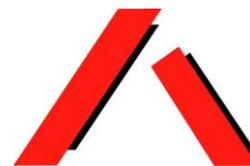


15th July 2021



**Queensland Advocacy
Incorporated**

*Advocacy for vulnerable people
with disability.*

Level 2, 43 Peel Street
PO Box 3384
South Brisbane QLD 4101

T (07) 3844 4200

F (07) 3844 4220

E qai@qai.org.au

ABN 97 527 905 201

Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Delivered via email [community.affairs.sen@aph.gov.au]

Dear Committee Secretary,

**National Disability Insurance Scheme Amendment (Improving Supports for At Risk Participants) Bill
2021**

We refer to the above inquiry and offer QAI's support for the proposed Bill.

About Queensland Advocacy Incorporated

Queensland Advocacy Incorporated (QAI) is an independent, community-based advocacy organisation and community legal service that provides individual and systems advocacy for people with disability. Our mission is to advocate for the protection and advancement of the fundamental needs, rights and lives of the most vulnerable people with disability in Queensland. QAI's management committee is comprised of a majority of persons with disability, whose wisdom and lived experience is our foundation and guide.

QAI has been engaged in systems advocacy for over thirty years, advocating for change through campaigns directed at attitudinal, law and policy reform, including advocating for the initiation of the National Disability Insurance Scheme (NDIS). For over a decade, we have provided services to people with disability through our Human Rights Legal Service, our Mental Health Legal Service, our Justice Support Program, and more recently, our NDIS Appeals Support Program and Decision Support Program, as well as our Disability Royal Commission Advocacy Program, our Education Advocacy Service and our Social Work Service. QAI's NDIS Appeals and Decision Support programs provide advocacy support to individuals and families engaging with, and seeking access to, the NDIS. QAI's individual advocacy underpins our understanding of the challenges, needs and concerns of people with disability and informs our campaigns for change at the state and federal levels.

Feedback regarding the Bill

QAI supports the introduction of the National Disability Insurance Scheme Amendment (Improving Supports for At Risk Participants) Bill 2021 and the proposed amendments listed in the Explanatory Memorandum. QAI has been concerned for some time about the ability of the NDIS Quality and Safeguards Commission (Q&S Commission) to effectively hold unethical and inadequate NDIS service providers to account. Without a strong oversight mechanism that raises the standards of service delivery through effective enforcement measures and proactive compliance strategies, the fate of a participant's journey in the NDIS becomes dependent upon whether they receive support from a safe and ethical service provider. The ability of the Q&S Commission to effectively address participant harm is limited by its establishment as a Commission with predominantly reactive, rather than proactive, powers. This essentially passive role, which has been ingrained by the high volume of complaints received, limits the Q&S Commission's capacity to properly utilise its investigatory powers and must be addressed.

The proposed amendments will help improve protections for people with disability interacting with the NDIS by:

- Clarifying and strengthening the Q&S Commission's compliance and enforcement powers, for example by placing conditions on quality auditors;
- Clarifying and broadening the Q&S Commission's information-sharing and information-request powers, for example by permitting the Q&S Commission to publish information on the NDIS provider register about historical compliance and enforcement action; and to obtain information about the *past* conduct of persons wishing to provide NDIS supports to enable better oversight and ensure the integrity of supports provided under the NDIS;
- Clarifying provider registration provisions, for example stipulating that the NDIS Practice Standards and Code of Conduct apply to NDIS provider key personnel, such as board members;
- Enabling information sharing between the NDIA and Q&S Commission and permitting the disclosure of information to relevant state and territory bodies, for example for the purposes of worker screening laws and checks;
- Clarifying (and potentially extending) the scope of reportable incidents;
- Strengthening banning orders, for example extending them to apply to key personnel of NDIS providers, allowing conditions to be attached to them and making it a civil penalty offence to contravene a condition of a banning order.

These amendments are welcome given the increasingly complex landscape in which NDIS supports are provided. A clarification and strengthening of the Q&S Commission's oversight function is vital given the evidence of violence, abuse, neglect and exploitation experienced by some people with disability engaging with the NDIS provided to the Disability Royal Commission. Greater access to information will improve the quality and accuracy of decision-making by the NDIA and Q&S Commission; will enable the NDIA and Q&S Commission to be more proactive in protecting NDIS participants who are vulnerable to experiencing harm; and will ultimately lead to safer outcomes for people with disability engaging with the NDIS. The amendment that permits the NDIA and Q&S Commission to share information with state and territory bodies regarding NDIS providers is particularly welcome in this respect. Greater access to information about the current and previous conduct of NDIS providers is also beneficial for participants, who as a result, will be empowered to make more informed and ultimately safer decisions regarding the providers they choose to deliver their disability supports and services.

However, QAI notes that the Bill fails to give effect to some of the other recommendations in the Robertson Review. For example, the recommendation that no NDIS participant who has been identified as being vulnerable to abuse and neglect should have a sole carer providing supports in their home. Or, that the Q&S Commission should establish an equivalent to state and territory community visitor schemes.¹ These recommendations are important additional safeguard measures that would strengthen the protection of vulnerable people with disability who are at risk of experiencing harm due to the actions of NDIS service providers. QAI also notes that the Bill refrains from addressing other inadequacies in the Q&S Commission's complaints handling processes. A commonly cited concern is that the response is slow and/or inappropriate, causing participants to feel confused and unsupported, as illustrated by Case Study 1.

