



National Disability Services

Submission: Own Motion Inquiry into Platform Providers Operating in the NDIS Market

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1.0 Executive Summary

National Disability Services (NDS) welcomes the opportunity to make a submission to the NDIS Quality and Safeguards Commission with regards to the Own Motion Inquiry into Platform Providers Operating in the NDIS Market.

The purpose of this Inquiry is to examine how Platform Providers operate in the NDIS Market, in particular whether the current regulatory settings that cover this part of the NDIS Market are appropriate.

Creating safer, quality services for all people with a disability is the role of all providers. NDS is committed to assisting disability service providers to understand, implement and improve practices which safeguard the rights of people they support. The sector needs regulatory approaches that balance compliance and auditing with educative and developmental approaches that support good practice and innovation.

The rise of contractor work, coordinated through Platform Providers, has become one of the defining trends of the NDIS in the past few years.¹ This trend indicates that this alternative way of procuring support services is meeting the needs of participants and may be providing greater flexibility and control over how, when and from whom they receive support.

However, the broader impacts on the NDIS workforce of contract-based work, casualisation and platform-based work are not well understood. There are also complexities of different contractual arrangements between workers, platforms and participants.² Similarly the extent to which these models and their different iterations increase or decrease risks for participant safety or result in higher quality supports requires more exploration and examination. Both this Inquiry and the work of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability will provide additional insights and NDS welcomes the opportunity to provide input.

There is no single model of service delivery within the NDIS context that will meet the diverse needs of people with disability. However, it is vital that there is a coordinated approach that outlines practical strategies to meet the increasing demands for a skilled, competent and engaged disability workforce and that supports safe and high quality service provision across the sector.

¹ First interim report: on-demand platform work in Australia, accessed 27 April 2023, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Interim_report

² First interim report: on-demand platform work in Australia, accessed 27 April 2023, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Interim_report

This submission makes the following recommendations:

Recommendation one: That the NDIS Commission work with the NDIA to implement price settings that adequately support providers to move beyond compliance with regulation, supporting providers to invest in innovation, new ways of working, workforce training, support and supervision.

Recommendation two: In line with recommendations of the Joint Standing Committee on Job Security, the NDIS Commission should work with the Australian Government to consider regulatory options that would ensure support workers engaged to provide services funded through the NDIS have fair pay and conditions, including those engaged through on-demand platforms.³

Recommendation three: In line with recommendations of the Joint Standing Committee on Job Security, the NDIS Commission should work with the Australian Government to clarify, by way of regulation, which persons or entities owe a duty of care as a person conducting a business or undertaking (PCBU) under the Model Work Health and Safety laws in relation to individual support workers engaged through on-demand Platform Providers. The law should dictate that:

- a platform that engages individual workers to provide support work under the NDIS or similar schemes, and makes money from the arrangement, is a PCBU and owes a duty of care to that worker, regardless of that worker's work status (employee or contractor), or their visa status; and that
- individual care recipients, such as NDIS participants, are not a PCBU in relation to that worker.⁴

Recommendation four: Develop an improved understanding of how Platform Providers apply (and where required develop resources to assist them to apply) the NDIS Workforce Capability Framework to ensure quality support for people with disability.

Recommendation five: That high risk supports are only delivered by registered providers.

³ First interim report: on-demand platform work in Australia, accessed 27 April 2023, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Interim_report

⁴ First interim report: on-demand platform work in Australia, accessed 27 April 2023, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Interim_report

Recommendation six: The NDIS Commission should develop resources for participants and their support networks understand how the Quality and Safeguarding Framework applies to registered and unregistered providers,

Recommendation seven: NDIS Worker Screening for all workers in risk assessed roles supporting NDIS participants, including those engaged through Platform Providers and for high risk supports to be delivered by registered providers.

Recommendation eight: Provider greater clarification on which roles including those engaged through Platform Providers are risk assessed roles.

Recommendation nine: Increase and improve data collection around of the disability workforce, particularly independent contractors and Platform Providers, to effectively understand the state of quality and safeguarding. This should include partnering with NDS, which undertakes regular data collection on the state of the sector and disability workforce.

2.0 Introduction

NDS's Vision is for an inclusive Australia where all people with disability live safely and equitably. Everyone has the right to safe quality services and any instance of abuse, neglect or violence is unacceptable. NDS supports the rights of people with disability to exercise choice and control about matters that affect them.

NDS believes that the Convention on the Rights of Persons with Disabilities (CRPD) communicates values and standards by which people with disability should be treated and that inform community values and attitudes. In fulfilling the rights of people with disability, the CRPD should be a guideline for organisations in their social obligations and social responsibilities. It should frame internal policies and procedures for equity, diversity and inclusion.

