National Disability Services Submission:

National Disability Insurance Scheme Provider and Worker Registration Taskforce

About National Disability Services

National Disability Services (NDS) is Australia's peak body for disability service organisations, representing more than 1000 service providers. Collectively, NDS members operate several thousand services for Australians with all types of disability. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Commonwealth governments. We have a diverse and vibrant membership, comprised of small, medium and larger service providers, employing 100,000 staff to provide support to half a million of people with disability. NDS is committed to improving the disability service system to ensure it better supports people with disability, their families and carers, and contributes to building a more inclusive community.

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1.0 Executive summary

National Disability Services (NDS) welcomes the opportunity to contribute to the development of a risk-proportionate regulatory model for all NDIS providers and workers, in alignment with Recommendation 17 of the NDIS Review Final Report. The recommendations in this submission aim to enhance visibility and regulation of NDIS providers and workers, strengthening responses to quality and safeguard concerns.

In presenting a conceptual regulatory model, NDS envisions a framework that is adaptable, responsive, and risk aware. This model should prioritise preventative measures and transparency, ensuring that all providers and participants understand their roles and responsibilities. It should also facilitate innovation and market growth while safeguarding the interests of people with disability.

NDS recommends a risk-proportionate regulatory framework that categorises services based on risk and service characteristics, with corresponding requirements aligned to the registration category of the provider (see Diagram 1 and Diagram 2).

All providers would undergo registration through this model, with set periods of registration and re-registration. Monitoring, complaints and feedback mechanisms would be an essential part of the regulatory intelligence framework that contribute to the overall success of the system, as would harmonisation with regulatory models in other parts of the care and support economy.

Done well, the new system should empower participants, facilitate self-management where appropriate, support an informed and responsible workforce, and quality disability services. It should work alongside a more proactive and responsive NDIS Quality and Safeguards Commission (NDIS Commission), engaging with innovation in the market and addressing quality and safeguard issues as they arise.

In presenting a conceptual regulatory model, this submission makes the following recommendations:

Recommendation 1: Develop a comprehensive implementation plan for a new risk-proportionate regulatory framework for the NDIS, including clear timelines, responsibilities, and milestones for key activities.

Recommendation 2: Enhance initiatives that build consumer and community capacity to empower NDIS participants as decision-makers in the marketplace.

Recommendation 3: Develop well-defined guidelines to implement a risk-proportionate regulatory framework for NDIS providers, ensuring that standards and requirements are aligned with the varying risks associated with different types of service delivery.

Recommendation 4: Streamline worker screening processes for all NDIS workers in risk-assessed roles to enhance efficiency without compromising safety.

Recommendation 5: Mandate basic online training for all NDIS workers in risk-assessed roles on working with people with disability and understanding NDIS obligations.

Recommendation 6: Establish clear guidelines for determining registration audit costs to ensure fairness and transparency.

Recommendation 7: Conduct a comprehensive review of practice standards to enhance the

risk-proportionate regulatory framework for NDIS providers.

Recommendation 8: Implement a risk-proportionate regulatory framework for self-managed supports in the NDIS, balancing flexibility for participants with robust safeguards.

Recommendation 9: Introduce a participant safeguarding strategy to uphold the rights of people with disability and align with the United Nations Convention on the Rights of Persons with Disabilities.

Recommendation 10: Identify clear definitions for platform providers within the NDIS framework, tailoring regulatory requirements based on the types of services they offer.

Recommendation 11: Establish a nationally consistent community visitor scheme, formally recognised as a NDIS safeguard for people with disability.

Recommendation 12: Conduct a thorough analysis to determine whether worker registration, worker accreditation, or a combination of both is the most effective approach to enhancing the quality and safety of disability support services.

As many proposals will likely be submitted, NDS urges the Taskforce to consider the most effective elements from each, amalgamating them into a cohesive draft regulatory framework.

NDS calls on the Taskforce to consolidate these proposals, identify practical solutions, and present a draft for final consultation with the sector, aligned to the NDIS Review's vision for a more graduated and risk-proportionate regulatory model. Engaging in a collaborative approach will help avoid duplication and ensure that the final model is comprehensive and robust.

When the new model is finalised, immediate priorities include communicating expectations, addressing conflicts of interest, promoting transparency, and engaging with innovative providers to refine regulatory approaches.

This submission represents NDS's commitment to enhancing the NDIS, ensuring participant safety, and supporting a vibrant disability services market.

2.0 State of the disability sector

The [NDS 2023 State of the Disability Sector](#) annual survey and report in collaboration with the Centre for Disability Research and Policy at the University of Sydney, sheds light on the current challenges faced by disability providers. The findings depict a sector teetering on the brink.

The report found:

- 72 per cent of not-for-profit providers and 67 per cent of for-profit providers are worried that they will not be able to provide NDIS services at current prices.
- 34 per cent of providers made a loss in FY 2022-23. 18 per cent broke even.
- 82 per cent of respondents received requests for services that they could not fulfil.
- 78 per cent reported extreme to moderate difficulty finding support workers, with availability of allied health professionals ranging from low to non-existent.

As the provider sector responds to the Royal Commission into Violence, Abuse, neglect and Exploitation of People with Disability (the Royal Commission) and NDIS Review recommendations, the State of the Disability Sector report findings point to the urgency and

significance of addressing the issues at hand in ways that foster and build a sustainable sector for people with disability.

Organisation finances and general operating environment

In the last three surveys, between 19 and 23 per cent of providers reported a loss. This year, a concerning 34 per cent of providers reported a loss and just 18 per cent broke even. This is the worst year for financial viability in the history of the survey.

Opinions about general operating conditions remain poor, with 70 per cent saying that they have worsened in the last 12 months. When asked about the wider Australian economy, 68 per cent say that conditions have worsened.

This underscores the challenging financial situation faced by many disability providers, with organisations having to make tough decisions about whether they can continue offering services in the current environment, emphasising the need for strategic interventions to ensure the sustainability and financial well-being of service providers in the disability sector.

Most providers would place the root of this problem in pricing, especially with the rising cost of doing business. Seventy-two per cent of not-for-profit providers and 67 per cent of for-profit providers said they worry that they will not be able to provide NDIS services at current prices. And yet demand for services keeps rising. Eighty-two per cent of respondents said they had received requests for services that they could not fulfil. The reasons they gave for turning down services include not enough staff (45 per cent), not enough qualified staff (21 per cent), or not enough organisational resources or money (15 per cent).

Quality and safeguards

Perceptions of the NDIS Quality and Safeguards Commission (NDIS Commission) continue to lean towards the negative. Fifty per cent of respondents express dissatisfaction with its collaboration with providers. The overall sentiment regarding the NDIS Quality and Safeguarding Framework declined in 2023, with a notable increase in respondents (48 per cent in 2023 compared to 41 per cent in 2022) disagreeing with the statement "We are confident that the NDIS Quality and Safeguarding Framework supports the quality of services/outcomes." Half of the respondents acknowledge positive outcomes resulting from the Commission practice guides, while only 47 per cent believe that the behaviour support requirements aimed at reducing and eliminating restrictive practices are yielding favourable results.

National Disability Insurance Scheme registration

Nearly 18 per cent of respondents are contemplating dropping their registration with the NDIS Commission. Services established during or after 2014 are significantly more likely (26 per cent) to consider dropping their registration, almost double the rate for organisations established before 2014 (14 per cent). Additionally, smaller organisations, both in terms of headcount and turnover, and for-profit entities show a higher likelihood of considering deregistration compared to their counterparts. Respondents express concerns about the administrative burden, costs, lack of benefits in registration, and the perceived lack of accountability for unregistered providers. These findings are underscored by concerns surrounding a perceived two-tier service provider market, with registered providers on the one hand, shouldering the costs and administrative burden of registration, and unregistered providers on the other delivering many of the same services but with less oversight and accountability.

"As an organisation we would like to maintain our status as a registered NDIS provider as we would like to adhere to ensuring quality and safety for participants. We believe registration provides a framework for meeting rigorous quality and safety standards, hence why we are a registered provider. However, we've noticed a declining trend in providers opting for NDIS registration. Anecdotally, this reluctance seems to arise from the high costs associated with both initial registration and ongoing compliance, with limited perceivable commercial benefit. This creates an imbalanced competitive environment; by adhering to higher standards through registration, our operational costs are significantly elevated compared to competitors who choose not to register."
NSW, large for-profit

Recommendations from the Royal Commission and NDIS Review to simplify the registration process should be a priority. Notably, 77 per cent of respondents find that, collectively, NDIS pricing and regulation hinder the provision of innovative services responsive to participant needs, a sentiment consistent with previous years. Concerns around the regulatory environment and quality and safeguarding framework need to be addressed urgently and carefully.

The state of the workforce

Disability providers, particularly within the NDIS, continue to face chronic challenges in the attraction, supply, and retention of workers. Recruiting staff remains a significant challenge. Barriers to recruitment include a tight labour market, lack of qualified staff, competition from other sectors, pay expectations, job security concerns, and challenges in accommodation availability, especially in regional areas.

Barriers to retention encompass competition, low pay rates, burnout, lack of career pathways, and the complexity of work. Facilitators for retention include a positive organisational culture, flexible working arrangements, competitive pay, training and development opportunities, manageable workloads, and recognition programs.

Strategic interventions are needed to address recruitment and retention challenges effectively. Without the essential workforce in place, implementation of significant reforms becomes even more challenging and may pose risks to both participants and existing workers. A comprehensive workforce strategy is imperative, including the strategic staging of reforms so that providers have the right staff, and the workforce is adequately equipped to implement changes. Collaborative efforts with providers are crucial to ensure that policy changes, which encompass training, skills development, oversight, and remuneration, can be effectively implemented.

Overall, the findings point to the need for a future regulatory system that is simple, reduces regulatory burden, is consistently applied, and is focused on quality and safeguarding. This includes addressing workforce challenges, ensuring that providers have the necessary support and resources to deliver high-quality services, and implementing reforms that enhance the sector's sustainability and ability to meet the needs of people with disability.

The challenge: building a stronger foundation for quality services

While the NDIS seeks to empower people with disability, substantial barriers impede the provision of high-quality and innovative services. These barriers can affect providers to varying degrees, with some experiencing more significant challenges than others, for example:

- **Funding shortfalls:** Providers who are either required or elect to be registered face rising compliance costs that are not reflected in current NDIS pricing. This financial strain discourages them from participating or remaining within the system.

- **Training and support gaps:** The current cost model for NDIS pricing does not adequately cover essential staff training, support, and supervision. This makes it difficult to develop a stable, well-trained workforce, a crucial element for ensuring participant safety and service quality, particularly where services are offered at scale.

  - **Limited training opportunities:** Data reveals a lack of training options for disability support workers. Even "free" training creates challenges, as providers struggle to cover backfill costs or pay for staff time away from their duties.

  - **Inadequate supervision:** Current NDIS pricing barely allows for supervision costs, despite its proven impact on service quality, staff well-being, and retention. Providers recognise its importance but are financially restricted.

  - **Uncompetitive wages:** Low pay and limited career pathways discourage potential workers and lead to high staff turnover. Providers struggle to offer competitive wages and training within the constraints of the NDIS cost model.

- **Industrial instruments that are not fit for purpose:** The Social, Community, Home Care and Disability Services Industry Award [MA000100] 2010 (SCAHDS Award) was put together during the 2009 award modernisation process. At that time, the workforce coverage of the SCHADS Award was only a fraction of what it now is, given the 2013 introduction of My Aged Care home care packages and the rollout (and subsequent growth) of the NDIS from 2015 onwards. As such, in 2009 the SCHADS Award was put in the lowest priority grouping for award modernisation, as evident in its Award Number of 100 out of the 122 original modern awards. The present service types, working environments and other needs of these sectors was not contemplated at the time that SCHADS was put together, and more than 150 variations made to the Award since inception have either done little to help, or have led to other unintended consequences.

Some examples of where the SCHADS Award is not aligned with NDIS pricing and the needs and rights of NDIS participants include:

  - The SCHADS Award requires a minimum engagement period of 2 hours for each shift, or period of work in a broken shift. However, NDIS participants can request services for as little as half an hour or an hour, as per their individual needs.

  - The Fair Work Ombudsman has advised that under the SCHADS Award, any work performed immediately before or after a sleepover should be treated as one continuous shift, despite part of that shift occurring in a new day. Although there is currently a matter before the FWC testing this interpretation, the issue for many SIL providers is that it is often NDIS participants' preference to have the same support worker before and after bedtime (for continuity of support). This means that this often default pattern of work under the NDIS must be dealt with by way of shift penalty arrangements, which should be the exception rather than the norm. This has financial implications for providers trying to meet participants' needs, which are not catered for under the NDIS Cost Model.

