



ACTIVITY REPORT

1 July to 31 December 2021

NDIS Quality and Safeguards Commission



**NDIS Quality
and Safeguards
Commission**

NDIS Quality and Safeguards Commission Activity Report 1 July - 31 December 2021

© NDIS Quality and Safeguards Commission



The material in this document, with the exception of logos, trademarks, third party materials and other content as specified is licensed under Creative Commons CC-BY-NC-ND licence, version 4.0 International. You may share, copy and redistribute the document in any format. You must acknowledge the NDIS Quality and Safeguards Commission as the owner of all intellectual property rights in the reproduced material by using ‘©NDIS Quality and Safeguards Commission’ and you must not use the material for commercial purposes. If you remix, transform or build upon the material contained in this document, you must not distribute the modified material. The NDIS Quality and Safeguards Commission expects that you will only use the information in this document to benefit people with disability.

Unless otherwise stated, data provided in this report pertains to the stated reporting period and was extracted between 4th - 7th January 2022.

Every effort has been made to ensure that the information in this document is accurate at the time of publication.

NOTE: In order to protect individuals’ privacy, identified populations less than 5 are reported as “<5”.

Published by:

NDIS Quality and Safeguards Commission

L1, 121 Henry St,

Penrith NSW 2750

www.ndiscommission.gov.au

1800 035 544

Designed by:

Twisted Pear

www.twistedpear.com.au





Foreword

In November 2021, Minister for the NDIS Senator the Hon Linda Reynolds CSC announced my appointment as the new NDIS Quality and Safeguards Commissioner, and I commenced in the role in January 2022.

As Commissioner, I am committed to upholding the rights of, and promoting the health, safety and wellbeing of, people with disability receiving supports under the NDIS. I am looking forward to leading the NDIS Commission into the next phase of its operations.

This is the seventh release of the Activity Report from the NDIS Commission, providing information about our operations in the six months to December 2021. Over the life of the NDIS Commission, the scope of our data and information has grown and we continue to expand and refine the information contained in the Activity Report.

I am pleased to announce that from March 2022 the NDIS Commission will commence releasing quarterly reports.

I am also committed to these reports being valuable for all of our stakeholders, and in particular, that NDIS participants will find these reports useful. If you have a contribution or would like to provide feedback regarding the content and usefulness of this report, please send an email to communications@ndiscommission.gov.au so we can improve the information in future reports.

I look forward to hearing from you, because when you make it known, you make it better.

Tracy Mackey

Commissioner

NDIS Quality and Safeguards Commission



Key highlights

Changes to the NDIS Act

Important changes to the **National Disability Insurance Scheme Act 2013** started on **29 October 2021** including:

- **Information disclosure:** greater scope for the NDIS Commission to disclose protected Commission information where there is a threat to the life, health or safety of an NDIS participant or other person as well as increased scope to disclose protected NDIS Commission information to the National Disability Insurance Agency (NDIA) and other government bodies (including worker screening bodies). The NDIS Commission will decide if the disclosures are appropriate and needed, for example to safeguard the interests of NDIS participants. Disclosures are still subject to the limitations imposed by the Privacy Act and other provisions of the NDIS Act. For example, disclosures to government bodies prescribed by NDIS Rules will only be able to be made for the purposes also prescribed by NDIS Rules.
- **Reportable incidents:** registered NDIS providers must manage reportable incidents and notify them to the NDIS Commission which occur in the particular circumstances that will be set out in new NDIS Rules.
- **Banning order coverage:** new NDIS Commissioner powers to place a condition on banning orders. NDIS Rules can now set out “suitability factors” which the NDIS Commissioner must consider before deciding whether to make a banning order. A banning order can be made on the ground that a provider is not suitable to provide NDIS supports or services to people with disability or that a person is not suitable to be involved in the provision of such supports or services. New NDIS Commissioner powers enable the making of a banning order for any current or former key personnel of a provider.
- **Approved quality auditors:** new NDIS Commissioner powers to vary or revoke the approval of quality auditors and impose conditions on the approval.

These NDIS Act amendments were made by the **National Disability Insurance Scheme Amendment (Improving Supports for At Risk Participants) Act 2021**. Some of the amendments require the making of NDIS Rules to make them operational and these will be made in accordance with the process required by the NDIS Act. The changes to the NDIS Act provisions about reportable incidents and information disclosure came about in response to the recommendations made by the 2020 Robertson Review into the death of Ms Ann-Marie Smith, an NDIS participant.

Amendments to the NDIS Practice Standards and Quality Indicators

On 15 November 2021 amendments to the NDIS Practice Standards and Quality Indicators came into effect and include new requirements for NDIS providers regarding the provision of support for NDIS participants at mealtimes, support to manage severe dysphagia (difficulty in swallowing), and support in times of emergency and disaster.

The amendments include new **Mealtime Management** and **Severe Dysphagia Management** Practice Standards. These two new Practice Standards will ensure NDIS participants have access to nutritious meals of the correct texture and delivered in a way that is appropriate to their needs and preferences.

There is also a new high intensity skills descriptor for Severe Dysphagia Management that describes the types of skills and knowledge required by workers to provide more complex eating and drinking supports.

The new **Emergency and Disaster Management** Practice Standard outlines provider obligations for planning to prepare, prevent, manage and respond to emergency and disaster situations while mitigating risks and ensuring continuity of supports that are critical to the health, wellbeing and safety of NDIS participants, including during the ongoing COVID-19 pandemic.



The new NDIS Practice Standards and Quality Indicators apply to existing registered providers, subject to the transition periods below.

- **Mealtime Management Standard:** applies to existing registered NDIS providers from Monday 13 December 2021.
- **Severe Dysphagia Practice Standard:** no transition period applies for existing providers, or for new providers registering to deliver NDIS supports or services for severe dysphagia on or after 15 November 2021.
- **Emergency and Disaster Management Standard:** applies to existing registered NDIS providers from Monday 24 January 2022.

The amendments around mealtime support are in response to the findings of a review we commissioned into the causes and contributors to deaths of people with disability in Australia; as well as recommendations made by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability informed by the reported experiences of people with disability and provider practice during the COVID-19 pandemic.

The new NDIS Practice Standards and Quality Indicators were developed in consultation with people with disability, NDIS providers, academics and other industry experts, and State and Territory Governments, including our Disability and Industry Consultative Committees.

NDIS Commission initiatives focused on improving quality

The NDIS Commission is focused on educating and providing information and advice to NDIS providers and their workers on areas of practice that have a significant impact on the quality and safety of supports and services that people with disability experience in the NDIS. Communication is an area that impacts the rights of people with disabilities to exercise choice and control and to make decisions about their own lives.

