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Ms Natalie Wade
Chair, NDIS Provider and Worker Registration Taskforce
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**RE: Physical Disability Australia's submission to the NDIS Provider
Registration and Worker Screening Taskforce**

Dear Ms Wade

Physical Disability Australia (PDA) thanks you for the opportunity to provide answers to the questions you posed on the Department of Social Services' (DSS') NDIS Provider Registration and Worker Screening Taskforce (the Taskforce) consultation webpage¹

Following a brief description of what we understand the Taskforce's role to be, and the new provider registration and worker screening regulation scheme (the Proposed Model) advanced in the Independent Review into the NDIS Panel's final report, *Working together to deliver the NDIS* (the Final Report)², are our answers to them. These have been formulated with the help of PDA's members, many of whom are NDIS participants, and reflect their thoughts and concerns about the Proposed Model, and how it might impact their lives. The concluding section of this submission will summarise our view that, overall, we do not find the Final Report's argument in favour of the Proposed Model convincing, and that, in any case, it represents a regulatory overreach that infantilises NDIS participants; denies many the dignity of risk, and needlessly curtails their ability to exercise choice and control over their supports.

The Taskforce's Remit

PDA's reading of the Taskforce's Terms of Reference³ lead us to understand that its purpose is to advise the Minister (for the NDIS and Government Services) on how the Final Report's Recommendation 17 – that the Australian Government "Develop and deliver a risk-proportionate model for the visibility and regulation of all providers and workers, and strengthen the regulatory response to long-standing and emerging quality and safeguards issues" – can be best be implemented.

From this understanding, and the Minister's 12 February 2024 media release⁴ PDA believes that the Australian Government has decided ahead of the Taskforce's work that **all** providers of support to NDIS participants **will** need to be registered with a new National Disability Supports Quality and Safeguards Commission (NDSQS

¹ <https://engage.dss.gov.au/ndis-provider-and-worker-registration-taskforce/>

² <https://www.ndisreview.gov.au/sites/default/files/resource/download/working-together-ndis-review-final-report.pdf>

³ <https://www.dss.gov.au/disability-and-carers-standards-and-quality-assurance/ndis-provider-and-worker-registration-taskforce-terms-of-reference>

⁴ <https://ministers.dss.gov.au/media-releases/13786>

Commission)⁵, and **all** workers delivering support to NDIS participants **will need** screening check-based certification (emphasis added).

The chapter of the Final Report that deals with the scope of the Taskforce's work, 'A new risk proportionate model for regulation of providers and workers' (pp. 207-217), accounts for only 11 of the document's 338 pages. It comprises:

- 5 pages listing and detailing the Review Panel's concerns about the current NDIS provider and worker regulatory arrangements –
 - There are gaps in the oversight of providers, particularly when delivering **high-risk supports**;
 - There are also excessive and duplicative regulatory burdens for providers delivering **lower risk supports**;
 - Worker screening is not consistently ensuring the NDIS workforce has **the skills and knowledge to deliver safe and quality supports**; and
 - Regulatory settings have not reflected changes in the market.
- 3 pages describing the Proposed Model; and
- 3 pages of suggested activities for DSS, the NDSQS Commission, the Department of Finance, and State and Territory agencies to implement the Proposed Model (Recommendation 17).

(emphasis added)

Our plain reading of the Review Panel's concerns

When reading this chapter, we were first perplexed by an apparent contradiction that undermines its conclusion; that the Proposed Model should be implemented. The second paragraph notes, "Registration is only mandatory for a limited number of high-risk support types..."⁶ and then the fourth paragraph suggests this is not the case because "there are many [unregistered] providers 'flying below the radar' with limited regulatory oversight. [and that] This leaves participants potentially exposed to risk — particularly those who have complex needs or circumstances." Either high risk support needing participants are already using registered providers (by necessity), or they are using unregistered providers (by choice).

Next, we noted concern over the latitude given to most participants to self-manage their supports, or employ plan managers to oversee payments, and thereby gain access to the broad range of supports available from unregistered providers arguing "the ability to access unregistered providers has driven demand for self-management and plan-management." According to the Review Panel, this puts around 89% of NDIS participants at risk because "Unregistered providers are not required to meet any specific standards beyond the basic expectations in the NDIS Code of Conduct⁷, which describes broad community expectations of expected behaviours for providers and workers involved in support"⁸, and that this does not provide adequate protection for participants who do not "fully understand the risks they are engaging with, how to manage them, or what their rights are, or may have more limited

⁵ In accordance with the NDIS Review's Recommendation 12.