Disability services should advance the human rights of people with disability, support their autonomy, independence and inclusion in society and ensure respect for their dignity. At the same time, disability service providers have a responsibility to prevent and respond to violence, abuse, neglect and exploitation in the course of service provision. This requires actively involving people with disability, and their families and supporters, in all decisions about where and with whom they live and what supports they receive. It may also require supporting people with disability to advocate for themselves and to access robust independent advocacy services.

A skilled, capable, diverse and sustainable provider landscape is a desirable outcome for participants and supports greater choice and control. A central foundation of the NDIS is that it is intended to uphold human rights and promote choice and control for people with disability to pursue their goals in the planning and

delivery of their supports. The market-based system established by the NDIS was intended to promote this choice and control, by offering people with disability a wide range of providers from which to seek support.⁵

The rise of contractor work, coordinated through Platform Providers, has become one of the defining trends of the NDIS in the past few years. Participants are benefiting from alternative ways of procuring support services through various platforms, with individuals having greater choice and able to exercise greater agency in their own care arrangements. However, this may also create challenges (and potentially risks) for participants and workers, with reduced regulation and the breakdown of holistic care into itemised tasks, with associated longer term implications for the caring workforce.⁶

The broader impacts on the NDIS workforce of contract-based work, casualisation and platform-based work are not well understood, and more information is required to understand some of the impacts, including how these factors affect worker retention, the types of obligations that occur between participants and workers, and the complexities of different contractual arrangements between workers, platforms and participants.⁷

Throughout this submission NDS does not intend to advocate for a single model of service delivery within the NDIS context. However, it is vital that there is a coordinated approach that outlines practical strategies to meet the increasing demands for a skilled, competent and engaged disability workforce to adequately meet the diverse needs of people with disability. This submission will explore essential components that ensure meaningful work, adequate pay and conditions and quality service provision within the unique circumstances of Platforms Providers.

2.1 Definition of Platform Providers

For the purpose of this submission, as per the Terms of Reference, 'NDIS Platform Provider' refers broadly to businesses that provide online platforms and online subscription services to connect workers with NDIS participants. NDIS Platform Providers include registered NDIS providers and NDIS providers who are not registered.

⁵ Contracting Care: The rise and risks of digital contractor work in the NDIS, accessed 27 April 2023, https://percapita.org.au/our_work/contracting-care-the-rise-and-risks-of-digital-contractor-work-in-the-ndis/

⁶ First interim report: on-demand platform work in Australia, accessed 27 April 2023, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Interim_report

⁷ First interim report: on-demand platform work in Australia, accessed 27 April 2023, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Interim_report

3.0 State of the Disability Sector

Recommendation one: That the NDIS Commission work with the NDIA to implement price settings that adequately support providers to move beyond compliance with regulation, supporting providers to invest in innovation, new ways of working, workforce training, support and supervision.

Platform Providers operate in the context of the broader disability sector. Before moving to discuss some of the particular issues for these providers it is important to examine some of the key and current issues that are impacting the operating environment for all providers.

The 2022 NDS Annual Market Survey was conducted by the Centre for Disability Research and Policy at the University of Sydney. As NDS's Annual Market Survey enters its ninth year, the results identify both growing optimism and residual uncertainty in the market, in part related to the COVID-19 pandemic. The survey results show the impact that unclear and constantly evolving operational processes and procedures have on the capacity of the sector to provide high quality supports that meet the needs of NDIS participants.⁸

Concern continues that NDIS prices will not cover costs and support quality service provision. The overall proportion of respondents who agree with the statement, 'We are worried we will not be able to provide NDIS services at current prices' has remained stable over the last five years. Some 59 per cent of respondents agreed in 2022. This is despite economic stimulus reforms implemented throughout the COVID-19 pandemic such as JobKeeper, COVID-19 support measures and recent increases in NDIS prices for some supports. Commentary highlights sector concerns that current pricing does not support quality and innovation.

In the current NDIS market, participants do not have reliable or consistent information about the quality of services on offer, and organisations compete primarily on price. This may have sector-wide implications for quality. Consequently, if enough service providers enter the market with the focus on lower prices, higher quality service providers will be unable to compete on price and potentially exit the sector, leading to an overall reduction in choice and quality.⁹

⁸ National Disability Services (2022) Victoria, State of the Disability Sector 2022, accessed 1 December 2022, <https://www.nds.org.au/about/state-of-the-disability-sector-report>

⁹ Contracting Care: The rise and risks of digital contractor work in the NDIS, accessed 27 April 2023, https://percapita.org.au/our_work/contracting-care-the-rise-and-risks-of-digital-contractor-work-in-the-ndis/

Workforce

Recruiting and retaining suitably qualified staff remains a major challenge. The current workforce issues faced by disability service providers are best described as a labour shortage, rather than a skills shortage, with providers reporting difficulties recruiting and retaining staff across almost all professions and at all levels. Compared to 2021, in 2022 it was significantly more difficult to recruit disability support workers, managers or supervisors of disability support workers, volunteers, and people working in HR or workforce development and information technology.