The NDIS Commission's new e-Learning module for NDIS workers, Supporting Effective Communication demonstrates how workers can support and enable people with disability to express themselves, to be heard and be safe.

The module builds on the success of the NDIS Commission's Worker Orientation Module – Quality Safety and You that has been completed by over half a million people since its release in mid-2019. Both e-Learning modules were co-designed by the sector.

NDIS Commission's regulatory response to URPs

There continues to be high numbers of notifications of the use of unauthorised restrictive practices reported by implementing behaviour support providers to the NDIS Commission.

The NDIS Commission released a detailed analysis of URPs received during the 2020/21 period in January 2022. This report showed that the number of URPs continued to increase in the period from 1 July 2021, including data up to 30 November 2021. This followed an increase in the average number of URPs reported each month during the 1 December 2020 to 30 June 2021 period of around 93,700. A significant component of that increase was attributable to the expansion of the NDIS Commission's jurisdiction in Western Australia and in relation to Residential Aged Care (RAC) providers. During this reporting period (1 July to 31 December 2021), some Western Australian providers and RAC providers were still transitioning to the full reporting requirements and so the NDIS Commission anticipated that numbers of reports of URPs would continue to grow in the 2021-22 reporting period.



The NDIS Commission has a range of activities underway to address the unacceptable rate of URPs in the NDIS with both implementing providers and behaviour support providers. Those activities are set out in the URPs report which can be found on the NDIS Commission website alongside the previous Activity Report.

Those activities include:

- Continuing to target the current compliance activity on participant outcomes
- Increasing focus on compliance as soon as notifications of URPs are received
- Continuing engagement with States and Territories on authorisation processes
- Increasing the number and competence of behaviour support practitioners
- Reviewing the interaction of the regulatory requirements in relation to behaviour support and reportable incidents
- Building the capability of the workforce implementing restrictive practices

Working with service providers through COVID

The NDIS Commission seeks to respond to changing circumstances within the sector. Over the current reporting period, a major area of response has centred on working with providers and other areas of government in relation to the changing circumstances of the COVID-19 pandemic, with a strong focus on the oversight of risks impacting the quality and safety of supports to NDIS participants.

The NDIS Commission has continued to perform its functions under the **National Disability Insurance Scheme Act 2013** (NDIS Act) through COVID-19 by maintaining quality and safeguarding mechanisms that have supported the continuity of critical supports and wellbeing for NDIS participants. This includes: continued guidance for providers on their obligations under the NDIS Act during the pandemic and communicating health advice in a manner that takes account of the regulation of NDIS supports and services; monitoring provider compliance with their obligations under

the NDIS Code of Conduct, and for registered providers, the NDIS Practice Standards; adjusting our engagement approach regarding compliance and investigation activities during periods of high rates of community transmission to focus on minimising risk to the health and wellbeing of NDIS participants; and coordinating with other agencies, particularly the NDIA, to ensure continuity of critical supports and the wellbeing of participants who are more likely to be at risk during COVID-19.



NDIS Quality
and Safeguards
Commission

1) Participants across Australia

The NDIS Quality and Safeguards Commission is an independent agency established to improve the quality and safety of NDIS supports and services for people with disability.

We are working with NDIS participants, service providers, workers and the community to introduce a new nationally consistent approach so participants can access services and supports that promote choice, control and dignity.

The NDIS Commission:

- responds to concerns, complaints and reportable incidents, including abuse and neglect of NDIS participants
- promotes the NDIS principles of choice and control, and works to empower participants to exercise their rights to access quality services as informed, protected consumers
- requires NDIS providers to uphold participants' rights to be free from harm
- registers and regulates NDIS providers and oversees the new NDIS Code of Conduct and NDIS Practice Standards
- provides guidance and best practice information to NDIS providers on how to comply with their registration responsibilities
- monitors compliance against the NDIS Code of Conduct and NDIS Practice Standards, including undertaking investigations and taking enforcement action
- monitors the use of restrictive practices within the NDIS with the aim of reducing and eliminating such practices

- is working in collaboration with states and territories to implement nationally consistent NDIS worker screening
- focuses on education, capacity building and development for people with disability, NDIS providers and workers
- facilitates information sharing with the National Disability Insurance Agency (NDIA), state and territory authorities and other Commonwealth regulatory bodies.

The National Disability Insurance Scheme (NDIS) is administered by the NDIA. The NDIS Commission regulates NDIS supports and services to NDIS participants in all states and territories. The NDIS Commission manages complaints and reportable incidents in connection with supports and services delivered by NDIS providers and their workers. Behaviour Support Plans including the use of restrictive practices must also be lodged with the NDIS Commission.

Since its inception in 2018, the NDIS Commission has received a complaint, reportable incident or Behaviour Support Plan relating to more than 50,000 NDIS participants, accounting for 7.85% of the total active participant cohort.



The NDIS Commission seeks to ensure that participants understand their rights to make a complaint about the NDIS-funded services they receive, and are empowered and know how to complain to their providers or to the NDIS Commission if they have concerns about the quality or safety of their NDIS provided supports and services. We do this by undertaking a range of engagement activities, such as presenting at events, outreach activities and the development of accessible resources.

Between 1 July 2020 and 31 December 2021, the NDIS Commission presented at 1,251 events (this included booths and talks at 26 Expos). Due to COVID-19, a vast majority of events have been teleconferences and/or virtual meetings.

Between 1 July 2020 and 31 December 2021, approximately 43,473 stakeholders attended events at which the NDIS Commission presented (note: the NDIS Commission often does not always receive confirmed attendee numbers from event organisers).

The NDIS Commission has established two consultative committees to provide ongoing advice and feedback to the NDIS Commission at a national level – the Disability Sector Consultative Committee and the Industry Consultative Committee. These committees help increase awareness of the NDIS Commission, its purpose and functions.

The Disability Sector Consultative Committee brings together key stakeholders from the disability sector to represent the interests and different perspectives of NDIS participants and their support networks, where they exist. The committee met three times in 2020 and three times in 2021.

Our National Engagement team also focuses on engaging with NDIS participants, their supporters and representatives, Aboriginal and Torres Strait Islander communities and disability leaders and advocates. Our engagement activities seek to consolidate awareness and information about the NDIS Commission and its functions, including registration and reportable incidents, complaints, restrictive practice, and behaviour support.

