NDIS Provider and Worker Registration Taskforce Submission

About VALID

VALID is the Victorian peak advocacy organisation for adults with intellectual disability. We have developed training, information and resources to help empower people with disability and their families since 1989.

Research and Consultation

VALID's Systemic Advocacy team analysed Recommendation 17 then consulted internally with staff with intellectual disability, VALID's DRC and NDIS Working Group, VALID's Individual Advocacy manager, and two VALID consultants who are, and work with, family members of people with intellectual disability.

Summary of VALID's position

VALID understands that the proposed changes are controversial. We also understand they have been proposed to maintain the NDIA's visibility of all providers working with NDIS participants as a safeguarding measure and a provision of financial oversight.

VALID believes that quality and safeguarding through the NDIS Quality and Safeguards Commission ('the Commission') is a critical issue that urgently needs fixing. It should go without saying that the Commission must provide effective oversight, regulation and action against abuse of NDIS participants as a matter of priority.

Some participants may benefit from the use of an exclusively registered provider market for some or all services they use. However, some of these participants may later, with formal and informal supports working with them to build capacity, benefit from having the flexibility of using some unregistered providers who are regulated outside the NDIS Quality and Safeguards framework. There are many other examples that speak to the complexity of this issue. The Taskforce has demonstrated its awareness of these.

Changes to the NDIS regulatory framework and the Commission need to be made with the understanding that regulation of NDIS service provision is a joint responsibility between the Commission and other regulatory bodies such as the Police and Consumer Affairs. In other words, the Commission is not the only body responsible for safeguarding NDIS participants, and these other bodies should also undergo any changes necessary to uphold the rights of people with disability.

VALID believes that factual issues raised on all sides of the issue of mandatory provider registration are legitimate and warrant serious consideration by the Taskforce and Government. At its heart, this 'debate' is a systemic manifestation of the same balancing act

faced by Supported Decision Makers: one between dignity of risk, and duty of care. In the same way VALID would never recommend that a Supported Decision Maker sacrifice one for the other, we will not recommend any 'one size fits all' approach for NDIS participants.

VALID's position is that a thoughtful, nuanced and co-designed approach with people with intellectual and other disabilities, their family members and advocates is essential. This approach must consider existing evidence and data, as well as the diverse needs and concerns of people with disability, when determining whether and how to enact the proposed levels of registration and enrolment.

Document note

Bold text throughout this document (besides headings) are lightly edited quotes from people VALID consulted with.

1. **How do you currently engage with the NDIS?**

VALID staff and consultants engage with the NDIS as advocates, participants and family members.

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

We need data to know whether there is a marked difference between the quality of service given by unregistered and registered providers.

Overall, VALID understands why these levels of registration and enrolment in the Report have been proposed. When VALID's Systemic Advocacy team met with the Hon. Vicki O'Halloran AO CVO to discuss these, Vicki spoke of disturbing practices that see unregistered services fraudulently using people's NDIS funding. VALID wholeheartedly condemns such practices.

Safeguarding issues

The NDIS Quality and Safeguards Commission is not currently keeping people safe. How would the proposed registration model support people who make complaints?

Even if we take it at face value that the proposed levels of registration and enrolment would contribute to keeping more people with disability safe, these would still fail to address critical issues:

1. Some organisations and sole traders have a lack of leadership. Who will check if they report incidents? Or the standard of education of service providers? A specific standard would need to be fleshed out and worked through when considering issues relating to registration and enrolment.

2. Deciding which providers would require Advanced Registration, as opposed to Enrolment, should not be a straightforward process. This is because some people whose support needs may appear low have complexities that remain undetected by the NDIA. For example, some people with disability who use NDIS funds to pay for a gardener may benefit from the gardener having minimum reporting mechanisms if they see or hear anything that doesn't sound right. Therefore, although the proposed model appears to be broadly common sense, "bad things will still happen to people" if it is adopted.

In principle, this sounds great for disability workers. But we need to look at safeguarding within the NDIS as a whole: how would it be audited? How would services register? If we don't work it out fairly, including with respect to issues around thin markets in rural and remote areas, as well as people's access to good/specialist services more generally, mandatory registration would be a paper exercise.

All these issues and more are interrelated. If the proposed models are adopted, the NDIA needs the capacity to enforce and monitor whether providers are meeting their obligations under these. In addition, it can be argued there are other issues to be rectified that are of higher priority than that of provider registration. VALID addresses some of these in this paper.

Issues with community participation

If providers are interacting a lot with people with disability, or providing a service to them, there should be disability awareness training for them.

