Insurance Scheme (Complaints Management and Resolution Rules) 2018*.

The NDIS Commission has established direct engagement arrangements with state, territory based advocacy organisations through its state, and territory based offices. The NDIS Commission has held four national Disability Advocacy Forums since it commenced operations in 2018. The 2022 event, held in late October, brought the organisation together with approximately 160 disability advocates. The intention is to continue to hold the event annually. The theme of this year's event was *Strengthening the relationship between advocates and the NDIS Commission with participant rights, quality and safe supports at the centre*. The presentations and discussions explored how the NDIS Commission can work with NDIS participants to improve quality and safeguards and better understand what quality means to them.

A focus of the day was the renewed vision of the NDIS Commission, complaints reform and enthusiastic engagement with advocates.

The NDIS Commission is enhancing engagement activities to gain greater input from all stakeholders, particularly participants and their families., The NDIS Commission has for the last 3 years sought to inform and receive advice from two Consultative Committees, which support the NDIS Commissioner to consult and cooperate with stakeholders, particularly on the rights of NDIS participants and to have regard to participant's needs and interests. It is also to support the NDIS Commissioner to perform her obligations to acknowledge, recognise and respect the role of advocates. A number of leading disability advocates are members of Disability Sector Consultative Committee. The terms of reference and governance of these committees is under consultation and review and it is anticipated that eminent advocates or representatives from leading advocacy organisations will form part of the membership of the new committee.

Where relevant, the NDIS Commission provides participants with information on advocacy services and referral advice.

Under Australia's Disability Strategy Safety Targeted Action Plan, the Commonwealth will lead work with states and territories to better understand factors that may place a person with disability at risk of harm to identify opportunities to strengthen system design and enable more effective referral pathways between systems.

## **Recommendation No. 19**

### **Recommendation**

The committee recommends that the Quality and Safeguards Commissioner consider making rules under the National Disability Insurance Scheme Act 2013 to provide for incident reporting to identify systemic quality and safeguarding issues.

### **Australian Government Position**

**Supported.**

## Australian Government Response

The *National Disability Insurance Scheme (Incidents Management and Reportable Incidents) Rules 2018* require that registered NDIS providers must establish incident management arrangements to enable the identification of systemic issues and drive improvements in the quality of the supports they deliver. Providers must also notify, investigate and respond to reportable incidents.

The NDIS Commission's reportable incident requirements do not adopt a model that requires providers to distinguish between more or less serious incidents or 'major' and other incidents; if an incident is a reportable incident, the provider must notify the NDIS Commission of the incident.

The *National Disability Insurance Scheme Amendment (Improving Supports for At Risk Participants) Act 2021* came into effect on 29 October 2021. It amended subsection 73Z(1) of the NDIS Act to enable the NDIS rules to prescribe circumstances in which reportable incidents occur or are alleged to have occurred and to enable the NDIS rules to prescribe the arrangements relating to the notification and management of these reportable incidents by registered NDIS providers in these circumstances. This amendment will enable the NDIS rules to expand and clarify the circumstances in which reportable incidents must be notified to the NDIS Commission, including for example by expanding and clarifying the circumstances in which the NDIS Commission must be notified of the death of a participant.

The NDIS Commission analyses trends in reportable incidents to identify areas for compliance focus and provider education.

The *NDIS (Incidents Management and Reportable Incidents) Rules 2018* include provision for undertaking own motion inquiries that may relate to a series of reportable incidents that have occurred in connection with the provision of supports of services by one or more registered NDIS providers. The then Acting NDIS Commissioner initiated an own motion inquiry into aspects of supported accommodation in 2021. The inquiry was completed in December 2022 and the final report was released on 16 January 2023. The NDIS Commission is progressing work in response to the inquiry, mindful that the broader Independent Review of the NDIS is currently reviewing the NDIS Quality and Safeguarding Framework.

# Recommendation No. 20

## Recommendation

The committee recommends that the NDIS Quality and Safeguards Commission work with State, Territory and Commonwealth governments as a matter of urgency to develop a specific strategy to increase the number of behaviour support practitioners. This strategy should include specific measures to:

- incentivise entry into behaviour support provision by practitioners and NDIS providers; and
- increase the ability of suitably qualified and experienced allied health providers to offer behaviour support where appropriate.