To ensure a strategic approach to engagement activities, the National Engagement Plan 2021 and the Aboriginal and Torres Strait Islander Engagement Plan 2021 were developed to set out our approaches, priorities and messages to participants and their representatives.

Since October 2020, the National Engagement Team has completed 194 significant engagements with more than 119 disability-related networks and organisations, including 52 formal presentations reaching over 964 stakeholders.

To support our direct engagement activities, our Participant Information Pack is sent to all NDIS participants at transition and is also available to download from the NDIS Commission website. It gives NDIS participants information about their rights, the role of the NDIS Commission, how to choose quality and safe supports, and how to make a complaint.

The pack is available in Braille, Easy Read, First Nations and Auslan versions. As at 31 December 2021, 60,834 printed copies of the pack had been ordered and distributed.

In August 2021, the NDIS Commission published versions of the Participant Information Pack and the NDIS Code of Conduct postcards created for Aboriginal and Torres Strait Islander people. An Easy Read version of the Participant Information Pack for Aboriginal and Torres Strait Islander people had previously been published in January 2021.

The NDIS Commission website is the central communication channel where NDIS Commission resources and information are available for people with disability, NDIS providers, advocates and the general public. The resources and information on the website build awareness of the NDIS Commission's role, purpose and function.

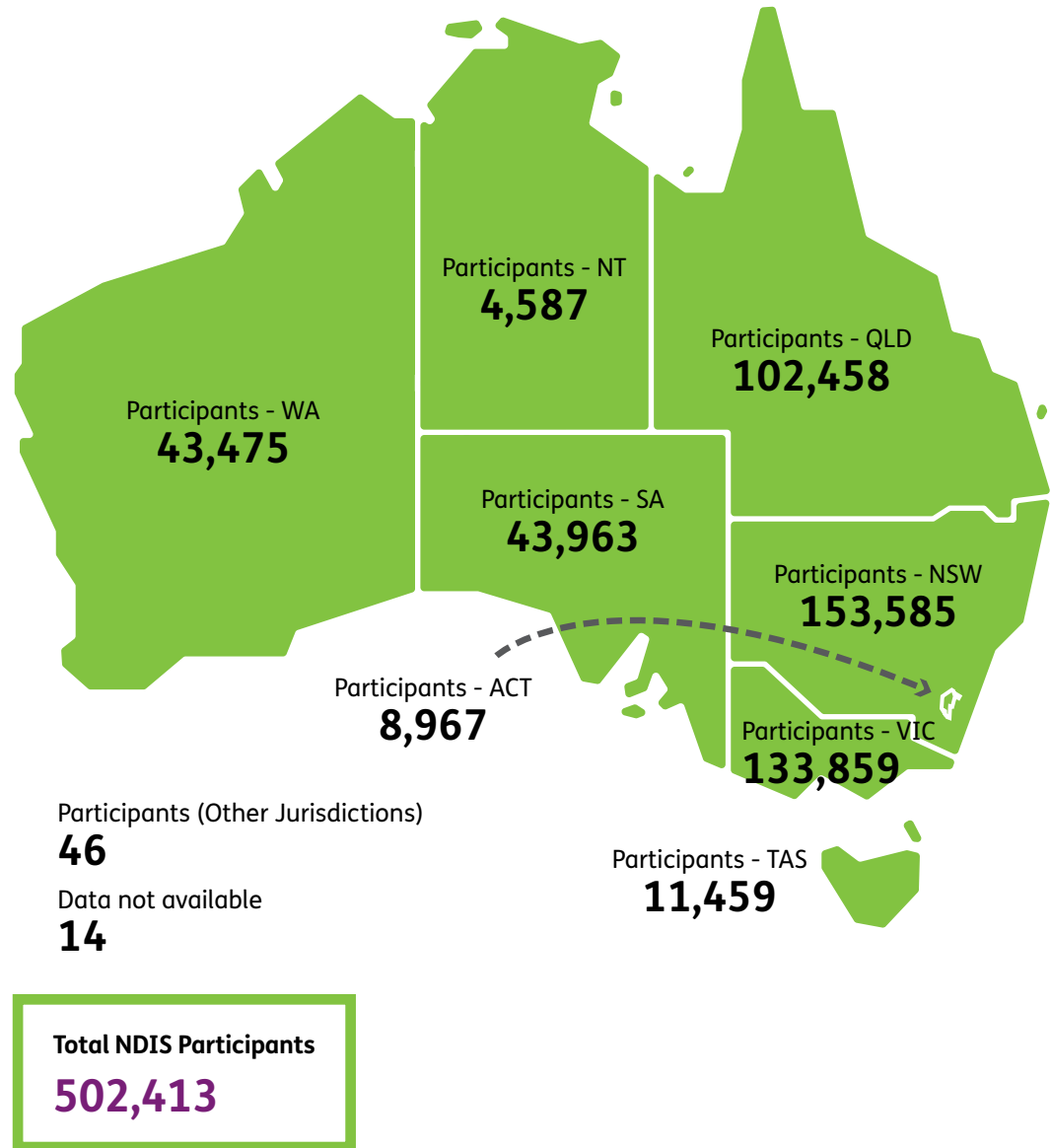


The NDIS Commission strives to ensure that all information it develops is accessible to users and available in an appropriate format that meets their needs – including people with disability, people with lower levels of literacy, or who are from culturally and linguistically diverse (CALD) backgrounds.

The NDIS Commission has resources available on its website in Auslan, as well as Easy Read, and CALD languages.

Since the NDIS Commission commenced on 1 July 2018, there have been 6,684,115 visits to the NDIS Commission website. The NDIS Commission is currently redeveloping this website, to ensure it better meets the needs and expectations of internal and external stakeholders. We expect to launch the new website in 2022.

