Submission to NDIS Provider and Worker Registration Taskforce Consultation Process

May 2024

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

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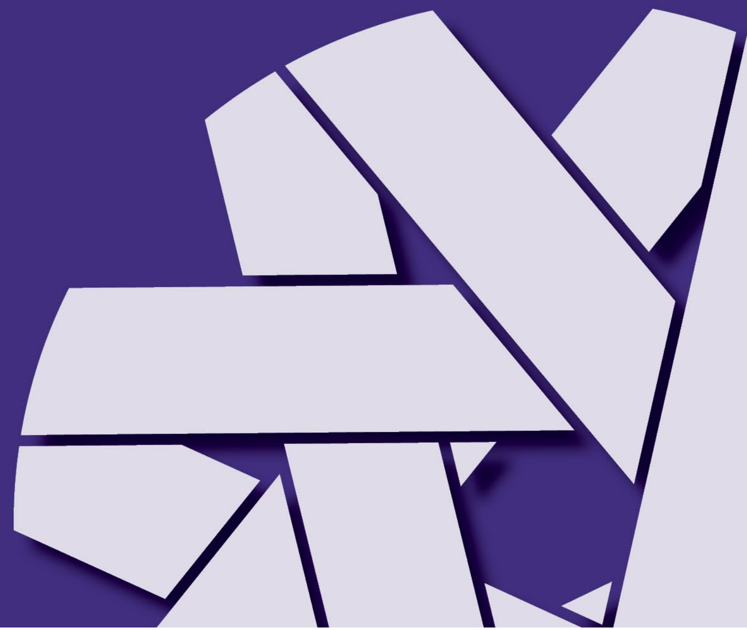

AHPA and the Disability Working Group

Allied Health Professions Australia (AHPA) is the recognised national peak association for Australia's allied health professions. AHPA's membership consists of 27 national allied health associations and a further 13 affiliate members, each representing a particular allied health profession. AHPA collectively represents some 200,000 allied health professionals and AHPA works on behalf of all Australian allied health practitioners, including the largest rural and remote allied health workforce numbering some 14,000 professionals.

Allied health professionals are a critical part of the National Disability Insurance Scheme ('NDIS'), providing a wide range of supports and services to help participants maintain and improve function, build their capacity to participate in community life, education and employment, and to access vital assistive technology.

AHPA's Disability Working Group ('Working Group') comprises policy and clinician representatives drawn from the range of AHPA's members that provide services in the NDIS. The Working Group is therefore informed by the views and experiences of both individual allied health professions and the allied health sector as a whole.

List of recommendations

Recommendation 1

Approaches to registration and other NDIS regulatory requirements should be based on an accurate assessment of risk, including taking into consideration any pre-existing regulatory requirements external to the NDIS that mitigate any risk to NDIS participants.

Recommendation 2

Consistent with Recommendation 1, the NDIS Quality and Safeguards Commission (or equivalent body) should work with allied health providers to facilitate the necessary changes to achieve 'light touch' registration, modelled on Medicare, for allied health professions that are regulated by the Australian Health Practitioner Regulation Agency (Ahpra) or are full members of the National Alliance of Self Regulating Health Professions (NASRHP).

Recommendation 3

The NDIS Quality and Safeguards Commission (or equivalent body) should directly engage with AHPA, NASRHP and self-regulating allied health professions concerning NDIS registration of self-regulating allied health professions that are not full members of NASRHP.

Recommendation 4

The NDIS Quality and Safeguards Commission (or equivalent body) should work with participants and Disability Representative Organisations to enhance participant capacity to manage risks and support the quality and safety of the services they receive, including via:

- Enhancing participant access to advocates
- Establishing a nationally consistent community visitor scheme

Recommendation 5

The new regulatory approach should be independently evaluated to assess whether it has increased quality and safety of supports and services.

Recommendation 6

The NDIS Quality and Safeguards Commission (or equivalent body) in collaboration with stakeholders should develop a comprehensive implementation plan for a new risk-proportionate regulatory framework for the NDIS, including clear timelines, responsibilities, and milestones for key activities.

Introduction

AHPA welcomes the opportunity to contribute to the development of a risk-proportionate regulatory model for all NDIS providers and workers, following Recommendation 17 of the NDIS Review Final Report.