Case study 1

A participant made a complaint regarding the perceived unethical practices of their support coordinator. It was alleged that the support coordinator shared the participant's information without their consent, made hurtful comments about their disability and only recommended services within their organisation. The participant contacted the Q&S Commission and was assigned a case manager who was pleasant and supportive. The case manager arranged for a meeting between the participant and support coordinator, however, did not attend the meeting themselves. It was unclear from the emails that the case manager would not be attending, and both the participant and support coordinator expected them to attend. This left the participant in a very awkward situation with the support coordinator. The participant felt unable to express their concerns alone due to the power imbalance inherent in their relationship. The Q&S Commission considered the matter to be resolved following the participant's subsequent termination of their service agreement, despite the complaint never being addressed or the unethical practices of the provider remedied.

Responses to complaints can also be ineffective and can result in an increase in expenditure by the NDIA to remedy the consequences of poor-quality service provision, as illustrated by Case Study 2.

Case study 2

A participant living in North Qld required modifications to their wheelchair-accessible vehicle. The planner recommended sending the vehicle to Provider Y in Brisbane for the work to be completed. The modifications were quoted to cost \$28,000. Provider Y advised that the work would take 3 weeks to complete, would be covered by warranty and completed to the appropriate health and safety standards. Two months later, the participant was finally advised the work had been completed. When the vehicle was delivered to the participant, notable defects became apparent. There was a leak in the fuel tank, the logbook and spare key had been misplaced, the fuel tank had incorrect fittings, the quality of the welding was poor and did not meet standards, there was some exposed wiring, and the electronic restraint was not working. The participant contacted Provider Y who advised the repair work could be completed locally and that they would reimburse the participant for this work. Subsequent correspondence with Provider Y revealed that they refused to accept responsibility for the poor workmanship and did not follow through on their offer to rectify the work. The participant sought the assistance of the NDIA, who advised it was not within their scope and could not assist even though it was the NDIA planner's decision to choose Provider Y in the first place. The participant made a

¹ Alan Robertson SC (August 2020) *Independent Review of the adequacy of the regulation of the supports and services provided to Ms Ann-Marie Smith, an NDIS participant, who died on 6 April, 2020*, p7

complaint to the Office of Fair Trading which advised that welding standards were outside of their scope and that the participant should pursue the matter through QCAT, the courts or the Q&S Commission. The participant made a complaint to the Q&S Commission, which advised they were also unable to make Provider Y pay for the repair work. The participant was eventually able to use \$6,000 of their NDIS plan funding to repair the vehicle, after obtaining an assessment which verified the poor workmanship. However the provider was not held to account, the NDIA had to pay an additional \$6,000 of tax-payers money to rectify the provider's poor quality work and the Commission was ultimately ineffective in ensuring the quality and service of NDIS funded supports.

The Q&S Commission must fulfil its role in ensuring quality and safety of NDIS supports and of safeguarding the interests of people with a disability. Consideration should be given to extending the remit of the Q&S Commission to hold NDIS providers financially responsible for harm or loss caused as a result of their actions, particularly if this loss is readily apparent, as in Case Study 2, and where the pursuit of damages through civil litigation is not feasible for the participant. There must be greater consequential enforcement measures to successfully deter stakeholders from breaching the Code of Conduct, for example in relation to the actions of the provider in Case Study 1. The Q&S Commission must ensure its response to complaints is effective and successfully targets behaviours of concern.

QAI further considers that the scope of the Q&S Commission to intervene and investigate the actions of unregistered providers should be made clearer, including where NDIS participants engage the services of unregistered providers who do not typically or solely provide services to NDIS participants. For example, a self-managed participant may choose to engage the services of an unregistered provider, such as a private gardener or cleaner, and pay the contractor from their own pocket before reimbursing themselves from their plan (as per the NDIA guide to Self-Management). In this situation, the provider may be unaware they are providing services to an NDIS participant and therefore oblivious to their obligations under the NDIS Code of Conduct. The remit of the Q&S Commission in these situations requires greater clarification. NDIS participants must be assured they have rights to protection and intervention from the Q&S Commission regardless of whether they engage registered or unregistered providers.

Further amendments could include requiring the Q&S Commission to proactively monitor situations where conflicts of interests are occurring and to make warm referrals to advocacy services on behalf of participants when a complaint is registered with the Q&S Commission. State and territory agencies could also have a mandatory requirement to fully liaise and cooperate with the Q&S Commission in the course of an investigation into matters pertaining to the health, safety or quality of support of an NDIS participant. This would help prevent agencies from avoiding responsibility in a culture of 'passing the buck' where serious matters are reported and yet no discernible outcome is achieved.

Thank you for the opportunity to make a submission to this inquiry. We are happy to provide further information or clarification upon request.

Yours faithfully,

Matilda Alexander
Chief Executive Officer
Queensland Advocacy Incorporated