Count of NDIS participants as at 31 December 2021

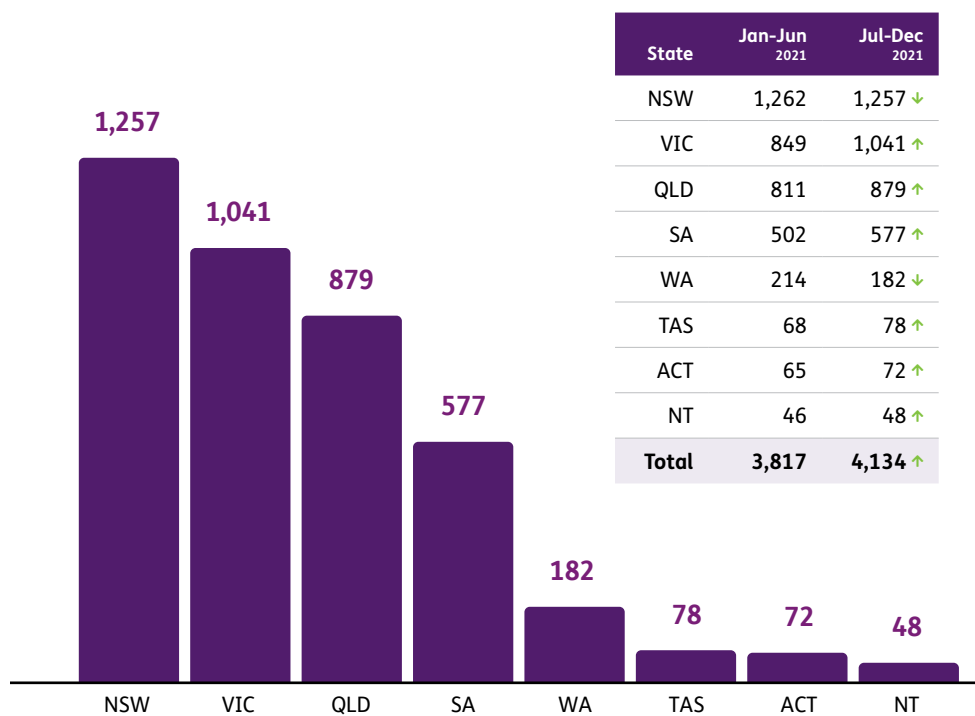


2) Complaints

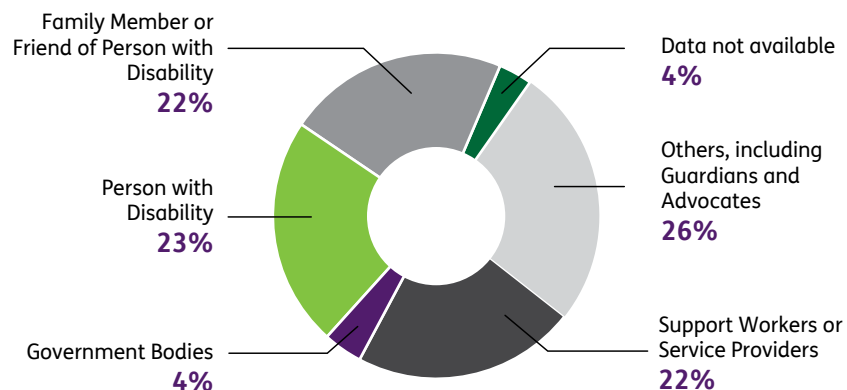
The NDIS Commission manages complaints in connection with supports and services delivered by NDIS providers and their workers. Anyone can make a complaint to the NDIS Commission about an NDIS support or service.

We received 4,134 complaints during the reporting period.

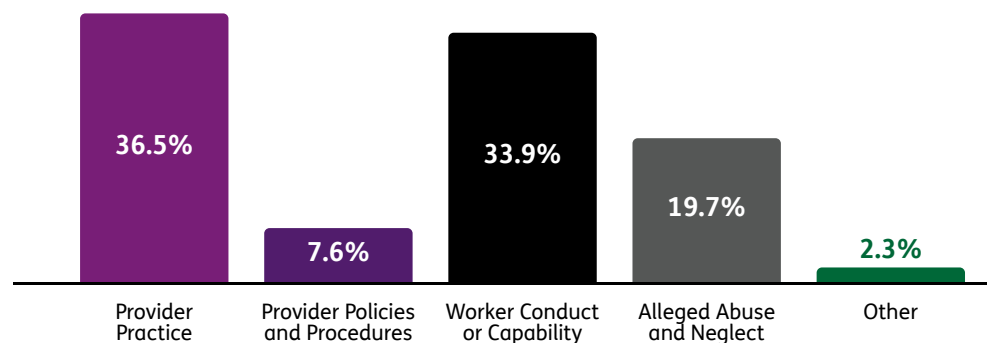
Number of complaints received by state/territory



Percent of complaints received by primary complainant



Issues raised by complaints received in the period can be grouped as follows:



3) Registrations

The NDIS Commission is committed to supporting and maintaining a diverse and sustainable NDIS market. The NDIS market comprises a wide range of providers – registered, unregistered, organisations and individuals, commercial businesses and not-for-profit organisations.

The registration of NDIS providers aims to ensure the provision of safe and quality services, by having providers meet quality and competency standards proportionate to the risk inherent in the service delivery and the scale of the provider.

Not all NDIS providers must be registered. Participants whose NDIS support plan is managed by the NDIA can only access their funded supports and services from a registered provider. Plan managers must be registered to manage the funding of supports included in a participant's plan. Providers must also be registered to deliver certain higher risk support types to any participant: specialist disability accommodation, development of Behaviour Support Plans, and for the implementation of regulated restrictive practices.

A transitioned provider is a provider who was previously registered with the NDIA and transferred to the NDIS Commission when the NDIS Commission started in each state and territory.

A new registered provider is an applicant who has completed the full registration process for the first time. These applicants may already have been delivering NDIS supports or services in an unregistered capacity or may be new entrants to the NDIS market or may be re-entering the registered provider market.

To apply for or renew a registration with the NDIS Commission, all applicants complete an online application, complete a self-assessment, receive a scope of audit, and undergo an independent audit against the NDIS Practice Standards by an Approved Quality Auditor. The NDIS Practice Standards are modular and applicants are assessed against standards in the modules that apply for the types of supports and services they deliver.

Applicants undergo either a full certification audit comprising a review of their policies, procedures and systems and direct engagement with participants and workers or a verification audit comprising a review of their policies, procedures and systems and verification of relevant professional qualifications where relevant. The type of audit an applicant undergoes depends on the types of supports and services they deliver.

The audit recommendation is submitted to the NDIS Commission by the Approved Quality Auditor and the NDIS Commission undertakes a suitability assessment of the applicant and any key personnel as part of the registration process. Once all these steps are complete a decision on the application is made and conveyed to the applicant.

Where a registered provider makes an application to renew their registration before the end of the period for which the registration is in force, the current registration continues until the Commissioner makes a decision on the application.

Where a registered provider elects not to make an application to renew their registration before the end of the period for which the registration is in force, the registration lapses or expires and the provider is no longer registered.