Disability providers are also finding it increasingly difficult to retain staff. While worker satisfaction in the disability sector is strong¹⁰, pressures from various issues (such as wages and conditions, covering shifts, managing infection control, lack of supervision and training opportunities, etc.) impact on wellbeing, job satisfaction and retention. In turn, severe and chronic workforce shortages lead many service providers to turn reluctantly to casual, agency staff.

Over half (56 per cent) of respondents in the 2022 survey reported difficulties in retaining their existing disability support workforce. This increased significantly from 2020 (40 per cent) and 2021 (44 per cent)¹¹. Given that disability support workers provide significant amounts of core daily living supports, in real terms this means that some people with disability were not able to access the daily support that they need. While this data reflects the views of a broader range of providers than under consideration for this Inquiry, workforce shortages, attraction and retention issues also impact Platform Providers. Workforce issues that are more specific to Platform Providers will be explored in Section 4.

Confidence in the regulatory environment

Overall, only 39 per cent of providers were confident that the Quality and Safeguarding Framework supported the quality of services and outcomes (significantly lower than the 45 per cent of respondents who agreed in 2021). Forty-one per cent disagreed or strongly disagreed, worse than previous years. Support or lack thereof for the Quality and Safeguarding Framework and its components was consistent across key organisational features, including state, size (by income) and whether organisations were for-profit or not-for-profit.

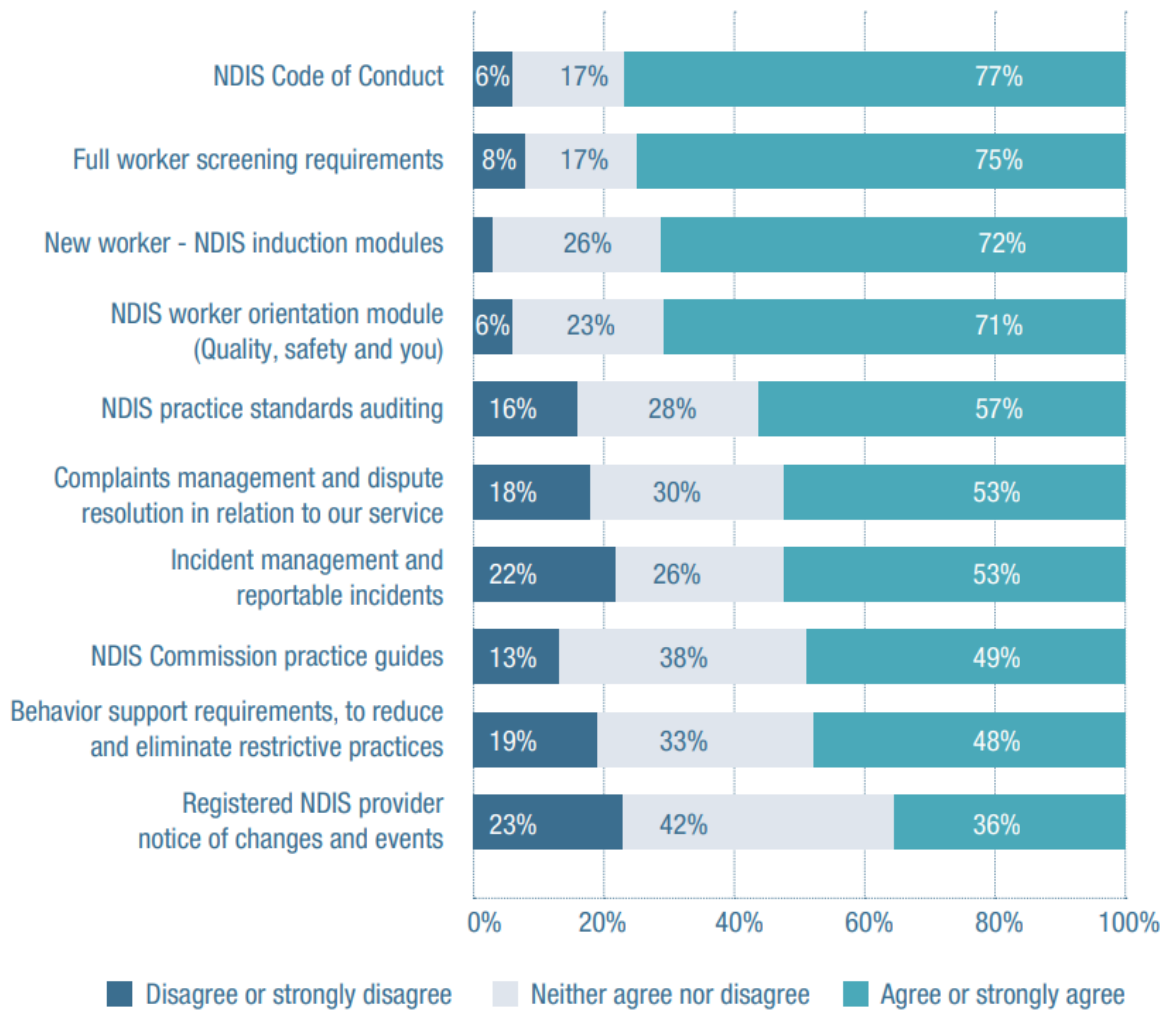
These results reflect general concerns about the regulatory environment across the entire service ecosystem. This is shown by 60 per cent of all respondents (about the same as 2021) agreeing or strongly agreeing that 'there are too many unnecessary