⁶ This is not technically true. **All** providers delivering supports to participants with NDIA-managed funding **need to be registered** too (<https://ndis.gov.au/participants/creating-your-plan/ways-manage-your-funding/ndia-managed-funding>)

⁷ <https://www.ndiscommission.gov.au/about/ndis-code-conduct>

⁸ Again, this is not technically true. **All businesses and sole traders** are subject to Australian, State and Territory fair trading laws (<https://business.gov.au/legal/fair-trading/fair-trading-laws>). Additionally, many capacity-building support providers are subject to the quality and safeguarding regulations associated with their professions and the Australian Health Practitioners Regulation Agency.

capacity to advocate for themselves.” The insinuation here is that some (most?) of the majority non-NDIA managed participants are laden with unacceptable support quality and safety risks.

PDA does not see how the need to reduce participant quality and safety risks would be properly mitigated by imposing the Proposed Model’s registration requirements on **all** providers. Indeed, the chapter itself noted that “registration is not a guarantee of either safety or quality [even though] it ensures visibility and does indicate a provider has taken steps to deliver supports professionally and competently”. The chapter also noted risks would be reduced if “the majority of adult participants who have a cognitive disability ... [received] support for decision-making, as would the around 50 per cent of participants aged 18 years or below who may require additional support, especially as they move through the adolescent years towards adulthood.”

We also read that there is significant provider frustration with needing to undergo overlapping registration processes. They apparently find the NDIS Quality and Safeguards Commission’s (NDIS Commission’s) system does not appropriately categorise providers and assign appropriate registration requirements⁹ even though these were “designed to be proportionate to the risk and complexity of different support types and providers ... The scope, coverage and intensity of standards and audits are not necessarily linked to a provider’s size or the risk and complexity of support delivery.”

PDA reasonably expects that the NDIS Commission *is* mismanaging its risk proportionate registration processes¹⁰. However, unless the proposed new NDSQS Commission is structured, staffed and resourced carefully and generously, we expect the Proposed Model to only **increase** provider frustration and thereby drive them from an already thin disability support market¹¹.

With regard to support worker screening, PDA understands the Review Panel concluded that current NDIS support worker screening requirements¹² (wholly reliant on State and Territory government entities reforming their pre-NDIS processes) are leaving users of non-registered support providers at risk of receiving poor quality and unsafe services. It is also the Review Panel’s view that worker screening processes should also take into account applicants’ qualifications and experience.

The chapter claims that support workers “who may otherwise be considered to pose an unacceptable risk of harm to people with disability and therefore be excluded from an NDIS Worker Screening Check [are] establishing themselves as unregistered providers or working for unregistered providers to avoid NDIS worker screening requirements.” No direct evidence of this is provided in the Final Report beyond two quotes from unnamed providers.

PDA believes the problem of inadequate worker screening processes has been overstated, and we do not believe the Proposed Model’s expanded and compulsory worker screening requirements will make any difference to the quality and safety of

⁹ <https://www.ndiscommission.gov.au/providers/becoming-registered-provider/registration-requirements-process-and-timeline>

¹⁰ Along with media reports regarding the NDIS Commission’s failures to take timely action against abusive and negligent providers, PDA’s submission to the Joint Standing Committee on the NDIS’s 2021 inquiry into the NDIS Commission detailed its comprehensive incapacity to discharge any of its statutory responsibilities (<https://www.aph.gov.au/DocumentStore.ashx?id=6ce89f5c-246f-4396-ae3b-679c7748a3f3&subId=690697>).

¹¹ The Final Report notes that “About 128,000 more workers are likely to be needed by June 2025 to fully meet [participant] demand.

¹² <https://www.ndiscommission.gov.au/workers/worker-screening>

the supports almost all NDIS participants routinely receive. We also think that this reform will further exacerbate the worker shortfall issue identified above and other sections of the Final Report.