Case Study: Provider

Over 600 residential aged care providers supporting NDIS participants transitioned to registration with the NDIS Commission on 1 December 2020, meaning all NDIS participants across Australia have access to the same quality and safeguarding requirements, regardless of where they live. Transition arrangements based on risk delivered a phased approach to registration renewal for affected organisations. The phasing period aligns with the Australian Government's Young People in Residential Aged Care Strategy which aims to move all people with disability under 65 into more appropriate accommodation, except in exceptional circumstances, by 2025. Between 1 July 2021 and 31 December 2021, 32 residential aged care providers supporting over a third of NDIS participants in residential aged care have commenced registration renewal with the NDIS Commission.

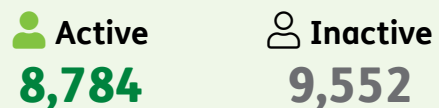


Registered Providers



17,834 at end of 30 June 2021

By active/inactive within last 3 months



A provider is considered active if they have made a claim for NDIS payment in the last three months

Number of providers that did not seek to maintain registration during reporting period

509



Organisations

11,115



Individuals

7,221

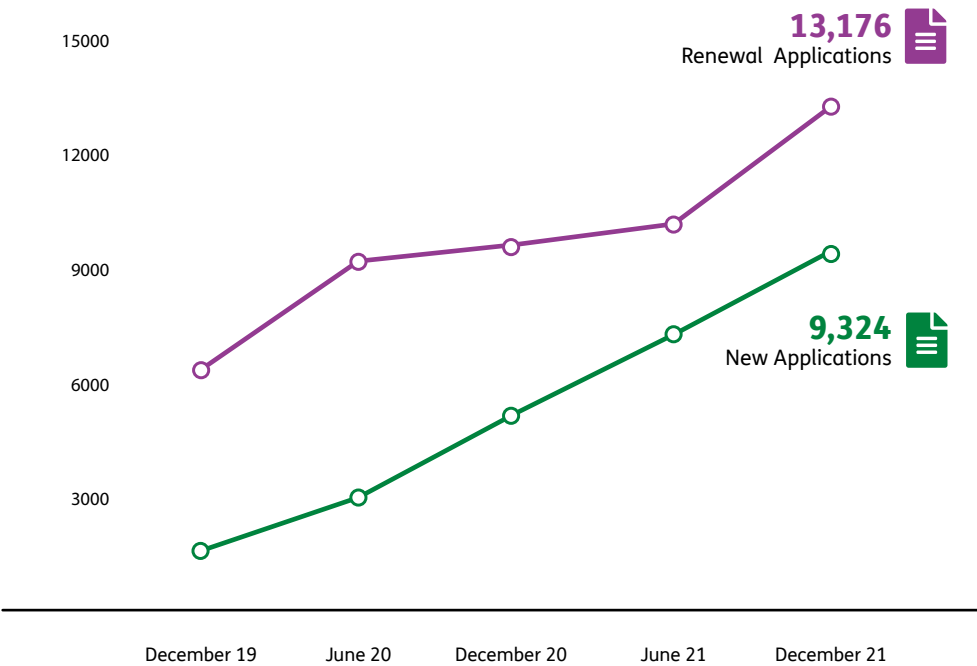


NDIS Quality
and Safeguards
Commission

Auditors and Audit Activity



New and Renewal Applications

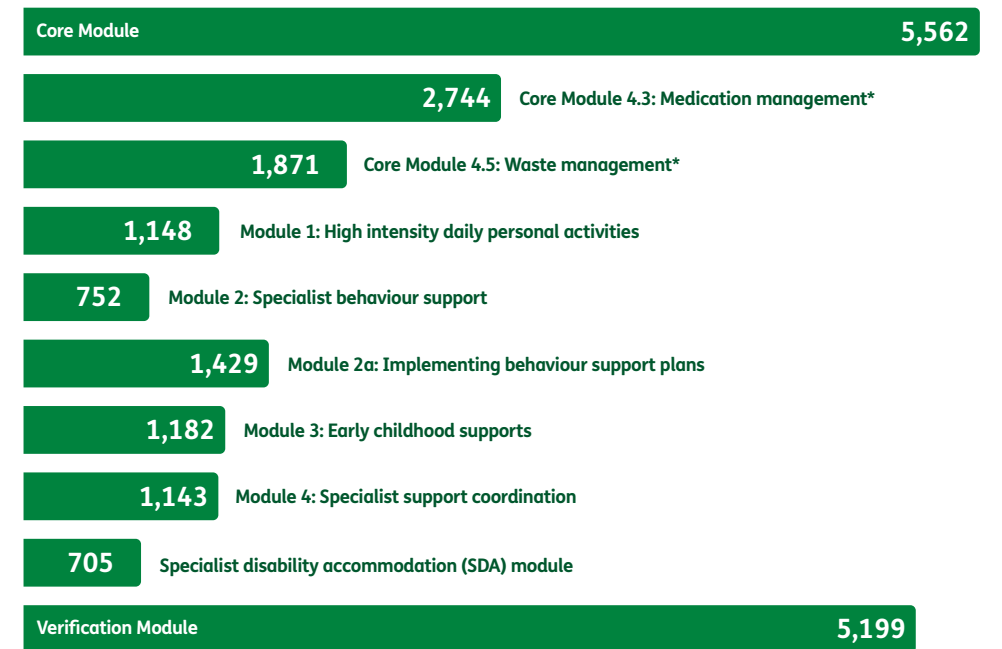


Applications By Audit, and modules completed

By Audit completed as part of the application process (Verification Audit, Certification Audit, Audit in progress/yet to commence)



Of those audits completed, by module completed¹



¹ Medication management and Waste management are standards within the Core module



4) Reportable Incidents (excl. Unauthorised Restrictive Practices (URP))

Registered providers are required to notify the NDIS Commission of certain serious incidents, including allegations, that occur in connection with the provision of NDIS supports and services. The NDIS Commission oversees the response and management of reportable incidents by registered NDIS providers to determine