¹⁰ Seek (2022). Disability Support Worker profile. Job satisfaction rating of 4.3 (out of 5). Accessed 6 January 2023.

¹¹ National Disability Services (2022) Victoria, State of the Disability Sector 2022, accessed 27 April 2023, , <https://www.nds.org.au/about/state-of-the-disability-sector-report>

rules and regulations (that) my organisation has to follow'. A major theme in respondents' comments was calls for greater accountability for unregistered providers and greater consistency and fairness in the application of regulatory instruments between registered and unregistered providers.

Table 1: Quality and Safeguarding Framework is leading to good outcomes for participants



4.0 Workforce Issues

4.1 Implications of contracting models and employment conditions

Recommendation two: In line with recommendations of the Joint Standing Committee on Job Security, the NDIS Commission should work with the Australian Government to consider regulatory options that would ensure support workers engaged to provide services funded through the NDIS have fair pay and conditions, including those engaged through on-demand platforms.¹²

The Select Committee on Job Security: First interim report: on-demand platform work in Australia¹³ outlined that Platform Providers work can provide economic benefits, including efficiently 'matching workers and participants, creating new markets and providing better or improved services'. It can also benefit workers by providing: 'skills, experience and opportunity that may lead to more traditional work opportunities, reducing unemployment'. However, there are also concerns about the 'work status' of on-demand platform workers.

Some organisations act purely as intermediary platforms, bringing together participants and independent contractors. These 'on-demand' platforms do not control for the safety of the work environment for workers, price setting, or the quality of the work provided to the participant beyond a basic safety level. Other organisations, such as Hireup, offer a hybrid type model in which they operate through an online platform, but maintain an employment relationship with the strict price guidance in line with industrial awards, casual loading, the application of peer review processes, the use of traditional or digital triage processes, and the ability to provide or support continuity of care and support.¹⁴

The Select Committee's First interim report highlighted concerns about the impact of platforms on the care services sector, particularly in relation to health and safety, insurance, unpaid work, and the training needs of the workforce.¹⁵ Given the already high levels of turnover and relatively low wages of disability workers, any further loss of conditions, either quantitative (pay, superannuation, training, benefits) or

¹² First interim report: on-demand platform work in Australia, accessed 27 April 2023, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Interim_report

¹³ First interim report: on-demand platform work in Australia, accessed 27 April 2023, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Interim_report

¹⁴ Contracting Care: The rise and risks of digital contractor work in the NDIS, accessed 27 April 2023, https://percapita.org.au/our_work/contracting-care-the-rise-and-risks-of-digital-contractor-work-in-the-ndis/

¹⁵ First interim report: on-demand platform work in Australia, accessed 27 April 2023, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Interim_report

qualitative (peer-to-peer support, professional recognition) will likely reduce the attractiveness of disability support work.¹⁶

There has been considerable growth of contracting arrangements in the disability sector, as well as the associated risks this could present to the sector for both workers and NDIS participants who are seeking disability and care services including lack of entitlements for workers employed through on-demand platform providers; and attribution of liability and other Work Health and Safety implications.¹⁷

Key issues regarding workforce conditions include:

- low pay, reduced working hours, and a lack of career advancement.
- work intensification and job stress, with increased pressure to 'do more with less' to ensure that participants' needs are met.
- increased casualisation, and a rise in insecure work.
- increased use of online platforms and direct engagement of workers by clients.
- poor training, supervision, and professional support; and
- bullying, harassment, and abuse, exacerbated by a lack of reporting mechanisms or avenues for redress.¹⁸

