

Submission on Audit of Effectiveness of the NDIS Quality and Safeguards Commission's Regulatory Functions

Joint Submission by Down Syndrome Australia Consortium
and Inclusion Australia

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Our organisations



Down Syndrome Australia was established in 2011 as the peak body for people with Down syndrome in Australia. Our purpose is to influence social and policy change and provide a national profile and voice for people living with Down syndrome. Our vision is an Australia where people living with Down syndrome are valued, reach their potential, and enjoy social and economic inclusion.

DSA also leads a consortium of organisations that represent people with intellectual disability with a focus on Down syndrome and similar chromosomal variations, providing systemic advocacy for that cohort.



Inclusion Australia is the national peak organisation representing the rights and interests of Australians with an intellectual disability and their families. Founded 70 years ago in 1954, our mission is to work to make sure people with an intellectual disability have the same opportunities as people without disability.

Our strength is in our national representation and our connection to our community. We have a member organisation in every state and territory across Australia:

- ACT Down Syndrome and Intellectual Disability (ACT DSID)
- Council for Intellectual Disability (NSW)
- Developmental Disability WA (DDWA)
- Inclusion Northern Territory (Inclusion NT)
- Parent to Parent (P2P, Queensland)
- South Australian Council on Intellectual Disability (SACID)
- Speak Out Advocacy (Tasmania)
- Victorian Advocacy League for Individuals with Disability (VALID).

This submission has been endorsed by People with Disability Australia.

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Background

The effectiveness of the NDIS Quality and Safeguards Commission (NDIS Commission) has been in the scope of several Commonwealth investigations over the past five years. Two major reviews within the disability sector, the *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (the Disability Royal Commission), and the *Independent NDIS Review* (NDIS Review), both made recommendations about the NDIS Commission. To date, the NDIS Commission and other safeguarding bodies have not been found effective, and there has been evidence presented to the NDIS Review and Disability Royal Commission which support this view from members of the community, service providers, disability representative organisations and other organisations with an interest in quality service provision and the safety and wellbeing of people with disability.

Quality and safeguards in service provision are particularly important for people with intellectual disability, who constitute up to half of the participants on the NDIS. Yet, the NDIS Commission is complicated to access, its powers are not understood and there are no formalised structures for supported decision-making (of which Disability Representative Organisations have been made aware). Furthermore, there are reports from members of the disability community that they have lost trust in the NDIS Commission. This is due to both the responses which they have received in interactions with the NDIS Commission, and concerns about the effectiveness of the NDIS Commission to investigate complaints or concerns, and take actions that act as effective deterrents.

A significant aspect of whether the NDIS Commission is effective is whether its functions are understood by the participants, and their supporters, whom it is attempting to safeguard. Confusion about the role of the NDIS Commission, while anecdotal, is a significant barrier to its success. When the NDIS Commission has dismissed complaints which have then been upheld by other bodies such as AHPRA, Fair Trading etc, this can be especially confusing. As a result, we have heard anecdotally that the community will provide advice to one another and recommend making complaints to other regulatory bodies than the NDIS Commission.

Overall, feedback from DRO members included:

- The NDIS Commission does not collect or utilise data to interpret, predict or take meaningful action against providers;
- The investigation process is slow and places too much burden on individuals – thus creating a power imbalance in favour of the service provider who may have access to staff specifically on quality and safety issues;
- The consequences of any findings of wrongdoing are manifestly inadequate in changing behaviour or acting as a deterrent;
- The NDIS Commission is not resourced to take a proactive approach, or respond to concerns in a timely manner; and
- The NDIS Commission should have an outcome which improves the quality and safety of services which a complainant has determined is unsafe or problematic in some way.

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The Independent NDIS Review

The NDIS Review heard evidence about the approach and operations of the NDIS Commission in its role to restore trust, confidence and pride in the NDIS. The NDIS Review states that recently the NDIS Commission “has begun to implement a number of positive quality improvement initiatives”¹. It is not obvious whether any of those initiatives have flowed to improve the experiences of NDIS participants and their supporters.

DSA's consortium members have reported that participants feel that they have to be “provider police” and ensure that providers are acting within the bounds of legislation – not only NDIS related legislation, but health and safety, worker employment and registration. This is clearly a significant administrative burden for participants beyond existing NDIS arrangements.

The NDIS Review shared a vision of the NDIS Commission and made recommendations about its future. The disability sector is still awaiting the Government's response to the NDIS Review and the quite significant recommendations which it makes. It is possible that the recommendations, if enacted, would resolve some of the concerns and failures of the NDIS Commission. The slow response to the NDIS Review is a matter of concern as any reform of the NDIS Commission will take time and should start immediately.

In this submission, DSA, Inclusion Australia and other endorsing bodies would particularly draw the attention of the Australian National Audit Office to the recommendations regarding the focus of the NDIS Commission and resourcing, which can also stand alone from other recommendations.

The Disability Royal Commission

The Disability Royal Commission heard harrowing evidence from people with disability and their supporters about experiences of violence, abuse, neglect and exploitation. This was both historical and contemporary – both prior to and following the NDIS Commission's implementation. As a result of this evidence, the Commissioners made recommendations about the NDIS Commission, including making the complaint process more accessible; and publishing data about unregistered providers - these recommendations were accepted by the Commonwealth Government in its response to the Disability Royal Commission.