This submission builds on the preliminary comments AHPA provided to the NDIS Provider and Worker Registration Taskforce ('Taskforce') on 1 May 2024 before our meeting with the Taskforce on 2 May 2024.

Our submission's use of the term 'allied health' rather than 'therapy' supports

Most of the allied health professionals who currently provide NDIS services do so within the category of 'therapy supports'. However, orthotic and prosthetic supports are not deemed therapy supports under the NDIS, with orthoses and prostheses instead being defined as assistive technology, and orthotic and prosthetic services assigned to the Custom Prostheses and Orthoses registration group.

Nevertheless, orthotic and prosthetic services do include clinical services (assessment, review and education) associated with the provision of orthoses and prostheses. These clinical services provided by orthotists/prosthetists parallel those provided by those allied health professions that are defined as providing NDIS therapy supports.[1]

Accordingly, when referring to NDIS supports or services provided by allied health professionals, this submission refers to 'allied health supports' or 'allied health providers'.

Appendix to this submission

Separately attached is an Appendix which details the 16 different allied health professions that currently provide NDIS supports or services (and are also represented on AHPA's Working Group). Each profession's scope of practice and how those providers assist NDIS participants is outlined, together with the requisite qualifications and how that profession is regulated.

Please note that the Appendix is not yet finalised for publication. It is provided to the Taskforce in confidence to facilitate understanding of the diversity of the allied health sector, and particularly of the regulatory issues discussed below.

Key issues for the Taskforce to consider

AHPA agrees with the NDIS Review Final Report that NDIS regulation must be risk-proportionate. This is not presently the case for allied health professionals providing NDIS supports and services. Instead, despite allied health providers presenting a low risk to quality and participant safety, and pre-existing regulatory processes external to the NDIS, our professionals are over-regulated via

[1] For more detail concerning orthotics and prosthetics, please see the submission to this Consultation from our member the Australian Orthotic Prosthetic Association.

existing NDIS registration requirements. The associated time and cost burdens are having flow-on effects that are exacerbating workforce shortages in an already under-supplied market.

Our allied health professionals place great value on maximising participants' choice and control, as well as ensuring high quality services and participant safety. AHPA believes that the best way to achieve these aims is to properly assess and monitor risk, and also to focus more on ensuring effective regulatory mechanisms other than registration. With these strengthened processes and a more proactive role for the NDIS Quality and Safeguards Commission ('the Commission'), we propose a 'light touch' registration category for allied health providers.

These themes are elaborated upon below.

Allied health providers present a low risk to quality and to participant safety

A central consideration in reform of NDIS registration must be that 'one size does not fit all'. For example, the scope of work, credentials, and checks and balances are very different for allied health professionals compared to those for disability support workers. A more appropriate comparison for allied health professionals is with other health professionals, such as nurses and general practitioners.

As several submissions to this Consultation from our member professions document, reported incidents and complaints concerning NDIS allied health supports and services are rare.

It is important to appreciate that allied health supports and services should be characterised as *risk-protective*. For example, therapy supports are approved in a participant's plan because they help the participant to build their capacity. Being able to live a more full life, such as having support from a speech pathologist and assistive technology to facilitate communication, enhances protective factors and therefore helps participants maintain safety and make complaints if necessary.[2]

The risk-protective nature of allied health supports is also illustrated by the NDIS requirement that behaviour support be provided by allied health professionals. Further, as outlined below, pre-existing regulatory mechanisms mean that allied health professionals are required to undertake Continuing Professional Development and have access to other protective strategies such as mentoring and use of the resources held by their peak bodies.

Allied health providers are currently over-regulated

The present heavy-handed NDIS approach to allied health provider registration is an unnecessary duplication of the external professional regulatory processes inherent to becoming and maintaining one's status as an allied health professional. These external processes are similar to those that exist for other health professionals, such as doctors and nurses.

The vast majority of allied health professionals are required to be regulated either under the National Registration and Accreditation Scheme (NRAS) by the Australian Health Practitioner Regulation Agency (Ahpra), or are members, or eligible to become members, of the National Alliance of Self Regulating Health Professions (NASRHP).

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[2] As an example, see the reference to the occupational therapist in https://www.abc.net.au/news/2024-05-09/ndis-provider-evoloution-support-services-under-scrutiny/103814678?utm_source=abc_news_app&utm_medium=content_shared&utm_campaign=abc_news_app&utm_content=mail .