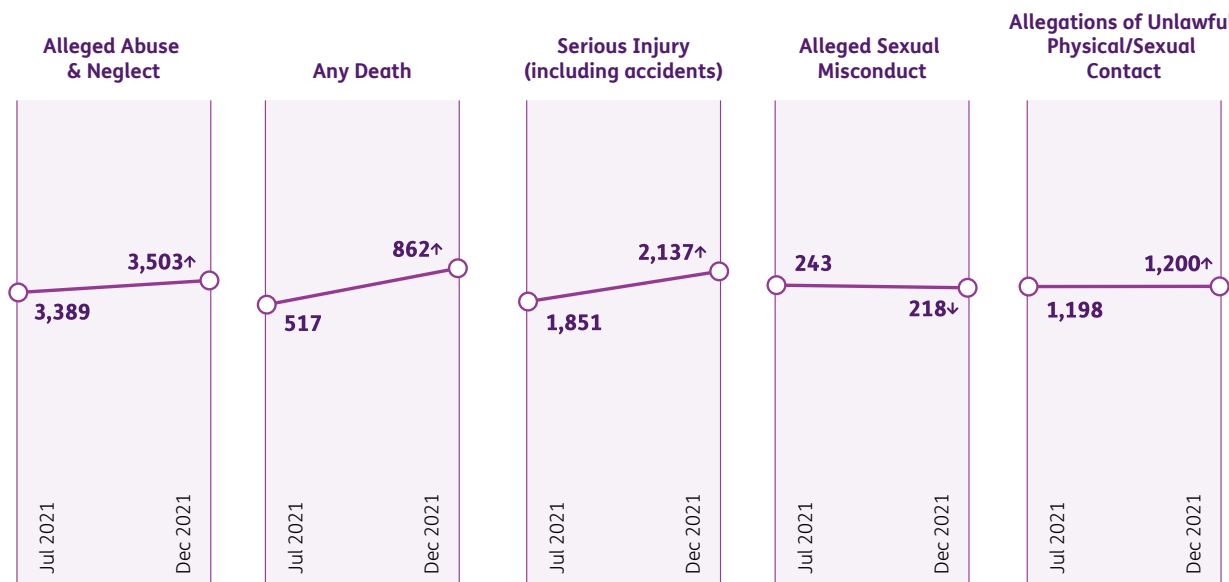
whether they are meeting their obligations to uphold the rights and promote the health, safety and wellbeing of people with disability.

The number of reports received does not correlate to the number of actual instances of harm to a person with

disability. Reports include multiple notifications of the same matter, allegations of incidents, and situations where incidents occurred, but harm to the person was avoided.

Number of RIs received (excl. URP) during reporting period

Total non-URP RI received 7,920



Providers indicated that Police were informed in relation to 1,505 incidents.



5) Unauthorised Restrictive Practices (URPs)

In this reporting period, the NDIS Commission were advised of 6,221 participants being subjected to unauthorised use of restrictive practices. The 6,221 participants were subjected to a total of 759,494 unauthorised uses of restrictive practices.

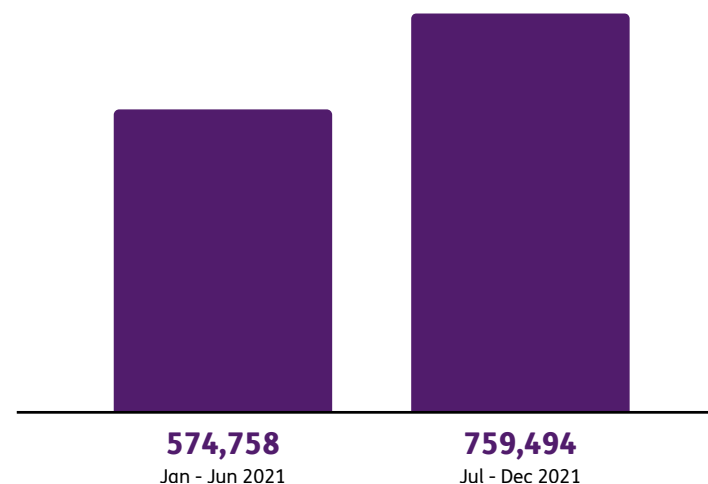
There continues to be high numbers of notifications of the use of unauthorised restrictive practices reported by implementing behaviour support providers to the NDIS Commission.

The NDIS Commission released a detailed analysis of URPs received during the 2020/21 period in January 2022. This report showed that the number of URPs continued to increase in the period from 1 July 2021, including data up to 30 November 2021. This followed an increase in the average number of URPs reported each month during the 1 December 2020 to 30 June 2021 period of around 93,700. A significant component of that increase was attributable to the expansion of the NDIS Commission's jurisdiction in Western Australia and in relation to RAC providers. During this reporting period (1 July to 31 December 2021), some Western Australian providers and RAC providers were still transitioning to the full reporting requirements and so the NDIS Commission anticipated that numbers of reports of URPs would continue to grow in the 2021-22 reporting period.

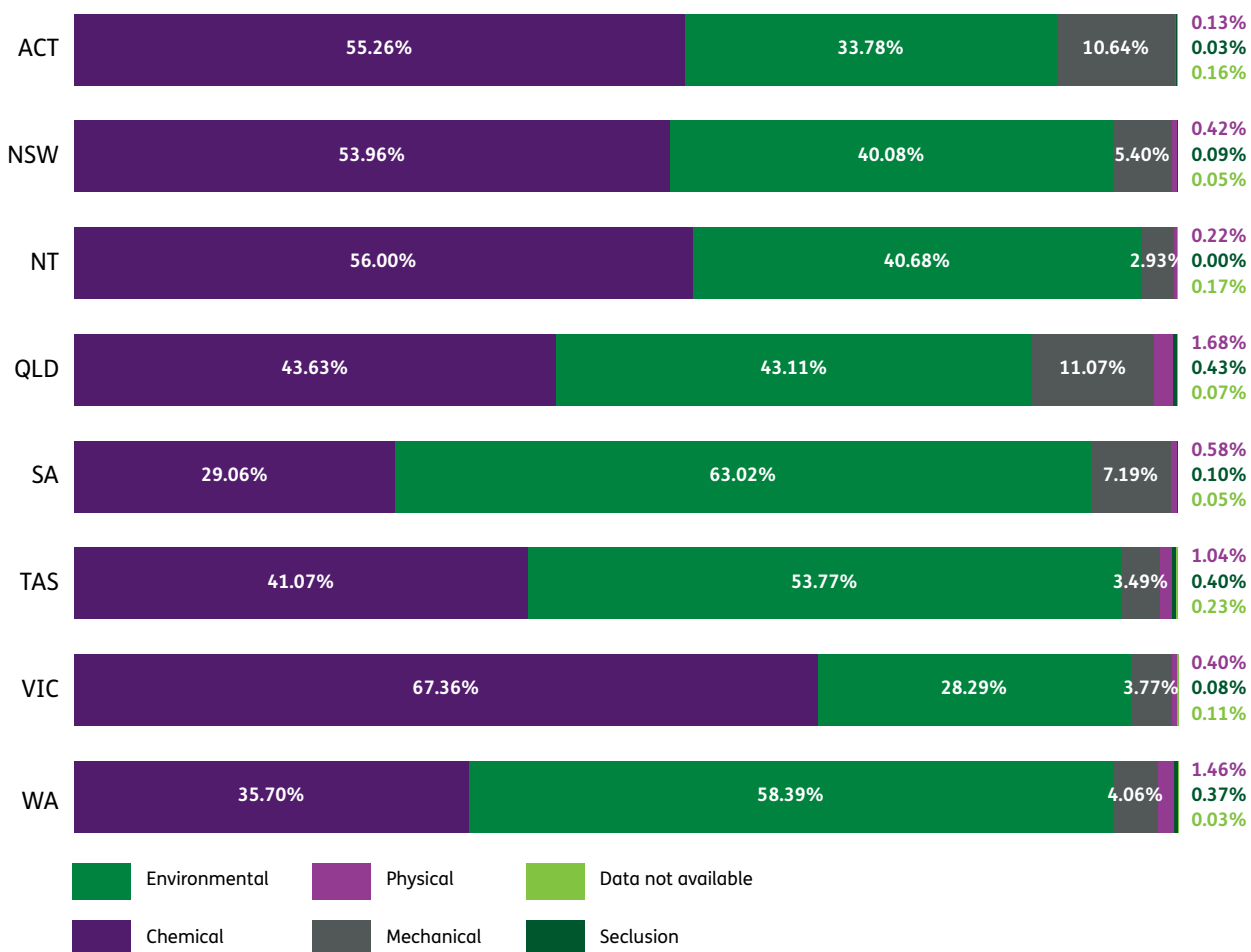
The NDIS Commission has a range of activities underway to address the unacceptable rate of URPs in the NDIS with both implementing providers and behaviour support providers. Those activities are set out in the URPs report which can be found on the NDIS Commission website alongside the previous Activity Report.

