A New Regulatory System for NDIS Providers and Workers: A Union Perspective

Submission to NDIS Provider and Worker Registration Taskforce

HSU NATIONAL

AUSTRALIAN SERVICES UNION By your side

UNITED WORKERS UNION

AWU AUSTRALIAN WORKERS' UNION

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Executive Summary

Unions representing workers in the National Disability Insurance Scheme (NDIS) – The Health Services Union, Australian Services Union, United Workers Union and Australian Workers Union – welcome the opportunity to provide feedback on a new, graduated and risk-proportionate registration scheme of providers and registration scheme.

There are at least 398,000 workers across the NDIS.[1] Unions have been involved in fighting for fairer working conditions and better outcomes for people with disability since the NDIS' inception and were vocal in calling for a full, independent review of the scheme. Throughout the NDIS Review, unions have vocally supported the registration of all providers and workers and are pleased that Recommendation 17 called for such a scheme.

Safeguards cannot be built on top of shaky foundations. Lifting quality and safeguards and participant confidence is much easier with a risk-proportionate provider registration scheme that applies across the board, ensuring basic safeguarding principles are upheld, and funds allocated for safe support conditions are used for the intended purposes, as well as a worker registration scheme that recognises professional skills of the workforce.

We agree with the NDIS Review's broad model of a provider registration scheme. Unions representing workers in the NDIS believe that a provider registration and enrolment scheme should:

- Follow the money, stamp out rorts and rip-offs
- Protect workers from rip-offs through industrial compliance
- Uphold workers' rights to health and safety
- Link to a worker registration scheme that recognises the professional skills of the support workforce
- Support continuous improvement in provider practice and lift quality of supports
- Set basic standards and prevent a "race to the bottom" over quality and safety in a competitive NDIS market
- Provide the government and regulator visibility and data about the NDIS markets and workforce

Several changes are need to be made to a provider registration to ensure it can achieve the above – such as how:

- it determines what falls under each level of risk,
- it considers platforms as covered by provider registration,
- it ensures compliance with industrial law (e.g. Fair Work, Award, EBAs and WHS legislation)

To that end, in the first half of this submission, we provide a list of recommendations to improve the model proposed in the NDIS Review.

We also note that the NDIS Review did not propose a specific model of worker registration scheme but recognised the importance of regulating workers' training and skills.

Unions representing workers in the NDIS call for a positive registration and accreditation scheme of disability services workers, which:

- Recognises the professional skill of the support workforce
- Supports workers' skills development, workforce attraction and retention
- Upholds the right of people with disability to choice and control
- Promotes continuous improvement in worker practice and lifts quality of supports.
- Ensures consistency across jurisdictions and responsiveness to changing needs
- Is accessible to NDIS participants and providers for verification, credentialling and worker screening
- Complements a risk-proportionate provider registration and enrolment scheme
- Can be a structural and value add vehicle for traineeships, portable leave and training entitlements.

In the second half of this submission, we provide a detailed model for the Taskforce's consideration based on the experience and feedback of our members.

[1] Commonwealth, *QUESTIONS WITHOUT NOTICE : Taxation* (House of Representatives, 12 February 2024) <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansardr%2F27600%2F0334;query=Id%3A%22chamber%2Fhansardr%2F27600%2F0264%22> [accessed 4 May 2024].

Implementation Detail: Provider Registration & Enrolment

Why register all providers? And what's the objective of provider registration?

The NDIS Review recommended a system of mandatory provider registration or enrolment for many reasons:

- *"Current regulation and registration of NDIS providers has created both gaps in the regulatory oversight of providers, particularly for providers delivering high-risk supports, as well as excessive burden and duplication for providers delivering lower-risk supports."*[2]
- This has led to a *"lack of visibility of the market"* that "*prevents the NDIS Commission from understanding what is happening and whether responses are required to prevent harm and promote quality improvement, until something has already gone wrong."*[3]
- It also means the regulator cannot *"effectively monitor the market and proactively intervene to prevent harm and promote quality improvement"* and has "*limited tools available to respond and take corrective action*" when incidents occur.[4]
- While the NDIS code of conduct applies to all workers and providers, "*it does not describe minimum acceptable standards for safe and appropriate service delivery, does not require any specific knowledge or expertise in support delivery, and does not describe the standards and behaviours necessary for a quality service."*[5]

We agree with these comments.

Without a provider registration and enrolment system that applies to all providers of disability support, the regulator lacks basic oversight of supports delivered under the NDIS. With just over 60% of complaints relating to unregistered providers, and unregistered providers account for 44% of plan-managed payments[6], we believe that the status quo has kept the government in the dark about the riskiest corners of the NDIS market.

As the Review highlights, registration is a preventative safeguard.[7] It allows the regulator to enforce obligations under the code of conduct and build capacity in providers by effectuating minimum standards. Provider registration does not ensure quality, but it can support improvement by ensuring providers take all reasonable steps to safely deliver disability supports in a publicly-funded sector.

Exempting large sections of the sector from worker screening requirements, serious incident reporting, audits and regulatory capture has condemned them to a negative regulatory approach, where the NDIS Quality and Safety Commission has oversight of provider practice when considering corrective action, rather than proactively supporting providers and workers to build capacity and improve service delivery.

The NDIS Act seeks to support "*the provision of high quality and innovative supports that enable people with disability to maximise independent lifestyles and full inclusion in the mainstream community*". However, few regulatory mechanisms put the working conditions in place to ensure their delivery in what is a taxpayer-funded sector.

Countless inquiries over the years have called for greater sector oversight. Last year, the Mental Health Legal Centre reported instances of abduction and financial exploitation in supported accommodation, referring to *"a lack of effective oversight and monitoring"* or "*clear duty of care to ensure people living with a disability have their fundamental human rights and basic human needs met*" in the NDIS.[8] Similar calls have been echoed across state inquiries into disability abuse and, most recently, in the Disability Royal Commission (hereafter DRC).

A mandatory provider registration and enrolment system would better define and enforce duties of care to participants and workers by regulating risk. Risk is multifaceted. A provider registration scheme regulates against:

- Risks to participant safety, safeguarding and agency
- Risks to worker health and safety, and of underpayment
- Risks to scheme integrity, sustainability, and efficacy of public expenditure

Risk underpins many other regulatory schemes and is broadly expressed as an object of the NDIS Act, which aims to *"protect and prevent people with disability from experiencing harm arising from poor quality or unsafe supports or*

[2] NDIS Review, *Working Together to Deliver the NDIS: Independent Review into the National Disability Insurance Scheme - Final Report Supporting Analysis* (Canberra: Department of the Prime Minister and Cabinet, 2023), p. 909.
[3] NDIS Review, p. 913.
[4] NDIS Review, p. 913.
[5] NDIS Review, pp. 909–10.
[6] Tracey Mackey, 'Key Directions: Quality & Safeguarding' (presented at the DSC Annual NDIS Conference, Sydney, 2023); NDIA, *Quarterly Report to Disability Ministers: Q2 2023-24* (Geelong: National Disability Insurance Agency, 2023).
[7] NDIS Review, p. 910.
[8] Mental Health Legal Centre, *MHLC Multiagency Choice and Control Project – 3-Month Interim Report April 2023* (Melbourne: MHLC, 2023), p. 1.

services".[9] While regulation cannot control outcomes or produce quality, it can set minimum standards to protect against risk and substandard services and resulting poor outcomes and safety issues.

Intense price competition has incentivised providers to cut corners in the pursuit of profits and exposes participants and workers to heightened risk. **Provider registration controls for risk by setting a floor in the market,** and:

- **Monitoring** expenditure and provider activity - "Following the money"
- **Excluding bad-faith service providers** from the scheme and access to taxpayer funds
- **Setting minimum standards** to prevent a race to the bottom in quality and safeguards
- **Enforcing basic working conditions** in one of the most unsafe sectors
- **Clearly defining safeguarding responsibilities** for participants and families.

We believe it is essential that provider registration and enrolment gives the NDIS Commission the power to:

- Stamp out rorts and rip-offs
- Protect workers from rip-offs through Award and EBA compliance
- Uphold workers' rights to health and safety
- Ensure due process for workers in disciplinary matters
- Link to a worker registration scheme that professionalises the sector.
- Support continuous improvement in provider practice.
- Set basic standards for service provision.
- Provide the government and regulator visibility and data about the NDIS markets and workforces.

The Review is correct that registration has not been sufficiently proportionate.[10] A new, universal, provider registration and enrolment scheme is a chance to simplify and improve a complicated and bureaucratic registration system.[11] It is an opportunity for the government to reassume responsibility for market outcomes in a publicly-funded sector.[12]

As the Review acknowledges, provider registration and enrolment does not need to be seen as trading off choice and control. We believe participants must, and would, retain choice over the right supports for them. While *"risk, safety and quality look different for every participant",* mandatory provider registration and enrolment can work *"at the system-level to strengthen the capacity of participants to safeguard themselves, develop their natural safeguards, reduce unacceptable risks of harm and drive improvements in the quality of supports".*[13]

Why is provider registration important to workers?

Unions representing workers in the NDIS are passionate about provider registration because many support workers are led to the profession because they want to make a difference for people with disability.

Many workers we represent support more complex clients with higher-intensity support needs, less ability to self-advocate, and less space in public debate. Many members have witnessed, encountered, or blown the whistle on fraud, abuse, and neglect and want to see change but feel disempowered by the lax regulatory system.

Our members are also frustrated about a "race to the bottom" in standards and workforce support that has resulted from a competitive NDIS market and the voluntary nature of provider registration. Quality, registered providers that face registration costs often exceeding tens of thousands of dollars a year[14] are being increasingly bid out of the market by unregistered, for-profit providers – many of which cut corners on safety and can charge lower prices because they are not subject to registration costs. Workers are frustrated that the system is punishing providers who do the right thing.

Provider registration can, or should, also make a difference in the lives of disability workers. We know that a safe support workforce is essential to safe disability supports, that worker stress and fatigue lead to errors at work, that stable rosters enhance continuity of supports, quality supervision improves reflective practice, training reduces risk of workplace injury and compliant medication protocols, and safe staffing levels are fundamental to models of active support.

Workforce support and participant safety go hand in hand. And we routinely find that providers who breach safeguarding standards fail to treat workers appropriately or in line with the law. Provider registration and enrolment can ensure that every NDIS worker feels safe and secure at work.

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[9] *National Disability Insurance Scheme Act 2013*, Part 2, (s) 3.1. (ga).
[10] NDIS Review, p. 907.
[11] NDIS Review, pp. 883–84.
[12] NDIS Review, p. 821.
[13] NDIS Review, p. 878.
[14] Multi-Employer Agreement Providers, HACSU, and AEU, *Submission on Workforce* (Canberra: NDIS Review), p. 8.

Does registration improve quality of supports?

Provider registration alone does not improve quality. However, it can create the right market conditions through enforceable minimum standards upon which providers can improve and innovate. The Review acknowledges this:

> *"While registration is not a guarantee of either safety or quality, it does provide assurance to participants that the provider has taken steps to ensure they are well managed and delivering supports in a professional and competent way, and that this has been independently assessed."*[15]

Moreover, through ongoing oversight, the regulator can take a positive regulatory approach to support all providers to improve practice. This contrasts with the current approach for unregistered providers, where the only point of interaction with the NDIS Commission in the provider's life cycle is when a complaint has been made.

Provider registration is by no means a "silver bullet" by which quality of supports is achieved, once and for all, nor should it be. It simply ensures appropriate regulation and oversight of risk by the NDIS Commission through a set of minimum standards that apply proportionate to risk.

Aren't unregistered providers still bound by the code of conduct?

Yes. However, there is no proactive oversight and enforcement of the code of conduct in unregistered providers.