  - The broken shift allowances that are payable under the SCHADS Award cause a financial gap from the NDIS Cost Model for providers of home support services. By the nature of

these services, there are often gaps between morning shifts with participants and other shifts throughout the day. NDIS participants rightly have choice and control over when their supports are received, however this places a financial and rostering liability upon providers to meet these irregular needs and preferences.

– Although not a SCHADS Award provision, state and territory governments are rapidly enacting portable long service leave (LSL) schemes which impose a non-refundable levy that must be paid on a quarterly basis in respect of a worker's potential long service leave. Under existing arrangements, long service leave liability would have a "book value" that is not vested unless the appropriate entitlement period is reached. Under the portable LSL schemes, the levy must be paid at cash value from the commencement of the scheme and is not refundable if a worker leaves prior to the entitlement date. This is not aligned with NDIS pricing assumptions and represents an investment loss to providers.

These are just some of the industrial costs of employing support workers that are not recoverable through NDIS pricing. Providers who directly employ support workers are in competition with a growing number of sole traders, often not NDIS registered, who are able to circumvent most of these industrial provisions by operating on a contract for service model. This also bypasses superannuation guarantee provisions and represents a future financial risk and burden for future governments, who will have to respond to retirees with low superannuation balances. For many NDIS providers, it represents an uneven playing field and a risk to service quality to compete with people operating with a much lower cost base through insecure work.

A sustainable, well-resourced workforce is essential for delivering quality and innovative services. Without addressing these funding and workforce limitations, the NDIS will struggle to achieve its goals. Examining pricing and quality needs to be a unified effort, not a siloed process. Investing in a skilled workforce and a diverse, sustainable provider landscape is crucial for ensuring positive outcomes for participants.

- **A focus on compliance rather than quality:** In the recent [NDIS Quality and Safeguards Commission Regulatory Burden Consultation Insights Report](#), providers have highlighted several key challenges. These challenges include delays in engaging NDIS behaviour support practitioners and developing behaviour support plans, concerns about the quality and accessibility of behaviour support plans, issues with NDIS pricing not aligning with the time required for plan development, and lack of clarity on the definition of restrictive practices. Providers also expressed difficulties with the timeliness and clarity of the NDIS Commission's closure of reportable incidents, as well as challenges with duplicate reporting obligations from states and territories, inconsistency in audit practices, and issues with worker screening processes. Additionally, concerns were raised about the time and administrative impact of complaints processes and the complexity of meeting NDIS and child safe standards, especially when supporting children and young people accessing multiple services.

- **Practice standards and certification:** Overall, the sector generally supports having a set of quality standards to guide, assess, and improve practice. However, providers have expressed concerns about the cost and questioned the value of the audit process in driving continuous quality improvement. Providers believe that the regulator should play a larger role in this process. They are requesting less focus on their obligations and more guidance on how they can meet and exceed these standards.

3.0 NDS Policy Position

In 2023, prior to the release of the NDIS Review Final Report, NDS called for a revised NDIS quality and safeguarding system that prioritises participant safety, quality and provider sustainability. This proposal outlines several key elements:

- **Strengthening the NDIS Code of Conduct:** Mandatory compliance for all providers and workers, coupled with active monitoring to ensure understanding and proper implementation.

- **Improved worker screening:** A universal and efficient NDIS Worker Screening Check for individuals who provide disability supports to NDIS participants.

- **Risk-based provider registration:** All providers, including sole traders and digital platforms, should register with the NDIS Commission or relevant professional bodies. Mutual recognition of existing quality certifications would reduce compliance burden. A tiered registration system should be implemented, with stricter requirements for higher-risk support areas like personal care and early intervention. Providers with minimal participant contact or offering generic services might require lighter-touch registration.

- **Cost of compliance:** Independent pricing mechanisms should account for the costs of safeguards and registration within NDIS pricing. Pricing incentives could be explored to encourage provider investment in quality and compliance.

- **Continuous improvement:** Regular analysis of NDIS market data and participant risk profiles should inform adjustments to the oversight framework, ensuring it remains adaptable and effective in the ever-changing disability sector.

By implementing these recommendations, the system can balance participant safeguarding with a supportive environment for quality providers to operate efficiently within the NDIS.

4.0 NDIS Review: A new risk-proportionate model for regulation of providers and workers

The NDIS Review identified a troubling gap in oversight when it comes to NDIS providers, particularly for those delivering high-risk supports. While registration exists to ensure providers are reputable and qualified, it is not mandatory for most. This creates a large, unregistered market of providers who operate with minimal scrutiny. Unregistered providers are not held to specific quality standards beyond the basic NDIS Code of Conduct, which outlines broad community expectations for provider behaviour. This lack of oversight leaves participants, especially those with complex needs or limited capacity to advocate for themselves, potentially exposed to risk.

The NDIS Commission, tasked with overseeing the market and enhancing service quality, faces challenges due to the limited visibility of unregistered providers. This lack of visibility hinders proactive intervention and makes preventing harm more difficult.

The current system seems to struggle with proportionality. While registration was designed to be more intense for higher-risk situations, the application is inconsistent. This means even low-

risk providers can face excessive and duplicative regulations. Furthermore, confusion persists around provider expectations and obligations, potentially leading to inconsistencies in service delivery.

Finally, worker screening, a crucial element in safeguarding participants, is not mandatory for all NDIS workers. This opens the door for individuals who might pose an unacceptable risk to participants to enter the workforce undetected. Together, these aspects highlight the need for significant improvements to ensure participant safety and achieve consistent, high-quality service delivery across the entire NDIS market.

Recommendations and associated actions

The NDIS Review suggests a fresh, risk-based method for regulating NDIS providers and workers, aiming to strike a balance between:

- **Preventing harm:** Strengthening preventive measures to actively protect participants, particularly those at higher risk.
- **Preserving choice and control:** Ensuring participants' rights to select and manage their NDIS supports.
- **Promoting innovation:** Cultivating a dynamic NDIS market that stimulates innovation in service provision

Key elements of the NDIS Review proposed model:

- **Four risk categories:** Providers will be categorised based on the risk associated with the supports they offer. This will determine the level of registration or enrolment required.
  - Advanced Registration: High-risk supports (e.g., daily living in group homes) will have the most stringent registration requirements and oversight.
  - General Registration: Medium-risk supports (e.g., high-intensity personal care) will have regulations tailored to the specific risks involved.
  - Basic Registration: Lower-risk supports (e.g., social participation) will have lighter-touch registration focused on adhering to Practice Standards.
  - Enrolment: The lowest risk supports (e.g., consumables) will require simple online enrolment for market visibility

- **Proportionality and streamlining:** Proportionality and streamlining are key principles in the proposed changes to the NDIS regulatory framework. Under these changes, registration requirements will be customised to match the risk level and operational scale of each provider. This approach aims to ensure that the regulatory burden is proportionate to the potential risks posed by the provider's activities. Additionally, the framework will seek to recognise and integrate existing regulations from other sectors where applicable, reducing duplication and administrative complexity. Furthermore, the system will be streamlined through the simplification of Practice Standards, implementation of risk-based auditing practices, and conducting targeted audits. These measures intend to create a more efficient and effective regulatory environment that supports high-quality service delivery while minimising unnecessary regulatory burden on providers.

- **Minimum worker safeguards:** The proposed changes in the NDIS Review include mandatory worker screening and basic online training to ensure that all workers understand their obligations and prioritise participant safety. This measure is essential for maintaining high standards of care and ensuring that workers are equipped with the necessary

knowledge and skills to support NDIS participants effectively. Additionally, the review proposes a faster, smoother, and more harmonised worker screening process to streamline the hiring process for providers. This change aims to reduce administrative burden and delays in hiring while maintaining rigorous screening standards to protect the safety and well-being of participants.

- **Proactive regulator:** Aiming to address emerging quality and safeguard issues before they escalate, is crucial for ensuring the safety and well-being of NDIS participants. By being proactive, the regulator can identify potential issues early, implement preventive measures, and provide timely support to providers to improve service quality. This proactive stance also aligns with the NDIS's goal of promoting a culture of continuous improvement within the disability sector, ensuring that providers are supported in delivering the best possible outcomes for participants.

This risk-based model aims to strike a balance between safeguarding participants, supporting choice and control, and fostering a healthy NDIS market that encourages innovation.

5.0 The nature and extent of violence, abuse, neglect and exploitation against people with disability in Australia

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability highlighted that people with disability in Australia are far more likely to experience violence, abuse, neglect, and exploitation than those without disability. For example:

- 65 per cent of people with disability report experiencing physical violence, sexual violence, intimate partner violence, emotional abuse, or stalking in their lifetime – compared to 45 per cent of people without disability.
- Women with disability are twice as likely to experience sexual violence.
- Young people with disability are more than double as likely to experience violence in the past year compared to those aged 45-65 with disability.
- People with cognitive and psychological impairments report higher rates of all types of violence compared to other disability groups.

This violence and abuse come at a staggering economic cost. Research conducted by the Royal Commission estimated that violence, abuse, neglect, and exploitation against people with disability cost Australia $46 billion in 2021-22:

- $18.3 billion stems directly from interpersonal violence, abuse, neglect, and exploitation.
- $27.7 billion results from systemic failures – including failures in government, businesses, and other systems to provide equal opportunity, access to quality services, and prevent discrimination.

These alarming statistics and economic costs highlight the urgent need for stronger regulation of the disability services and support systems, including the NDIS. Better oversight will help create a safer and more secure environment for people with disability through:

- **Reduced risk:** Regulation can identify and address potential risks within the NDIS system, minimising the opportunity for abuse and exploitation.
- **Improved quality:** Clear standards and regulations can ensure service providers meet

essential quality benchmarks, leading to better support and outcomes for participants.

- **Increased accountability:** A robust regulatory framework holds service providers accountable for their actions, fostering a culture of safety and respect for participants' rights.

6.0 Objectives of a redesigned system

The current NDIS Quality and Safeguarding Framework faces significant challenges in ensuring participant safety and promoting consistent, high-quality service delivery across the entire market. The key issues are as follows:

- **Limited visibility of unregistered providers:** A large, unregulated market of providers exists. This lack of visibility hinders NDIS Commission's proactive monitoring, intervention to prevent harm, and acting against issues.
- **Disproportionate regulation:** The current system applies a "one-size-fits-all" approach to provider registration, creating gaps. High-risk supports lack sufficient oversight, while lower-risk providers face excessive and duplicative regulations, creating unnecessary burdens.
- **Inadequate safeguard mechanisms:** The existing framework lacks robust safeguards, particularly for unregistered providers. This increases the risk of participants encountering unqualified or unsafe support delivery.

The issues must be addressed in a redesigned system to support participant safety and the consistent delivery of high-quality NDIS services. This includes implementing a more comprehensive and risk-proportionate regulatory framework that addresses the visibility of unregistered providers, streamlines regulation for different risk levels, and strengthens safeguard mechanisms for all providers.

7.0 Where do we need clarity?

Definitions

It is important that the new model sets out to change and improve the way NDIS services and supports are delivered through pathways that:

- provide support and encouragement to lift **quality** of supports and
- detect and address harms through **safeguarding**.

Safeguards are actions aimed at protecting individuals from harm, abuse, and neglect, while also empowering them with choice and control over their lives. These safeguards can be informal, such as self-advocacy and trusted relationships, or formal, including legislative requirements, policies, complaint processes, and regulatory oversight.

Quality services, on the other hand, are defined by their focus on achieving positive outcomes for service users, involving them and staff in service design, promoting continuous improvement, and using data to monitor and enhance performance.

These definitions provide a framework for understanding and implementing regulatory standards that prioritise the well-being and autonomy of individuals using services.

To improve the quality of services, a cultural shift is necessary. The new model is crucial

in driving this change by emphasising relational regulation, which focuses on fostering relationships, trust, and transparency.

The changing landscape of NDIS service provision

One of the expected outcomes of the NDIS was the opening of the market for goods and services, allowing participants to access supports from both specialist disability service providers and businesses in the community. This was intended to increase choice and create a competitive market where providers would compete based on quality and price. It also aimed to make NDIS participants consumers in a broader market, potentially safeguarding them from receiving supports behind closed doors or in institutional settings.

Regulatory systems were designed to reduce barriers for providers of general supports while ensuring that only those with the necessary skills, experience, and capacity to deliver specialised services could enter or remain in the market. Minimal obligations, such as the NDIS Code of Conduct, were established for all providers, while registration and associated obligations applied only to a small subset delivering high-risk supports.

