CONSULTATION RESPONSE

Allied Health Professions Australia

Joint Standing Committee on the National Disability Insurance Scheme

Inquiry into the operation of the NDIS Quality and Safeguards Commission

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Chair, Joint Standing Committee on the
National Disability Insurance Scheme
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Allied Health Professions Australia (AHPA) thanks the Chair, The Hon Kevin Andrews MP and the Committee for the opportunity to provide feedback to the Joint Standing Committee on the National Disability Insurance Scheme (NDIS) Inquiry into the operation of the NDIS Quality and Safeguards Commission.

AHPA represents 19 national allied health associations and collectively work on behalf of their 130,000 allied health profession members. Many of those allied health professionals are involved in providing services to people with disability, people who may or may not be participants in the NDIS. AHPA and its member associations are committed to ensuring that all Australians, regardless of disability, can access safe, evidence-based services to assist them to realise their potential for physical, social, emotional and intellectual development.

In responding to this Inquiry, AHPA notes that it has received financial support from the NDIS Commission in the form of a grant to support the development of resources and guidance to assist allied health providers with the task of registering as an NDIS provider. We are confident that this relationship has not impacted our ability to provide fair and appropriate feedback on the operation of the Commission from the perspective of the allied health sector.

This submission has been developed in consultation with AHPA's allied health association members.

Introduction

AHPA and its members have closely followed both the development of the NDIS Quality and Safeguarding Framework and the establishment of the NDIS Quality and Safeguards Commission. As a sector, allied health professionals very much support the aims of the NDIS Quality and Safeguarding Framework and are committed to ensuring that people with disability can access safe and high-quality supports. While the sector continues to have challenges with how the registration process operates, and struggles with multiple and differing regulatory requirements, there is an acknowledgement of the value of the Commission. The latter is particularly acknowledged in relation to the need to have a national focus on growing the quality of the supports available to NDIS participants.

AHPA and representatives from the individual professions have sought to positively influence and support the development and rollout of the NDIS Commission. AHPA participated in a series of consultations with the Department of Social Services in the development of the NDIS Code of Conduct and the development of registration rules. Since then AHPA and the sector have continued to engage with the NDIS Commission as part of the rollout of registration requirements across states and territories in Australia, both through direct engagement and through AHPA's role as a member of the NDIS Commission's Industry Consultative Committee. AHPA provided feedback to support changes to the registration rules to reduce the administrative and financial burden on smaller providers as a result of their corporate structures. We are currently working to support the development and rollout of capability frameworks. This has provided good opportunities to understand the work of the Commission and to consider its impact on the sector.

In addition to AHPA's advocacy and advice work with the Commission, AHPA was also successful in being awarded a grant by the NDIS Commission as part of the Support for Providers program. That program funded work by AHPA to undertake a review of the need for support in the sector in relation to registration with the NDIS Commission, and to then develop a range of resources to address those particular needs. This work provided a positive opportunity to undertake targeted engagement with practitioners to understand need and readiness for registration.

AHPA hopes that our feedback will support government and the NDIS Commission in continuing to develop and refine the way safety and quality are approached in the disability sector.

Responses to the terms of reference

Please note that in responding to the Terms of Reference for this Inquiry, AHPA has chosen to focus only on those areas we feel we have sufficient experience and expertise to provide expert comment on. We understand that individual submissions have been made by several AHPA member associations, which provide additional information and insights. We encourage the Committee to consider the additional profession specific insights those allied health peak association submissions provide in conjunction with the AHPA response.

A. The effectiveness of the Commission in responding to concerns, complaints and reportable incidents – including allegations of abuse and neglect of NDIS participants;

AHPA understands that the Commission is broadly achieving its aims in responding to concerns, complaints and reportable incidents though we acknowledge our limited knowledge in relation to specific incidents. Our understanding is that the Commission has moved quickly and effectively to respond to individual issues as well as working to understand where broader systemic issues are impacting participants. We note in particular the rapid increase in engagement with providers and the provider sector undertaken by the Commission in response to the Covid-19 pandemic. The Commission demonstrated its ability to proactively support the sector with information and to retroactively address individual issues experienced by participants such as difficulties in relation to continuity of access to services.