This has led to a problematic dynamic where the burden falls on participants and their families to speak up when they feel unsafe. The regulator has no way of knowing what issues occur in unregistered providers *unless* someone speaks up. And there is no way of enforcing this proactively without relying on participant complaints and reports.[16]

What about dignity of risk?

Dignity of risk is an important principle underpinning an individual's capacity building and natural safeguards that applies to an individual's choices. Provider registration is about the standards that should apply to a service provider receiving taxpayer funds. As far as unions are concerned, these are fundamentally separate questions.

One reason that dignity of risk carries over poorly to a regulatory scheme is that it is a function of a participant's agency but not a worker's agency. If a participant chooses an unsafe provider that endangers workers, that choice has ramifications not just for the participant but also for the workers and the broader integrity of the NDIS.

It is also problematic as a regulatory principle as not everyone has the capacity to manage dignity of risk. While all participants might benefit from the assurance that the supports they receive meet basic standards, not all participants can reap the rewards of a deregulated market. As we have already seen – assuming that this is the case can leave participants with more complex needs at risk:

> *"While we acknowledge that participants value access to the unregistered provider market, the current approach of allowing providers to largely opt out of registration and regulation leaves many participants potentially exposed to high levels of risk without appropriate preventative safeguards – particularly participants who have complex needs or circumstances. This puts the onus of managing these risks on individual participants, which is an inappropriate burden for many."*[17]

We agree that participants should have choice and control in a person-centred system, however, this choice can and should exist within a regulatory framework. Just as there is regulation of other services from health and education to plumbing and catering, the case for disability services regulation is that there are fundamental safety risks that no one should be exposed to or expected to protect themselves from.

A participant's ability to self-advocate can and should be factored into the risk-proportionate regulatory requirements that may apply. However it should not be an organising principle of the new regulatory system.

What should a new provider registration scheme look like?

[15] NDIS Review, p. 910.
[16] NDIS Review, p. 913.
[17] NDIS Review, p. 916.

Unions broadly support the model given by the NDIS Review but believe further additions and minor changes to auditing requirements should be made. The first table outlines "Provider obligations" as described in Figure 161 of the Supporting Analysis with proposed changes. The second details the processes of provider registration and enrollment.

FIGURE A: PROVIDER OBLIGATIONS WITH PROPOSED CHANGES (bold, italics)

	Advanced registration of service providers *In-depth registration for high-risk services*	**General registration of service providers** *Graduated registration for medium-risk services*	**Basic registration of service providers** *Light-touch registration for lower-risk services*	**Enrolment of service providers** *Basic visibility & requirements for lower-risk services*	***Enrolment of service providers**** *Basic visibility & requirements for providers of consumables*
Code of Conduct	YES				***YES***
Worker screening (Action 17.4)	YES Workers in risk-assessed roles			YES Workers directly delivering specified supports or services, or who have more than incidental contact with people with disability	***NO***
Subject to complaints process	YES				***YES***
Report Incidents	YES			NO	***NO***
Practice standards	YES General standards and support-specific standards for all support types		YES Simplified general standards for all support types	NO	***NO***
Performance measurement (Action 12.3)	YES			NO	***NO***
Industrial Compliance Practice Standards*	*YES*			*YES* *Applies to supports where workers are employed to deliver supports (not consumables)*	***NO***
WHS Practice Standard*	***YES*** *More advanced audits to investigate higher WHS risks.*	***YES***		***NO***	***NO***
Safe staffing standard*	***YES*** *Staffing ratios and supervision requirements tiered according to client complexity. For more complex supports, a supervisor might require a higher qualification.*			***NO***	***NO***
Ongoing training requirements*	***YES*** *Audits ensure providers pay workers to complete ongoing training.*			***NO***	***NO***
Worker registration (qualification requirements)*	***YES*** *Support workers must have a Certificate III & IV or attain one over time. More advanced qualification requirements for supervisory, specialist, navigator and lead practitioner roles.*	***YES*** *Support workers must have a Certificate III & IV or attain one over time.*		***NO***	***NO***

FIGURE B: PROCESSES WITH PROPOSED CHANGES (in bold, italics)

	Advanced registration of service providers *In-depth registration for high-risk services*	**General registration of service providers** *Graduated registration for medium-risk services*	**Basic registration of service providers** *Light-touch registration for lower-risk services*	**Enrolment of service providers** *Basic visibility & requirements for lower-risk services*	***Enrolment of service providers**** *Basic visibility & requirements for providers of consumables*
Application, identity verification, Code of Conduct and worker screening attestation	YES Provider completes online application form, integrated with centralised online platform and NDIS payments system (Actions 10.1 and 10.3) to provide the NDIA and new National Disability Supports Quality and Safeguards Commission with visibility of all providers and data on payments. Application form collects basic information (e.g. business name, ABN or digital ID, bank account, location, contact details, support types delivered) Business identity is verified by leveraging existing government systems and processes (such as myGovID)				

Audit of compliance with Practice Standards*	YES In-depth observational audit of compliance with relevant practice standards. Streamlining where appropriate based on risk, such as the use of desktop auditing, self-assessment and attestation, and mutual recognition of compliance in other regulatory systems.	***YES**** ***Currently is suggested that this involves "self-assessment and attestation". We are concerned this could lead to tick and flick. We recommend a light-touch audit.***	NO	***NO****
Suitability assessment of provider and key personnel	YES		NO	***NO****
Ongoing monitoring and compliance	YES The National Disability Supports Commission undertakes: Risk-based monitoring, investigation and regulatory intelligence gathering (including through provider outreach and information sharing with other regulators). Corrective action in responses to breaches of the code of conduct (registered and enrolled providers) and practice standards (registered providers only).			

What needs to change in the proposed model?

RECOMMENDATION 1 - DISTINGUISH GOODS FROM SERVICES IN THE MODEL

The currently proposed provider risk framework proposes four categories of risk, starting with enrolment, and then three categories of provider registration requirement. It groups together providers of goods (i.e. consumables) and providers of services (e.g. community participation, therapy, shared living supports). For clarity, at the base of provider registration, we would propose three broad categories based on different regulatory principles based on the matrix below. Under registered service providers, there would still be "basic", "general" and "advanced" registration requirements:

FIGURE C: ENROLLED GOODS PROVIDERS vs ENROLLED SERVICE PROVIDERS vs REGISTERED SERVICE PROVIDERS

	APPLIES TO	REGULATORY PRINCIPLES	IMPLEMENTATION DETAIL	RISK TIERS
ENROLLED GOODS PROVIDERS	Providers who do not deliver supports delivered by a worker (e.g. consumables)	Follow the money Oversight of public funds Fair pricing, value for money	Identification provided through online form Oversight through online payment tracking	Single tier.
ENROLLED SERVICES PROVIDERS	Non-disability specific services (e.g. gardening, transport). Not specialist services, so no requirement for disability-specific regulation. But involves incidental human contact.	Follow the money Oversight of public funds Fair pricing, value for money Basic worker safety requirements	Identification provided through online form Oversight through online payment tracking Worker screening requirements	Single tier.
REGISTERED SERVICES PROVIDERS	Disability-specific supports delivered person-to-person	Quality of supports Safety and safeguarding Quality workforce	Worker screening requirements Disability-specific standards ensured through simplified practice standards + support-specific practice standards where necessary	Three, according to risks posed to participants and workers: Basic, General, Advanced

RECOMMENDATION 2: INTRODUCE INDUSTRIAL AND WHS COMPLIANCE PRACTICE STANDARDS

The NDIS Review recognised that workforce capability is *"critical to the effectiveness and sustainability of the NDIS"* but jobs *"can be short term, with variable hours, high turnover, poor conditions and poor career prospects"* with many workers juggling multiple jobs. These issues have contributed to widespread burnout and a workforce retention crisis.[18]

Provider registration currently lacks provisions to enforce industrial and WHS obligations, does not address insecure work and only covers workplace health and safety (WHS) to the extent that it requires a "risk management system".[19] We believe more could be added to the regulatory model to protect workers from harm.

Firstly, we know that there are significant issues with industrial compliance in the disability sector:

[18] NDIS Review, pp. 848, 853.
[19] NDIS Quality and Safeguards Commission, *NDIS Practice Standards and Quality Indicators* (Parramatta: NDIS Quality and Safeguards Commission, 2021).

- **Many workers are being paid the wrong rates.** Misclassification in the NDIS is rife – workers frequently work at higher classification levels within the SCHADS Award than they are being paid for or are underpaid as home care workers under Schedule E of the Award when performing disability support work.
- **Workers are frequently performing unpaid work.** Downward pressure on prices has led to providers denying workers pay for attending training and team meetings, as well as workers planning for clients and debriefing with supervisors in their own time. One HSU survey of 1,659 union members in the NDIS found that 72.9% had inadequate time for administrative duties.[20] UWU and HSU's NDIS tracker has received 1,033 reports of unfunded and unpaid work since its launch in 2023 alone.[21]
- **Many workers lack access to superannuation.**

Provider registration could provide the regulator access to data and knowledge about providers' industrial compliance. We believe these records should be assessed as part of a provider's re-registration. Failure to address the above heightens industrial compliance risk across the scheme. It also contributes to workforce burnout and attrition, leading to a vicious cycle of workforce shortages and burnout that reproduces itself:

FIGURE D: A CYCLE OF WORKFORCE BURNOUT

The risk that disability support workers (hereafter DSWs) are underpaid or denied workplace entitlements is widespread across the NDIS, and not confined to particular kinds of supports. We, therefore, think it is appropriate that all registered providers be subject to an industrial compliance standard.

An industrial compliance standard should ensure that providers:

- Pay workers according to the correct Award or EBA rates with all relevant loadings and allowances
- Record and resource adequate levels of supervision (where applicable)
- Keep records of non-billable hours and pay workers for all hours worked (including handover, debrief, administration and planning work)
- Pay workers superannuation.

It is well-evidenced that precarious, unsafe workplaces with unfunded training are not conducive to participant outcomes. However, workers in the NDIS are exposed to significant safety issues at work. Community and personal services workers face the highest rate of work-related WHS issues, the serious claim rate for injuries in the care and support economy is twice the national average, and "*43% of NDIS workers feel burnt out at least some of the time*".[22]

Safety hazards NDIS workers sometimes face are physical, such as manual handling, slips and falls and workplace-related violence, but also psychosocial, such as stress, burnout, vicarious trauma, bullying and unpredictability of work. Workplaces can never be 100% safe, but they can have appropriate controls in place to manage WHS, such as:

- **Adequate supervision** – which enables the early identification of qualification, training and skills gaps for workers, assists providers in identifying behaviours and attitudes contrary to facilitating people's human rights and participation in society and can play a central role in empowering workers to speak up, engage in formal

[20] HSU, *Submission: Review of the National Disability Insurance Scheme* (Canberra: Department of the Prime Minister and Cabinet, 2023).
[21] United Workers Union, HACSU Victoria, and HACSU Tasmania, 'About', *NDIS Tracker* <https://ndistracker.org/about/> [accessed 28 February 2024].
[22] Department of the Prime Minister and Cabinet, *Draft National Care and Support Economy Strategy* (Canberra: Australian Government, 2023), pp. 33–36.

reporting and seek feedback. Formal supervision practice ensures workers are empowered and appropriately skilled to undertake their work, including when client needs change.[23] Yet more and more workers are missing out on supervision or have limited access to supervision (e.g. check-ins over the phone).