It is also worth noting that in 2019, a Federal Circuit Court found two labour hire companies that provided “independent contractor” disability support workers to disability care and support facilities, guilty of sham contracting. The court found that the workers were underpaid, overworked, and not in any way independent in employment terms. This raises the question as to the independence of some independent support providers in the NDIS, particularly those in long-term mutually reliant relationships with their clients.¹⁹

¹⁶ Contracting Care: The rise and risks of digital contractor work in the NDIS, accessed 27 April 2023, https://percapita.org.au/our_work/contracting-care-the-rise-and-risks-of-digital-contractor-work-in-the-ndis/

¹⁷ Joint Standing Committee on the National Disability Insurance Scheme NDIS Workforce Final Report, accessed 27 April 2023, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/workforce/Report

¹⁸ First interim report: on-demand platform work in Australia, accessed 27 April 2023, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Interim_report

¹⁹ Contracting Care: The rise and risks of digital contractor work in the NDIS, accessed 27 April 2023, https://percapita.org.au/our_work/contracting-care-the-rise-and-risks-of-digital-contractor-work-in-the-ndis/

4.2 Implications of contracting models for participant responsibilities for work, health and safety

Recommendation three: In line with recommendations of the Joint Standing Committee on Job Security, the NDIS Commission should work with the Australian Government to clarify, by way of regulation, which persons or entities owe a duty of care as a person conducting a business or undertaking (PCBU) under the Model Work Health and Safety laws in relation to individual support workers engaged through on-demand Platform Providers. The law should dictate that:

- ***a platform that engages individual workers to provide support work under the NDIS or similar schemes, and makes money from the arrangement, is a PCBU and owes a duty of care to that worker, regardless of that worker's work status (employee or contractor), or their visa status; and that***
- ***individual care recipients, such as NDIS participants, are not a PCBU in relation to that worker.***²⁰

The contractual nature of the workforce for some Platform Providers can mean that risk and legal liabilities are shifted to the worker/independent contractor and may potentially lead to liability on the part of the NDIS participant. There is general concern in the sector that platforms assume no legal risk for workplace health and safety or consumer protection, de-voiding themselves of responsibility. The *Contracting Care: The rise and risks of digital contractor work in the NDIS Report*²¹ maintains there is the potential for a case to be brought, whereby that the NDIS participant or a platform operator is effectively considered a person conducting a business or undertaking (PCBU) under the legislation. Under legal definitions, a person owes a duty of care as a PCBU when they:

- direct or influence work carried out by a worker
- engage or cause to engage a worker to carry out work (including through subcontracting)
- have management or control of a workplace.²²

²⁰ First interim report: on-demand platform work in Australia, accessed 27 April 2023, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Interim_report

²¹ Contracting Care: The rise and risks of digital contractor work in the NDIS, accessed 27 April 2023, https://percapita.org.au/our_work/contracting-care-the-rise-and-risks-of-digital-contractor-work-in-the-ndis/

²² Contracting Care: The rise and risks of digital contractor work in the NDIS, accessed 27 April 2023, https://percapita.org.au/our_work/contracting-care-the-rise-and-risks-of-digital-contractor-work-in-the-ndis/

The legal liabilities and regulations surrounding digital platforms are not yet clarified, and this poses significant risk to the scheme, participants and the quality of services provided.

4.3 The role of training, education, professional development, support and supervision

Recommendation four: Develop an improved understanding of how Platform Providers apply (and where required develop resources to assist them to apply) the NDIS Workforce Capability Framework to ensure quality support for people with disability.

Evidence suggests that training, education, professional development and appropriate wage and conditions are key in retaining and building a workforce that can adapt and meet the changing needs of NDIS participants.²³

The Select Committee on Job Security has reported that workforce supervision, mentoring, and leadership are crucial factors in the development of workers' professional expertise and self-confidence. The committee also considers these factors can enhance worker retention and crucially, support the delivery of safe and quality supports to NDIS participants.²⁴

There is an increased desire for flexibility within the on-demand workforce, however, capability development is vital to workers in insecure work. Without training, skills development and education opportunities that provide career pathways and lead to economic security, these workers face diminished job satisfaction and an ongoing cycle of precarious work.²⁵ The *First interim report: on-demand platform work in Australia* found that on-demand workers receive less work-related training, skills development and education than traditional employees.²⁶ The use of independent contractors reduces organisational knowledge and peer-to-peer support between employees, and may cause a decline in the structured training of workers. This will have broad implications for the workforce, and specific implications for individual

²³ Joint Standing Committee on the National Disability Insurance Scheme NDIS Workforce Final Report, accessed 27 April 2023, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/workforce/Report

²⁴ First interim report: on-demand platform work in Australia, accessed 27 April 2023, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Interim_report