Those activities include:

- Continuing to target the current compliance activity on participant outcomes
- Increasing focus on compliance as soon as notifications of URPs are received
- Continuing engagement with States and Territories on authorisation processes
- Increasing the number and competence of behaviour support practitioners
- Reviewing the interaction of the regulatory requirements in relation to behaviour support and reportable incidents
- Building the capability of the workforce implementing restrictive practices



URPs by State/Territory and Restrictive Practice Type



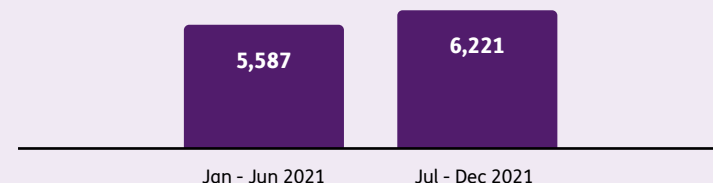
A restrictive practice means any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability.¹

The use of restrictive practices for people with disability can present serious human rights breaches. The decision to use a restrictive practice needs careful clinical and ethical consideration, taking into account a person's human rights and the right to self-determination.

In this Activity Report, we have provided data on the total number of URPs notified to the NDIS Commission in a given period. We will, in future, be looking at changing the way we report this data as the substantial numbers from past reports, can often divert focus and discussion away from the participants subjected to these practices, their individual circumstances and the requirements of providers to ensure their health, safety and wellbeing.

During the reporting period, the NDIS Commission were advised of 6,221 participants being subjected to unauthorised restrictive practices.

Total persons subject to URP



¹ section 9, *National Disability Insurance Scheme Act 2013*



6) Behaviour Support

The NDIS Commission oversees behaviour support practitioners and providers who use behaviour support strategies and restrictive practices involving NDIS participants. The NDIS Commission also provides best practice advice to practitioners, providers and participants on positive behaviour support strategies.

To inform that work, the NDIS Commission reviews provider reports on the use of restrictive practices.

The Senior Practitioner is responsible for delivering the NDIS Commissioner's behaviour support functions, outlined in section 181 (H) of the **National Disability Insurance Scheme Act 2013** (NDIS Act) with the overarching goal to provide leadership in relation to behaviour support, and in the reduction and elimination of the use of restrictive practices.

Case study: Behaviour Support

This case involved the use of the prohibited practice of physical prone restraint on 23 participants with complex needs.

In 2020, the Senior Practitioner of the NDIS Commission released a publication determining prone restraint to be a prohibited practice, which indicated to a service provider that the regulated restrictive practices they were implementing as per the participant's Behaviour Support Plans would no longer be authorised by the state government authorising body. The provider proactively reached out to the NDIS Commission to seek initial advice. The NDIS Commission identified the serious nature of which the practices were being undertaken. For some of the 23 participants Midazolam was implemented in combination with prone physical restraint.

The NDIS Commission issued the provider with a remedial action letter in accordance with section 26(1)(b) of the NDIS (Incident Management and Reportable Incidents) Rules 2018, which required the provider to report elimination of the practices to the NDIS Commission.

In response, a meeting was scheduled with the service provider and their executive team to work on reducing the practices that were high risk. As a result of the meeting, the service provider agreed to work collaboratively with the NDIS Commission to reduce and eliminate the use of prohibited practices.

The NDIS Commission's Behaviour Support Team worked collaboratively with the behaviour support provider and the service provider to assist with fading out the prohibited practices. Over the course of this matter, the Behaviour Support Team reviewed the provider's quarterly remedial action responses including all reports of unauthorised restrictive practices submitted, in addition to reviews of monthly reporting, and reportable incidents.

This resulted in the elimination of the prohibited practices from 23 participants to two participants. Once the prohibited practices were faded out the Behaviour Support Team further reviewed the Behaviour Support Plans.

On-going consultation and inter-agency collaboration continues to be undertaken to eliminate the use of prohibited practice with the remaining two participants, as they require extensive work due to the nature of the participants' complex needs. The NDIS Commission continues to monitor the service provider ensuring they proactively work towards the elimination of the prohibited practices with the two participants.

Number of Behaviour Support Plans lodged



6,547

Behaviour support practitioners



Provisionally suitable

7,266



Suitable

990



NDIS Quality and Safeguards Commission

7) Compliance Activity

We undertake compliance and enforcement activities. This involves:

- applying proportionate and appropriate regulatory responses to non-compliance
- investigating matters, and taking corrective compliance action
- deploying proactive compliance programs that address areas of identified risk of non-compliance
- working with other regulators
- conducting participant outreach
- taking enforcement action in serious cases of persistent and high-risk non-compliance

We use a range of compliance and enforcement powers, tools, and methods. In the most serious matters we can remove people and organisations from the NDIS market.