- **Safe staffing levels and workloads –** which ensure workers have adequate rest and time to deliver active person-centred supports to clients. By contrast, we hear that staffing gaps are widespread and workloads are unsustainably large, such as for administrative tasks and non-direct support work, like completing client notes and travel time. The combination of both is causing work to be rushed, or client requests to be unattended to, comprising quality of supports and increasing risk of workplace injury.
- **Appropriate client matching** means that clients live with others compatible with their needs and well-being and are supported by workers who are the right fit and have sufficient training. By contrast, we hear that constant roster changes cause participants to lose access to DSWs they trust, disrupting continuity of supports. Staff shortages might mean that the workers lack sufficient training to support clients in areas like psychosocial disability, medication, or high-intensity personal care, creating risks of work being performed insensitively or incorrectly.
- **Secure work** improves continuity of supports and client outcomes. Despite the evidence demonstrating this causal link, 40% of the workforce is casualised,[24] and workers in the disability sector report increasing rates of precarious employment arrangements. This includes underemployment, "permanent part-time" employees being subject to constantly changing rosters, and the fractured "gig-economy" model, where workers are denied the rights and entitlements afforded via the traditional employment relationship.

The new registration system should audit workplace health and safety through a WHS standard. Irrespective of existing obligations under WHS laws, the government has a responsibility to enforce these duties through its power as the funder of the scheme.

A core set of standards would apply to all providers, but some may be tiered according to the category of supports delivered (e.g. stricter supervision requirements for high-intensity supports). Where possible, emphasis should be placed on objective requirements (e.g. targets and ratios).

A workplace health and safety standard should ensure that providers:

- Comply with applicable WHS laws and guidelines for safe disability support work
- Pay worker's compensation premiums so that workers have access to injury payments on a no-fault basis
- Track workloads and report serious safety and stress issues, including psychosocial hazards
- Safe and appropriate client matching
- Safe supervision ratios, where applicable. Safe spans of control can be tiered to the experience of the worker, complexity of the client and supports.
- Provide certainty of work. This involve targets for ongoing employment.
- Safe rostering practices that ensure continuity of care.
- Safe staffing levels (e.g. ratios).

Introducing a workplace health and safety standard would also give the NDIS Commission more data and help it work with the price setter to identify and rectify restrictive price limits that prevent providers from supporting WHS. The NDIS Commission would also have greater capability to collaborate with state WHS regulators on enforcement.

RECOMMENDATION 3: LINK PROVIDER REGISTRATION TO TRAINING REQUIREMENTS IN A WORKER REGISTRATION AND ACCREDITATION SCHEME.

Unions believe there should be a worker registration and accreditation scheme that incorporates an ongoing training entitlement and requirement.

Disability workers report that ongoing training, particularly specialised training, is not readily available and where it is available, it is often unaffordable or impractical for them to access, primarily due to short staffing. Ensuring workers receive adequate and ongoing training is essential to a proper and holistic understanding of human rights, dignity and

[23] G Meagher and others, *Meeting the Social and Emotional Support Needs of Older People Using Aged Care Services* (UNSW Sydney, Macquarie University, RMIT, 2019).
[24] NDS, *NDS Workforce Census Report 2022* (Parkville: National Disability Services, 2023), p. 5.

respect. It also assists workers in building a stronger awareness of the signs of abuse and the necessity of reporting. It empowers workers to prevent, identify and act against violence, abuse, neglect and exploitation.

We believe that providing ongoing access to accrediting training to workers should be a condition of provider registration - such as individual participant behaviour support plans, medications management, and complex health needs, including PEG feeding, tracheostomy care, and epilepsy management.

A worker registration and accreditation scheme would allow the registrar to track how much CPD a worker has completed and links to a provider registration scheme: where workers fall short of the minimum requirements, providers could be required to demonstrate what steps they have taken to support the workers training, such as paid training leave. This could be linked to portability of training and supported by full-pay traineeships.

A worker registration scheme would also allow the regulator to set quality standards for training, meaning that training funded by providers would need to comply with those minimum standards. It would also keep a record of workers with a Cert III, Cert IV, equivalent or higher, and allow the NDIS Quality and Safeguards Commission to verify that providers roster adequately-trained staffed for more complex categories of supports (e.g. PEG feeding, medication management, complex behaviours), or roster sufficient hours of supervision.

RECOMMENDATION 4: REPLACE "SELF-ASSESSMENT" PROCESSES FOR REGISTERED PROVIDERS WITH LIGHT-TOUCH AUDITS

While we understand the rationale for tiered auditing requirements, we fear that "self-assessment" audits for providers under basic registration would have unintended consequences. Given that the NDIS incentivises providers to minimise costs where possible, self-assessment could lead to a proliferation of conflicts of interest and "tick-and-flick" practices, as providers essentially investigate themselves. We believe a light-touch audit is a more appropriate registration process for lower-risk providers than self-assessment.

RECOMMENDATION 5: A MORE NUANCED DESIGNATION OF "RISK" IN HOME AND LIVING SUPPORTS

We agree that shared living supports involving 24/7 support should generally be considered higher risk, especially congregate care environments. However, the proposed model appears to focus more on the size of the living arrangements than the nature of the supports delivered.

Historic risks and systemic issues in group homes are multi-faceted and are linked to a lack of active and workforce support in larger living arrangements rather than the size of the home itself.[25] In many cases, the risk profile and informal supports of a participant might not differ much between a three-person and a four-person shared living arrangement. However, only the broad designation of a "formal setting" is currently considered to require "advanced" registration.[26]

With the delivery of 24/7 care increasingly shifting to 1:3 shared living arrangements, a broader consideration of the risks in "closed settings" is needed, considering all risk factors beyond mere size. Some 1:3 arrangements might still suit advanced registration where there are complex support needs. Smaller, more isolated living arrangements might also require greater regulation as participants often have fewer informal supports, and workers face greater safety risks.

RECOMMENDATION 6: GENERAL REGISTRATION FOR SOME COMMUNITY PARTICIPATION, GROUP AND CENTRE-BASED ACTIVITIES

The proposed provider risk framework currently has designated community participation (CP) supports suited to basic registration. We are concerned that this takes all community participation work as "low risk" and has the potential to overlook the potential safety risks involved in support delivery. For example, although there may be less one-to-one interpersonal contact, as with personal care, there is still a high degree of interpersonal interaction and communication.

This designation of risk might lead to inconsistency and confusion for workers, providers and participants. For example, some participants might receive support under advanced regulatory settings at home, but few checks and balances would apply once they leave the house.

A potential solution is to consider CP supports higher risk if the same participant receives higher-risk supports at home. That way, CP for individuals living more independently would still be considered "lower risk" with lower regulatory

[25] Christine Bigby, 'A Flawed Model or Weak Implementation? A Critical Review of the Approach to Group Homes Taken the Disability Royal Commission', *Research and Practice in Intellectual and Developmental Disabilities*, 2024, 1–20.
[26] NDIS Review, p. 935.

requirements (similar to how registration is mandatory when supports involve restrictive interventions). We would at least expect "high intensity" CP supports to be treated as medium risk and require general registration.

RECOMMENDATION 7: MORE RESPONSIBILITIES FOR CONTRACTOR PLATFORM PROVIDERS

We broadly agree with the NDIS Review on the need to regulate platform providers but believe more could be done to safeguard the rights of workers and participants.

We agree that the new regulatory model should treat employing platform providers like any other NDIS provider. We also believe it is important to distinguish independent sole traders from platform workers who happen to be contractors. Even when platforms treat workers as "contractors", they do more than "connect" workers with participants—they draft the terms of service agreements, constrain how supports are delivered, condition payment terms, and effectively broker private insurance.

The Review suggests several factors might influence how the regulatory model treats platforms, such as interactions and commitments between the platform and people with disability.[27] But we would contend that regulation needs to account not only for the technical and legal relationship between the worker and client, but also for the *perceived* relationship.

For example, although it is well-established that workers on contractor platforms are independent contractors, the NDIS Commission's Own Motion Inquiry found that 70% of the workers they surveyed consider themselves employees of the platform they used, while 50% of participants considered the platform providers as the worker's employer.[28]

The NDIS Commission has also clarified that platform providers are subject to the same duties under the Code of Conduct as any other provider.[29] While the Review considers "*General Registration… appropriate for platforms that make representations and provide assurances to people with disabilities about the standards and quality of individuals delivering supports*,"[30] under the Code of Conduct, all "*NDIS providers have a responsibility to provide safe and quality supports and services*."[31] On this basis, we suggest that all providers be subject to at least general registration.

Often, there is an assumption that there are fewer risks to regulate when platform providers take a more "hands-off" approach to the delivery of supports by platform users.[32] However, the fact that these platforms operate in a legal grey area without defined responsibilities for the conditions under which support work is contracted is *itself* a risk to workers and participants. Fiona Macdonald's *Unacceptable Risks* provides a detailed discussion of the risks confronted by platform workers in the NDIS.[33]

Platform workers operating as independent contractors miss out on the protections offered by WHS law and workers' compensation. Because workers are in constant competition with other contractors for jobs, they exercise little control over their working conditions. What is posted on a job ad might not reflect the job a platform worker shows up to, and that worker might feel disempowered to speak out for fear of losing work and income. The competitive nature of platforms also means workers feel compelled to charge less and less for supports they deliver in order to retain work.

The less a platform regulates the delivery of supports, the more responsibilities they push onto workers and participants, and the greater the risks they expose them to. These risks are particularly problematic when only 12% of participants using platforms have a high level of reported function, compared to 29% nationwide[34], and many workers using platforms have not previously worked in the disability sector.

Taking an approach that treats "marketplace" platforms as intermediaries could also have unintended consequences: platform providers providing additional support to participants and workers might withdraw it to fall into a lower registration category. This could replicate the same "race to the bottom" the new regulatory model purports to end.

We would recommend that the framework treats platform providers as carrying the same level of risk, if not more risk than an employing provider, due to the poorly understood duties in platform work, the high risks faced by platform workers, and the fact that platform providers have the same code of conduct duties as any other provider.

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[27] NDIS Review, p. 929.
[28] NDIS Quality and Safeguards Commission, *Own Motion Inquiry into Platform Providers Operating in the NDIS Market - Insights Report* (Parramatta: NDIS Quality and Safeguards Commission, 2023), p. 8.
[29] NDIS Quality and Safeguards Commission, *Own Motion Inquiry into Platform Providers Operating in the NDIS Market - Insights Report*, p. 19.
[30] NDIS Review, p. 929.
[31] NDIS Quality and Safeguards Commission, *NDIS Code of Conduct* (Parramatta: NDIS Quality and Safeguards Commission, 2024), p. 27.
[32] NDIS Review, p. 929.
[33] Fiona Macdonald, *Unacceptable Risks: The Dangers of Gig Models of Care and Support Work* (Canberra: Australia Institute, 2023), pp. 27–41.
[34] NDIS Quality and Safeguards Commission, *Own Motion Inquiry into Platform Providers Operating in the NDIS Market - Insights Report*, p. 14.

We would also highlight that contractor arrangements are growing at the expense of direct employment, and more workers are being forced into support work as contractors due to redundancies. Contractor platforms are undercutting employing businesses, bidding them out of the market, and undermining the employment rights of an already insecure workforce. Sufficient regulation is critical to give workers and participants genuine choices about their work.

Finally, we would like to respond to suggestions that platform workers might be the registered entity of a provider registration system. We do not consider it appropriate for a low-paid, precarious platform worker to bear the full legal liability for service provision when it is the platform that controls the release of funds, binds workers with terms and conditions, or writes up template service agreements, potentially with hundreds of millions of dollars in revenue. It is even more problematic given that many platform workers have little prior experience in support work.[35]

We accept that when a sole trader conducts business purely as a sole trader, they should be registered and regulated as a provider. However, it does not make sense for them to be registered as their own business when a platform writes up their contracts and provides them with all their work. In those instances, a platform should face the registration requirements of a provider.

Other comments on the proposed provider registration model

RECOMMENDATION 8: ADOPT A REGULATORY MODEL THAT ACCOUNTS FOR DIFFERENT MODELS OF SUPPORT, RATHER THAN CARVING THEM OUT.