However, AHPA does note our view that additional work is required to establish clear protocols and agreements between the different organisations and bodies involved in the regulation of health practitioners. This would help to ensure a more streamlined system that limits opportunities for providers or practitioners to slip through gaps in systems or to be sanctioned under one scheme and operate under another. We argue this on the basis of examples provided by our professional members where a complaint in relation to disability issues has come through to them as well as to the NDIS Commission. As we understand it, in these cases the professional association has applied their own processes to deal with the situation, however indicated no contact or follow-up from the Commission.

While AHPA are not suggesting any awareness of incidents that have not been dealt with appropriately, we remain concerned about multiple layers of regulation across different funding schemes and overall lack of coordination. Our view is that this creates risks as well as inefficiencies. AHPA argues for the need to ensure that there are clear notification processes in place between regulators to both flag that a practitioner and/or provider is under review, and noting the outcomes of that process. We also argue for the need to have clearer processes to identify which regulator is responsible for different types of complaint and issue. Our view is that where the issue relates to clinical practice, the regulator for that health profession should be responsible for taking action, that is the relevant Australian Health Practitioner Authority (AHPRA) Board or self-regulating profession,

though there should be mechanisms to ensure that the NDIS Commission and other relevant regulators are aware of the outcomes of that process. Where the issue is at provider level, the Commission may be the most appropriate regulator, though there may also be aspect relating to individual practitioners that should be addressed in combination between both. We argue that this work should draw in other sectors such as aged care as well, given the potential for allied health and other disability workers to provide services across schemes or to shift from one to another.

Perhaps most importantly, AHPA argues that there is a strong need for clearer consumer guidance in relation to complaints handling and the role of individual bodies and regulators in that process. Consumers and/or participants should have a clear understanding of how and where to raise issues, and confidence in how those issues will be addressed rather than feeling they need to take a scattergun approach by sending their complaints via any avenue they have identified.

In addition, AHPA also wishes to flag our concern that it is not yet clear if or how the findings of the Commission are translating into guidance for both the NDIA and the sector in relation to system-wide improvements to reduce areas of risk for participants. We note for example the role of swallowing issues and choking in relation to avoidable deaths and injury. A range of reports including those of the NSW Ombudsman and the Victorian Disability Services Commissioner have identified choking as the cause of death for multiple people with disability. While there are aspects of these deaths that will relate to the conduct of individual providers, AHPA and its members argue that it also speaks to a requirement for more effective system-wide focus on ensuring safe eating and drinking for participants.

Addressing the dangers of swallowing issues and safe eating and drinking requires work by both the Commission and the NDIA to ensure that NDIS planning processes are identifying need and funding access to the right allied health assessments and development of appropriate mealtime plans, as well as providing funding for training of support workers by allied health professionals. The latter may require additional training time where there is significant turnover of support workers. It also requires a focus on ensuring that the allied health workforce—speech pathologists and dietitians—and the support worker workforce are supported with training to ensure appropriate and consistent development and implementation of mealtime plans.

While AHPA have here focused on swallowing issues and their role in avoidable deaths, we argue more broadly that the Commission in ensuring that plans are being developed appropriately by the NDIS. While the Commission does not currently have a regulatory role in relation to the work of planners, AHPA argues that the Commission is positioned to identify through its role in receiving complaints and feedback and addressing the causes of those, where issues might be arising that involve failures in the planning process. We further argue that these should be identified, and reported on, and used to trigger engagement with the NDIA to support improvements in the training and guidance provided to the NDIS planning workforce.

b. The adequacy and effectiveness of the NDIS Code of Conduct and the NDIS Practice Standards;

Despite significant involvement with the work of the Commission over several years, AHPA and its members remain uncertain about the effectiveness of the Code and Practice Standards. Feedback from practitioners suggests that while the registration process creates a significant cost burden, where providers have been able to meet that burden there have been positive flow-on effects. Providers have commented positively about the benefit of developing and documenting their systems and processes more formally and that this is likely to result in benefits to how they run their businesses. Many have commented that registration has been the prompt needed to undertake work that they recognise as valuable. However, while providers have reflected positively about the business benefits of having the right systems, policies and processes in place, there has been no suggestion of significant changes or benefits to participants.