In recent years, there has been a shift in the types of support unregistered providers offer. Initially, it was expected that unregistered providers would offer general services like transport or gardening, which were considered lower risk due to limited participant contact. However, unregistered providers are now providing supported independent living (SIL) and increasing amounts of daily activities and social and community participation. For example the NDIS January to March 2023 Quarterly Report notes that 25 per cent of plan managed payments for daily activities (for participants receiving SIL), 51 per cent (for participants not receiving SIL supports) and 39 per cent of payments for community and social participation supports were paid to unregistered providers.

There is limited publicly available data on the size, structure, or locations of unregistered providers. Anecdotally, reports suggest that many unregistered providers, especially those offering personal care and community participation supports, are operating as sole traders. These providers vary in size, ownership, and service offerings, with some operating on a large scale serving many participants and others offering niche services to a small customer base.

While the size or structure of a provider does not determine the quality or safety of their services, it does influence how supports are delivered. A sole trader providing personal care to a few local participants operates differently from a large national provider serving thousands of participants across various disability supports. Both types of providers have their place in the market, meeting the needs of different participants who may seek supports from a mix of registered and unregistered providers.

The diversity of the market, where some services require higher levels of regulation and scrutiny, is not unique to the disability industry. However, it will require a regulatory model and quality measures that acknowledge, regulate, and enable this diversity.

In developing the new risk-proportionate regulatory framework, it is crucial to define the concept of a "provider." A clear definition and consistent application of the legislation is pivotal as it establishes the scope and boundaries of entities subject to the regulatory framework.

8.0 Guiding principles for a risk-proportionate model

NDS believes a robust and well-designed framework is essential to ensure the safety, dignity, and empowerment of participants while fostering a thriving NDIS market.

NDS recommends a set of principles to guide development of the new model. These principles are grounded in human rights, participant empowerment, national consistency, and best practice regulation. We believe that adhering to these principles will create a system that effectively balances participant safeguarding with a supportive environment for quality providers to operate efficiently within the NDIS.

These principles should prioritise:

Human rights and participant empowerment

- Align with the UN Convention on the Rights of Persons with Disabilities, upholding dignity, respect, and freedom from abuse.
- Respect the presumption of participant capacity for choice and control, balancing harm reduction with participant autonomy.
- Support participants in becoming informed consumers and advocating for themselves.
- Ensure participants can plan for and access the supports over a lifetime.
- Participants have the right to receive high-quality supports delivered by qualified and competent providers.

National consistency and proportionality

- Ensure a consistent level of participant safeguarding across the NDIS.
- Tailor risk management to individual needs and types of support, considering:
  - Risks at the individual level (age, communication, medical conditions, mitigating factors such as nature and extent of informal supports, appropriate supported decision making mechanisms in place)
  - Risks based on types of support (personal contact, potential adverse effects)
  - The level of personal contact involved
  - The environment in which the support occurs (limited supervision, professional registration).
- Maintain a regulatory system that responds to market failure risks with practical monitoring

Efficiency, effectiveness and market sustainability

- Strike a balance between regulation and market growth, avoiding unnecessary red tape.
- Develop participant, worker, and provider capabilities to foster a responsive market.
- Reduce duplication and recognise equivalent standards from other sectors.
- Ensure a diverse and sustainable market which fosters innovation, quality, continuous improvement, contemporary best practice and effectiveness in the provision of supports.

Best practice regulation

- **Outcomes-focussed:** Regulatory actions should improve participant outcomes and align with NDIS objectives.
- **Proportionate and efficient:** Regulatory measures should be tailored to the specific issue being addressed and avoid overreach.

- **Responsive and flexible:** Regulatory approaches should adapt to individual circumstances and sector changes.
- **Transparent and accountable:** Regulatory actions should be open and transparent to encourage public confidence and provide certainty and assurance for regulated entities.
- **Independent:** Regulatory authorities should be free from conflicts of interest.
- **Communicative and engaged:** Regulatory bodies should actively engage with stakeholders (government, providers, participants, community).
- **Mutual responsibility:** Shared responsibility for quality improvement between regulatory bodies and providers.
- **Inter-jurisdictional cooperation:** Consistent and coordinated regulatory practices across different regions.
- **Regulatory environment awareness:** Minimise duplication and coordinate with other relevant regulations.

9.0 Key enablers for a successful regulatory framework

Key enablers serve as the foundation for a regulatory framework that not only safeguards participants but also fosters a culture of excellence and continuous improvement within the disability sector. Recommendations to government on a new regulatory framework should not be made in a policy vacuum that does not acknowledge the importance of the following factors in setting the regulatory system and its many stakeholders up for success:

- **Workforce:** A well-trained and supported disability workforce is crucial for providing secure and high-quality services. Workforce shortages and recruitment challenges need long-term sustainable solutions to meet growing demand.

- **Funding and resourcing:** Adequate funding and resources are essential for implementing a risk-proportionate regulatory model. This ensures providers can meet standards without being overburdened, supporting sustainability and quality outcomes. Well-designed pricing and payment frameworks can also link to outcomes frameworks, empower participants to make informed choices and support investments in quality.

- **Planning:** There can be a mismatch between the support participants need and what their plans enable. Plans should respond to individual risks and preferences, ensuring support for decision-making and access to information.

- **Complaints management:** Effective complaints management is critical for improving service quality and regulatory frameworks. It can shift the culture towards better quality care and service and should be seen as an opportunity for improvement rather than just a compliance burden.

- **Regulatory intelligence:** Public access to sector data and intelligence from complaints and other sources is crucial for identifying trends and improving services. Better use of regulatory intelligence can inform education, compliance, and enforcement activities.

- **Risk-based monitoring:** Monitoring providers based on risk helps ensure safety and quality outcomes. Data from various sources helps regulators proactively address risks at different levels, from individual providers to systemic issues.

- **Information sharing:** Clear and transparent information sharing enhances regulatory efforts. It allows for more informed decisions, better monitoring, and improved service outcomes.

- **Advocacy:** Advocacy services are key for individuals to address concerns and protect against abuse. Stable funding for advocacy programs is crucial for supporting individuals and addressing systemic issues.

- **Supported decision making:** Supporting individuals in decision-making is essential for choice and control. A framework for supported decision-making, guided by principles and elements, should be implemented across all levels.

- **Participant safeguarding:** A comprehensive strategy for participant safeguarding is essential. It provides guidance on supporting the safety and well-being of participants, crucial for a successful regulatory framework.

10.0 A new way of regulating NDIS supports and services

The conceptual model proposed by NDS is in line with the model recommended in the NDIS Review final report. It categorises services based on risk and service characteristics, allowing providers to register for specific service categories. All providers would undergo registration through the new model, with set periods of registration and regular re-registration requirements to ensure ongoing suitability, viability, capability, and propriety. Monitoring will be implemented, using data and intelligence to identify and address risks. Complaints and feedback mechanisms will be enhanced to provide safe and accessible pathways for concerns, improving accountability and transparency. The model also proposes harmonisation with other care sectors, supporting information sharing and removing barriers to entry. Cultural change will be crucial, emphasising relational regulation to build trust and transparency. Providers will be incentivised to improve continuously, with escalating enforcement actions for non-compliance. The NDIS Commission will be empowered to identify systemic issues efficiently and work with providers for continuous improvement. Additionally, streamlined information sharing and light-touch regulation for high performers will be applied. Overall, the framework seeks to enhance quality, promote transparency, and ensure accountability in disability service provision under the NDIS.

Diagram 1: Graduated and risk -proprotionate provider registration and enrolment

Registration categories	Enrolment	Basic	General	Advanced
Vision / purpose	To enable high quality support services and effective safeguards for the delivery of NDIS services to people with disability			
Conditions (Core)	These obligations apply consistently to all registration categories • Comply with Code of Conduct / Positive duty code of conduct • Accessible complaints process • Worker Orientation Module 'Quality, Safety and You' • Worker Screening • Comply with applicable laws/legislation (state and federal) – E.g. Privacy and confidentiality, industrial relations, WHS, anti-discrimination, consumer protections • Report complaints and incidents to NDIS Commission			
Conditions (Core) **Evidence may vary**	Conditions apply universally to all NDIS providers, however, evidence required to demonstrate compliance and the implementation specifics may vary based on the provider's registration category • Establish and operate an internal system for managing complaints and feedback that adheres to specified standards, handles complaints as outlined, and prohibits discrimination against individuals who raise complaints • Implement an incident management system and procedures that meet specified standards, handle incidents as outlined, and prohibit discrimination against individuals who report incidents • Demonstrate record keeping practices and processes for specified records, consistent with the personal information requirements • Confirmation that NDIS Funding is used for reasonable and necessary services			

Diagram 1: Graduated and risk-proportionate provider registration and enrolment (continued)

Registration categories	Enrolment	Basic	General	Advanced
Standard registration period	3 years			
Conditions (Service type / category specific)	Obligation requirements and evidential burdens are graduated in line with risk of the registration category. Specific obligation requirements might vary between services in the same registration category			
	Digital declaration Attestation with Basic practice standards	Compliance with Basic practice standards	Compliance with Core practice standards	Compliance with Core practice standards Compliance with relevant supplementary modules of Practice Standards • High intensity daily personal activities • Specialist behaviour support • Implementing Behaviour Support Plans Module. • Early childhood supports • Specialist disability accommodation. • Residential accommodation support
Provider-Specific Conditions	Bespoke conditions maybe be determined by the Commission to address specific service delivery characteristics and/or risks associated with their provider operations (as required)			
Monitoring	Providers may be subject to risk-based compliance monitoring to ensure their ongoing suitability to deliver NDIS services, with the monitoring intensity and format varying based on their registration category and risk. Monitoring methods may include on-site observations, document reviews, self-assessments, and other compliance activities to address identified risks (including complaints and other regulatory intelligence) Regulatory intelligence: Proactive regulatory action through preventing, detecting and correcting risk			

*New or revised basic, core and supplementary practice standards will be required.

10.1 Regulating for quality

In developing a regulatory framework for disability service provision, it is crucial to focus on key elements that ensure quality, safety, and accountability. Cultivating a service culture that respects human rights and rejects violence is foundational, alongside promoting transparency, accountability, and openness to change. Governance should be strengthened to ensure understanding of accountability and governance requirements, with a focus on including consumers, advocates, families, and carers as partners in service design and governance. Operational aspects should prioritise recruiting and retaining skilled staff committed to disability rights, with adequate training and support. Supervision, recruitment processes, and support for compliance with policies and standards are essential for maintaining service quality. Regarding reporting and response, improving accessibility and effectiveness of complaints processes is paramount, including addressing barriers to making complaints and ensuring complaints are seen as opportunities for improvement. By focusing on these elements, a regulatory framework can effectively ensure quality and safety in disability service provision.

In transitioning to a risk proportionate regulatory framework, it is crucial to implement measures across three key domains: developmental, preventative, and corrective. These measures aim to strengthen the capability of people with disability, the workforce, and providers, support quality services, prevent harm, and address issues when they arise. Investment in the developmental and preventative domains is particularly important, as it can reduce the need for corrective action. For example, while complaints are a corrective measure, they also offer an opportunity for learning and improvement, reducing the likelihood of similar issues in the future. These measures work together to create a system that supports positive outcomes and reinforces a culture of continuous improvement in disability services.

10.1.1 The role of the regulator

Providers are seeking increased support, clearer information, and more resources to enhance their capacity and improve the quality of their services, aiming for excellence in practice. They advocate for a more significant role for the NDIS Commission in providing this support. Specifically, providers are requesting less emphasis on their obligations and more guidance on how to meet them effectively.

According to the NDIS Commission's Activity Reports, over the past decade, more than 14,000 audits, including certification and verification audits, have been conducted. This milestone presents an opportunity to summarise audit findings, highlighting the types of non-compliances identified, and share them with the sector in an accessible format, including for people with disability. This knowledge-sharing can facilitate improved practices and a better understanding among participants of how regulation can drive quality improvements, thus benefiting the entire NDIS community.

Measures to drive service quality

Increasing the focus of regulation on measures aimed at developing participant and provider capability is required. The NDIS Commission has a rich source of data that holds potential for it to engage in greater education and information provision across the entire sector.

Measures include:

- **Strengthening developmental role:** Enhancing the developmental role with providers through free training on zero-tolerance cultures and resources related to registration compliance requirements regarding preventing violence, abuse, neglect, and exploitation. This includes understanding risk factors and prevention techniques involving these issues. For example the Aged Care Quality and Safety Commission and the Australian Commission on Safety and Quality in Health Care, provide publications, resources, and information on poor-performing areas of practice in an accessible manner for a wide range of providers.