We agree with the need for a genuinely risk-proportionate provider registration scheme responsive to participant's ability to self-advocate. It makes sense that supports delivered to participants with less complex disabilities should be subject to less onerous registration requirements. Registration requirements should be implemented in a phased manner that recognises implementation difficulties (e.g. rural and regional areas, thin markets) and ensures continuity of supports (e.g. Services for One arrangements, unique arrangements in First Nations communities). However, we disagree with *exempting parts* of the NDIS market from registration requirements, such as self-managed participants.

First, the organising principle of provider registration, as with many other public regulatory schemes (e.g., AHPRA), is risk. There is little reason for how participants manage their funds to affect the regulatory requirements applying to a provider. Not all self-managing participants necessarily face low levels of risk. Even if a participant does encounter few risks when receiving supports, which is reflected by their self-management, there are still risks that are not faced by the participant that require regulation (e.g. risks to the worker, scheme). For this reason, the Review recommended that *"the way a participant's budget is financially managed will not determine regulatory requirement"*.[36]

Second, there is little precedent in other sectors for this argument. Families who build their own home are not exempt from employing a licensed electrician because they manage their own funds. This is because there is an acceptance that the level of risk a person should be protected from has nothing to do with the extent of choice a consumer enjoys.

Third, sound regulatory systems that are well-understood and accessible apply to the entire market with few gaps and consistent expectations. The Review recommended a new regulatory model because current regulation "*has created… gaps in the regulatory oversight of providers"*.[37] Baking gaps into the new regulatory model would undermine this rationale. We believe everyone benefits from a supportive, quality assurance framework – a rising tide lifts all boats.

Similarly, for allied health and therapy providers, we think it makes sense for a provider to have some "advanced standing" in achieving registration when they meet regulatory requirements under other schemes – the new model should reduce duplication where possible. Having another form of registration count towards NDIS provider registration, however, is distinct from exempting those providers from NDIS registration entirely.

RECOMMENDATION 9: ADOPT THE NDIS ACT'S DEFINITION OF A PROVIDER

We believe a provider registration scheme should adopt the definition of an "NDIS provider" in the NDIS Act: *"a person or entity: (i) who provides supports or services to people with disability other than under the National Disability Insurance Scheme."*.[38] This definition is already widely used and appropriate. Distinguishing providers of goods from providers of services will also ensure that this definition is clearly applied and understood.

[35] Macdonald, *Unacceptable Risks: The Dangers of Gig Models of Care and Support Work*, p. 4.
[36] NDIS Review, p. 922.
[37] NDIS Review, p. 909.
[38] *National Disability Insurance Scheme Act 2013*, part 4 (9).

RECOMMENDATION 10: DETERMINING A PROVIDER'S "RISK PROFILE" SHOULD BE NUANCED

We would caution against using one strict test to determine what registration requirements apply to a provider. Just as there are multiple risks that a provider registration scheme controls for, a provider's risk profile is often complex and multi-faceted. The following considerations are vital in determining proportionate auditing requirements:

- **Complexity of the client base** – this is an important factor influencing the degree of risk a participant and worker is exposed to in the delivery of supports. However, complexity and function can fluctuate, both are socially constructed, and regulating purely based on a client's disability would problematise the person with disability rather than the relational and interpersonal delivery of disability supports.
- **Complexity of supports** – this factor ensures a focus on the delivery of supports as the epicentre of risk and interpersonal contact as a core determinant of risk. But determining a provider's risk profile purely based on what supports are delivered risks papering over how the expression of a participant's disability can define the delivery of those supports and arising risks (e.g. daily living assistance for a client with physical mobility issues vs a for a client experiencing mental ill-health).
- **Context of service delivery** – housing arrangements involving other family members, isolation, or congregate care (where participants have less choice and control over whom they live with) might reduce access to natural safeguards. However, the risks involved in the context of service delivery are inseparable and shaped by the supports delivered and the client-worker relationship.
- **A provider's size and ability to exercise oversight** – as recognised by the Review, a provider's ability to exercise duties of care and oversight of services from executive level down to supervision and support delivery increases or decreases providers' capacity to mitigate risks to participant and worker safety. These risks are heightened in platforms where few WHS regulations exist, and industrial relations reforms have only recently passed parliament.

The Taskforce might wish to consider a multi-point test to strike the right balance between these risk factors, where each factor is measured and amounts to a weighted score to ensure the new registration scheme appropriately captures risk.

Regardless of the total risk score of a provider, some supports will be deemed *automatically* to require compliance with specific practice standards (e.g. psychosocial supports, housing and living). As suggested earlier, basic regulatory requirements should apply regardless of a provider's "risk score", such as industrial and WHS compliance. The risk score could, however, help determine the degree of auditing required against the standards.

RECOMMENDATION 11: A BALANCED APPROACH TO RECOGNISING ALLIED HEALTH REGISTRATIONS FOR PROVIDER REGISTRATION.

As the Review recommends, provider and worker regulation should minimise duplication where possible.[39] For allied health roles, mutual recognition of registrations is not necessarily straightforward. Many allied health roles are regulated by AHPRA, which regulates individual practitioners and qualified persons (e.g. psychologists, occupational therapists, nurses). This is a slightly different object to provider registration – an entity or organisation received NDIS funding.

There are also differences in the content of the codes:

FIGURE E: NDIS CODE OF CONDUCT OBLIGATIONS vs AHPRA CODES OF CONDUCT[40]

NDIS Code of Conduct (*Applies to all NDIS providers.)*	**AHPRA Code of Conduct** (*Applies to registered practitioners in Aboriginal & Torres Strait Islander Health Practice; Chinese medicine; Chiropractic, Dental, Medical radiation practice; Occupational therapy, Optometry, Osteopathy, Paramedicine, Pharmacy, Physiotherapy; Podiatry)*	**APS Code of Ethics** (*Applies to Psychologists under AHPRA but is set to be replaced.)*
Act with respect for individual rights to freedom of expression, self-determination and decision-making in accordance with applicable laws and conventions.	Put patients first – Safe, effective and collaborative practice	General Principle A: Respect for the rights and dignity of people and peoples
Respect the privacy of people with disability	Aboriginal and Torres Strait Islander health and cultural safety	General Principle B: Propriety

[39] NDIS Review, p. 922.

[40] NDIS Quality and Safeguards Commission, *NDIS Code of Conduct*; AHPRA & National Boards, *Code of Conduct* (Canberra: AHPRA, 2022); 'Psychology Board of Australia - Code of Conduct' <https://www.psychologyboard.gov.au/Standards-and-Guidelines/Code-of-conduct.aspx?_gl=1*1ggl2na*_ga*MTgyMDI4MDc3Mi4xNzEzMjI4Mjkx*_ga_F1G6LRCHZB*MTcxNDk2MTg1NS41LjAuMTcxNDk2MTg2Ni4wLjAuMA..> [accessed 6 May 2024].

Provide supports and services in a safe and competent manner with care and skill.	Respectful and culturally safe practice for all	General Principle C: Integrity
Act with integrity, honesty and transparency.	Working with patients	
Promptly take steps to raise and act on concerns about matters that may impact the quality and safety of supports and services provided to people with disability.	Working with other practitioners	
Take all reasonable steps to prevent and respond to all forms of violence against, and exploitation, neglect and abuse of, people with disability	Working within the healthcare system	
Take all reasonable steps to prevent and respond to sexual misconduct	Minimising risk to patients	
Not engage in unfair pricing when supplying or promoting goods for NDIS participants.	Professional behaviour	
	Maintaining practitioner health and wellbeing	
	Teaching, supervising and assessing	
	Ethical research	

We agree that meeting some AHPRA registration requirements should count towards provider registration, such as minimum qualifications, recency of practice and ongoing training requirements. However, caution must be taken to avoid emergent gaps between both schemes (including NDIS-specific safeguarding expectations, for example, and regulating allied health assistants). It might be that a practitioner's registration covers most of the registration requirements, and a gap module covers additional expectations.

Many allied health NDIS roles are not publicly-registered, such as speech pathologists, social workers, art and music therapists, among others. Workers in these occupations can certify as practitioners under self-accreditation schemes provided by professional associations with varying levels of government recognition.

Before granting any mutual recognition of registration under these schemes, the Taskforce should consider whether requirements under these schemes are sufficiently rigorous, meet participant expectations and requirements under the Code of Conduct, and if there are duties not covered under those schemes. In applying regulatory requirements to allied health roles, the Government should be mindful of the administrative work required in maintaining compliance and impact on a practitioners' time spent with clients and their ability to work at the top of their scope of practice.

RECOMMENDATION 12: STRICTER REGULATION OF HOUSING AND LIVING SUPPORTS.

The NDIS Review has already recommended that shared living supports face higher regulatory requirements, including a new housing and living standard. The new housing and living standard should cover several aspects:

- **Stricter regulation of supported residential services and equivalents** – in line with DRC Recommendation 7.38. Minimum standards for developing support plans, up-to-date records on compliance with those plans, access to independent advocacy, minimum yearly audits and complaint mechanisms should apply in these closed settings.[41]
- **Appropriate use of sleepover shifts and adequate facilities for workers under the Award –** although sleepover shifts are a legitimate part of the NDIS' infrastructure, workers frequently report providers misusing sleepover shifts to minimise costs. This occurs when there is a pattern of multiple disturbances during the night, requiring a worker to wake up numerous times, but steps are not taken to fund hours of active supports.

  Sleepover shifts create immense anxiety among workers. Workers struggle to sleep well on sleepover shifts because they are still responsible for multiple clients in a home. This fatigue causes work such as administering medication to be carried out by exhausted staff, risking the health and safety of participants and workers.[42] In the long run, workers continuously working sleepover shifts are more likely to burn out[43].

  A few enterprise agreements contain clauses that ensure workers can "wake rested" after a sleepover shift and are paid for active support when repeated disturbances occur.[44] Similarly, the SCHADS Award entitles workers to *"a separate room with a bed and clean linen… appropriate facilities (including access to food preparation facilities and*

[41] Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report - Volume 7 - Inclusive Education, Employment and Housing - Part C* (Canberra: Commonwealth of Australia, 2023), pp. 588–89.
[42] Natasha Cortis and Georgia Van Toorn, *Working in New Disability Markets: A Survey of Australia's Disability Workforce* (Social Policy Research Centre, Sydney, 2020), p. 32.
[43] Jillian Dorrian, Crystal Grant, and Siobhan Banks, 'An Industry Case Study of "Stand-up" and "Sleepover" Night Shifts in Disability Support: Residential Support Worker Perspectives', *Applied Ergonomics*, 58 (2017), 110–18.
[44] *Disability Services Enterprise Agreement Victoria 2018-2022*, (s) 30.1(a); *Able Australia (Tasmania) Union Collective Agreement 2021*, (s) 37(c).

staff facilities where these exist) and free board and lodging".[45] However, these are also both fundamental health and safety issues for workers and should be ensured in the first place through proactive regulation of all providers.

- **Ensure separation of housing and living supports through active oversight, auditing, and transparency of SDA providers, including monitoring** compliance with SDA practice standards, in line with the Review and DRC.[46]
- **Clear requirements for WHS in home care arrangements –** Workers in home care face specific WHS risks due to their isolation and sporadic supervision, which WHS codes of practice have not yet addressed. Specific regulations should apply to uphold workers' rights to health and safety when support is delivered in the home, such as standards for supervision, requirements for homes to be inspected prior to work, and more, through intensive co-design with participants and workers.

RECOMMENDATION 13: REGISTRATION MUST PREVENT CONFLICTS OF INTEREST AND PHOENIXING.

Unions in the NDIS frequently encounter issues where unregistered providers set up shop in one part of the NDIS, delivering disability supports, can get away with charging extortionate prices, underpaying workers, and/or exposing clients and workers to safety issues, only to be reported, close down the business, and continue delivering services under a different name and in a different part of the country or scheme.