NRAS and Ahpra

Around 40% of AHPA's allied health professions are registered under the NRAS and are accredited and certified, and regulated by Ahpra and various National Boards. Relevant professions include physiotherapy, occupational therapy, psychology, podiatry, osteopathy and chiropractic care. AHPA refers to the submission to this Consultation by our member Occupational Therapy Australia, which details the requirements and mandatory processes.

NASRHP

The remaining 60% of our member professions are self-regulating. Many of these professions, including Speech Pathology Australia, the Australian Orthotic Prosthetic Association, Dietitians Australia, Exercise & Sports Science Australia and Audiology Australia are full members of NASRHP.[3]

Each member has to submit their full suite of standards to NASRHP, and is subject to an annual review. Members are also required to submit to NASRHP the number of complaints received and associated outcomes. For more detail on the requirements for full membership of NASRHP, AHPA refers to the submission to this Consultation from our member Speech Pathology Australia.

NASRHP standards are independent, rigorous and equivalent to those of NRAS, and should be recognised as such. Self-regulating professions who are full members of NASRHP should therefore have their regulatory requirements and associated processes, such as accreditation and certification, recognised as equivalent to those for Ahpra-regulated allied health providers.

Those self-regulating health professions that are not full NASRHP members still have regulatory structures in place that may meet the requirements of the Commission in providing a base line quality control. These processes may require some additional work to map the standards of those self-regulating professions against those used as a basis for NDIS registration or decisions about registration requirements.

AHPA and NASRHP are actively working with all self-regulating health professions to review current standards and approaches and to consider any future needs. This group of professions should be engaged with by the Commission or equivalent body, to provide advice and input in relation to self-regulation and NDIS registration.

Recommendation 1

Approaches to registration and other NDIS regulatory requirements should be based on an accurate assessment of risk, including taking into consideration any pre-existing regulatory requirements external to the NDIS that mitigate any risk to NDIS participants.

When it is also considered that many allied health professionals provide services in more than one care or support sector, and that they may also be subject to additional requirements if they are involved in the provision or prescription of assistive technology, there is a strong case for streamlining and harmonising regulation to eliminate duplication.

Consequences of continuing the existing registration approach

The current approach to registration of allied health providers has significant negative impacts on service supply, and consequently also on participant experience.

[3] In addition to the full members of NASRHP listed above, the Australian Music Therapy Association is a provisional member and the Australian, New Zealand and Asian Creative Arts Therapies Association, the Australian Society of Rehabilitation Counsellors and the Psychotherapy and Counselling Federation of Australia are qualifying members.

AHPA has documented elsewhere the considerable time and financial costs incurred by our professionals in undergoing processes such as NDIS audits, and in associated registration administration.[4] These burdens are particularly felt by sole traders and small providers, who comprise a large portion of the allied health sector. Many of these providers also work part-time (likely related to the fact that the workforce is primarily female).

These imposts have contributed to the recent decline in allied health provider registration, as well as to more of our providers choosing to leave the NDIS sector.

Delays in registration and re-registration processes also contribute to present service shortages and participant lack of choice. For example, as the submission to this Consultation from our member Speech Pathology Australia details, recent Commission data on registration shows that it takes 4 months for approval of an initial verification application and 10 months for a certification application. These reported timeframes start from when the Commission has received the paperwork from the auditor, and so do not include the additional time for the auditing process itself.

The current regulatory burden does not only directly contribute to present workforce shortages. It is also a factor in allied health professional burnout, especially early in careers. Burnout is exacerbated by ongoing failures within the NDIS funding structure to facilitate workforce supports such as supervision, training and placements.[5]

The allied health sector also significantly subsidises its work with NDIS participants. Far from some media claims of 'price gouging', allied health providers often do not pass on to participants the full cost of services, particularly where assessments and reporting, and assisting participants to navigate the scheme are concerned. Our professionals' commitment to providing high quality services, especially in the early childhood space, also inevitably means considerable unbillable hours.

For all of these reasons, if universal registration is adopted without easing the current burdens, it is highly likely that many more allied health professionals will exit the NDIS. In addition, if every provider was required to register under the current approach, delays will only get worse, with further serious impacts on availability of services and participants' choice and control.