## Australian Government Position

**Supported.**

## Australian Government Response

The Australian Government, in collaboration with states and territories, is already making steps to expand and develop the capability of the behaviour support provider market.

A number of projects are underway, or planned, to improve the quality of behaviour support service, build provider capacity and capability, upskill existing high-performing behaviour support practitioners to provide mentoring and leadership and to incentivise the behaviour support market. This includes the development of a national curricula and engagement with tertiary institution to support them to offer a wider range of courses through accessible channels to enhance practitioners.

The NDIS Commission's *Positive Behaviour Support Capability Framework* enables any practitioner to consider their professional capabilities to engage in positive behaviour support activities. This includes professionals who have allied health qualifications.

# **Recommendation No. 21**

## **Recommendation**

The committee recommends that the NDIS Quality and Safeguards Commission formally include clinical oversight bodies for the health and mental health sectors in its national coordination work for the reduction and elimination of restrictive practices.

## **Australian Government Position**

**Supported.**

## **Australian Government Response**

The NDIS Commission is working in partnership with the Australian Commission on Safety and Quality in Healthcare Aged Care Safety and Quality Commission to implement the Joint Statement on the Inappropriate Use of Psychotropic Medicines in Disability and Older Persons. This work is particularly focussed on the use of chemical restraints, which are prescribed by medical professionals. The NDIS Commission is supporting the Australian Commission on Safety and Quality in Healthcare in its work to develop clinical standards for the prescribing of psychotropic medication for people with disability and standards for Community Mental Health Standards. In addition, the NDIS Commission's Senior Practitioner has regular engagement with a number of clinical experts to inform work on the reduction and elimination of restrictive practices.

# **Recommendation No. 22**

## **Recommendation**

The committee recommends that the NDIS Quality and Safeguards Commission develop a framework that clarifies the responsibilities of Commonwealth, State and Territory bodies involved in regulating restrictive practices at the interface between the NDIS and the health and mental health sectors. This framework should encourage all relevant sectors to work together on how they might better support

people with disability and include specific reference to the prescription of medications that may be classified as restrictive.

## **Australian Government Position**

**Supported.**

## **Australian Government Response**

Objective 4 of Australia's Disability Strategy Safety Targeted Action Plan seeks to reduce and eliminate the use of restrictive practices in all government service systems. Further actions could be included in consultation with state and territory governments, including health and mental sectors.

The [National Framework on Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector \(2014\)](#) established a national approach to addressing the use and reduction of restrictive practices by disability service providers across a range of disability service sector settings. This was developed in recognition of Australia's commitment under the United Nations Convention of the Rights of Persons with Disabilities.

The NDIS Commission's Senior Practitioner works with the Department of Health as a member of the National Roadmap on Intellectual Disability and Health Implementation Steering Group to provide subject matter expertise in intellectual disability and human rights.

The NDIS Commission is working with the Australian Commission on Safety and Quality in Healthcare and the Aged Care Quality and Safety Commission to address the over prescription of psychotropic medication, informed by the NDIS Commission's evidence of the extent of the use of chemical restraints to which NDIS participants are subjected. On 21 March 2022, a Joint Statement on the Inappropriate use of psychotropic medicines to manage the behaviours of people with disability and older people was released. This statement can be found at [www.ndiscommission.gov.au](http://www.ndiscommission.gov.au).

# Recommendation No. 23

## Recommendation

The committee recommends that the framework mentioned in Recommendation 22 include a protocol around information sharing on restrictive practices between the NDIS Quality and Safeguards Commission and State and Territory bodies.

## Australian Government Position

**Supported.**

## Australian Government Response

Provisions in the *National Disability Insurance Scheme Amendment (Improving Supports for At Risk Participants) Act 2021* came into effect on 29 October 2021, which include greater protections for NDIS participants through more effective information sharing arrangements.

This includes making or amending Rules that prescribe additional persons or bodies with whom the NDIS Commissioner may share information for the purposes of the NDIS Act, including those relating to the use of restrictive practices.

# Recommendation No. 24

## Recommendation

The committee recommends that the Australian Government review the NDIS Quality and Safeguards Commission's current staffing levels and provide additional resources for increased staff numbers if necessary.

## Australian Government Position

**Supported.**



## **Australian Government Response**

The Australian Government is committed to ensuring the NDIS Commission receives the necessary funding for it to undertake its functions. The Government will continue to monitor and make adjustments to the resourcing of the NDIS Commission as required to ensure it can perform its functions effectively.