As part of the new provider registration scheme, the NDIS Quality and Safeguards Commission requires the capability to track a provider's ownership structure and stop unscrupulous business owners from exploiting the scheme. This should also extend to identifying and eliminating conflicts of interest, not only in housing and living, but also between intermediaries and support providers.

RECOMMENDATION 14: PROVIDER REGISTRATION SHOULD LINK TO PRICE REGULATION.

Workers have less and less paid time for training, handover, debrief, and administration, and they are less equipped to provide safe supports to clients precisely because providers are incentivised to charge as little as possible for supports. On the other hand, the price limits that cap what providers can charge are based on what the NDIA deems the most "efficient" allocation of resources, which industry research has shown is near impossible to achieve across the board.[47]

Provider registration can allow for standards to be set around WHS and industrial compliance in line with the code of conduct. An integrated regulatory system requires this to be linked to price setting. When the NDIS Commission identifies shortfalls in safeguarding, unsafe levels of staffing and supervision, this data should be shared with the price-setter (recommended to be IHACPA by the Review[48]) to drive fair pricing that reflects the true cost of service delivery. Where providers set pricing at dangerously low levels, either agency should be able to fix prices at safe rates.

RECOMMENDATION 15: WORKERS MUST BE PAID FOR ALL REGISTRATION-RELATED ADMINISTRATIVE WORK

In transitioning to a new registration model, any additional work required to keep up with regulatory requirements must be funded through the NDIA's pricing arrangements. Support workers already undertake excessive non-face-to-face work detracts from valuable time with clients.

As part of the new model, the NDIS Commission should be clear that additional compliance work associated with the model should be funded and paid. Inevitably, workers in direct support roles will need to perform some registration-related administrative work. Where possible, regulatory guidelines should provide that compliance work is carried out by administrative staff so that DSWs can work at the top of their scope of practice.

RECOMMENDATION 16: REGISTRATION SHOULD ALLOW INFORMATION SHARING WITH OTHER REGULATORS.

The current provider registration system and related audits tend to be siloed from other regulatory systems, such as WHS and industrial inspectorates. This is a missed opportunity for the NDIS Commission to share and refer reports to other regulators for prosecution and enforcement or benefit from greater regulatory intelligence. As part of the new

[45] *Social, Community, Home Care and Disability Services Industry Award 2010*, (s) 25.7 (c).
[46] NDIS Review, pp. 636–37; Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, pp. 625–26.
[47] The Ability Roundtable, *2023-24 Annual Price Review Submission Core Supports (DSW Cost Model)* (Sydney: Ability First Australia, 2024).
[48] NDIS Review, pp. 791–92.

registration system, barriers within the NDIS Act[49] to facilitate should be removed to facilitate the NDIA and NDIS Commission sharing information with other regulators to ensure compliance with WHS laws.

RECOMMENDATION 17: PROPORTIONATE AUDITS SHOULD INCENTIVISE BEST PRACTICE.

Problematically, provider registration operates as a pass/fail system, meaning that providers who take more proactive steps to safeguard workers and participants would receive the same registration approval as providers who meet only the bare minimum standards.

One way provider registration can support better practice is through more proportionate audits, such as less frequent audits when providers have a clean safety record. More broadly, incentives for best practice should be built into the new model which reward best practice and providers with a positive record.

The Commission should prioritize unannounced audits for providers with sub-par safeguarding records in identifying and correcting adverse conduct.

[49] *National Disability Insurance Scheme Act 2013*, (s) 67G.

Implementation Detail: Worker Registration & Accreditation

Why register workers?

Participants deserve safety and access to a stable and quality workforce that supports meeting their goals when they use their NDIS funds. However, the quality of jobs and conditions of work in the scheme are barriers to this. A poorly remunerated and disempowered workforce that is left structurally undervalued for the skills, emotional labour and dedication they bring to their roles is ill-equipped to deliver quality supports.

There is currently no form of "positive" workforce regulation at the national level which defines the required competencies to deliver support work. Because of this, support work is perceived by some as:

- "Low skill", standing in stark contrast to nurses, early childhood educators, many allied health professionals, and soon aged care workers (upon implementing recommendation 77 of the Aged Care Royal Commission).
- Work anybody can do – that it is "just care work": and all you need to do it well is to have the right values.

This is reflected by:

- A tendency of some providers to treat workers as replaceable
- Low rates of pay, which do not account for the considerable skill involved in delivering care and support work, made invisible because of the structural and historical devaluation of work performed primarily by women.[50]
- A lack of professional development and career pathways in the NDIS because there is a perception that there are few skills that support workers can develop further or finesse.

Workers feel disempowered and are leaving the sector in droves, constraining choice and limiting outcomes for NDIS participants. A UWU survey of 1,501 workers found that 84% of workers had difficulty attracting, recruiting or retaining staff at their workplace, and 75% of those wanting to stay in the sector still think about leaving.[51] Now, more than ever, we need to support, define and recognise the skills of the workforce and make it a career of choice.

The only form of national worker regulation in the NDIS that currently exists is worker screening. Worker screening must be applied across the Board, but it is a negative form of regulation and does not ensure a well-skilled workforce.[52] It only excludes workers with a criminal history. For this reason, the Review commented*, "Worker screening is not sufficient to guarantee all NDIS workers can deliver safe and quality supports."*[53]

The NDIS Code of Conduct requires workers to have the necessary competencies to deliver support work and minimum training. However, as in Aged Care[54], it does not specify training requirements or lead to positive workforce support to attain skills. For this reason, the Review emphasised *"concerns about the adequacy of worker training and competencies"* and whether *"workers have the necessary skills, competencies and qualifications."*[55]

Outstanding resources have been developed by the NDIS Commission, such as the Worker Capability Framework, which outlines the necessary skills and competencies to deliver forms of support work. However, these have remained voluntary guidelines and have had minimal impact on workforce standards as the market settings of the NDIS offer providers few incentives to invest in ongoing training.

The principle for applying competence and pre-entry requirements is to test if "the action of an untrained practitioner can cause harm". In the case of disability support work, which often involves supporting people with complex needs and multiple conditions, this risk undoubtedly exists.

RECOMMENDATION 18: ESTABLISH A POSITIVE WORKER REGISTRATION AND ACCREDITATION SCHEME TO DEVELOP WORKERS' SKILLS AND PROVIDE PROFESSIONAL RECOGNITION OF THE WORKFORCE.

Unions representing NDIS workers believe that safe, quality supports requires a set of mandatory competencies and ongoing training requirements. This is best ensured through a positive worker registration and accreditation scheme that develops support workers' skills and provides professional recognition of the workforce.

A positive, worker registration and accreditation scheme would:

[50] Sara Charlesworth, *Report of Sara Charlesworth: Health Services Union of NSW - Regarding Work Value for Aged Care Members* (Sydney: Fair Work Commission, 2021), p. 10.
[51] UWU, *Disability Workforce Crisis Survey* (Sydney: United Workers Union, 2023).
[52] Fiona Macdonald, *Professionalising the Aged Care Workforce: The Case for Worker Registration and a Mandatory Qualification* (Canberra: The Australia Institute, 2024), p. 11.
[53] NDIS Review, p. 947.
[54] Macdonald, *Professionalising the Aged Care Workforce: The Case for Worker Registration and a Mandatory Qualification*, p. 10.
[55] NDIS Review, p. 907.

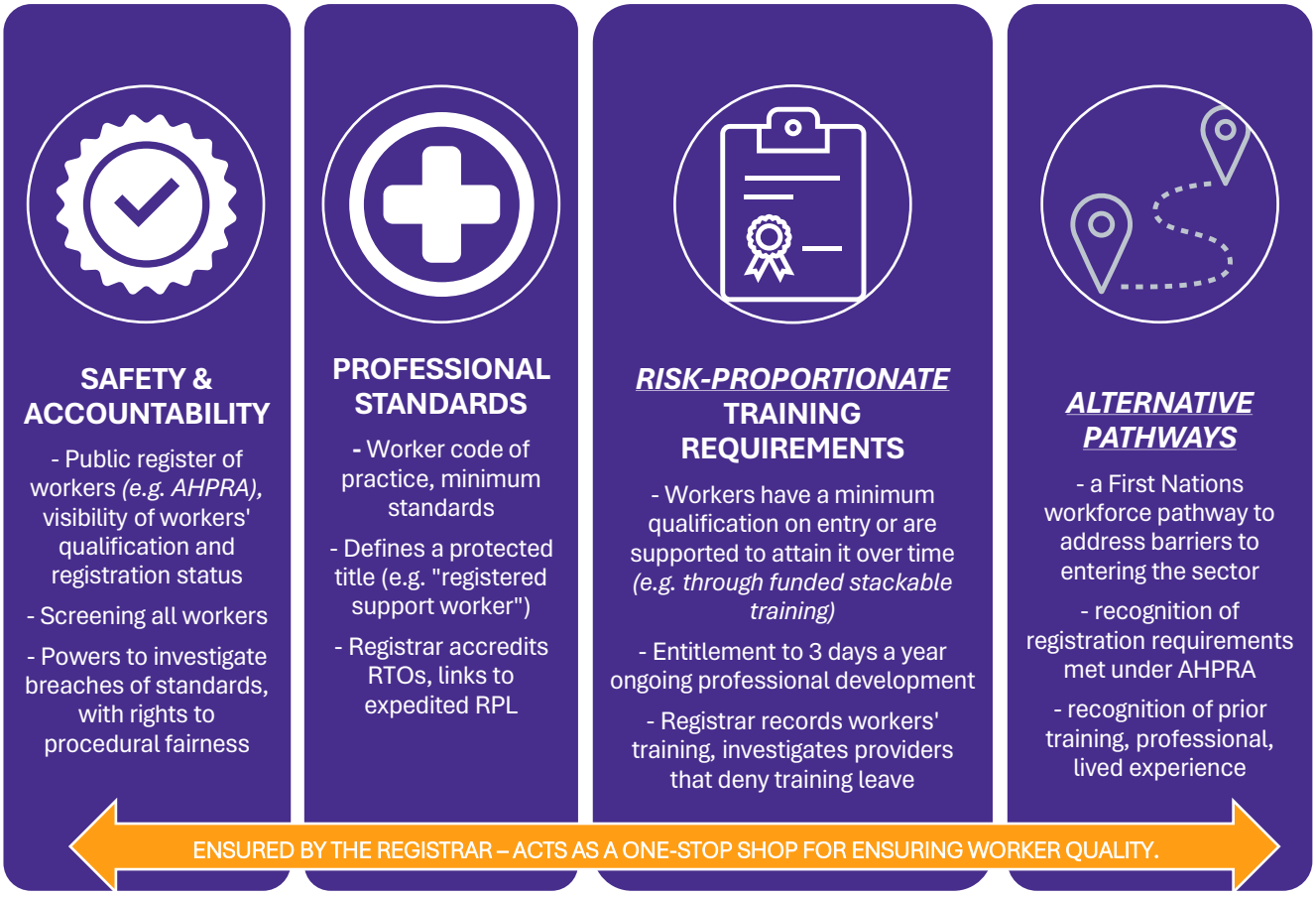
- **Lift the quality of supports and uphold the right of people with disability to choice and control**
- **Ensure the skill level and screening checks can be easily verified by participants.**
- **Be a vehicle for training initiatives like full-pay traineeships and portable training entitlements.**
- **Boost workforce attraction and retention.**
- **Complement a provider registration scheme.**

At a base level, worker registration and accreditation controls for risks arising from an untrained worker. But more broadly, it supports cultural change in the disability sector and society: valuing quality improvement in disability supports, as well as the skills, contributions, and careers of a hard-working, precarious workforce. It contributes to better recognition and fairer valuation of the skills DSWs possess. It can also alleviate inequalities at the intersections, as the average worker is more likely to identify as a woman or come from a culturally or linguistically diverse background. [56]

The evidence shows that registration can raise workforce standards and, in turn, lift the standards of support clients receive.[57] The NDIS Act's objectives—to enable *"people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports"* and *"high quality and innovative supports that enable people with disability to maximise independent lifestyles and full inclusion in the mainstream community"*—also entail ambitious goals for workforce development. Workforce regulation supports and ensures achieving those goals.[58]

A mandatory worker registration scheme in disability would reflect reforms occurring in aged care to introduce a national aged care personal care worker registration scheme. It builds on the work already underway in designing a mobile care sector worker screening system and advances the objectives of the Government's care and support economy agenda.