Moreover, as a sector, AHPA and its members continue to argue against an approach that provides additional regulatory requirements based not on the person receiving services, but rather on the requirements of the government funder. We note the seeming incongruity between recognising people with disability as vulnerable and requiring of safeguards, and not applying those same safeguards if the person is a self-managing their plan, or accessing services outside the NDIS, such as through Medicare or by paying privately. AHPA argues that a more appropriate approach is to identify where existing regulation might lack sufficient safeguards and to address those for the benefit of any person accessing disability and related services. We argue that this should be considered particularly carefully in relation to any future regulation of the aged care sector, noting that there can be significant crossover of the workforce and potential overlap of the consumer cohorts accessing services such as older NDIS participants transitioning into the aged care system or younger participants living in residential aged care settings.

c. The adequacy and effectiveness of provider registration and worker screening arrangements, including the level of transparency and public access to information regarding the decisions and actions taken by the Commission.

AHPA and its members continue to have significant questions about the effectiveness and adequacy of provider registration arrangements under the National Quality and Safeguarding Commission. While we broadly acknowledge their effectiveness if a provider is registered, our most significant concerns remain in relation to the impact on access to services for participants that results from differential access to registered and unregistered providers working in the scheme. While AHPA very much recognises the essential nature of appropriate safeguards for people with disability, and the benefit for consumers and providers in a focus on quality improvements, we argue that there are significant inequities that arise from a two-tier system of registered and unregistered providers. Any system that creates significant cost barriers to registration, and then limits the number of providers that a person with disability that is being NDIA-managed can access, is ultimately disadvantaging the participant, not the provider. Unregistered providers also have greater flexibility in relation to the negotiation of costs providing a double disincentive to registering. While in some cases these inequities may be addressed by sufficient availability of services, it fails in any case where demand is

not matched by the availability of registered providers. In such a case, participants may be forced to self-manage or plan-manage in order to access providers or risk missing out on services.

A key issue that has also impacted on provider registration arrangements, and the impact on the accessibility of services for participants, is what appears to be a misalignment or lack of coordination in relation to policy development and the implementation of decisions in relation to both registration with the NDIS Commission and the structuring of plans by the NDIA. These two aspects can significantly impact one another and, more importantly, determine which services participants can access. The most significant example of this that AHPA is aware of is allied health services for children with disability. AHPA and its members identified early on that the more complex form of NDIS Registration required for Early Childhood Intervention was causing significant anxiety in the sector and that the solo and small providers that make up a large proportion of the providers delivering services for children under 7 were unsure whether they would be able to overcome the cost barriers to registration.

In discussions with the NDIS Commission, it was made clear that in its role as regulator, the NDIS Commission took the position that allied health supports for any age group were therapeutic supports and thus needing only registration for that support group category. This position was welcomed by the sector as it left providers needing to undertake only a 'verification' level audit, a desktop process with lower costs and administrative requirements. Unfortunately, engagement with practitioners in different NDIS rollout areas at the time showed that plans were not being structured this way and that the NDIS was often developing plans so that all supports were funded under the Early Childhood Early Intervention support category. AHPA and its members spent significant time engaging with both the NDIA and NDIS Commission but were not able to get a clear resolution and agreed position from the two organisations. Even now, it is not clear that there is a firm position on this, with the result that providers are forced into the more expensive and onerous certification process, or simply choose not to register which impacts the availability of services for participants.

AHPA welcomes the introduction of a national NDIS Worker Screening Check and the associated development of a national NDIS Worker Screening Database. We note our view, outlined above, that there is significant merit in aligning different regulatory schemes and providing mechanisms to identify where workers have been subject to sanctions. Some of the issues outlined above in relation to the complexity arising from multiple levels of regulation, and multiple regulators, and the difficulty of coordinating these may be addressed by a national screening database. However, this would require additional work to ensure appropriate access by providers and participants/consumers in multiple schemes and the ability to contribute information and outcomes by different regulators.

d. The effectiveness of communication and engagement between the Commission and state and territory authorities;

AHPA is not confident that the level of communication and engagement between the NDIS Commission and state and territory authorities is currently working effectively. We note as a

concrete example of this the apparent lack of coordination in relation to the development of capability frameworks for the allied health disability workforce and the disability workforce more broadly, a piece of work now being undertaken by both the Victorian government Department of Health and Human Services (DHHS) and the NDIS Commission. AHPA understands that there was no interaction between the two organisations and projects until AHPA was able to facilitate interaction between the two and it remains unclear how the two projects will interact. In addition to the potential doubling-up of this work, and the potential confusion for practitioners that will result from having two different frameworks, AHPA understands that the Victorian government initiated this piece of work, as well as a range of others, due to concerns about perceived gaps in work being undertaken by the Commonwealth. While AHPA does not wish to comment on the accuracy of that perception, we do note that this appears to be a broader issue and there are a range of projects relating to disability currently are being undertaken by the states and territories. Our engagement with various stakeholders suggests there remains a view that the states and territories will need to continue to drive and influence the rollout of the NDIS in their regions rather than being able to rely on working through Commonwealth channels and taking a national perspective.