- **Utilising data:** Increasing the use, interrogation, and interpretation of data, including making more publicly available information regarding aggregated audit findings. With a national framework and regulator, there is now a national view of the disability sector that has never existed before. This, combined with the amount of data available and emerging technologies, could allow for deep and authoritative insights into the state of quality and safeguarding across the country, determining where the sector can improve and where services may require more education to improve quality and address gaps.

- **Key observations across the scheme:** Highlighting key themes observed by the NDIS Commission regarding quality and safeguarding across the country. While regulator reports often pinpoint areas needing improvement, the NDIS Commission's activity reports focus on undertaken activities and statistics regarding complaints and reportable incidents. Further interpretation could paint a clearer picture of the nationwide situation. A proactive approach, such as Own Motion Inquiries into SIL and Platform Providers, can draw out themes and identify areas requiring a targeted response. NDS members seek benchmarks to understand their competency level in comparison to other organisations.

- **Promoting evidence-based practice:** Promoting evidence-based practice in preventing and responding to all forms of violence, exploitation, neglect, and abuse by disability providers. This includes promoting good-practice examples and sharing quality approaches through information such as ongoing publication of providers' approaches.

- **Centralised resources:** Centralising a clearinghouse of resources that enables access by providers, like those by the Aged Care Quality and Safety Commission and the Australian Commission on Safety and Quality in Health Care.

- **Enhanced transparency in compliance and enforcement:** Providing greater detail regarding compliance and enforcement breaches, and penalties applied. The current level of detail provided is limited. Examples from Australian health and safety and aged care regulators, and the disability services regulator in New Zealand, show how a level of detail can be provided while maintaining appropriate privacy considerations. NDS suggests releasing information pertaining to the nature of the proven breach; how long it occurred; any actions taken by the NDIS Commission; and any penalties issued. This could not only serve as a general deterrent to other service providers but also be educative in assisting them to understand how the regulator expects disability services to be delivered and support providers' practical and proactive approaches.

11.0 Becoming a provider

Registration would be an important tool to help safeguard people with disability by making sure only providers that can demonstrate their suitability, capability, viability, and propriety are able to register.

The NDIS Review recommends improvements to the suitability assessment process undertaken by the NDIS Commission for provider registration. This includes streamlining and automating the assessment process to reduce processing times and potentially granting conditional registration for lower-risk providers. The NDIS Review emphasises the need for minimum expectations to be set, ensuring providers and workers operate safely, competently, and ethically. It suggests implementing a statutory code of conduct to promote safe and ethical service delivery, outlining duties, obligations, and rights. This code would help shape behaviour and culture, empower consumers, and exclude providers engaging in unacceptable conduct. Additionally, providers must comply with all applicable laws, manage conflicts of interest, subcontracting, and maintain adequate insurances. They must also keep proper records, follow pricing and payment conditions, and report serious incidents. Overall, these recommendations aim to ensure the safety and quality of supports within the NDIS market, setting clear expectations for providers and empowering consumers.

11.1 Evaluating the risk profiles of different supports and providers

Ineffective regulation has been one of the contributing factors to the high levels of substandard care in the NDIS. Regulation should seek to prevent harm to people with disability and ensure that instances of substandard support are detected and addressed.

Allowing providers to opt out of most regulatory requirements places an excessive burden on participants to manage risk themselves. Implementing minimum safeguards are common in our community and are a general community expectation. We rely on government and its agents to take on and establish mechanisms to mitigate some of the risks inherent in our day to day to lives and as we interact with goods and services. This also hinders the Commission from having sufficient market visibility to apply a proactive, risk-based approach to prevent harm and promote quality improvement.

However, this needs to be balanced with ensuring principles of choice and control.

11.2 Choice and control

Choice and control are fundamental principles of the NDIS, enabling people with disability to have agency in pursuing their goals and in planning and receiving their supports. This empowerment extends to making decisions about the level of risk they are comfortable with and having the necessary tools and information to assess the quality and suitability of providers. The NDIS recognises that offering choice and control can enhance outcomes for individuals and foster a provider market focused on supporting participants in achieving their objectives. To effectively support choice and control, a cohesive approach to quality and safeguarding is crucial. This involves empowering participants with information about their rights and options, enhancing their skills and confidence, facilitating connections, and providing decision-making support when needed.

For a risk proportionate regulatory model, this means that the focus should be on enabling choice and control while managing risks effectively. The model should empower people with disability to make informed decisions about the services and supports they receive, including understanding the level of risk involved. It should provide them with the tools and information needed to assess the quality and suitability of providers, as well as the ability to choose providers that best meet their needs and preferences.

Additionally, the regulatory model should ensure that participants are supported in exercising their choice and control, which may include providing decision-making support when needed. It should also foster a provider market that is responsive to participants' goals and objectives, with a focus on delivering high-quality services.

Overall, a risk proportionate regulatory model should balance the need for choice and control with the need to safeguard participants from harm, ensuring that people with disability can access the supports they need while being protected from risks.

11.3 Entry requirements to be a NDIS Provider

The approach recommended by the NDIS Review and supported in NDS' conceptual model mandates universal registration for all providers delivering NDIS services. This central registry will function as a single entry point for the NDIS Commission, giving them crucial capabilities and information. Firstly, it allows them to comprehensively track the sector, providing a clear picture of all operating providers and the services they deliver. Secondly, it fosters increased transparency, bolstering public trust and confidence in the NDIS by demonstrating a clear system of oversight. Finally, the collected data becomes valuable regulatory intelligence, informing future decisions and improvements within the NDIS framework.

As part of the new regulatory model, the NDIS Commission's capacity will need to be increased and enhanced to handle incoming registrations effectively and efficiently. This includes investing in technological infrastructure to support the registration process, such as online application systems and databases. Important considerations include:

- **Meeting demand:** With the universal registration requirement for all providers, there will likely be an influx of registrations. Increasing system capacity ensures that the registration process remains smooth and timely, avoiding delays for providers seeking to enter the NDIS market.

- **Efficiency:** A robust system with increased capacity can process registrations faster, reducing administrative burden for both providers and regulatory bodies. This efficiency can contribute to a more streamlined and effective regulatory process overall.

- **Data management:** An improved system can better manage and analyse registration data, providing valuable insights into the NDIS provider landscape. This data can inform decision-making and policy development, leading to continuous improvement of the NDIS framework.

11.3.1 Ensuring trustworthy NDIS providers: The suitability assessment

Before allowing providers to participate in the NDIS, the NDIS Commission will conduct a thorough suitability assessment. This assessment safeguards participants by ensuring providers and their key personnel meet registration requirements.

The Commission will assess providers' suitability to deliver services during registration and re-registration. This assessment includes evaluating applicants' understanding of services, experience in providing care, ability to meet registration conditions, compliance with laws, financial management, past performance, and cultural appropriateness. Key personnel's suitability, such as board members or operations managers, is also considered, including their experience and completion of worker screening processes. Registration and assessment processes would be streamlined by recognising accreditations from other regulatory schemes, supplemented with additional information required to demonstrate compliance with NDIS registration conditions and verifying information via existing mechanisms such as MyGovID.

Input information

Providers would input the following information:

- organisation's contact details
- corporate structure
- outlets/places of operation, and
- key personnel details.

Select the service types of the organisation provides to determine the applicable registration category.

Key criteria evaluated

- Past NDIS involvement: Determine if the provider or key personnel have been previously registered with the NDIS.
- Banning orders: Check for any current banning orders in place.
- Criminal history: Review past convictions for serious offenses that raise concerns.
- Financial stability: Assess if the provider has ever been insolvent or under administration.
- Regulatory compliance: Check for any past enforcement actions by relevant authorities.
- Ethical conduct: Review any findings of fraud, misrepresentation, or dishonesty.
- Corporate governance: Determine if anyone is disqualified from managing corporations.

Beyond the basics

The NDIS Commission may request additional information from new applicants, such as details about skills and experience, organisation policies and service delivery plans.

Decision process

Following a comprehensive review, the NDIS Commission will reach a decision on the application.

Providers will be notified of the outcome, including the reasoning behind the decision.

The NDIS Commission will determine the registration category that applies to the organisation based on factors such as the nature of services provided, scale of operations, and potential

risks involved.

This determination establishes the regulatory framework within which the organisation will operate under the NDIS, ensuring compliance with necessary standards and obligations.

11.4 Service types

Registration categories will group together services based on shared characteristics and associated service risks, along with provider obligations addressing those risks. Providers will select the service(s) they intend to deliver and register within the appropriate category(ies). This approach aims to simplify registration processes, enhance understanding of provider obligations for people with disability and providers alike, and facilitate risk-proportionate regulation.

Diagram 2: Service types and registration categories

	Description	Services	Rationale	Registration category
Service Type 1	Support Services for Home, Meals, and Transport	Assistance with household tasks (House or Yard Maintenance; House Cleaning; linen services) Preparation and Delivery of Meals Assistance with Travel/Transport Arrangements	Providing services in a person's home typically includes tasks like housework, delivering, and maintaining the home. These services are often more accessible through private markets and do not necessitate disability specific expertise. To streamline regulation and ensure safety for people with disability, a system of mutual recognition of regulatory standards will be adopted (e.g. Aged Care services)	**Enrolment**
Service Type 2	Assistive technology, other specialised products and home modifications	Assistive Products for Personal Care and Safety Personal Mobility Equipment Assistive Equipment for Recreation Vision Equipment Hearing Equipment Assistive Products for Household Tasks Communication and Information Equipment Vehicle Modifications Home Modifications Assistance Animals Specialised Driver Training	Services encompass the provision of equipment, aids, and modifications to assist people with disability in their daily activities. Equipment and modifications are often provided on a one-off basis or for a limited period Risks associated with aids, equipment, and home modifications are overseen by other regulators	**Basic**

Diagram 2: Service Types and Registration Categories (continued)

	Description	Services	Rationale	Registration category
Service Type 3	Assistance with Social, Economic and Community Participation	Assistance to Access and Maintain Employment or Higher Education Assistance in Coordinating or Managing Life Stages, Transitions And Supports (school, SLES) Specialised Supported Employment Group and Centre Based Activities Individual Social Skills Development Community Engagement Assistance Daily Personal /self-care Activities Development of Daily Living and Life Skills Accommodation / Tenancy Assistance Assistance to Access Community, Social and Recreational Activities	These services may generally have a medium risk profile compared to services requiring more specialised or intensive support Applying a general form of regulation to these services can streamline administrative processes for providers, reducing regulatory burden and promoting efficiency. A uniform regulatory approach across these services can ensure consistency in service delivery standards and quality, benefiting both providers and clients. While these services may not require the same level of oversight as higher-risk services, they still need to meet minimum quality standards to ensure the well-being and satisfaction of participants	**General**
		Innovative Community Participation Community Participation Activities	Lower risk profile and the desire to reduce barriers to entry for providers offering these types of services. These services often involve community-based activities delivered by mainstream community organisations or providers. Activities are generally not designed to be disability specific.	**Enrolment**

Diagram 2: Service Types and Registration Categories (continued)

	Description	Services	Rationale	Registration category
Service Type 4	Allied health / professional services	Nursing Support Specialised Hearing Services Interpreting and Translation Exercise Physiology and Personal Training Therapeutic Supports Hearing Services Customised Prosthetics Dietetics Multidisciplinary Team Supports	Lower inherent risk, due to standardised practice, existing regulatory frameworks, and the need to maintain participant choice and control Routine or non-invasive procedures with established protocols and guidelines Regulation by professional bodies or accreditation schemes.	**Basic**

	Description	Services	Rationale	Registration category
Service Type 5	Homes and living and specialised supports	Specialist Positive Behaviour Support High Intensity Supports (self-care activities, group and centre based, Community, Social and Civic Activities) Assistance in Shared Living Arrangements (Supported Independent Living) Specialised Disability Accommodation On-call overnight monitoring Assistance from a live-in carer Short Term Accommodation Medium Term Accommodation Individualised Living Options Residential aged care	Participants requiring these supports are likely to have more complex support needs, requiring specialised knowledge and skills. Multiple individuals typically receive this support in the same location, requiring providers to manage interactions to ensure safe, quality care for all. There may be an increased risk of use of restrictive practices. This care is often provided over an extended period. It typically requires several staff members on-site and coordination of their efforts, making it unlikely to be delivered by an individual to meet safety standards. This category encompasses all services and support provided in a residential disability care setting. Providers are responsible for the continuous, round-the-clock care of individuals, meeting all their needs (food, accommodation, personal care, clinical care, social activities, etc.). Effective incident management, care planning, staff monitoring, and emergency management systems are crucial for safe and quality care. These services are higher risk due to the increased risk levels of those accessing them	**Advanced**

Diagram 2: Service Types and Registration Categories (continued)

	Description	Services	Rationale	Registration category
Service Type 6	Early Childhood	Early Intervention Supports for Early Childhood Early Childhood Supports (EC) – younger than 9* Specialised Home-Based Assistance for a Child	There are established best practice guidelines for delivering early intervention support. These have been endorsed by the NDIA. Ensuring that providers delivering early childhood intervention supports are registered and assessed against practice standards support the delivery of best practice support and facilitate positive outcomes for children and their families.	**Advanced**
Service Type 7	Financial and support plan management	Management of Funding for Supports in Participants' Plans Plan Management – Financial Administration Supports Specialised Support Coordination	Need for regulatory oversight to ensure providers meet standards related to financial management, service coordination, and quality of supports. Risk of financial mismanagement or misuse of funds, it is considered a medium risk compared to direct service provision.	**General**
Service Type 8	Services that may be transitional due to reform agenda	Support Connection Coordination of Supports Psychosocial Recovery Coaches	Significant changes are expected for these support and services during the NDIS reform period. These services are crucial for participants and it is essential to ensure these supports remain accessible. As the NDIS moves towards implementing the navigator function, which is categorised as Advanced regulation, it is important to keep these foundational services accessible.	**Basic**

In the NDIS system, there are two clear types of providers: those offering services and support, and those supplying goods and products.