²⁵ First interim report: on-demand platform work in Australia, accessed 27 April 2023, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Interim_report

²⁶ First interim report: on-demand platform work in Australia, accessed 27 April 2023, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Interim_report

NDIS participants who cannot fall back on an organisation which understands their specific needs.²⁷

The NDIS Commission has developed the NDIS Workforce Capability Framework (the Framework) to support delivery of quality disability services across Australia. It translates the NDIS Practice Standards and Code of Conduct into observable behaviours that service providers and workers should demonstrate when delivering services to people with disability. However, the Framework is not mandatory. It is provided as guidance to all stakeholders to explain expectations about the way support is provided. It also describes essential features of organisational culture, systems and practices needed to support a capable workforce. The intent is to drive and promote positive engagement in a culture of mutual respect and participant-focused, quality supports.

5.0 Regulation and the Quality and Safeguarding Framework

The increased presence of Platform Providers has the potential to change the nature of the support arrangements away from organised, supervised, employment-based systems, to a more fragmented, unregulated workforce where individuals accept liabilities with fewer external safeguards.²⁸ NDS is committed to assisting all disability service providers to understand, implement and improve practices which safeguard the rights of people they support. The data from the NDS Annual Market Survey and State of the Sector Report outlined in Section 3 identifies several elements of the current Quality and Safeguarding Framework that providers generally feel assist in driving safer and higher quality services (please see Table One). The NDIS Commission should work with participants and providers to consider how these elements of the Quality and Safeguarding Framework should apply to Platform Providers.

The emergence of the NDIS marketplace has resulted in a commercial element to disability service provision. Organisations engaging independent contractors have lower costs than an organisation that employs its workers such as payroll tax, superannuation, compliance and employee training. This has resulted in a two-tier NDIS, where one group of organisations incurs the costs of employment and compliance with a range of safety and quality standards, and another operates largely without these costs and may also provide fewer protections for workers and

²⁷ Contracting Care: The rise and risks of digital contractor work in the NDIS, accessed 27 April 2023, https://percapita.org.au/our_work/contracting-care-the-rise-and-risks-of-digital-contractor-work-in-the-ndis/

²⁸ First interim report: on-demand platform work in Australia, accessed 27 April 2023, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Interim_report

clients.²⁹ To enable a benchmark for quality service delivery, organisations delivering like services and operating under the same price caps should share similar responsibilities and obligations.³⁰

5.1 Provider registration

Recommendation five: That high risk supports are only delivered by registered providers.

Recommendation six: The NDIS Commission should develop resources for participants and their support networks understand how the Quality and Safeguarding Framework applies to registered and unregistered providers.

The introduction of Platform Providers requires the NDIS Commission to ensure accountability and quality control of work standards when dealing with outsourced, contracted-out service provision,³¹ particularly with unregistered providers.

The *NDS 2022 State of the Sector report*³² and the results of a pulse survey that was conducted in November 2022 to inform an NDS submission to the NDIS Review³³ leave little doubt that providers are increasingly questioning the benefits of registration. The data reveals concern about the uneven playing field between the regulatory obligations for registered providers and the low level of compliance and oversight of the unregistered provider market. Providers note that unregistered providers can provide most NDIS supports with few supports, including those that could be considered higher risk such as accommodation and personal care supports, requiring registration by the NDIS Commission.

Although all providers who deliver services under the NDIS are regulated to some degree by the Commission, only registered providers must meet NDIS Practice Standards as part of their registration. Unregistered providers are not proactively

²⁹ First interim report: on-demand platform work in Australia, accessed 27 April 2023, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Interim_report

³⁰ Joint Standing Committee on the National Disability Insurance Scheme NDIS Workforce Final Report, accessed 27 April 2023, (https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/workforce/Report)

³¹ NDIS Quality and Safeguards Commission, accessed 27 April 2023, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/QS_Commission/Report

³² National Disability Services (2022) Victoria, State of the Disability Sector 2022, accessed 1 April 2023, <https://www.nds.org.au/about/state-of-the-disability-sector-report>

³³ National Disability Services (2022) Victoria National Disability Services Submission- Have your say: NDIS Independent Review Panel, accessed 3 April 2023 https://www.nds.org.au/images/Policy/NDS_Pulse_Survey_IRP_submission_FNL

monitored by the Commission.³⁴ While the NDIS Code of Conduct provides sound guidance to staff and organisations, NDS continues to have concerns around its adequacy as an enforcement tool.

*The Joint Standing Committee on the National Disability Insurance Scheme: NDIS Quality and Safeguards Commission Report*³⁵ expressed concern that unregistered providers are not subject to the stringent quality and safety obligations imposed on registered providers and, consequently, fewer enforcement powers are available to the Commission in relation to this cohort. These services are considered 'out of jurisdiction' for the Commission which may have a very significant impact on participants.