In addition to safeguarding issues, the proposed model also raises issues with community participation for NDIS participants. These include:

- A potential increase in the bureaucratic burden on people with disability and their family members
- A decrease in community participation and inclusion as NDIS participants may be 'shut out' from mainstream service providers if the participant or their nominee is not in a position to ask a given provider to register
- An overall "polarisation in society"

One comment from a person with intellectual disability highlighted the social divide between people with and without disability:

I think registering in general is important from a systemic standpoint: people are less likely to be neglected. Disabled people are less likely to be taken seriously or listened to than the general population, so having somewhere specific [the Commission] is important.

At face value, this statement reflects the speaker's agreement with a registration model resembling that being proposed. However, it also reflects their knowledge that in Australian society, people with disability need centralised, disability-specific services not only to meet their needs, but for them to have a fighting chance of being taken seriously. This speaks to a broader social issue that mainstream services that should serve all members of their communities are failing in their obligations to meet the needs of people with disability.

Whether and how the proposed model is implemented should not replace discussion about how to improve the efficacy of mainstream services for community members with disability.

Questions to consider

- If a person with disability has transport funding and needed to hail a cab off the street, would the cab driver need to be registered? If so, what level of registration would they need? How would this impact on the community inclusion of the person with disability? If not, how might a person with disability be safeguarded against abuse?
- If independent advocacy organisations such as VALID needed to register, how could we avoid the perception of a conflict of interest when supporting clients who are unhappy with the NDIA?

3. What key features of the proposed model are important to you?

Anyone can get around a system. Many people do.

When considering features of the proposed model, VALID has identified five areas it believes are important:

1. What are the risks and who knows about these?
2. Capacity building
3. A graduated and risk-proportionate approach
4. Incident reporting: Plan Management and Support Coordination
5. Related considerations

What are the risks and who knows about these?

It is hard to say a lot about it because we don't know. It will come down to how it is carried out.

'A better balance is required to ensure the effective **prevention of harm**…' (NDIS Review: Final Report, p. 212, emphasis added) contradicts the NDIS Act 2013: '(4) People with disability should be supported to exercise choice, including in relation to taking **reasonable risks**, in the pursuit of their goals and the planning and delivery of their supports' (General Principle of the NDIS Act 2013, emphasis added).

Who has communicated with the individual about the risk involved?

When considering which risks are reasonable for a person with disability to undertake, it is critical to continually work to communicate the risks to, and act on the informed choices of, the people affected – regardless of the degree of their communication support needs. It is in contravention of the NDIS Act not to.

Requirements you need to meet for registration is something I didn't know about.

Capacity building

It will be essential to complement any new registration process with both Supported Decision Making (SDM) and other capacity building for participants and nominees to build their self advocacy skills and support them to:

- Understand the Code of Conduct and Practice Standards so they know what to expect from workers
- Understand the new processes around worker registration
- How to use their flexible budget
- Understand their rights, options and pricing
- Manage interactions with workers and providers

We trained over 4,000 families when the NDIS was being rolled out. This experience taught us that some people will take a new system and run with it, while others will gain a basic understanding but remain at the mercy of systems and vulnerable to manipulation.

A graduated and risk-proportionate approach

VALID believes that a tiered system, accountability, and mandatory registration of providers of supports that unambiguously carry the most risk of abuse (e.g., behaviour support) to people with the highest support needs are critical. Deciding which providers belong to this category should be a considered discussion with people with disability and their supporters.

Incident reporting: Plan Management and Support Coordination

VALID is concerned about the potential impact of the removal of Plan Management and Support Coordination from the NDIS. For many people with intellectual disability, good Plan Managers and Support Coordinators are the difference between violence, abuse, neglect and exploitation being reported and not.

Worker registration alone won't safeguard people because there is no monitoring. Removing Plan Management and Support Coordination is taking out two tiers of safeguarding. How accessible will Navigators be?

Related considerations

Will the Commission make incident reports visible to auditors? If not, what's the point of mandatory registration?

For mandatory registration to 'ensure NDIS participants get safe and quality supports' (Department of Social Services, LinkedIn), the following related considerations of the NDIS Review recommendations would need to occur to support the intent of worker registration:

- Reduce the time it takes providers to become registered
- Ensure auditing processes are affordable for smaller services
- Ensure Navigators are available when needed
- Improve the Commission's response to complaints
- Provide capacity building for participants, nominees and supporters
- Improve the availability of independent advocacy

Considering worker registration in the context of other changes is important for all NDIS participants. However, it is critical for participants who currently rely on Plan Managers and Support Coordinators to provide a level of interactive oversight and safeguarding they will not have once these roles no longer exist.

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

1. **'Prevention of harm' is in contravention of the NDIS Act 2013.** It is also unrealistic and goes against the underlying principle of Supported Decision Making.

2. **Consider the broader context:** Worker registration must be implemented alongside the other recommendations and robust monitoring, auditing and other safeguards.