Goods and products

The definition of a NDIS provider includes businesses that supply goods and products, some of which are available to the general community. NDIS participants can use their funding to purchase these items if they support their goals. Examples include buying continence products or an iPad. Visibility of these providers may be ensured through payment information shared with the NDIS Commission or by requiring them to enrol at a basic level. Some goods are specifically developed for people with disability or require modifications to meet their needs, such as building renovations or customised wheelchairs. Risks for these products are managed through planning processes, and providers are likely to be subject to standards before selling them in the Australian market.

Services and supports

The new model aims to categorise service types and assign them to registration categories, facilitating a regulatory framework that employs various approaches to assess providers at entry and continuously manage risks. This approach seeks to resolve concerns regarding the existing market, which features a clear division between registered and unregistered providers and supports flexibility for graduated registration requirements and ongoing obligations.

Furthermore, the system aims to distinguish between service types that can be managed through registration and re-registration processes and risk-based monitoring by the NDIS Commission, informed by regulatory intelligence such as complaints and feedback, routine audits and additional conditions of registration for certain service types.

Providers delivering a range of supports with varying risk profiles will be categorised based on the highest risk support they provide. Registration serves as a preventative safeguard, ensuring providers are reputable, well-managed, and competent to meet the needs of people with disability. While not a guarantee of safety or quality, registration indicates that providers have been independently assessed and are accountable. It is important to allocate service types to the correct registration category to avoid under-regulation or imposing unnecessary requirements on providers.

Aligning obligations with the rights of people with disability is crucial to ensure practical outcomes and uphold these rights. Providing clarity about obligations for people with disability and providers while allowing the NDIS Commission to apply tailored obligations to mitigate service provider-specific risks is a key goal. The system aims to balance safeguarding people with disability and building confidence in the sector without creating barriers to providers entering the system. Finally, where possible and appropriate, aligning obligations with similar service offerings across the care and support economy to facilitate providers and workers entering the NDIS is also considered.

12.0 Responsibilities of being a provider

12.1 Risk as an organising principle

Using risk as an organising principle for developing and implementing a risk-proportionate

regulatory model for all NDIS providers and workers aims to increase visibility and regulation of NDIS providers and workers and strengthen responses to quality and safeguard concerns.

NDS proposes a risk-based framework, considering two key types of risk. One risk is that people with disability could receive poor-quality supports that do not help them achieve their goals. The other risk is that people with disability could be harmed in some way.

Some risks can be managed by individuals and through strategies agreed upon between the NDIA and participants as they develop and monitor individual plans. Other types of risk may require regulatory approaches to ensure that the rights of people with disability to be free of harm, abuse, exploitation, or violence are upheld.

The goal is to establish universal registration requirements that allow only suitable providers to participate in the scheme, while avoiding unnecessary barriers for providers to enter or remain part of the scheme. A market made up of diverse providers gives participants with choice, which can naturally act as a safeguard against poor-quality and unsafe support provision, as people can choose to switch from providers they feel offer subpar supports. In less developed markets, such as rural and regional areas, additional considerations may be needed to balance quality support provision with minimising unnecessary barriers.

The goal of a risk-based framework is to focus on areas where the risks are greatest, and the consequences of harm are most severe. This means that providers of support types with potentially greater risks to participants will need to comply with stronger regulatory requirements than providers in low-risk areas.

The level of risk involved in delivering support can vary depending on an individual's risk factors and the nature of the support being provided. A risk-based framework should be used to inform the regulation of different types of supports and providers in the model and guide how risk-proportionate features of regulatory oversight are applied. As outlined in the NDIS Review Final Report, NDS agrees that proposed framework should be responsive to different types of risks:

- Risks at the individual level: Personal characteristics such as age, skills, limited communication abilities, and complex medical conditions can be associated with heightened risk. Certain groups, such as women, children, Aboriginal and Torres Strait Islander people, those from non-English speaking backgrounds, and those with intellectual disability and complex mental illnesses, may be at higher risk of abuse and poor practice. Individuals who have regular contact with family and friends, or who receive support from multiple providers, may be less vulnerable to abuse and poor or harmful practices than those who are isolated.

- Risks based on types of support: The potential adverse effects of the support, such as peg feeding and administering prescription drugs, can be serious if not carried out correctly. The level of personal contact involved, such as in personal care supports, can raise the potential for abuse. The environment in which the support occurs, particularly if it lacks external visibility or direct supervision, or if the support does not require professional registration, can pose a higher risk of abuse for participants.

- Indicators of high inherent risk in support delivery, such as:
  - Where supports are delivered in a formal setting with limited informal supports (for example, people with disability in group homes).
    - Where a person's choice in the support and provider is constrained (for example,

through direct commissioning of supports).

- ○ Where a provider can exert influence over a person's choices (such as supporting decision-making, connecting people with disability with support or managing funding); and

- ○ Where early intervention supports are delivered to children and will affect long term development or long-term reliance on the NDIS.

- Further indicators that may increase or decrease the risk of a support or provider, such as:
  - The intensity of a support (for example, whether it involves more specialist or health-related supports)
  - The setting in which a support is being delivered (for example, risk may differ for supports delivered in a person's home versus in the community)
  - The level of contact with a person (particularly on a 1:1 basis versus supports delivered in a group)
  - The size of the provider (for example, larger providers versus smaller or sole trader providers) and
  - Regulatory intelligence gathered through market monitoring or information sharing with other regulators about a particular provider or systemic risk of some support types

12.2 Proportionality

The current regulation and registration of providers does not adequately align with the diverse risk profiles associated with different types of supports and services. This mismatch results in regulatory gaps, particularly in overseeing higher-risk support delivery, while also imposing unnecessary burdens and duplications for lower-risk support services. The current regulatory framework lacks proportionality in overseeing various support services, often burdening providers with unnecessary and poorly targeted regulations. To address this, regulatory oversight should be proportionate, aligning standards and requirements with the varying risks associated with different types of support delivery. This approach ensures that regulatory measures do not go beyond what is necessary to achieve their objectives. It is crucial to match the scope and intensity of regulations with the potential benefits, such as improving quality outcomes for participants or reducing the risk of harm. Regulatory efforts should be concentrated where they can yield the greatest benefits relative to the resources expended. This prioritisation should be based on evidence, focusing on areas where the potential benefits and risks are most substantial.

To strengthen participant safeguards within the framework, a risk-proportionate regulatory approach is proposed. This model prioritises targeted monitoring interventions based on
- the person with disability who is receiving products or services
- the nature of the product or service
- the service provider delivering the product or service
- how the service provider delivers the product or service.

This model offers several advantages. Firstly, it reduces unnecessary entry barriers for low-risk providers, promoting a more accessible NDIS market. Secondly, by minimising administrative burdens, providers can dedicate more resources towards delivering high-quality care and achieving positive outcomes for participants. Finally, the NDIS Commission can strategically

focus its oversight on high-risk areas and emerging threats within the sector, ensuring optimal use of resources for maximum impact. It is important to clarify that this approach does not signify less protection for people with disability. Instead, it represents a smarter allocation of resources, guaranteeing the strongest safeguards are in place for those most at risk.

The NDIS Review emphasised the importance of clear guidelines to implement proportionality effectively. NDS agrees with this assessment. This means tailoring regulatory requirements based on the risk level associated with different providers. Here are some potential methods to achieve this:

- **Streamlined practice standards:** The NDIS Commission could develop simplified versions of practice standards for specific provider categories. For instance, basic registration providers might have a less complex set of standards compared to larger organisations. Sole traders, who often operate differently than organisations, could potentially have certain standards removed if deemed less applicable.

- **Mutual recognition:** The NDIS could acknowledge existing compliance with standards from other relevant regulatory systems. This might involve recognising similar standards from the aged care sector or professional registrations issued by bodies like AHPRA (Australian Health Practitioner Regulation Agency), where appropriate. The NDIS Review recommends establishing more extensive mutual recognition of compliance with other regulatory systems, such as aged care, to streamline processes for providers. Additionally, it suggests implementing more proportionate audit approaches, such as targeted audits and the use of self-assessment and attestation, to assess compliance and quality.

- **Reduce duplication of requirements for providers:** The NDIS Review suggests implementing a nationally consistent system with mutual recognition of compliance with equivalent standards where appropriate. This would simplify compliance for providers operating nationally and across different community service sectors, while also making it easier for participants to understand expectations and access supports across Australia.

- **Risk-based audits:** The intensity and format of audits could be adjusted based on the provider's registration category. This could involve a combination of on-site observations, document reviews, self-assessments, and ongoing monitoring activities tailored to the specific provider and identified risks.

- **Targeted audit scopes:** Audits could be more focussed, concentrating on aspects of the practice standards most relevant to a provider's services or areas with higher identified risks. For other areas, the NDIS Commission could potentially accept self-attestation as evidence of compliance.

By implementing these strategies, the NDIS Commission can establish a more efficient and risk-focused regulatory framework.

12.3 Rules and standards for regulation of supports

Provider responsibilities will be known as conditions in the proposed new model. Providers are responsible for meeting these conditions, which aim to safeguard people with disability by putting in place the necessary controls to manage risk of harm and facilitate the delivery of high quality care.

To establish clear expectations for NDIS providers, the new model proposes a tiered structure for their obligations. This conceptual framework categorises requirements of registration into three distinct areas: Core conditions; Category-specific conditions; and Provider-specific conditions.

12.3.1 Core conditions

Core conditions of registration are certain conditions that would apply to all registered providers including those relating to:

- NDIS Code of Conduct: Applies to all workers. It sets standards of behaviour for providers and workers in their interactions with participants.
- Accessible Complaints System: An effective complaints system is needed to:
  – Help participants understand their rights and expectations.
  – Give participants confidence to complain by addressing power imbalances.
  – Be accessible and easy to navigate.
  – Respond to serious incidents and complaints.
  – Enable stakeholders to make complaints on behalf of participants.
  – Support resolution of complaints and provide an escalation pathway.
  – Identify systemic issues and drive improvement actions.
- Worker Orientation Module 'Quality, Safety and You': This module is an interactive online course that explains the obligations of workers under the NDIS Code of Conduct. All registered NDIS providers will need to ensure that all workers complete this mandatory training.
- Worker Screening: To work or volunteer with adults or children with disability in in the NDIS you must receive a disability worker screening clearance.
- Report complaints and incident to the NDIS Commission
- Comply with applicable laws/legislation: A registered provider must comply with relevant federal and state or territory laws in which they deliver services.

These measures are crucial for ensuring the safety, well-being, and rights of NDIS participants, and for maintaining the integrity of the NDIS.

12.3.2 Category-specific conditions

These essential conditions apply to all providers, regardless of the specific services they deliver. Evidence required to demonstrate compliance and the implementation specifics may vary based on the provider's registration category. For example:

- Establish and operate an internal system for managing complaints and feedback that adheres to specified standards, handles complaints as outlined, and prohibits discrimination against individuals who raise complaints.
- Implement an incident management system and procedures that meet specified standards, handle incidents as outlined, and prohibit discrimination against individuals who report incidents.
- Demonstrate record keeping practices and processes for specified records, consistent with

the personal information requirements

- Confirmation that NDIS funding is used for reasonable and necessary services and in line with the NDIS legislative framework. Providers must adhere to the requirement of only claiming for services they are registered to provide, which serves as an additional safeguard. They also have an obligation to report any significant changes to their operations or structure.