A core concern is that the Commission takes a reactive rather than proactive approach to compliance and enforcement. The Commission relies heavily on complaints and reportable incidents to initiate compliance processes, rather than proactively monitoring the quality and safety of services and supports. This is not effective in terms of ensuring the quality and safety of supports or building the capacity of the sector. Moreover, this reactive approach places a heavy burden participants, families, supporters and providers alike.³⁶

On the surface, the Commission's approach to unregistered providers appears to push responsibility for ensuring that a provider is appropriately qualified or skilled entirely back onto the participant.³⁷ The participant must know and understand both the NDIS Code of Conduct, and what is not allowed from an unregistered provider (such as restrictive practice), identify when there has been a breach, and have the time and capacity to make a complaint. All this under the perceived risk of being a 'troublemaker' and alienating themselves from the people they rely on for support.³⁸

³⁴ Contracting Care: The rise and risks of digital contractor work in the NDIS, accessed 27 April 2023, https://percapita.org.au/our_work/contracting-care-the-rise-and-risks-of-digital-contractor-work-in-the-ndis/

³⁵ NDIS Quality and Safeguards Commission, accessed 27 April 2023, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/QS_Commission/Report

³⁶ NDIS Quality and Safeguards Commission, accessed 27 April 2023, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/QS_Commission/Report

³⁷ NDIS Quality and Safeguards Commission, accessed 27 April 2023, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/QS_Commission/Report

³⁸ NDIS Quality and Safeguards Commission, accessed 27 April 2023, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/QS_Commission/Report

The current system of provider registration is complex, costly, with rigid regulation and compliance requirements. However, although it is not perfect, registration is the primary mechanism for regulation and oversight in the NDIS. The Commission needs to consider how addressing the risks of not subjecting providers to appropriate oversight may outweigh the administrative or compliance burdens associated with registration, while ensuring that requirements are not unduly onerous or costly. This is a fine balance but will ultimately result in greater choice and control and quality service provision across the entire scheme.

5.2 Worker Screening

Recommendation seven: NDIS Worker Screening for all workers in risk assessed roles supporting NDIS participants, including those engaged through Platform Providers and for high risk supports to be delivered by registered providers.

Recommendation eight: Provider greater clarification on which roles including those engaged through Platform Providers are risk assessed roles.

The NDIS Worker Screening Check is an assessment of whether a person who works, or seeks to work, with people with disability poses a risk to them. The assessment determines whether a person is cleared or excluded from working in certain roles with people with disability.³⁹

Currently, only workers working in risk-assessed roles with providers registered with the NDIS Commission are required to undergo a NDIS Worker Screening Check. The current system gives room for unscreened workers, or those who have not meet requirements to continue working in the sector. A worker with any background can register for an ABN and potentially start working with people immediately. This introduces clear risks for participants. There is no justifiable reason not to require this safeguarding measure for all workers with more than incidental contact with NDIS participants, and not only those engaged by registered providers.

The NDIS Worker Screening Check timelines, expense and processes often pose a particular barrier for job seekers and organisations alike. This is particularly the case in a highly competitive labour market where job seekers can immediately commence work in other sectors such as retail and hospitality with comparable pay and working conditions. Providers report a significant number of cases where high-quality applicants have found alternative employment in other industries or with unregistered NDIS providers due to delays of months in receiving their NDIS check. However, these issues are issues related to implementation of the Check. Mechanisms such

³⁹ NDIS Worker Screening Check, accessed 27 April 2023, <https://www.ndiscommission.gov.au/workers/worker-screening/ndis-worker-screening-check>

as ensuring appropriate resourcing is available to process checks in reasonable timeframes and either waiving, reducing or subsidising the costs of a NDIS Worker Screening Check would address these issues.

Extending worker screening requirements to unregistered providers will not, on its own, stop potential exploitation and neglect of people with disability. Other mechanisms will be needed to ensure the quality and safety of supports. NDS recommends that all workers involved in the delivery of NDIS supports with more than incidental contact with participants should undergo NDIS Worker Screening (including independent contractors through Platform Providers); that high risk supports are well defined and only delivered by registered providers; that the government is accountable for educating consumers on the requirements for NDIS Worker Screening (particularly those self-managing plans); and changes are made to the NDIS Worker Screening process to ensure it is accessible and timely.⁴⁰

6.0 Data Collection

Recommendation nine: Increase and improve data collection around of the disability workforce, particularly independent contractors and Platform Providers, to effectively understand the state of quality and safeguarding. This should include partnering with NDS, which undertakes regular data collection on the state of the sector and disability workforce.