PDA's understanding of the Proposed Model

Having carefully examined Figure 14 'Graduated and risk-proportionate provider registration and enrolment', (and the text supporting the Review Panel's view that "A more graduated and risk-proportionate regulatory model will better prevent harm while continuing to support choice and control and enable a thriving market") we understand:

- **All** service and product providers delivering NDIS paid-for supports to participants will need to obtain NDSQS Commission registration and that their employees with more than incidental contact with participants will need to pass a worker screening assessment.
- Registration requirements will be contingent on the parts of the NDIS support market they serve –
 - Advanced - where participants receive supports that may pose an inherently high-risk to participants and where their employees require high-level technical competencies;
 - General - where participants receive supports that require workers to have specified skills and training for specialised care tasks, and the provision of supports involving significant 1:1 contact participants;
 - Basic - where participants receive low risk supports such as assistance with social and community participation, and supports involving more limited 1:1 contact; and
 - Enrolment - where participants are exposed to very low risk and the general protections available under Australian Consumer Law are sufficient. This registration class would cover the providers of consumables, equipment, technology, and home and vehicle modifications.
- **All** service and product providers delivering NDIS paid-for supports to participants will need to complete an online application form visible to both the NDIA and NDSQS Commission documenting (at least) their business name, ABN or Digital ID, bank account details, location, contact details, and the support types they deliver.
- **All** service and product providers delivering NDIS paid-for supports to participants will be subject to risk-based monitoring by the NDSQS Commission through, investigation and regulatory intelligence gathering.
- **Any** service and product providers delivering NDIS paid-for supports to participants (and any relevant employee) that is found to have breached the NDIS Code of Conduct may be subject to 'corrective action' in addition to any liabilities under Australian Consumer Law.

PDA's answers to the Taskforce's questions.

1. How do you currently engage with the NDIS?

PDA has a close working relationship with the NDIA. We are members of its Disability Representative and Carer Organisations (DRCO) Forum¹³ and attend many of its community sector briefing sessions. We are also involved in some of its 'Reform for Outcomes' co-design activities.

¹³ <https://ndis.gov.au/community/community-participation#ceo>.

The NDIA accepts we are the national peak Disability Representative Organisation for Australians living with physical disability and welcomes our engagement in many aspects of its work.

2. What do you think of the proposed levels of registration and enrolment in the Report?

Most of PDA's members (and the broader cohort we represent) are Australians with disability with physical impairments that result in limitations to their capacity to navigate the natural and built environment and interact with other members of their communities. Predominantly their functional capacity is not further curtailed by intellectual and/or sensory impairments, neurodivergency and/or psychosocial disability.

PDA members who are NDIS participants overwhelmingly choose to self-manage and/or self-coordinate their supports (regardless of their plan management arrangements). They carefully choose providers that provide the best value-for-money while meeting their support and autonomy needs, and this has led a lot of them to directly employ their own support workers (or engage unregistered sole-trader providers) and source their disability related consumables, equipment, technology, and home and vehicle modifications from the non-NDIS market.

In our view, the Proposed Model should be rebuilt to:

- Do away with the 'Enrolment' registration category so that participants in the market for mainstream services (such as gardening, cleaning, and home and vehicle modifications and maintenance) and products (such as continence aids, low-cost¹⁴ Assistive Technology devices and other items not readily available in Australia (such as custom communication aids) can continue to exercise choice and control, and retain full access to the existing open markets (This would align registration requirements with the demonstrated capabilities of relevant participants); and
- Specifically exclude self-managing participants from the need to register themselves as providers, nor require those who choose to directly employ their own support staff to ensure all their employees pass any worker screening tests.

3. What key features of the Proposed Model are important to you?

No aspects of the Proposed Model are of particular importance to PDA. What *is* important is that NDIS participants are effectively protected from being abused, neglected and exploited by (sometimes registered) providers of poor quality and unsafe supports. Both IRAbina¹⁵ and Integrity Care¹⁶ were registered providers, but this did not prevent horrendous outcomes for some of their customers.

PDA feels there is no point imposing additional administrative burdens on the already too-thin NDIS supports market if there is no effective mechanism to hold providers to account for any breaches of the NDIS Code of Conduct and failure to deliver supports in accordance the NDIS Quality and Safeguarding Framework¹⁷.

¹⁴ Currently the NDIA classes items costing less than \$1,500 to be low-cost (<https://ndis.gov.au/participants/assistive-technology-explained#low-mid-and-high-cost-at>).

¹⁵ <https://www.abc.net.au/news/2023-09-25/autism-therapy-program-abuse-ndis-four-corners/102896354>.