The sector has significant concerns about the impact on providers arising from the continuation of differing requirements in different jurisdictions. Similarly, we see it as a lost opportunity if solutions are developed by individual states and territories and then not taken up more broadly. We note in this context the Supervision and Delegation Framework for Allied Health Assistants and Disability Support Workers developed in Victoria in consultation with a wide range of key stakeholders. This Framework was developed in recognition of the need for clear guidance about how assistant and support worker workforces can be safely integrated as part of therapeutic interventions for people with disability. Yet the framework has not been endorsed nationally or even formally employed by the NDIA in guiding its planners in how plans need to be structured. As a result, there continues to be significant variation and uncertainty about the use of assistants nationally.

AHPA argues strongly for the need to ensure better coordination and engagement between the key stakeholders and for the need to ensure that the jurisdictions commit to, and have confidence in, a nationally led approach.

f. Management of the transition period, including impacts on other commonwealth and state-based oversight, safeguarding, and community engagement programs; and

While AHPA has welcomed the engagement of the NDIS Commission with the allied health sector, and very much acknowledges the work of Commission staff to understand and address some of the challenges facing the sector, AHPA and its members have also experienced significant frustration at the adverse impacts of transition on some providers.

One of the most frustrating aspects of the transition process for providers is the potential doubling up of costs, both direct financial and staffing costs, and in terms of productivity costs resulting from providers undergoing multiple audits as part of the transition process. A significant number of

providers undertook third party audits in order to meet the requirements of registration as NDIS providers but, rather than having those audits accepted as sufficient to meet the requirements of the NDIS Commission, were required to undertake a registration renewal and associated audit process with the Commission. This was particularly difficult for providers in NSW where a number of providers had undertaken third party audits only months before becoming subject to the NDIS Commission's registration requirements.

Despite a range of discussions with the Commission, and acknowledgement of the potential impact of this on some providers, it is not at all clear in practical terms that providers experienced any real cost-savings as a result of having already undergone previous audits. Similarly, AHPA is also concerned that some practitioners undertook certification-level audits at a time when the Commission was already finalising consultations with State and Territory governments in relation to changing the rules for bodies corporate. As a result, AHPA understands that a number of allied health providers progressed with certification level audits which cost significantly more both in terms of the preparation for audit and establishment of appropriate systems to meet the practice standards, and in the higher cost of audit.

g. Any other matters

AHPA and its members remain concerned about a lack of available data in the disability scheme in relation to workforce shortages, also referred to as thin markets, particularly as it relates to registered and unregistered providers. From the perspective of the allied health sector, there has been a significant drop in the number of allied health professionals indicating an intention to register as an NDIS provider. This is borne out by data from both the NDIA and the NDIS Commission in relation to registration numbers. However, it is not clear that there is clear and up-to-date data about how this is impacting access to services for participants, particularly in light of the limitations on Agency-managed participants in relation to accessing services from non-NDIS registered providers.

While AHPA is aware that the Department of Social Services-led Boosting the Local Care Workforce Demand Map project seeks to provide market information to support providers to understand where there may be potential investment opportunities, it does so with only six-monthly updates in relation to participant plan data and with no overlay of available services. It is also limited in providing profession specific data, instead it combines workforce projections for professions with very distinct areas of work such as physiotherapy and occupational therapy. This heavily limits its effectiveness even where a provider may genuinely be seeking to expand or set up a new business. The limits of this system mean that if a participant is seeking to access the services of an NDIS-registered paediatric speech pathologist and cannot do so, there is no clearly available information to the market or to anyone responsible for the development of workforce initiatives to address this need. There is also no clear information about waitlists or what is impacting the availability of services. And while we understand that the NDIA's thin markets team works to address shortages through a range of means including commissioning models, these must be seen as short-term solutions.

AHPA recognises that the NDIS Commission is only responsible for one piece of the workforce puzzle but argues that there is a strong need for there to be data-sharing arrangements that allow workforce data about registered vs unregistered NDIS providers to be publicly available. This data is available based on both NDIS Commission registration data, and active provider data from the NDIA. Other data may also be required to ensure that providers being paid by self-managed participants can be identified for the purposes of understanding the available workforce.