The Contracting Care: The rise and risks of digital contractor work in the NDIS Report highlighted the lack of relevant labour statistics and data as a key issue in understanding the needs of workers engaged by Platform Providers and the physical, financial and other risks they face. There is also inadequate data regarding work-related injuries and fatalities within the on-demand platform sector.⁴¹

This lack of robust, reliable data restricts the Commission's ability to identify the true size, nature and impact of the on-demand workforce within the NDIS. It becomes critical that this gap in our knowledgebase be filled through the regular collection and publication of robust data can provide significant insights about the state of quality and safeguarding across the scheme. The NDIS Commission should use this data to determine the effectiveness of the quality and safeguarding framework in preventing and responding to violence, abuse, neglect and exploitation of people with disability, where the sector can make progress, and where services may require more

⁴⁰ National Disability Services (2022) Submission: Federal Budget 2022-2023, accessed 27 April 2023, <https://www.nds.org.au/index.php/events-and-training/nds-events/special-event/nds-2022-federal-budget-submission>

⁴¹ Contracting Care: The rise and risks of digital contractor work in the NDIS, accessed 27 April 2023, https://percapita.org.au/our_work/contracting-care-the-rise-and-risks-of-digital-contractor-work-in-the-ndis/

education to improve the quality of supports.⁴² NDS conducts regular surveys of the sector and disability workforce through the Annual Market Survey and Workforce Census and the Commission should consider partnering with organisations like NDS to utilise and extend existing data sources.

7.0 Conclusion

The role of Platform Providers has been explored across hearings of the Royal Commission into Violence, Abuse Neglect and Exploitation of People with Disability (or 'Disability Royal Commission'). It is open to the Royal Commission to make recommendations and findings about the ways in which these models support quality and safety and prevent and respond to violence, abuse, neglect and exploitation.

The Royal Commission and more recently the NDIS Commission's Own Motion Inquiry into Aspects of Supported Accommodation in the NDIS call attention to the harm experienced by people with disability and begin to identify the areas of system and service provision improvement needed. Creating safer, quality services for all people with a disability is the role of all providers.

Without immediate changes to better support the workforce, the ability of providers to consistently meet the needs of people with disability will be further impacted.

It is vital that funding is made available for this change agenda and tangible outcomes established to support the implementation of necessary reforms and recommendations for the Disability Royal Commission. Responding to the Disability Royal Commission will require additional funding to support the ambitious and quick implementation of the inevitable sector development recommendations. The way forward is to focus on the things that matter to create safer services, focus on quality and safeguarding, measures that improve outcomes and share data that support providers to innovate and identify good practice.

The State of the Disability Sector Report outlines the way forward to ensure the NDIS delivers on its promise for all Australians.⁴³

- *Listen to providers:* We encourage the Commission to engage with providers and draw on their expertise to develop NDIS reforms and a new workforce strategy, focusing on where quick wins can be achieved
- *Talk to providers:* As reforms and improvements are identified, the sector will need support to implement them. This will require clear communication to

⁴² NDS Submission to the Royal Commission on the Safeguards and Quality Issues Paper 2021

⁴³ National Disability Services (2022) Victoria, State of the Disability Sector 2022, accessed 1 December 2022, <https://www.nds.org.au/about/state-of-the-disability-sector-report>

participants and providers, appropriate timeframes and resourcing, and mitigation of any unintended consequences.

- *Don't just talk:* While providers welcome the potential of the current reviews to improve the Scheme and address interface issues, their support will ultimately rely on seeing these plans turn into action
- *Keep reviewing the cost model:* While the price increases announced in June 2022 were welcome, it was a catchup payment. Economic conditions remain challenging. The cost model needs to be continually reviewed to reflect wage pressures, changes to the SCHADS award, adequate training, and support and supervision needs
- *Cut red tape:* Reduce duplication of reporting between regulators, cut unnecessary red tape that reduces the effectiveness of services without improving standards, and take steps to address the uneven playing field between registered and unregistered providers.
- *Keep it simple:* The sector wants reform but is fatigued by change. The Commission should ensure that solutions simplify the processes for providers, who have limited resources to engage with the review and contribute their practical expertise. Reforms will need to be progressively implemented to maintain momentum.

NDS and its members welcome the opportunity of this Inquiry and look forward to working with the NDIS Quality and Safeguards Commission to achieve a NDIS which is vibrant, innovative and delivers quality supports to people with disability to meet the original intent of the Scheme.

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National Disability Services is the peak industry body for non-government disability services. It represents service providers across Australia in their work to deliver high-

quality supports and life opportunities for people with disability. Its Australia-wide membership includes more than 1200 non-government organisations which support people with all forms of disability. Its members collectively provide the full range of disability services—from accommodation support, respite and therapy to community access and employment. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Federal governments.