12.3.3 Provider-specific conditions

The NDIS Commission may establish tailored conditions for individual providers to address specific service delivery characteristics and/or risks associated with their operations. The NDIS Commission has the authority to require providers meet specific conditions on the registration at any time. For example, these conditions may include requiring the provider to deliver culturally appropriate services, or report on specific matters, or limiting the number of people with disability to whom a provider can deliver care and services.

12.4 Categories of registration

The model proposed in this submission is in line with the NDIS Review recommendation, which recommended four registration or enrolment categories, each with distinct obligations and requirements.

Overall, this model aims to regulate providers effectively based on the risk profile of their support types, ensuring compliance with standards at a proportionate level while minimising regulatory burden.

12.4.1 Enrolled

Providers of lowest risk supports need to comply with the Code of Conduct, ensure worker screening where necessary, and provide basic information through an online application form. This process leverages existing government ICT systems and processes for business identity verification.

> **Case Study:** A sole trader offering low-risk gardening services seeks NDIS registration.
>
> **Service type:** Support Services for Home, Meals, and Transport which falls into the Enrolled registration category.
>
> **Regulatory approach:** The provider completes a simple online application form, agrees that they will comply with the Code of Conduct, and they have received a worker screening clearance. Their information is verified via existing systems such MyGovID. The provider is enrolled quickly and efficiently, entering the NDIS market with minimal regulatory burden.

12.4.2 Basic

Lower risk supports require providers to comply with the Code of Conduct and simplified general practice standards, ensure worker screening, and report incidents. Providers must self-assess and attest to compliance with their obligations and requirements under the practice standards, instead of undergoing auditing.

Case study: A small practice of physiotherapists operating in a regional centre has received requests to provide physiotherapy from NDIS participants.

Service type: Allied health / professional services which falls into the Basic registration category.

Regulatory approach: The provider reviews the basic standards. The module provides guidance on mutual recognition and the provider identifies which standards they meet due to their registration with AHPRA. The provider attests compliance with the basic standards.

12.4.3 General

For medium risk supports, providers must comply with the Code of Conduct and relevant practice standards, ensure worker screening, report incidents, and demonstrate compliance with practice standards in a graduated and proportionate way. This may include the use of third-party auditors, or self-assessment, along with mutual recognition of compliance with comparable standards in other systems.

Case Study: A medium-sized disability support provider offers personal care, including medication management, for NDIS participants with complex needs.

Service type: Assistance with Social, Economic and Community Participation which falls into the General registration category.

Regulatory Approach: The provider undergoes third-party audits and demonstrates compliance with relevant Practice Standards. Given the higher risk associated with personal care and medication management, the provider must meet stricter regulatory requirements.

12.4.4 Advanced

This category applies to high-risk supports, requiring providers to comply with the Code of Conduct and relevant practice standards, ensure worker screening, report incidents, and undergo in-depth observational audits by third-party auditors. Some flexibility is allowed for providers to self-assess and attest to compliance with certain requirements, with mutual recognition of compliance with comparable standards in other systems where possible. However, this would be determined by the NDIS Commission and may require additional information to be submitted by the provider.

Under the Advanced Registration category, specific practice standard modules will apply to providers of more complex supports. These include:

- Positive Behaviour Support for practitioners conducting behavioural assessments and developing positive behaviour support plans.
- Providers responsible for implementing positive behaviour support plans likely to include the use of restrictive practices.
- Providers delivering specialist support coordination.
- Early childhood supports.
- Providers delivering high-intensity daily personal activities.
- Providers delivering supports for people with complex needs, including health needs.
- Providers of specialist disability accommodation.
- Providers of supported independent living
- Independent Living Options (ILO)

Case Study: A registered nurse operating as a sole trader in a regional town supporting two participants with complex bowel care and two other participants with other health related disability supports.

Service type: Homes and living and specialised supports which falls into the Advanced registration category.

Regulatory Approach: Mutual obligations to maintain nursing registration are recognised and proportionality is applied to the Advanced registration requirements. This results in the provider undertaking a limited self-assessment against the high intensity support standards relevant to the supports that they are providing.

12.5 Support for participants in supported accommodation

NDS agrees with the Royal Commission's recommendation regarding the need for advocacy services for people with disability living in residential accommodation. These services are crucial for protecting and enforcing their rights, reducing the risk of violence, abuse, neglect, or exploitation, and preventing homelessness. The Royal Commission suggested that the NDIA establish a program, developed in collaboration with people with disability, disability organisations, and peak bodies, to connect NDIS participants in supported accommodation with disability advocacy organisations. This program aims to enhance advocacy in NDIS planning, raise awareness of advocacy's importance, improve referral processes, and encourage collaboration between service providers and advocacy organisations. The program is expected to commence by January 2025, with a potential expansion to other vulnerable groups following an evaluation. Additionally, the NDIS Commission should actively promote independent advocacy for at-risk participants or those in supported accommodation during complaints and incident reviews.

12.6 Worker screening

The NDIS Review found that worker regulation and safeguards in the care and support sector

are inconsistently applied, ineffectively operationalised, and can be duplicative and costly for workers. Worker screening, a preventative safeguard, does not apply to all workers delivering supports to people with disability. The NDIS Worker Screening Check, which commenced in 2021, has seen low uptake among unregistered providers, with only a fraction having any workers with this check. Without a minimum preventative safeguard for all workers, regulatory action is primarily reactive, responding only after harm has occurred. Worker screening is a tool to filter out high-risk workers but does not establish minimum competency requirements or standards. This limitation restricts the NDIS Commission's ability to respond to misconduct and build workforce capability.

NDS recommends all individuals who provide disability supports to NDIS participants must undergo a NDIS Worker Screening Check and receive a clearance to work. However, for the system to effectively work, improvements to the current system are urgently required. The current NDIS Worker Screening Check timelines, expense and processes pose a particular barrier for job seekers. This is particularly the case in a highly competitive labour market where job seekers can immediately commence work in other sectors with comparable (or better) pay and working conditions. Providers report cases where high-quality applicants find alternative employment in other industries or with unregistered NDIS providers due to delays of months in receiving their NDIS check.

A well-functioning NDIS Worker Screening process is pivotal to maintaining the integrity and safety of disability support provision. Awareness and adherence to the NDIS Code of Conduct for all workers and providers, including sole traders, needs to be monitored and upheld, as a prerequisite for eligibility to receive Australian Government funding for NDIS services. This includes proactive recording and monitoring mechanism to ensure robust awareness, understanding, and implementation of the NDIS Code of Conduct.

Worker screening requirements should be expanded to include all workers in risk-assessed roles for registered providers and workers involved in direct delivery or significant contact with people with disability for enrolled providers. Efforts should be made to improve the operation of worker screening processes and harmonise them across jurisdictions. Amendments to the Intergovernmental Agreement on Nationally Consistent Worker Screening for the NDIS should be considered.

13.0 Holding providers accountable

A robust monitoring, assessment, and reporting system holds providers accountable by utilising information to evaluate their compliance with regulations. This includes reports on incidents, service quality, and adherence to rules. Regulatory activities encompass educating, monitoring, checking compliance, enforcing regulations, and issuing penalties. Complaints management ensures that grievances from consumers, families, and the public are addressed according to set rules. Compliance and enforcement measures oversee providers and workers' adherence to obligations, issuing sanctions such as infringement notices, directions, penalties, and bans when necessary.

This section outlines how the new model will enhance risk management during service delivery to people with disability. The emphasis is on integrating information and intelligence, including feedback from people with disability, to proactively prevent, detect, and address risks and poor

provider performance. It underscores the significance of complaints and emphasises the need to foster a culture that values complaints and listens to feedback from people with disability. Additionally, it will establish pathways for people with disability to raise concerns and seek the protection of their rights in cases where providers act inappropriately.

13.1 The role of proactive and responsive monitoring

Once registered, providers across all registration categories will be monitored. Risk-based monitoring will be informed by data and regulatory intelligence that signals a risk or issue that needs additional monitoring and/or a response. Through ongoing monitoring, oversight and complaints, a provider that is not respecting people with disability's rights or is delivering substandard quality of support will come to the attention of the NDIS Commission.

The proposed regulatory model empowers the NDIS Commission with a robust framework for identifying and managing risks across the whole NDIS provider landscape.

- **Multi-level risk management:** The NDIS Commission will gain the ability to assess risks at three distinct levels: individual providers, groups of providers with similar characteristics, and specific types of NDIS services.
- **Targeted enforcement:** This risk-based approach allows the NDIS Commission to take decisive and proportionate compliance actions when necessary, ensuring resources are directed towards areas of greatest concern.

Risk-based monitoring:

Once registered, all NDIS providers will subject to monitoring. This process will be data-driven, with risk assessments informed by:

- **Regulatory intelligence:** Data collected through various channels will be used to identify potential risks or issues that require further investigation.
- **Complaints and oversight:** Complaints received by the Commission, along with routine oversight activities, will also contribute to identifying providers potentially neglecting participant rights or delivering sub-standard services.

Holistic risk assessment:

The NDIS Commission will leverage this combined data, along with relevant technology, to create a comprehensive picture of risk within the NDIS sector. This will enable them to identify practice areas for improvement and prioritise situations where participants may be at significant risk of harm.

Flexible monitoring strategies:

Compliance activities can be initiated at any time, triggered by:
- Participant complaints.
- Suspected violations of the NDIS Code of Conduct.
- Notifications of serious incidents.
- Intelligence gathered by the Commission.

Monitoring methodologies:

A range of monitoring approaches can be employed, including:

- **On-site visits:** Direct assessment of a provider's operations.
- **Desktop reviews:** Evaluation of documentation and records submitted by the provider.
- **Announced or unannounced visits:** Providing flexibility and the ability to conduct surprise inspections.
- **Simple inquiries:** Following up on specific concerns with a provider via phone calls.
- **Full investigations:** Utilising the Commission's investigative powers for in-depth examinations of critical issues, including own-motion inquiries.

13.2 Third party certification

Improving third-party certification is essential for enhancing the quality and effectiveness of NDIS supports and services. Currently, the certification process lacks efficiency and consistency, hindering its ability to accurately assess provider compliance and service quality. To address these shortcomings, several key steps can be taken.

Firstly, there is a need for greater proportionality in the certification process. Audits should be tailored to the specific nature of a provider's support delivery and their compliance history. This would ensure that audits are focused on areas of greatest risk, making the process more effective and efficient. Greater application of proportionality in a consistent manner is needed to ensure that certification requirements are appropriate and tailored to the size, complexity, and risk profile of each provider. This would help prevent unnecessary burden on smaller providers while ensuring that larger providers meet rigorous standards.

Secondly, it is crucial to enhance the training and capacity of auditors. Auditors should have the necessary experience and expertise to effectively assess the quality of disability support services. This would help standardise auditing experiences for providers and improve the overall quality of audits. Ensuring the availability of quality auditors is essential, including auditors with lived experience of a disability. Auditors should possess the necessary qualifications, experience, and expertise to conduct thorough and reliable assessments of service quality. Investing in the training and development of auditors can help maintain a high standard of certification.

Additionally, introducing regular reviews and updates to quality practice standards is essential. As the NDIS market evolves, standards should be revised to reflect changing practices and expectations. This would help ensure that certification standards remain relevant and effective in promoting quality service delivery. Consistency in the scope and application of practice standards is essential for promoting uniformity and fairness across the certification process. Clear guidelines and criteria should be established to ensure that standards are applied consistently by certification bodies.

Overall, improving third-party certification requires a more targeted and efficient approach, supported by well-trained auditors and regularly updated standards. By addressing these areas, we can enhance the certification process and promote better outcomes for people with disability.

In addition to the key considerations for improving third-party certification, several other factors need to be addressed to enhance the effectiveness and reliability of the certification process.

Consideration could be given to adopting quality monitoring mechanisms like those used in

other care and support systems, where the regulator is responsible for assessing compliance with practice standards. For instance, the Aged Care Quality and Safety Commission assesses and accredits aged care providers against quality standards, a role similarly fulfilled by the Care Quality Commission in the UK. These regulators also publish audit reports of individual providers, a practice that could enhance transparency. Streamlining audit functions under the NDIS Commission could address issues of consistency in both the audit process and the assessment of provider performance. Additionally, this could facilitate better sharing of regulatory intelligence related to complaints and incidents, offering several benefits to the NDIS regulatory framework.