3. **Do not compromise Services For One.**

4. **Mandatory worker and provider registration will reduce participant choice and control** – especially for people living in rural and remote areas, those who need specialists that are already in short supply, and where the NDIS 'oasis in the desert' is not rectified quickly enough.

5. **The Government needs to be very clear about what mandatory registration would offer.** VALID's informants have commented that provider registration does not equate to the safety and quality of service provision. We want to know that any new registration system would demonstrably improve the lives of people with intellectual disability.

6. **An entirely mandatory NDIS provider market runs the risk of further embedding the segregation of people with intellectual disability.** Laws that apply to mainstream services and people without disability also apply to disability providers and people with disability. What VALID does not want to see is the Commission being tasked with regulating illegal activity where this is more appropriately dealt with by existing legal systems. If these systems are not accessible to people with intellectual disability, that is a separate issue to be addressed.

7. **Consider accountability and data.** VALID wants to be sure that any new registration system would incorporate, and facilitate the collection of, relevant data. This data should include information about how creative and person-centred families are currently supporting their loved ones to be safe and take risks. Further, any new registration system should address how providers are to be held accountable, such as through independent advocacy support.

8. **All information needs to be made accessible for and with people with intellectual disability.** One person VALID consulted with said the changes are not easy to understand, and they did not know what it all means. VALID wants to see all changes communicated in Easy Read and other accessible formats for and with people with intellectual disability.

9. **A 'proportionate' approach to registration might miss issues faced by NDIS participants who appear to have lower support needs than they do.** VALID's Individual Advocacy team works with people with intellectual disability and their families in extremely complex situations that can appear straightforward on the surface. These situations are often exacerbated by the legal system, among other systems, not understanding the dynamics at play and enforcing inappropriate 'solutions' that perpetuate further harm to people with disability.

10. **People with intellectual disability have comments, suggestions and concerns about the proposed model:**

- Complex issue with lots of considerations, don't rush and be too hasty, need to think about all the things – taxis, groceries, advocacy organisations, etc. – there's a lot more to consider than the NDIS is probably initially thinking about.

- It's a complicated situation if all providers need to be registered, especially if you're using allied health, and if they're not registered, [they would] say you need to be

registered or [you] have to find someone else, and that just doesn't make any sense. You should be able to do what you want, especially when it comes to your health.

- Maybe there should be a middle ground where certain organisations that aren't registered don't have to as they've proven their worth, but still need to register to be monitored, but others need to do more registration. Monitored but still being independent lets us do what we need to without being too overconfident [provider registration would keep providers humble].

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

Some organisations are still going against choice and control.

When considering the proposed model, VALID has identified the following areas it believes are important:

1. Consider reasons people with disability and their supporters engage unregistered providers
2. Consider the broader context of provider registration
3. Exceptions
4. How will people with disability evaluate a new system?

Consider reasons people with disability and their supporters engage unregistered providers

Many NDIS participants and their families self-manage their funding because their support needs cannot be met by existing disability support services. There are many reasons for this, including rigidity of services, and large services that have a monopoly over some of the disability 'market' and do not allow participants to choose their own staff. Mandatory provider registration would not fix this issue.

Practical and effective monitoring and complaints processes are essential, as is making complaints and incident reports available to auditors. This may make some services more accountable for improving the quality of their worker support and supervision.

Organisations need to show respect.

Consider the broader context of provider registration

NDIS provider registration cannot be considered or altered in isolation of the factors VALID has raised in this paper. If registration is altered before other major changes are made, it risks being ineffective in safeguarding, improving accountability and upholding the rights and independence of people with disability.

In addition, there are broader social issues both within and external to the disability sector that place mandatory provider registration at risk of being ineffective. These include organisational cultures of providers not reporting incidents, and the disability sector interfacing with numerous other systems (e.g., Child Protection Services) where professionals, consciously or otherwise, perpetuate systemic violence.

Certain people's behaviours need to be checked – not necessarily registered, but held accountable.

Exceptions

If mandatory NDIS registration is adopted, there are several circumstances where this should not be required. Examples include when a participant uses services that have specific expertise that cannot be found within the disability sector, and when a provider is in the process of becoming registered and a participant needs to use these services without delay. There are already exceptions within the current system around issues such as family members providing support when a participant provides evidence there are no viable alternatives. VALID cautions against any process of seeking an exception being onerous or lengthy.

People who don't have a criminal history or past behaviour don't need to be registered.

How will people with disability evaluate a new system?

VALID believes that before any new system is adopted, it will need to be researched and piloted for and with NDIS participants and their supporters to determine its strengths and weaknesses.

We suggest that provider registration is less important than the obligation of all providers to report wrongdoing to the Commission and other bodies as appropriate, and for those bodies to act effectively and decisively to address cases of wrongdoing.

You can put up a framework, but what it ultimately comes down to is cultural change.