How would worker registration and accreditation work?



RECOMMENDATION 19: ALL WORKERS MUST BE SCREENED.

Workers delivering disability services with more than incidental contact with a person with disability would be required to register *as workers* with the NDIS Quality and Safeguards Commission. For the lowest risk, non-specialist supports

[56] Macdonald, *Professionalising the Aged Care Workforce: The Case for Worker Registration and a Mandatory Qualification*, p. 5.
[57] Nina Hemmings, Camille Oung, and Laura Schlepper, *New Horizons: What Can England Learn from the Professionalisation of Care Workers in Other Countries?* (London: Nuffield Trust, 2022).
[58] *National Disability Insurance Scheme Act 2013*, part 2 (s) 3(1).

(e.g. gardening, cleaning, transport), workers would only need to pass a screening check. This would ensure exclusion of workers posing an active risk of harm to NDIS participants.

RECOMMENDATION 20: SOME ROLES WOULD HAVE A PROTECTED TITLE AND LIST THOSE WORKERS ON A PUBLIC REGISTER

Other supports involving increased skill and risk would involve a protected professional title, where workers are put on a pathway to attaining a qualification (or recognised for already having one, or equivalent experience). These workers will be called "registered workers".

Different protected titles would be based on the NDIS Quality and Safeguards Commission's Worker Capability Framework, which defines the appropriate skills for various forms of support work. For example:

- Workers delivering person-to-person supports (e.g. community participation, group activities, personal care) would be a "registered disability support worker".
- Workers delivering navigator supports (e.g. housing and living, psychosocial) would be "registered navigators"

Workers that complete certificates, diplomas or degree, would have their qualifications accredited and verifiable on a public register, and market themselves as Cert IV registered support workers, for example. This would give participants transparency and visibility of workers' skills. AHPRA currently keeps public registers of accredited professionals.

RECOMMENDATION 21: REGISTERED WORKERS SHOULD BE REQUIRED AND SUPPORTED TO ATTAIN A MINIMUM QUALIFICATION OVER TIME.

Workers practising any of the protected titles would be subject to a learning entitlement as part of their registration and commit to attaining a minimum qualification over time. Workers would not need to meet these requirements immediately but would be supported to gain qualification over time via the registration scheme. These arrangements already exist in care worker registration schemes in Scotland, Northern Ireland and Wales.[59]

This will support them to attain a base qualification (the Certificate III in Individual Support and Certificate IV in Disability) and then further specialist accredited training. Ryan and Stanford's report[60] on portable training outlines a phased approach which puts workers on a pathway to a full qualification:

- At entry, workers are required to complete induction and foundational training modules
- Workers are then put on a pathway to a Certificate III in Individual Support (Disability), the minimum training acquired over time with employer and government support, if they do not already have one.
- Workers can then attain a Certificate IV in Disability, the preferred qualification for DSWs tailored to the NDIS.

Requirements for worker registration would be applied proportionate to the risk in the services provided. On one end of the scale, lower-risk supports, like gardening, non-specialist transport and cleaning would not require workers to be on a pathway to qualification. On the other end of the scale, some higher-risk supports might require training before work is carried out (e.g. high intensity supports).

RECOMMENDATION 22: CPD REQUIREMENTS AND ENTITLEMENTS FOR REGISTERED WORKERS WITH STACKABLE TRAINING PATHWAYS.

Registered workers would be required to undertake three days per year of ongoing professional development. This would support workers' to progress their careers, refresh training, and ensure recency of practice and knowledge. It is a crucial component of establishing and sustaining a professional workforce: it is simply not enough to deliver training once, tick the box, and claim obligations have been met.

An ongoing training entitlement requirement and entitlement is consistent with the Review's comments that *"driving continuous improvement in the quality of supports, providers and workers is critical to the NDIS achieving good outcomes for participants"*[61] and could be enabled by portability of training.

[59] Hemmings, Oung, and Schlepper, p. 16.
[60] Rose Ryan and Jim Stanford, *A Portable Training Entitlement System for the Disability Support Services Sector* (Canberra: The Australia Institute, April 2018).
[61] NDIS Review, p. 879.

A worker registration scheme would then provide the basis for supporting workers who have already achieved the base qualification to attain higher qualifications. Workers could complete CPD units through their CPD requirement and entitlement, which could stack towards higher diplomas beyond Certificate III and IV level.

RECOMMENDATION 23: PROFESSIONAL INDEMNITY INSURANCE FOR REGISTERED WORKERS

Support workers should be required to hold professional indemnity insurance to practice as DSWs to ensure they and their clients are appropriately covered in the case of an incident. The same professional indemnity requirements as exist in AHPRA could be carried over:

> *All health practitioners who undertake any form of practice in their respective profession(s) must have professional indemnity insurance (PII) arrangements that comply with the relevant registration standard, for all aspects of their practice.*

Professional indemnity insurance requirements are often provided by a worker's employer, a professional body or union[62], and many already offer this to NDIS workers.

RECOMMENDATION 24: CO-DESIGNED QUALITY STANDARDS FOR TRAINING AND EXPEDITED RPL UNDER WORKER REGISTRATION

As part of a worker registration scheme, the registrar should be able to develop co-designed quality standards for training and require that CPD that counts towards a worker's registration is completed in an approved training provider. They could be designed by, or in tandem with, the NDIS Review's newly recommended Deputy Commissioner for Quality.[63]

This would give participants a voice in the design of best practice disability supports and ensure that training is high-quality and responsive to changing needs and research. Ongoing professional development should be conducted by public or selected non-profit RTOs, accredited by the NDIS Quality and Safeguards Commission.

Recognition of prior learning (RPL) remains onerous, costly and complicated for care and support workers. To minimise delays in access to worker registration and costs to workers, the NDIS Quality and Safeguards Commission could work with Humanability to develop a system of recognition of prior learning, training and lived experience system specific to the care and support economy.[64] This should be free for workers to access.

How would you define a worker? How would worker registration tiers be defined?

RECOMMENDATION 25: ADOPT THE VICTORIAN DISABILITY WORKER REGISTRATION SCHEME'S DEFINITION OF A "DISABILITY WORKER"

Victoria already has a voluntary disability worker registration scheme, which defines a disability worker as *"a person (other than a disability student) who: (a) directly provides a disability service to a person with a disability; or (b) supervises or manages another person who directly provides a disability service to a person with a disability."*[65] A national worker registration and accreditation scheme could adopt the same definition. It could also define more complex kinds of disability work with higher registration requirements based on the Workforce Capability Framework.

RECOMMENDATION 26: RISK-PROPORTIONATE REGISTRATION REQUIREMENTS BASED ON THE WORKFORCE CAPABILITY FRAMEWORK

The NDIS Workforce Capability Framework already defines different types of NDIS work requiring different levels of skill.[66] Some aspects of the framework have already been integrated into training package development.[67] The Framework establishes key competencies for five categories of NDIS work which have been extensively co-designed by and with participants:

FIGURE F: SKILLS DESCRIPTORS UNDER THE NDIS WORKFORCE CAPABILITY FRAMEWORK

[62] Nursing and Midwivery Board, 'Nursing and Midwifery Board of Australia - Fact Sheet: Professional Indemnity Insurance Arrangements', 2024 <https://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/FAQ/Fact-sheet-PII.aspx> [accessed 6 May 2024].
[63] NDIS Review, pp. 973–74.
[64] Macdonald, *Professionalising the Aged Care Workforce: The Case for Worker Registration and a Mandatory Qualification*, p. 30.
[65] *Disability Service Safeguards Act 2018 (Vic)*, part 1.
[66] NDIS Quality and Safeguards Commission, *NDIS Workforce Capability Framework* (Parramatta: NDIS Quality and Safeguards Commission, 2021).
[67] SkillsIQ, *CHC Community Services Training Package V9.0: Companion Volume Implementation Guide* (Canberra: Department of Employment and Workplace Relations, 2024), p. 18.

	OBJECTIVES	DESCRIPTORS	ANCILLARY WORK	GENERAL SUPPORT WORK	ADVANCED SUPPORT WORK	SUPERVISION & FRONT-LINE MANAGEMENT	SENIOR MANAGEMENT & LEADERSHIP
CORE CAPABILITIES	OUR RELATIONSHIP	*Uphold my rights* *Communicate effectively* *Build trusted relationships* *Work collaboratively*	***YES***	***YES***	***YES***	***YES***	***YES***
	YOUR IMPACT	*Show self-awareness* *Work within your capabilities* *Look after yourself*	***YES***	***YES***	***YES***	***YES***	***YES***
	SUPPORT ME	*Understand what a good life means to me* *Support me to make my own choices* *Build my capacity to partcipate*	***YES***	***YES***	***YES***	***YES***	***YES***
	BE PRESENT	*Observe and respond flexibly to my changing needs* *Manage health and safety* *Engage and motivate me*	***NO***	***YES***	***YES***	***YES***	***YES***
	CHECK IN	*Review quality of support and service* *Support me to speak up*	***NO***	***YES***	***YES***	***YES***	***YES***
ADDITIONAL CAPABILITIES	IDENTITY CAPABILITIES	*Be responsive to my:* **Aboriginal and/or Torres Strait Islander Identity* **Culturally and linguistically diverse identity* **LGBTQIA+ identity*	***NO***	***NO***	*MAYBE*	*MAYBE*	*MAYBE*
	SPECIALISED SUPPORT CAPABILITIES	*Work with me to develop my health and allied health support plans* *Support me to implement:* **my health and allied health support plans* **my mealtime plan* **my medication plan* **my positive behaviour plan* *Support me:* **with my psychosocial disability* **and my family in my childhood*	***NO***	***NO***	*MAYBE*	*MAYBE*	*MAYBE*
ORGANISATIONAL CAPABILITIES	MANAGE, SUPERVISE & COACH OTHERS.	*Model and reinforce values in organisational culture and practice* *Promote quality through consistent good practice* *Support health and manage risk* *Foster and develop a capable workforce*	***NO***	***NO***	***NO***	***YES***	***NO***
	CREATE AN ENABLING WORK ENVIRONMENT	*Build consistent, good practice* *Establish and embed:* **NDIS values in organisational culture and practice* **systems to support health and manage risk* **a learning culture to support workforce capability*	***NO***	***NO***	***NO***	***NO***	***YES***

A wealth of knowledge is contained in this framework. Worker registration scheme should apply qualification and training requirements based on these skill descriptors. It also broadly corresponds to the regulatory requirements providers face under the proposed provider risk framework. An example below of how registration requirements might apply:

FIGURE F: A POTENTIAL MODEL FOR TIERED WORKER REGISTRATION

	SCREENING	PUBLIC REGISTER	QUALIFICATION	CPD	PROTECTED TITLE
LOWER-RISK SUPPORTS e.g. gardening, transport, cleaning	☑	☒	☒	☒	☒
DISABILITY SUPPORT WORKERS *Applies skills descriptor of "general support work". e.g. community participation, personal care.*	☑	☑	☑ Cert III or IV *(to be attained on entry or over time)*	☑	☑
SPECIALIST SUPPORT WORKERS *e.g. Advanced Support Workers under the Capability Framework in direct support roles – psychosocial, high-intensity supports.*	☑	☑	☑ Cert IV or higher	☑	☑
SUPERVISORS AND FRONT-LINE MANAGERS	☑	☑	☑ Cert IV or higher	☑	☑
INTERMEDIARIES, LEAD PRACTITIONERS & NAVIGATORS	☑	☑	☑ Cert IV, Diploma or degree dependent on the role.	☑	☑

RECOMMENDATION 27: INTEGRATE PROPOSED AND EXISTING QUALIFICATION REQUIREMENTS FOR INTERMEDIARIES AND AHPRA-REGULATED ROLES.