AHPA already has significant concerns regarding sustainability of an allied health workforce that is stretched to breaking point and unable to meet NDIS demand. Utilisation rates for therapy supports are continuing to decrease, meaning that increasingly participants who are NDIS-funded for allied health are then unable to find providers.[6]

Our proposed NDIS approach to allied health professionals

Allied health providers are not inherently high or even medium risk NDIS providers, and are already subject to comprehensive regulatory processes outside the NDIS.

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[4] https://ahpa.com.au/advocacy/submission-national-disability-insurance-agency-2023-24-annual-pricing-review-consultation/ . See also the submissions to this Consultation from our various members.

[5] Ibid. See also National Disability Services (NDS) 2023 State of Disability Sector annual report as summarised in NDS's submission to this Consultation; and the recent Joint Statement from NDIS providers, 'Pricing for a sustainable quality driven sector' https://ahpa.com.au/news-events/ahpa-collaborates-with-ndis-provider-peaks-to-call-for-action-on-ndis-pricing/ .

[6] The utilisation rate is calculated as the ratio of payment to providers for services compared to the amount of spending approved in participants' plans, with allied health utilisation being significantly lower than that for NDIS supports as a whole. See https://ahpa.com.au/advocacy/submission-national-disability-insurance-agency-2023-24-annual-pricing-review-consultation/ , 6.

Assuming universal registration is to be adopted, NDIS regulation should therefore require the lowest level of formal registration with the NDIS, analogous to Medicare registration. In AHPA's experience, the Medicare approach is effective, efficient and likely to result in majority buy-in by our professionals.

In terms of the NDIS Review's proposed registration categories (Figure 14, Final Report, 214), the Medicare analogy draws on elements of both C. Basic and D. Enrolment.

It is important to stress that this light touch approach, consistent with our Recommendation 1, should apply to all allied health supports and associated participants, with no registration differentiation according to setting or service type (as currently exists with regard to behavior supports or Early Childhood).

Recommendation 2

Consistent with Recommendation 1, the NDIS Quality and Safeguards Commission (or equivalent body) should work with allied health providers to facilitate the necessary changes to achieve 'light touch' registration, modelled on Medicare, for allied health professions that are regulated by the Australian Health Practitioner Regulation Agency (Ahpra) or are full members of the National Alliance of Self Regulating Health Professions (NASRHP).

Recommendation 3

The NDIS Quality and Safeguards Commission (or equivalent body) should directly engage with AHPA, NASRHP and self-regulating allied health professions concerning NDIS registration of self-regulating allied health professions that are not full members of NASRHP.

The current regulatory approach places too much emphasis on registration

Lastly, we make some comments about the future direction of NDIS regulation as a whole. As demonstrated by highly publicised NDIS failures such as the death of Ann-Marie Smith,[7] in the absence of other effective regulatory mechanisms, requiring provider registration does not guarantee quality and safety.

Instead of placing an unnecessary onus on providers who are low risk, the regulatory focus should shift to simply include registration as one element of a suite of strategies to safeguard participants, with those strategies based on genuine assessment of where the greatest risk lies, and associated monitoring.

As part of this shift in emphasis, participants must be empowered to identify unsafe situations and risks, and to make complaints. This requires more support from the NDIA and the NDIS Commission to help build participants' capacity and assist participants, including making complaints pathways more accessible. Access to advocates and a regular community visitors' program must also be guaranteed.

Recommendation 4

The NDIS Quality and Safeguards Commission (or equivalent body) should work with participants and Disability Representative Organisations to enhance participant capacity to manage risks and support the quality and safety of the services they receive, including via:

[7] Alan Robertson SC, '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', Report to the Commissioner of the NDIS Quality and Safeguards Commission, 31 August 2020.

- Enhancing participant access to advocates
- Establishing a nationally consistent community visitor scheme

Given the recommended changes in focus, AHPA submits that it is essential for all of these changes to be independently evaluated.

Recommendation 5

The new regulatory approach should be independently evaluated to assess whether it has increased quality and safety of supports and services.

Recommendation 6

The NDIS Quality and Safeguards Commission (or equivalent body) in collaboration with stakeholders should develop a comprehensive implementation plan for a new risk-proportionate regulatory framework for the NDIS, including clear timelines, responsibilities, and milestones for key activities.