Capacity to respond is crucial, ensuring that certification bodies have the resources and flexibility to address emerging issues and respond promptly to provider needs. This includes the ability to scale operations to accommodate fluctuations in demand for certification services.

Affordability is a key consideration, particularly for smaller providers. Certification fees should be reasonable and proportionate to the size and resources of the provider, ensuring that certification remains accessible to all eligible providers.

Integration with other aspects of monitoring, such as regulatory intelligence, can enhance the effectiveness of certification by providing valuable insights into industry trends, emerging risks, and best practices. This integrated approach enables continuous improvement and strengthens sector capability.

Finally, the certification process should go beyond mere compliance and tick-box exercises. It should incorporate spot checks and ongoing monitoring to ensure ongoing compliance with certification standards. This proactive approach helps identify and address issues before they escalate, promoting continuous improvement and enhancing overall service quality within the disability support sector.

13.3 Quality practice standards

The NDIS Review identified that the current NDIS practice standards do not adequately represent the diverse range of supports available in the market. This lack of representation leads to ambiguity regarding the expectations and responsibilities of providers. To address this, the NDIS Review recommended the development of new or revised practice standards that better encompass the diverse types of supports and providers, ensuring they set appropriate standards and provide clear expectations. These standards should also align with the UN Convention on the Rights of Persons with Disabilities, particularly in upholding the rights of people with disability.

In the immediate term, the focus should be on filling existing gaps in standards. Additionally, simplified standards should be developed for use in Basic Registration. However, the development and revision of practice standards should be an ongoing process to adapt to the evolving market landscape.

NDS supports these recommendations, emphasising the importance of establishing clean and transparent expectations for quality service delivery. Providers and workers who cannot meet

these standards would be excluded from the NDIS market to ensure the quality and safety of supports provided.

13.4 Compliance and enforcement

The NDIS Commission currently employs various compliance and enforcement tools to prevent and address breaches of the National Disability Insurance Scheme Act 2013. These tools include banning orders, compliance notices, and court-based outcomes. The NDIS Commission also educates and collaborates with other complaints and regulatory bodies. They have published a set of compliance and enforcement policies outlining their approach to ensuring compliance with the Act, managing risks to NDIS participants, and the use of specific tools such as compliance notices, infringement notices, enforceable undertakings, injunctions, civil penalties, and variations to registration. While it is expected that the new framework will continue these practices, NDS calls for greater accountability and transparency in their development and application.

14.0 Tailoring regulation: A custom fit for specific NDIS support services

14.1 Self-managed support and safeguards

What did the NDIS Review recommend?

The NDIS Review recommended treating participants who directly employ workers, including those in Services for One arrangements, as sole trader providers subject to relevant registration or enrolment requirements. It highlighted the need for close consultation and design to avoid disrupting arrangements that are working well. The NDIS Review also emphasised the importance of regulation responding to individual risk appetites, supporting individuals to make choices as safely as possible without compromising staff safety or increasing risk to staff or others.

NDS supports the recommendations of the NDIS Review for these arrangements to be incorporated into the new regulatory framework.

What is the role of planning?

Planning should always start with the assumption that participants and their networks have the capacity to make informed decisions and engage in individual safeguarding. Effective planning is crucial in a person-centred system, supporting participants to identify and manage risks as they interact with the NDIS. It should include formal safeguards proportionate to the level of risk the participant faces based on their capacity, natural support network, available supports, and the level of risk they choose to accept. Some participants may also need supported decision-making to ensure their preferences and rights direct the decisions affecting their lives.

Participants in the NDIS, particularly those with cognitive disability, may require varying levels of support to manage risks in their lives. The NDIS Review identified that around 60 per cent of adult participants have conditions such as acquired brain injury, intellectual disability, cognitive impairment, psychosocial disability, or other episodic or degenerative disability that could affect their decision-making capacity. Additionally, approximately 42 per cent of participants

are under 15 years old and may require assistance in decision-making or may not yet be able to make certain decisions independently. As a result, the NDIS must ensure that safeguarding processes are adaptable to meet the diverse needs of participants, empowering them to safeguard themselves with the support of their natural networks.

It is essential for the NDIS to support participants in building and strengthening their natural safeguards, such as family and social supports, in alignment with their preferences. These natural safeguards not only provide a sense of security but can also serve as a critical component in the overall safeguarding framework. Safeguards within NDIS plans should be designed to be psychologically and culturally safe, trauma-aware, and healing-informed, ensuring that participants feel supported and empowered in their decision-making processes.

Furthermore, the NDIS should recognise that participants have the right to make decisions about the risks they are willing to accept while ensuring that they feel safe and supported. This concept, known as 'dignity of risk,' is crucial in fostering independence and autonomy among participants. Safeguards should also be responsive to changes in participants' circumstances, ensuring that they remain effective and relevant over time.

Participants at higher risk may include those receiving 24-hour support, living in supported accommodation, or with involvement in the justice system.

Self-management pathways

NDS endorses Recommendation 16.3 of the NDIS Review, which calls for the implementation of a comprehensive risk assessment during the planning process to enhance participant safety and well-being. NDS further suggests that this risk assessment could directly inform the process for self-management within a risk-proportionate regulatory framework.

The risk assessment process for NDIS participants involves inquiries into personal safety, informal support networks, and financial management skills. Through this assessment, the NDIA aims to develop strategies to mitigate risks related to exploitation, abuse, and financial vulnerabilities during plan implementation. Factors such as family circumstances, informal support structures, and individual capacities are considered to identify individuals at risk and determine the support needed for plan implementation. This process also involves families and carers, who play a crucial role in helping individuals make informed choices about their supports. The assessment is designed to manage and reduce risks, ensuring participant safety and well-being.

When a participant requests to self-manage their plan, this assessment process will determine if they are eligible to use self-management pathways, which offer greater flexibility and control over their NDIS funds. This assessment considers the participant's ability to manage their funds, make informed decisions, and access the necessary supports to effectively self-manage their plan. Participants who meet the criteria for self-management will receive additional guidance and support to help them successfully navigate this option. This includes guidance on meeting their obligations for workplace health and safety (WHS), obtaining appropriate insurance cover, complying with the SCHADS Award, and ensuring the payment of superannuation. Additionally, participants may need support in managing the accrual of leave and sick balances to ensure they can pay these entitlements to their workers when required.

While self-managing participants in the NDIS have the flexibility to choose their providers, this flexibility comes with inherent risks, particularly in selecting providers who may not meet

quality and safeguarding standards. While many participants may hire providers they know and trust, there is a risk of inadvertently employing someone who may pose physical, emotional, or financial harm.

To effectively balance choice and control with safeguarding and visibility, self-managed participants in the NDIS take on the responsibilities of an enrolled provider. This includes complying with the Code of Conduct, ensuring worker completion of the 'Quality, Safety and You' Worker Orientation Module, undergoing worker screening, complying with relevant laws, maintaining record-keeping practices, and confirming that NDIS funding is used appropriately. These responsibilities aim to maintain high standards of quality and safeguarding while allowing participants flexibility in choosing their providers. When self-managing participants use supports from providers that would typically require advanced registration, additional safeguards may be implemented, for example discussions with the NDIS Commission.

It is important to regularly review the effectiveness of safeguards for self-managing participants as more evidence about self-management becomes available. This will ensure that safeguards are tailored to individual risks and needs, including access to support and resources to build their capacity to self-manage while minimising risks through a balanced regulatory approach.

Restrictions within flexibility

To mitigate unacceptable risks, some service types will require self-managing participants to use registered providers. This requirement applies to services directly relevant to positive behaviour support plans and associated legislative requirements and specialised support services, including:

- Positive Behaviour Support for practitioners conducting behavioural assessments and developing positive behaviour support plans.
- Providers responsible for implementing positive behaviour support plans likely to include the use of restrictive practices.
- Providers delivering specialist support coordination.
- Early childhood supports.
- Providers of specialist disability accommodation or forensic disability services.

This approach aligns with current requirements to ensure that participants receive high-quality, safe, and effective support. By mandating the use of registered providers for these specific services, the NDIS aims to uphold standards of care, safeguard participants from potential harm, and maintain trust and confidence in the NDIS system.

14.2 Platform providers

In February 2023, NDIS Commission launched its Own Motion Inquiry into Platform Providers Operating in the NDIS Market (the Inquiry). The Inquiry examined how platform providers function in the NDIS market. The Inquiry's Insights Report found that in the period from July to December 2022, over 13,000 NDIS participants engaged services and supports through a platform provider. Most participants used these providers for community participation and personal activities, aiming to limit the number of providers they engaged. When selecting a platform provider, participants prioritised reliability and suitability for their support needs.

Platform providers offer participants the opportunity to choose their supports, which many

find suitable through a 'self-serve' model. Participants value knowing who will be providing their support, especially in their homes. About 87 per cent of participant payments via platform providers were for personal activities and community participation, indicating the practical and significant role providers play in participants' daily lives.

However, the probity and background checking services provided by platform providers vary and can be limited. Participants have emphasised the importance of values that providers bring to the service relationship and expressed a desire for a NDIS market that promotes best practices and fosters ethical and rights-based providers.

NDIS participants have expressed concerns about the gig economy culture infiltrating their service settings, which can make them feel commodified rather than valued individuals or a means to quick earnings. There is a consensus within the sector that platform providers should be regulated to the same standard as other service providers, rather than being held to a lower standard. With thousands of workers delivering millions of hours of support work through these platforms, often in one-to-one settings in people's homes, regulatory obligations should align with the actual scale and risk profile of these services.

While many platforms state that they engage support workers as independent contractors, workers may operate in an 'employee-like' capacity. Further, the providers may (to varying degrees) assure participants about things like worker verification, safety, and quality standards, and/or play a significant role in service delivery, including communication, shift booking, insurance, payment processing, shift notes, incident reporting, and record-keeping.

A platform provider is more than just a referral directory or marketplace; it represents a new method of service delivery that uses technology to arrange services.

How platform providers are defined in this context is important and this will need to be determined within the NDIS framework.

The technology platform used to arrange the engagement of supports, should not determine the registration category of a provider. Rather, the type of service(s) the provider is facilitating should determine the registration category, whether they use a technology platform to do this or otherwise.

NDS agrees with the recommendation from the NDIS Review that platform providers should be included in the new graduated and risk-proportionate regulatory model, with specific registration requirements based on their business structure, services provided, and the nature of their relationship with individuals delivering supports.

All platform providers should, at a minimum, be subject to registration requirements as a provider of services, supported by appropriate practice standards. Service provider platforms that facilitate the connection of workers and clients, and provide assurances about the safety and quality of the service delivered, should be required to register with the presumption high risk services are being delivered via the platform

The approach to different models and structures should consider factors such as the direct relationships, interactions, and commitments between the platform provider and people with disability, as well as the nature of the relationship between the platform and individuals delivering supports. For instance, the NDIS Review suggests that General Registration may be

suitable for platforms that make representations and assure people with disability about the standards and quality, while Basic Registration may be appropriate for platforms that primarily offer infrastructure and back office support for providers to engage with people with disability.

15.0 Managing the transition

Transition includes the planning and processes required to support the disability sector to move from the current regulatory framework to the new model, while ensuring continuity of support for people with disability.

The effectiveness and efficiency of the transition to a new regulatory regime are paramount, requiring careful planning and consideration of the capacity of various systems within the sector to respond. A timeline must be developed in consultation with the sector to ensure a smooth transition, considering the differing capacities of providers and other stakeholders.

Transitioning to a new regulatory regime involves changes to legislation, ICT systems, and regulatory processes. Effective communication, engagement, and support for providers are crucial to ensure a smooth transition and avoid exacerbating thin market issues.

NDS agrees, particularly with regards to supported independent living, that the sequencing of the transition recommended by the NDIS Review is sensible and necessary. Starting with the expansion of Advanced Registration requirements to additional high-risk supports allows for a focused approach to managing risks. Transitioning all currently unregistered providers to Enrolment before moving to General and Basic Registration requirements is one way of ensuring a systematic and controlled transition process. Whatever sequencing is determined, its success will be contingent upon system builds and upgrades, which include integrating with centralised online platforms and whole-of-government systems. Such integration is crucial for simplifying processes for providers and ensuring a smooth transition to the new regulatory regime.

A well-resourced NDIS Commission and regulatory system are essential for timely responses to issues and a proactive approach. Roles and responsibilities need to be clearly defined to avoid ambiguity that could put the health and safety of people with disability at risk.