The NDIS Review already proposes qualification or training requirements for many intermediary roles in the NDIS:

- For **needs assessors,** "*minimum qualifications in allied health, social work or youth work provide a sound basis for Needs Assessors who can accurately assess the impact of disability on a person's life."*[68]
- **Lead practitioners** *"should be required to have degree level qualifications in allied health or other relevant discipline and have expertise in child development to be able to support families in an evidence informed way."*[69]
- For **navigators,** it recommends: *"training, practice standards and accountability mechanisms",* including on support for decision-making, and *"a strong baseline level of understanding of psychosocial disability and mental health",* with particular focus on complex communication needs and cognitive disability. [70]
- **Specialist navigators** would have *"required expertise, appropriate training, experience and qualifications… not limited to, allied health professionals and social workers/youth workers."*[71]

These requirements can be easily integrated and recognised in the new worker registration scheme, with CPD requirements also applying. Defining and regulating the role of these emergent intermediary roles would allow the NDIS Commission to properly define their scope of practice and ensure a consistent expectation around their level of skill. Qualification and CPD requirements already met by AHPRA would be recognised under the worker registration scheme could be mutually recognised by the NDIS Commission as appropriate to minimise duplication.

We also believe that the NDIS Review's recommendation of minimum qualifications for the intermediaries sets a clear precedent for ensuring all DSWs are put on a pathway to a base level of qualifications – training requirements can ensure consistency of skills for DSWs and quality supports for participants, in the same way that the Review recognised their potential for improving navigation supports.

What's the basis for a worker registration and accreditation scheme?

The NDIS Review recommends registering both workers *and* providers. A worker registration and accreditation scheme is entirely consistent with Recommendation 15 of the NDIS Review and its comments about the importance of regulating training and working conditions, that "*in practice, training and supervision outcomes will depend on a range of factors including minimum training requirements"* and "*the level of enforcement"*.[72] It is also consistent with:

- **Disability Royal Commission** Recommendations 10.8
- **Parliamentary Joint Standing Committee on the NDIS** Report on Workforce, Recommendation 4: *"that the Australian Government review options to develop a national registration and accreditation scheme for disability support workers, as the product of a co-design process with relevant appropriate people. This should include developing national benchmarks for skills, qualifications and competencies which reflect the diversity of people with disability, and which are co-designed by appropriate industry bodies, people with disability and representative organisations, support workers and unions, and other key stakeholders."*[73]
- **The Aged Care Royal Commission** has already recommended a Personal Care Worker Registration Scheme with a Certificate III requirement, leaving disability at risk of being the only care and support sector without training requirements.
- **NDIS Code of Conduct** requires workers with *"necessary training, competence and qualifications to deliver supports"*.
- **NDIS Workforce Capability Framework** provides valuable benchmarks and expectations for the skills of DSWs but is difficult to enforce.

Our proposal does not require workers to have a qualification to *commence* work in the NDIS. Rather, for all registered workers to attain a minimum qualification over time. This proposal is detailed in Stanford and Ryan's report[74], which

[68] NDIS Review, p. 287.
[69] NDIS Review, p. 489.
[70] NDIS Review, pp. 311, 330.
[71] NDIS Review, p. 331.
[72] NDIS Review, p. 873.
[73] Joint Standing Committee on the NDIS, *NDIS Workforce Final Report* (Canberra: Australian Parliament House, 2022), p. 68.
[74] Ryan and Stanford.

proposes a way for NDIS workers to attain a base qualification while working in the NDIS through fee-free TAFE and an ongoing learning entitlement and then build on that to further specialist skill sets and qualifications.

FIGURE I: A case study – Victorian Disability Worker Registration Scheme

In 2020, after years of advocacy from the disability sector and unions, the Victorian Government established a disability worker registration scheme. The scheme is the first worker registration and accreditation scheme established in the country, and is voluntary. Workers can apply to be a:

- Registered worker with professional experience, a qualification (Certificate III or IV in Disability, Individual Support, or a related field), or a combination of both.
- Registered disability practitioner with a relevant tertiary qualification (diploma or higher), professional experience or both.

The scheme is overseen by the Victorian Disability Worker Commission and established under the *Disability Service Safeguards Act 2018 (Vic)* after the Victorian Parliamentary Inquiry into Abuse in Disability Services. Workers need to meet three registration standards (competency in English, criminal history and CPD) to maintain registration. The scheme aims to:

- ensure workers have the necessary skills, experience and qualifications to provide quality services
- stop people who pose a serious risk of harm from providing disability services in Victoria
- enable people with disability to exercise greater choice and control in their lives, and
- ensure people with disability receive high quality services.

The VDWC is underpinned by five values: *Diversity and inclusion, Independent and fair, Fearless and accountable, Trust and respect, Empathy and dignity*. Its actions are guided by defined rights of people with disability and DSWs. Registration standards and approved programs of study are set by a Disability Worker Registration Board involving people with disability and workers.

The infrastructure of the Victorian registration scheme could be adapted and adopted in a new national scheme. However, because has remained voluntary, only 572 workers have registered, limiting the scheme's effectiveness in lifting quality and standards in disability services. Creating a national worker and accreditation registration would make a big difference.

FIGURE J: Disability Royal Commission Recommendation 10.8: A national disability support worker registration scheme

The Australian Government should establish a national disability support worker registration scheme by 1 July 2028. Consultation about the scope and elements of the national disability support worker registration scheme should begin as soon as possible. The consultations should include people with disability, disabled people's organisations, disability representative organisations including member-led First Nations Community Controlled Organisations, support workers and their representative bodies, disability service providers, state and territory governments, and peak and regulatory bodies. The design of the scheme should consider:

- the definition of 'disability support worker'
- a code of conduct and minimum standards for registered disability support workers, including support coordinators
- mandating the NDIS Worker Screening Check for all disability support workers
- recognition and accreditation of workers' qualifications, experience, capabilities and skills
- continuing professional development requirements for disability support workers
- automatic registration for disability support workers who are registered with other relevant professional bodies
- a First Nations workforce pathway to address barriers to First Nations workers entering the sector
- an accessible portal to enable people with disability and their supporters to view the profiles and registration status of disability support workers
- portable training and leave entitlements.

What's the difference between provider registration and worker registration?

A provider registration scheme attempts to set minimum standards of service delivery in a publicly-funded sector, and control for risks in the delivery of disability services. A worker registration and accreditation scheme ensures individual workers attain or supported to attain minimum training to perform work safely, can continuously improve practice, and are recognised as the professionals that they are. Both set standards and regulate the sector, but provider registration and enrolment has a greater emphasis on oversight, while worker registration and accreditation provides tailored support and recognition for workers to deliver safe, quality supports.

How does worker registration and accreditation support pay and conditions?

All workers are funded and entitled to ongoing training

We know that many workers miss out on both the foundational training needed to deliver disability supports safely, as well as the professional development required to improve on those skills. Worker registration and accreditation will put

all workers on a pathway to achieving a baseline qualification and support them to improve on those conditions. Workers will feel more confident working with clients and better equipped to assist them.[75]

Higher rates of qualification makes pay rises easier to achieve

As more workers attain a Certificate IV, more workers could benefit from pay rises by accessing *at least* the qualified rate of SACS 2.2. This will help get wages moving in a predominantly low-paid sector.

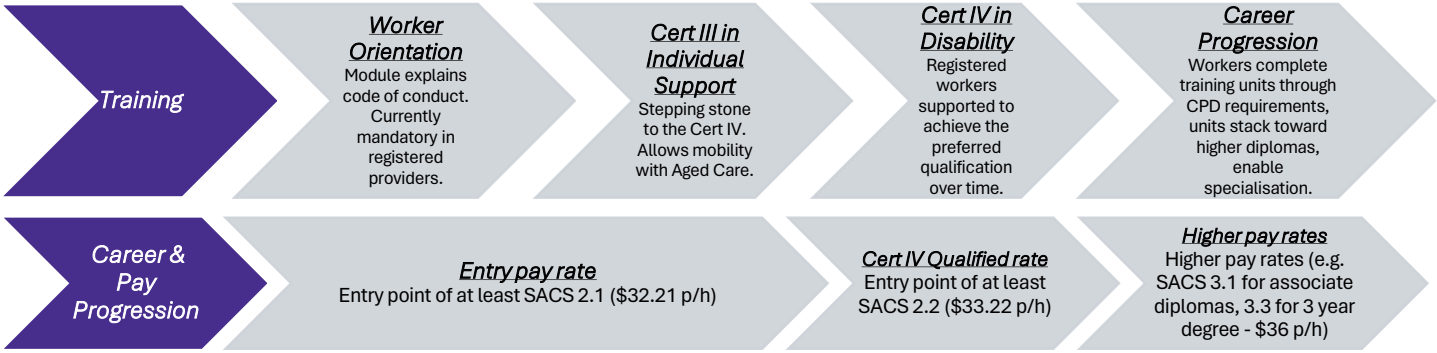
Safer staffing ratios and better client matching can be easily linked to skills profiles.

By tracking the training and qualifications workers complete, the NDIS Commission can have proactive oversight of client matching, such as by identifying when workers with gaps in training are matched with complex clients who in actuality, require more specialist support. Similarly, requirements for supervision and staffing levels enforced through provider registration can be mapped to workers' qualification levels to ensure workers with less experience have more staff working with them to safely deliver supports.

Supports career pathways, higher qualifications, skills progression and graduated classification structures.

Moreover, as workers complete professional development units, these units can stack to higher diplomas, leading to higher pay rises. Workers will have more support to improve their skills and want to stay in the sector. Where higher diplomas for advanced support work and specialist practitioners do not presently exist, the new Jobs and Skills Council (Humanability) could develop them with participant co-design to expand career pathways in direct support work.[76] Worker registration can open up career pathways for DSWs and be a vessel for career progression.

FIGURE G: WORKER REGISTRATION IMPROVES WORKERS' PAY AND SKILLS



Reduces risk of injury and workplace related violence due to higher skills in staff.

Because workers will have the skills necessary to carry out work appropriately and safely, there is a much lower risk of injury at work. This will go a long way toward reducing the high burden of injury on the care and support economy.

Defined scopes of practice ensure clear boundaries for workers

Defined roles and scopes of practice within a worker registration and accreditation scheme can help ensure clearer job descriptions to protect workers from risks when they overstep the boundaries of their role, often due to workforce shortages. This is particularly important for workers in isolated environment, such as support delivered in the home.

Greater job satisfaction.

Positive worker registration and accreditation will make workers feel more supported through skills, pay progression, and recognition. It also contributes to a culture where workers are supported to improve skills and quality instead of the onus falling on the individual, improving workforce retention, quality of supports and participant outcomes.

How can worker registration lift the quality of disability supports?

A guaranteed minimum standard for workers and consistency of quality.

As more workers attain the baseline qualifications, participants can have more consistent expectations about support workers' skills and competencies.[77] Putting all workers on a pathway to qualification and requiring ongoing professional development will ensure minimum competencies for all disability support workers.

[75] Hemmings, Oung, and Schlepper, pp. 2–3.
[76] Ryan and Stanford, p. 40.
[77] Macdonald, *Professionalising the Aged Care Workforce: The Case for Worker Registration and a Mandatory Qualification*, p. 20.