A key recommendation responding to concerns from the disability community was recommendation 11.3, which recommended the creation of a one-stop shop complaint mechanism in each State and Territory. This was not accepted in full by the States and Territories and could therefore unfortunately result in an uneven national approach. However the recommendation for establishing a national 1800 number and website for complaints was accepted in principle. The outcomes from this mix of responses is unknown and no specific timeframes or resourcing arrangements have been released which would provide any certainty to people with disability and their representative organisations.

¹ Commonwealth of Australia, Department of the Prime Minister and Cabinet (2023). Working together to deliver the NDIS - Independent Review into the National Disability Insurance Scheme: Final Report.

In general, there are significant opportunities for improvements in complaint systems, with many recommendations made by the Disability Royal Commission. It would be disappointing if these opportunities weren't taken.

Response to Audit Questions

1. Does the NDIS Commission have effective and timely intelligence gathering and information sharing arrangements in place?

In answering this question, we can only reflect on the experiences of the disability community. At present, it seems that the NDIS Commission does not have effective and timely intelligence gathering and information sharing arrangements. This is reflected in the amount of time taken to investigate a complaint, and the significant requirement of information from a complainant.

The disability community expects that the NDIS Commission should proactively act on data from within the NDIS Commission, the NDIA, and any other Government organisations such as the Australian Tax Office in addition to responding promptly to direct complaints.

It is also the expectation of the community that the NDIS Commission have information sharing arrangements with State and Territory consumer complaint bodies. This would include collecting and analysing data about providers, including payments to them from NDIS participants, the number of clients and number of staff, for example. This proactive approach would further improve safeguarding.

Furthermore, information sharing arrangements would provide monitoring lists of individuals or businesses who have regulatory action against them in another jurisdiction or service provision area (i.e., outside of the NDIS).

2. Has the NDIS Commission developed a risk-based strategy to guide regulatory decision-making?

The organisations involved in preparing this submission are unaware of any strategy. As organisations representing people with disability, and especially intellectual disability, we would like to be aware of, and involved in the development of, such a risk-based strategy, recognising that quality and safety have two entirely different risk profiles.

We would be interested in ensuring the particular and significant safety risk for people with intellectual disability is recognised, either through codesign of this strategy or by reviewing any existing strategies.

3. Has the NDIS Commission effectively implemented risk responsive and proportionate monitoring, compliance and enforcement activities?

This submission can only reflect on the experiences of people in the disability community.

While people generally receive a warm reception from staff at the NDIS Commission, the outcomes for the person with disability have generally been minimal or meaningless. Interactions between the NDIS Commission and service providers have not had any noticeable impact on the behaviour of providers or improved the quality of service or reduced safety risk for participants. While there is an element of

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confirmation bias in the way that DROs ask questions about experiences of the NDIS Commission, there has been a significant lack of positive experiences with the NDIS Commission.

Members of the DRO also raised the following issues:

- The Commission is not proactive in protecting participants from non-complying providers. Even when a provider was put onto the Commission's Compliance and enforcement actions register for performance failure, complainants using the same provider were not informed. Clearly, there had been earlier complaints, that triggered their listing on the Commission's register. Therefore, those providers should have been monitored. Current customers of the provider should have been informed that monitoring was warranted and was in place. Customers should have been informed about the issues being monitored, provided details for self-monitoring and the reporting avenues.
- The Commission's response to complaint lodgement is anecdotally very slow. This reduces the effectiveness of any follow up and action.
- We understand that the triage process is so narrow that only the dangerous and urgent complaints get attention. The dangerous and less urgent, but with accumulating safety issues or quality failures seem to be ignored all together. The 'bar' for a participant to get assistance is far too high. Likewise, it's too high for dubious providers to feel a meaningful impact of any consequences
- The Commission is not transparent with those who have lodged the complaint regarding the consequences on the provider. There is talk of 'education' and 'other actions'. Without knowing the specific requirements put on the provider, the complainant does not have an opportunity to understand whether the 'education' delivered is being enacted by the provider.

Statement of Support

The NDIS Review included a vision from the Panel for connected safeguarding in the disability ecosystem. This was based on its determination that the current safeguarding in place, both within and outside the NDIS, isn't sufficient or effective.

It is our expectation that this Audit of the NDIS Commission will have findings that demonstrate that the Commission is not effective and does not meet the criteria crucial for safeguarding a vulnerable population.

Beyond a report or scorecard indicating any deficiencies or inefficiencies in the current system, we would support the development and funding of an ecosystem-based approach as described in the NDIS Review and taking into account the supports people with disability might require to access complaints and safe-guarding, especially supported decision-making, transparency about process and outcomes, and understanding across the sector of the roles of organisations.

Our organisations would like to see a one-stop-shop approach to complaints within the NDIS and service provision sector, which should reduce the complexity and burden for people with disability and their supporters.

A key aspect of this will be accessibility of the NDIS Commission to people with disability, including supports once making a complaint or raising an issue.

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