To ensure a successful transition to the new regulatory regime, it is crucial to support providers effectively. This support should encompass various aspects, including providing accessible information resources that explain the new requirements and expectations clearly. Education campaigns can help raise awareness among providers about the changes and equip them with the knowledge needed to comply with the new standards.

Moreover, establishing an in-house advisory function would enable proactive engagement with providers and provide a dedicated point of contact for providers to seek guidance and clarification on any regulatory matters. This function can address inquiries and concerns promptly, provide targeted assistance and communication, helping to alleviate any confusion or uncertainty providers may have during the transition period.

Additionally, it can help monitor compliance and provide ongoing support to ensure providers adhere to the new standards.

16.0 Further considerations

16.1 Community visitor scheme

Aligning with Royal Commission recommendations, NDS urges states and territories to promptly implement community visitor schemes (CVS) for people with disability, ensuring sufficient resources for frequent visits to those at higher risk of abuse or harm.

To enhance national consistency, states and territories should align community visitor schemes (CVS). This includes defining the scope of schemes, specifying powers, establishing common monitoring standards, and defining data requirements.

They should also prioritise defining the scope of CVS and developing mechanisms to identify risks. Legislation should enable information sharing between CVS, the NDIS Commission, and the NDIA.

Integration of CVS with the NDIS should be formalised through amendments to the National Disability Insurance Scheme Act 2013 (Cth) and a national agreement. This would ensure effective information sharing, common standards, and recognition of CVS's role in the NDIS Quality and Safeguarding Framework.

16.2 Worker registration

In its final report, the Royal Commission recommended establishing a national disability support worker registration scheme. This recommendation aims to enhance the quality and safety of disability support services by ensuring that workers meet certain standards and qualifications. Registration typically involves a process of verifying qualifications, conducting background checks, and adhering to a code of conduct, providing a level of assurance to participants and employers.

However, the NDIS Review recommended that all providers, not just individual workers, should be registered. This broader approach raises questions about whether registration for individual workers is required if there is a universal registration scheme, including workers operating as sole traders, and/or whether a more fruitful area of policy development should be around professionalising parts of the workforce (for example through accreditation).

The appropriateness of the recommended mechanism depends on the specific goals and context. Worker registration and worker accreditation are two distinct processes aimed at ensuring quality and safety in service delivery, particularly in sectors like disability support. Worker registration typically involves individual workers meeting specified requirements to practice in their field. This process often includes verifying qualifications, conducting background checks, and adherence to a code of conduct. Worker registration provides a level of assurance to clients and employers that the worker has met certain standards of competence and professionalism.

On the other hand, worker accreditation focuses on assessing and recognising an individual worker's skills, knowledge, and experience against a set of industry standards or benchmarks. Accreditation is often voluntary and may involve a more rigorous assessment process than registration. Accreditation can demonstrate a worker's commitment to ongoing professional development and adherence to high standards of practice.

In summary, worker registration is about ensuring that individual workers meet minimum standards to practice, while worker accreditation is about recognising and rewarding excellence in practice. Both processes play important roles in maintaining quality and safety in service delivery, but they serve slightly different purposes and target distinct aspects of professional practice.

17.0 Recommendations

Recommendation 1: Develop a comprehensive implementation plan for a new risk-proportionate regulatory framework for the NDIS.

This plan should include clear timelines, responsibilities, and milestones for key activities such as:

- Developing guiding principles for a Risk-Proportionate Model to regulate NDIS providers and workers, ensuring that regulations are aligned with risk levels.
- Outlining key enablers for quality services and a successful regulatory framework, including mechanisms for feedback, complaints, and continuous improvement.
- Establishing a universal, mandatory registration process for NDIS providers, including different registration categories based on risk profiles.
- Propose strategies to ensure the reliability of NDIS providers through a comprehensive suitability assessment process.
- Implementing a risk assessment framework to determine the level of regulation required for each provider.
- Establishing clear standards and conditions for each registration category, implementing a rigorous monitoring, assessment, and reporting system to enforce providers' compliance with regulations.
- Providing guidance and support for providers to meet regulatory requirements.
- Expand monitoring and compliance mechanisms to all providers to ensure ongoing adherence to obligations.
- Conducting regular reviews and evaluations of the regulatory framework to assess its effectiveness and make necessary adjustments.

Recommendation 2: Enhance initiatives that build consumer and community capacity to empower NDIS participants as decision-makers in the marketplace.

- Implement measures that support informed and empowered consumers and strengthen consumer and community capacity.
- Implement ongoing support and capacity-building initiatives to ensure participants can effectively navigate and benefit from the NDIS marketplace.
- Ensure participants have the information and capability to make informed choices on the value and quality of supports.

Recommendation 3: Develop well-defined guidelines to implement a risk-proportionate regulatory framework for NDIS providers, ensuring that standards and requirements are aligned with the varying risks associated with different types of service delivery.

- Co-design guidelines to tailor regulatory requirements based on the risk level associated

with different providers, to help ensure that regulations are proportionate to the risks involved, maintaining strong safeguards for people with disability.

- Streamline compliance for low-risk providers, allowing them to focus more on delivering high-quality care.

Recommendation 4: Streamline worker screening processes for all NDIS workers in risk assessed roles to enhance efficiency without compromising safety.

- Improve and simplify worker screening procedures in collaboration with state and territory governments.
- Reduce processing times for worker screenings.
- Explore expanded work-on application provisions.
- Recognise NDIS worker screening checks for other relevant checks.
- Improve data sharing and system design for worker screenings.
- Provide transparency on clearance times for worker screenings.
- Streamline worker screening processes to ensure NDIS providers have access to a qualified workforce.
- Reduce administrative burdens on providers by improving the efficiency of screening procedures.
- Focus resources on delivering quality services by streamlining worker screening processes.
- Enhance the transparency and consistency of worker screening across jurisdictions.
- Ensure all workers undergo thorough checks without unnecessary delays.

Recommendation 5: Mandate basic online training for all NDIS workers in risk assessed roles on working with people with disability and understanding NDIS obligations.

- Provide mandatory training through the Worker Orientation Module 'Quality, Safety and You' for all NDIS care and support workers.
- Ensure that mandatory training equips workers with necessary skills and knowledge to deliver high-quality services to participants.
- Uphold the principles of a risk-proportionate regulatory framework through mandatory training.
- Equip workers with tools to understand a human-rights based approach and adhere to NDIS Code of Conduct and related obligations.
- Review and update the training module to adequately cover key areas such as the NDIS Code of Conduct, restrictive practices, and human rights.
- Enhance worker competency and the overall quality and safety of NDIS services through mandatory training.

Recommendation 6: That the NDIS Quality and Safeguards Commission, in consultation with providers and auditing bodies, establish and publish clear guidelines for determining registration audit costs.

- Establish clear guidelines for determining registration audit costs to implement a risk-proportionate regulatory framework for NDIS providers.
- Ensure that audit costs are aligned with the size and complexity of the provider, reflecting the principle of proportionality.

- Develop transparent and fair guidelines by consulting with providers and auditing bodies.
- Consider the varying risks associated with different providers in developing audit cost guidelines.
- Promote accountability and efficiency in the audit process through clear guidelines for audit costs.
- Focus resources where they are most needed by establishing clear guidelines for audit costs.
- Support the goal of a regulatory framework that is proportionate, effective, and responsive to the needs of NDIS providers through clear audit cost guidelines.

Recommendation 7: Conduct a comprehensive review of practice standards to enhance the risk-proportionate regulatory framework for NDIS providers. This review should result in the development of basic, core, and supplementary standards, reflecting the varying levels of risk associated with different types of supports and providers.

- Conduct a review of practice standards to implement a risk-proportionate regulatory framework for NDIS providers.
- Categorise standards as basic, core, and supplementary to differentiate regulatory requirements based on risk levels.
- Apply basic standards universally to all providers to ensure essential quality and safety measures are met.
- Tailor core standards to specific provider categories to reflect varying risk profiles within the NDIS sector.
- Address specialised or higher-risk areas with supplementary standards to provide additional safeguards.
- Enable a more targeted and efficient regulatory process by categorising practice standards.
- Hold providers accountable while minimising unnecessary burden and duplication through categorised practice standards.
- Align regulatory efforts with diverse needs and risks present in the NDIS sector through the review of practice standards.

Recommendation 8: A risk-proportionate regulatory framework be implemented for self-managed supports in the NDIS. This framework should aim to balance flexibility for participants with the need for robust safeguards.

To achieve this, the following steps are proposed:
- Risk assessment and eligibility for self-management: Conduct a holistic assessment of participants' ability to self-manage, considering factors such as vulnerability, decision-making capacity, and potential harm. Those deemed able to self-manage should take on the responsibilities of an enrolled provider.
- Responsibilities of self-managing participants: Self-managing participants should be responsible for finding and arranging supports, making payments, meeting legal requirements for direct employment, managing plan expenditure, and keeping records. They should adhere to relevant registration/enrolment requirements and be subject to periodic reviews of their risk management strategies.
- Safeguards and reviews: Regularly review the effectiveness of safeguards for self-managing participants as more evidence about self-management becomes available. Ensure that

safeguards are tailored to individual risks and needs, including access to support and resources to build their capacity to self-manage.

Recommendation 9: Introduce a participant safeguarding strategy to uphold the rights of people with disability and align with the United Nations Convention on the Rights of Persons with Disabilities.

- Establish a comprehensive participant safeguarding strategy to ensure the safety and rights of people with disability.
- Foster a shared understanding of safeguarding principles to promote inclusivity, respect, and dignity in all interactions.
- Serve as a guide for enhancing community attitudes towards safeguarding people with disability.
- Ensure compliance with international human rights standards through the safeguarding strategy.

Recommendation 10: Identify clear definitions for platform providers within the NDIS framework, tailoring regulatory requirements based on the types of services they offer.

- Categorise platforms based on their level of involvement in service delivery to ensure regulations are proportionate.
- Apply stricter requirements to platforms with more direct control or influence over supports.
- Implement more rigorous regulation for platforms that maintain employee-like relationships with support workers.
- Apply less stringent regulations to platforms that act as facilitators between participants and providers.
- Ensure regulations are proportionate to the level of responsibility assumed by platform providers.
- Promote accountability and innovation in service delivery through tailored regulatory approaches for platform providers.

Recommendation 11: Establishment of nationally consistent community visitor scheme, formally recognised as a NDIS as a safeguard for people with disability.

- Establish a nationally consistent Community Visitor Scheme (CVS) formally recognised by the NDIS as a safeguard for people with disability.
- Ensure consistent implementation of CVS in all states and territories.
- Resource CVS for frequent visits to at-risk individuals.
- Maintain national consistency in scope, powers, monitoring standards, and data reporting for CVS.
- Enable information sharing between CVS, the NDIS Commission, and the NDIA through legislation.

Recommendation 12: The NDIA, NDIS Commission and DSS should jointly conduct a thorough analysis in consultation with the sector to determine whether worker registration, worker accreditation, or a combination of both is the most effective approach to enhancing the quality and safety of disability support services.

- Develop the specific goals of the registration scheme, the level of assurance required for

participants and employers, and the potential impact on the disability support workforce.

- Understand and consider interconnected policy frameworks, such as the National Strategy for the Care and Support Economy.
- Work together to understand the unique benefits and implications of each approach.
- Make an informed decision that best aligns with NDIS objectives and the needs of participants and workers.

18.0 Conclusion

Everyone has the right to live free from violence, abuse, neglect and exploitation. The recommendations of the Royal Commission and the NDIS Review can help bring about important reforms and changes within the disability sector. The relevant findings create opportunities for providers to enhance the quality of their services, strengthen their practices and promote a safer environment for everyone.

Achieving the reform agenda will require structural adjustment across most aspects of service delivery. Careful deliberation, collaboration and co-design will be necessary to implement reforms effectively. Providers need a seat-at-the-table to ensure changes can be safely and practically implemented and all stakeholders must work together to ensure high-quality, equitable and sustainable supports that provide choice, control and independence to people with disability.

The views of people with disability, their representative groups, providers and government must all be considered in this next phase of work in implementing reforms.

The disability services sector is ready and willing to take on recommendations to improve the quality and safety of services they deliver for people with disability.

A skilled, capable, diverse and sustainable provider landscape is a desirable outcome for participants. However, we need to be mindful of how we match the timetabling of reforms with the capacity of the sector to respond.

NDS is committed to collaborating with government and the disability sector to ensure Australians with disability have access to the safe, quality and culturally appropriate services they deserve.

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