## **Recommendation No. 25**

### **Recommendation**

The committee recommends that the Australian Government ensure that it is adequately resourcing the NDIS Quality and Safeguards Commission so that the Commission is able to investigate complaints thoroughly and promptly, and initiate its own investigations.

### **Australian Government Position**

**Supported.**

## **Australian Government Response**

The Australian Government is committed to ensuring the NDIS Commission receives the necessary funding for it to undertake its functions. The Government will continue to monitor and make adjustments to the resourcing of the NDIS Commission as required to ensure it can perform its functions effectively.

## **Recommendation No. 26**

### **Recommendation**

The committee recommends that the Australian Government ensure that the NDIS Quality and Safeguards Commission has adequate and appropriate training in place for staff, including in the following areas as appropriate:

- awareness of disability types
- awareness of disability service provision

- awareness of the Commission's role and responsibilities
- understanding of the NDIS Code of Conduct; and
- understanding of the key issues for Aboriginal and Torres Strait Islander peoples with disability.

## **Australian Government Position**

**Supported.**

## **Australian Government Response**

The NDIS Commission requires staff to complete a number of mandatory training modules when they start with the NDIS Commission. Local training is provided to staff on specific matters, including on policies and procedures relevant to the function in which they work (such as complaints, reportable incidents, compliance and registration). Induction training is currently being refreshed and will be rolled out in 2023.

The NDIS Commission employs staff from a range of backgrounds, including people with regulatory experience, and those with extensive experience in the disability sector such as direct service delivery roles. The NDIS Commission employs people with disability and those with lived experience of disability. Senior leadership in the NDIS Commission encourages all staff to actively work within their teams to share established knowledge and experience to undertake their work.

The NDIS Commission has reviewed its learning and development program for staff and is implementing a comprehensive approach to providing professional development and training opportunities.

## **Recommendation No. 27**

### **Recommendation**

The committee recommends that the Australian Government review the NDIS Quality and Safeguards Commission's current ICT systems and replace or update them if necessary to ensure that they are fit-for-purpose.

## **Australian Government Position**

**Supported.**

## **Australian Government Response**

The NDIS Commission Operating System (COS) is a bespoke system developed to support the functions of the NDIS Commission. There has been significant investment in developing this system since the NDIS Commission's establishment in 2018, with regular updates to reflect changes in policy, procedures and the needs of end users. Upgrades to the system are developed directly with end users. COS is a highly stable system with minimal outages experienced.

With the growth of the NDIS Commission and the requirement for connectivity across functions, it is timely for the NDIS Commission to develop a Digital and Data Strategy. This Strategy will articulate the requirements of the NDIS Commission and inform any consideration of future investments.

## **Recommendation No. 28**

### **Recommendation**

The committee recommends that the Australian Government give specific consideration to the following matters in its review of the NDIS Quality and Safeguarding Framework:

- clarifying the safeguarding responsibilities of Commonwealth, state and territory bodies at the interfaces of NDIS and mainstream services; and
- the needs of people with disability in forensic detention, including the role of the NDIS safeguarding system in ensuring the rights of people with disability in these settings are upheld.

## **Australian Government Position**

**Referred to NDIS Review.**

## **Australian Government Response**

The Australian Government's independent review of the NDIS provides an opportunity to look at these matters.

## **Recommendation No. 29**

### **Recommendation**

The committee recommends that the Australian Government specifically consider the following in its review of the NDIS Quality and Safeguarding Framework:

- how to improve access to and strengthen natural safeguards for all people with disability; and
- the impact of NDIS pricing on the quality and safety of NDIS supports.

### **Australian Government Position**

**Referred to NDIS Review.**

## **Australian Government Response**

This recommendation will be explored as a part of the Australian Government's independent review of the NDIS.

## **Recommendation No. 30**

### **Recommendation**

The committee recommends that the NDIS Quality and Safeguards Commission develop resources and training materials that emphasise the systemic factors that increase risks to the safety of people with disabilities, including by emphasising the importance of social inclusion and individual and systemic attitudes towards disability.

### **Australian Government Position**

**Referred to NDIS Review.**

## **Australian Government Response**

This recommendation will be explored as a part of the Australian Government's independent review of the NDIS.