¹⁶ https://www.ndiscommission.gov.au/sites/default/files/2022-08/independent-review-report-commissioner-public-310820_0%20%281%29.pdf

¹⁷ https://www.dss.gov.au/sites/default/files/documents/04_2017/ndis_quality_and_safeguarding_framework_final.pdf

4. What is the most important thing to you that you want the Taskforce to consider when developing their advice?

PDA understands that the current NDIS support market's regulatory scheme fails to meet the needs of some participants, and that they would be well served by regulations that deliver assurance that their providers, and the workers they employ to deliver high and medium risk supports, are qualified to do so. However, few, if any of our members and broader community of stakeholders receive these. Instead, high-capability self-managing participants should be allowed to operate under current regulations.

PDA wants the Taskforce to consider the degree to which the Proposed Model (potentially) discourages participants from electing to self-manage or self-coordinate their supports and reduce the scope to which they can exercise choice and control in the mainstream services and product markets.

5. In your view, how can the proposed model uphold the rights of people with disabilities, including the right to live independently and be included in the community, be free from violence, abuse, neglect and exploitation, have an adequate standard of living and economic and social participation?

In PDA's view, the proposed model, to some extent, **diminishes** the rights of people with disability. It will erode the degree to which they can exercise choice and control over who provides **any** of the (including the most benign) supports they may need.

On its own, without a generously staffed and resourced and committed-to-task NDSQS Commission, the Proposed Model will not effectively guarantee participants will not be exposed to violence, abuse, neglect and exploitation. Similarly, without a social security system that guarantees all Australians a 'living wage', we cannot see how it will have **any** effect on participant standards of living and economic and social participation.

A hypothetical implication of the Proposed Model

One of our members recently recounted her experiences in acquiring a folding, light weight power wheelchair to use when travelling.

First, she approached a registered NDIS provider who showed her a wheelchair that would need to be 'scripted' to her personal circumstances and then have the 'script' approved by an Occupational Therapist before it could be custom built and supplied on a 6-week timeframe (pending approval by the NDIA).

This solution would have cost Australian taxpayers over \$6,000 not including the fees due to the Occupational Therapist and the wages due to the NDIA personnel conducting the approval process.

Instead, our member chose to buy a suitably specified 'off-the-shelf' travel power wheelchair from a well-known internet-based retail platform for \$1,200, and it was delivered to her home within a week. Despite its apparent cheapness, this solution has served her well through many road and air travel journeys.

Under the Proposed Model, our member would have been denied the opportunity to do this.

Conclusion

As can be gleaned from what we have said above, PDA does not recommend the Australian Government implement the Proposed Model for regulating the NDIS supports market:

- ✓ It gives some participants assurances that the providers of their supports have quality systems appropriate for the supports they provide, and that the workers they employ have a documented capacity to deliver supports in a safe and respectful manner; **but**
- ✗ Other participants will have their legislation-promised right to choice and control over their supports diminished by the removal of their ability to get their supports from whomever they want (just as non-NDIS participants can).

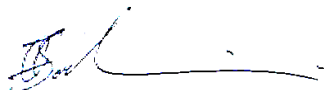
It is plain to us that even the minimalist 'Enrolment' requirement the Review Panel recommends for gardeners, cleaners, mechanics and builders will drastically reduce the number of businesses from which participants can buy their low and very low risk NDIS supports.

It is also plain to us that the Proposed Model's plans to impose registration requirements on 'Basic' providers of low risk supports (including self-managing participants who directly employ their own core support staff?) will deprive them of choice and control.

Yes, by all means, properly regulate the market for very-high, high and medium risk supports, but leave the low and very-low risk support markets be.

The Taskforce **must** recommend an Alternate Model.

Your sincerely



Andrew Fairbairn
President and Director (WA)
Physical Disability Australia



Simon Burchill
Executive Officer
Physical Disability Australia

C.c. The Hon Bill Shorten MP, Minister for the NDIS and Government Services
The Hon Amanda Rishworth MP, Minister for Social Services
The Hon Michael Sukkar MP, Shadow Minister for Social Services, the NDIS,
and Housing and Homelessness.

About Us:

Physical Disability Australia (PDA) is a national peak membership-based representative organisation run by people with physical disability for people with physical disability. PDA was founded in 1995 and have over 1,200 members from all Australian States and Territories. Our purpose is to:

- Remove barriers through systematic advocacy to all levels of government to enable every Australian living with a physical disability opportunities to realise their full potential;
- Proactively embrace and promote difference and diversity for an inclusive society; and
- Actively promote of the rights, responsibilities, issues and participation of Australians with physical disability.