Better outcomes and sharing of best practice as workers continually upskill.

Combined with participant co-design of qualifications, worker registration and accreditation can ensure that new workers entering the sector have skills that reflect contemporary best practice in support work, and that workers continually refresh their training. This is critical to creating a disability support sector that continuously improves.

Increased public confidence in the NDIS.

By ensuring all support workers have access to minimum skills to deliver supports under the NDIS, the public will have greater confidence that NDIS funds are being used effectively.

Valuing disability services as deserving highly skilled workers.

Worker registration puts a value on disability services as something worth investing in and continuously improving.

Appropriate staffing and client matching ensures clients get the most value from supports.

Links to staffing and client matching requirements under provider registration will expand models of active support and ensure more participants receive the person-centred support the NDIS promised them.

Delivery of complex care with less risk.

Participants with more complex needs can be assured that workers have the appropriate skills and training to conduct work safely and properly.

How can worker registration support attraction and retention?

Presents it as a career of choice through increased community and professional recognition.

Regulating the workforce increases the social standing of disability support work compared to other professional but regulated occupations, like nurses and allied health workers, making the sector more attractive to prospective workers.

Long-term impacts on career progression, pay and conditions reduce workforce turnover.

Improved pay and conditions will give workers more reason to stay in the sector.

Provider savings on recruitment, induction, supervision and training.

Providers can have greater confidence that workers have appropriate skills commencing work, and may save in supervision costs otherwise incurred when inducting unqualified workers.

Supports access to training, leave, positive supervision and practice review that improves retention.

Expanding access to ongoing professional development, links to supervision and other entitlements will support workers to improve practice and confidence, and remain in the sector.

Improved workforce mobility by expanding the skills base of the sector.

As workers improve their skills, they will have more opportunities to try different forms of work in the sector.

Improved workforce planning through a central record of skills gaps.

A central record of workers with and without qualifications will lead to better analysis, measurement, and detection of workforce shortages. It could also enable targeted workforce attraction and retention measures to address them.[78]

How would worker registration impact choice and control?

Worker registration and accreditation is not focused on preventing a participant's choice of workers. It is about ensuring that all workers are supported with ongoing training and put on a pathway to attaining a foundational qualification.

It enhances choice and control by expanding access to skilled workers who can market skills to participants. Improved transparency and visibility of skills will make it easier for participants to find workers who are the best fit for them. Accountability through a public register will strengthen natural, corrective and preventative safeguards.

This is also an opportunity for training standards to be co-designed by people with disability, for people with disability, be embedded throughout the scheme, and ensure all workers are trained to deliver supports with a human rights focus.

[78] Macdonald, *Professionalising the Aged Care Workforce: The Case for Worker Registration and a Mandatory Qualification*, p. 20.

Wouldn't minimum qualifications be a barrier to entry?

2023 surveys by unions estimate that between 85% and 93% of NDIS workers at least a Certificate III,[79] and both the Cert III in Individual Support and Cert IV in Disability already qualify for fee-free TAFE nationwide. Even still, our proposal is that workers can enter without a qualification and attain one over time. Workers with sufficient workforce, training or lived experience can access alternative pathways to attain qualification. Similar pathways have already existed in Victoria's disability worker registration scheme.[80]

RECOMMENDATION 28: TRAINING, PROFESSIONAL AND LIVED EXPERIENCE PATHWAYS UNDER A WORKER REGISTRATION SCHEME

FIGURE H: PROPOSED ENTRY PATHWAYS TO REGISTRATION FOR DISABILITY SUPPORT WORKERS

PATHWAY	FOR WORKERS WITH...
Qualification	Certificate III in Individual Support or Certificate IV in Disability
Professional Experience	Equivalent workforce experience.
Training	Equivalent training experience.
Lived Experience	Equivalent lived experience.
Combined	A combination any of the above.
Equivalent	Equivalent registration in other schemes (e.g. AHPRA)

What is more, the transition to a worker registration scheme can occur over multiple years (note – this implementation timeline is a suggestion and to be taken without prejudice):

- Firstly, by ensuring all workers are screened, then by registering and accrediting workers' qualifications
- Then by providing gap training to workers and recognising prior experience of workers without qualification
- Then by supporting workers without qualification with gap training and other support to achieve a foundational level of training.

RECOMMENDATION 29: TRANSITIONAL SUPPORT FOR WORKERS WITHOUT EDUCATIONAL BARRIERS

We also recognise that some NDIS workers without qualifications might speak English as a second language, or not have an educational background. As part of a transition to a worker registration system, workers who face additional barriers to utilising in-service and pre-service training should receive tailored support to access further training.

Are changes to the training system required to support worker registration and accreditation?

RECOMMENDATION 30: REMOVE BARRIERS TO ATTAINING THE CERTIFICATE IV AND DESIGN NEW DIPLOMA PATHWAYS

Changes to the Community Services Training Package, managed by Humanability, the sector jobs and skills council, would support workers to more quickly achieve a full Certificate III or IV after registering. Humanability could consider making the mandatory NDIS Orientation Module a stackable, accredited unit of competency. It could also look at removing the requirement for workers to have completed the Certificate III in Individual Support to enrol in a Certificate IV in Disability. These changes would improve qualification rates in the sector and reduce the time it takes to qualify.

The disability sector used to have a bespoke Diploma and Advanced Diploma in Disability, which supported workers to be recognised as disability practitioners and frontline leaders; however both were discontinued in previous years, leaving workers with few qualification pathways beyond the Certificate IV.

As the Government works on designing training pathways for registered specialist workers, it should work with Humanability on integrating already-existing CPD units beyond the Certificate IV (e.g. PEG feeding, medication management, positive behaviour support, practice leadership) into new specialist diplomas and advanced diplomas that are accredited by the worker registration scheme.

Who should regulate the NDIS workforce?

[79] HSU; UWU.
[80] Macdonald, *Professionalising the Aged Care Workforce: The Case for Worker Registration and a Mandatory Qualification*, p. 33.

RECOMMENDATION 31: ESTABLISH A WORKER REGISTRATION SCHEME WITHIN THE NDIS COMMISSION WITH QUADRIPARTITE OVERSIGHT

We believe a worker registration function would be best established within the NDIS Quality and Safeguards Commission. This would build on the existing data infrastructure of worker screening units and minimise costs posed to the regulator. It could also easily support the work of the new recommended Deputy Commissioner for Quality, supplement safeguarding work already undertaken by the Commission, and easily link up to provider registration.

To ensure transparency, accountability, quality, and alignment with workforce demands and pressures, we believe a board should be set up to oversee the registration scheme with participant, provider and union involvement. This could look similar to Victoria's Disability Worker Registration Board.

How much would a worker registration cost?

RECOMMENDATION 32: REGISTRATION SHOULD BE FREE UNTIL WORKFORCE SUPPLY HAS MET DEMAND

Barriers to registering workers should be as low as possible, particularly given the low wages of DSWs. To minimise any negative impacts on workforce retention, we recommend making worker registration free until workforce demand has been met. Once these shortages are resolved, the costs of a registration scheme must be proportionate to wages.

Why require qualifications? Aren't a worker's values and attitudes more important?

Both are important, and values/attitudes and skills/qualifications are not mutually exclusive. This is not to suggest that qualification is the panacea for bad practice; however, it does add an important layer of quality assurance that has not previously existed and provides workers with basic training and knowledge they might not otherwise have. It can ensure active supports are embedded in service delivery and contribute to better outcomes.[81]

Qualification requirements also encourage cultural change by defining support work as important work that should be taken seriously, not work that just anybody can do, and ensuring a base level of skill. You cannot professionalise a workforce without requiring some demonstrated and regulated skill. The research available suggests that this is an essential part of professionalisation.[82] We are not aware of any professional occupations without a proscribed regulated qualification requirement.

How could worker registration support the development of a lived experience workforce?

By recognising the skills of lived experience workers through a protected title and recognising those skills through a worker registration scheme. Workers with lived experience of autism, for example, might have access to RPL from the Commission to support a quick transition into work. Workers who have been carers for family members could access RPL for some training units. Moreover, recognising lived experience workers as qualified workers could support access to higher pay by recognising that lived experience has value and can qualify a worker as a professional.

Additional supervision and WHS duties can easily be applied to support identified lived experience workers once they are accredited under a worker registration scheme. This would support greater utilisation of peer workers, as recommended by the Review.[83]

Couldn't we have a skills passport instead of a worker registration scheme?

A digital skills passport is already being designed across the economy so that workers can advertise their skills. However, it is not a targeted solution for the disability sector and does not provide a protected title. It does not put workers on a pathway to ongoing or foundational training. It just allows workers to advertise skills they already have.

Models discussed for a skills passport often do not distinguish between accredited and non-accredited training. It is, therefore, less useful for participants to rely on as it would not determine quality or be based on AQF standards.

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[81] Christine Bigby, *Evidence about Best Practice in Supported Accommodation Services – What Needs to Be in Place* (Bundoora: Living with Disability Research Centre, 2022).

[82] Hemmings, Oung, and Schlepper, p. 9.

[83] NDIS Review, p. 848.

What training initiatives might support implementation of worker registration and accreditation?

FULL-PAY TRAINEESHIPS

The NDIS Review recognised that expanding the options for workers to gain full qualifications, through both in-service and pre-service training, by making full-pay traineeships more widely available for workers would make it easier for workers to attain the Certificate III and IV:[84]

> *"Growing the number of traineeships for entry-level workers, micro-credentials and a digital skills passport are important modernising initiatives already agreed and underway. Greater use of traineeships, for example, could provide alternative pathways, for workers to complete the Certificate III in Individual Support, bypassing the need for 120 hours of mandatory unpaid work placement."*

Currently, funding for traineeships is limited under existing apprenticeship subsidies. It hardly covers the added costs of supervision, buddy shifts, training leave, mentoring and backfilling rosters that are left largely unfunded under the NDIS Pricing Arrangements. Expanded funding for traineeships would increase earn-and-learn opportunities to benefit workers who find in-classroom educational settings inaccessible.

PORTABLE TRAINING

A portable training scheme could also support workers to attain qualifications. The NDIS Review recommended exploring a portable training scheme *"which could fund paid time off as well as course costs, could assist in addressing this barrier",*[85] where DSWs would be credited 1-hour of paid training for every 50 hours of NDIS-funded work. Under the Centre's proposed scheme, credits would be vested with individual workers, allowing them to accumulate credits even if they work for multiple employers or as sole traders. Workers could use portable training credits to cover any gaps in training and attain a full qualification, or to support their professional development.

The NDIS Review suggested that *"as with any scheme, it will be important to ensure design and implementation of the scheme achieves the intended policy outcome and avoids unintended effects."* If the Government considers a portable training scheme to be beneficial, it will be important to ensure providers retain clear responsibilities for workers' training, particularly when it comes to rostering, client matching and disciplinary procedures.

Conclusion

Unless an efficient and effective regulatory system of the NDIS workforce and market is put in place, a race to the bottom in skills, safeguards and working conditions will only worsen, and workforce shortages will only intensify. The status quo is untenable.

Safe, quality supports requires a well-skilled workforce that is safe and has basic working conditions. Unions support a genuinely risk-proportionate provider registration scheme, but it needs to be broad in scope and capture. It needs a nuanced conception of risk at its core, and to set minimum standards around working conditions.

Provider registration alone is insufficient to boost standards of support. We need to also support and recognise the skills of the NDIS workforce through a worker registration and accreditation scheme. All support workers should be put on a pathway to minimum training and supported with CPD. Only by defining and recognising the skills of support workers can we embed a culture of professionalisation and present support work as a career of choice.

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[84] NDIS Review, p. 857.
[85] NDIS Review, p. 858.