Case study: Compliance

We expect registered NDIS service providers to comply with the rules and regulations, particularly around the use of regulated restrictive practices, including notifying the NDIS Commission when there has been an unauthorised use of a restrictive practice. This is when a chemical, mechanical, physical or environmental (including seclusion) restraint is used without a Behaviour Support Plan in place and without authorisation by the relevant state or territory, where required.

The NDIS Commission found that a provider, while meeting its obligations to report the unauthorised use of restrictive practice:

- had not taken all reasonable steps to facilitate the development of Behaviour Support Plans that covered the use of regulated restrictive practices for a number of participants, and
- had not taken steps to obtain state authorisation for the use of any type of regulated restrictive practice.

In this case, the NDIS Commission issued a compliance notice to the provider.

A compliance notice requires a provider to take action, or refrain from taking action, in response to an issue of non-compliance under the NDIS Act. Failure to comply with a compliance notice may result in a maximum civil penalty of \$66,600 and/or action being taken on the registration of a provider.

The compliance notice required the provider to show that it had taken steps to obtain authorisation, had facilitated the development of interim and comprehensive Behaviour Support Plans, and had engaged an independent, suitably qualified person to review and report on its policies and procedures and make recommendations aimed at addressing any deficiencies.

The provider was able to provide all the information required and prove it had put the necessary measures in place.

The result: a clear plan to improve the way in which a number of people with disability are supported so they have fundamentally greater freedoms and better quality of life.



Number of compliance outcomes in reporting period

In addition to the below compliance activities and outcomes, the NDIS Commission commenced targeted compliance action in which:

- 12,037 registered NDIS providers were issued with a notice requiring them to provide information pertaining to the COVID-19 vaccination status of their workers, in the context of their obligations to comply with state and territory public health orders; and
- 626 registered NDIS providers were issued with a notice requiring them to provide information pertaining to actions taken to support NDIS participants to be vaccinated against COVID-19 if they choose to be, in the context of their obligations under the NDIS Code of Conduct and NDIS Practice Standards

By outcome type

18	Banning orders
<5	Registration suspensions
42	Registration refusals
5	Infringement notice
13	Compliance notices
19	Warning Letters
63	Remedial Action
143	Education
378	Investigations underway
1,391	Compliance activities underway
2,689*	Providers subject of compliance and/or investigation activity

* The providers subject of compliance and/or investigation activity does not include activity in relation to the COVID-19 vaccination status of workers.





8) Worker Screening

National NDIS worker screening commenced in all states and territories on 1 February 2021 (except for the Northern Territory which commenced on 1 July 2021).

NDIS Worker Screening is a preventative measure, that sits within a framework of capability building, prevention and monitoring of the workforce delivering disability supports and services to NDIS participants. As a preventative measure, worker screening deters individuals who pose a high risk of harm from seeking work in the sector, and reduces the potential for providers to employ workers who pose an unacceptable risk of harm to people with disability.

Worker screening also has a corrective effect in prohibiting those persons who pose an unacceptable risk or are proven to have harmed vulnerable people from having more than incidental contact with people with disability when working for a registered NDIS provider.

State and territory governments undertake the screening of individuals who seek a clearance, in accordance with state and territory laws. The Australian Government, through the NDIS Commission, is responsible for regulating NDIS provider compliance with their obligations in respect of worker screening.

Registered NDIS providers must ensure that key personnel and other workers in certain types of roles have a worker screening clearance that meets the requirements of the NDIS Practice Standards.

As of 31 December 2021 and since 1 February 2021, over 280,000 worker clearances have been granted, with approximately 6,500 registered providers and 3,500 unregistered providers being linked to a worker. In addition, over 100 workers have been issued with an exclusion which prevents them from being engaged by a registered NDIS provider to delivery NDIS supports or services that involve more than incidental contact with people with a disability.

Case study: Worker Screening

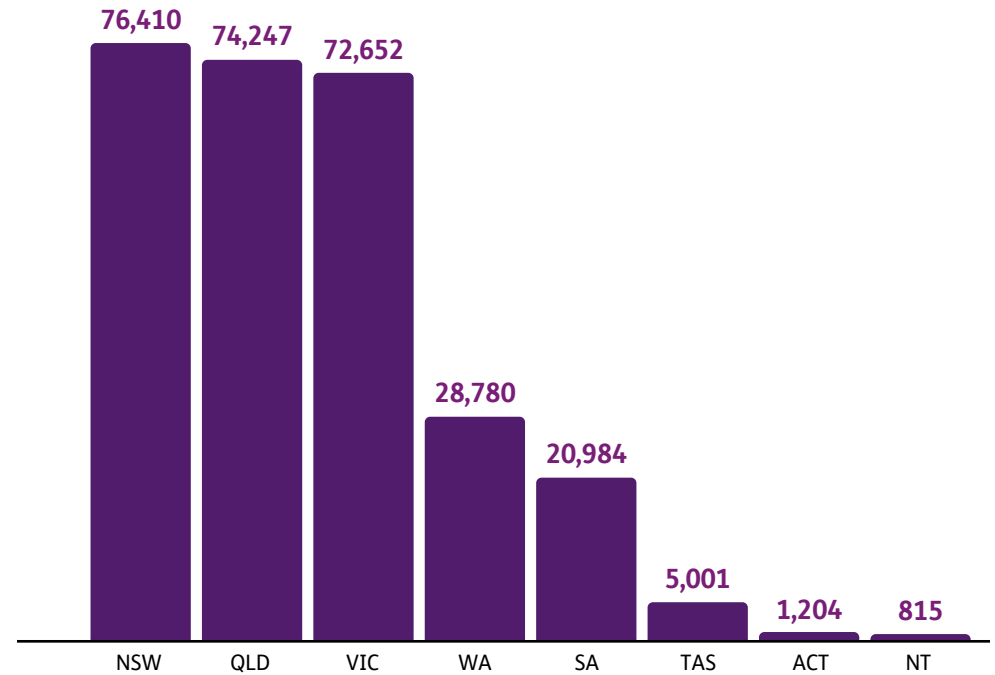
A worker who a registered NDIS provider intended to engage to provide NDIS supports applied for an NDIS Worker Screening Check. The state government Worker Screening Unit responsible for NDIS worker screening assessed the worker's NDIS Worker Screening Check application and decided, based on the worker's criminal history, to impose an Interim Bar on the worker's application. This prevented the worker from working in a risk assessed role for a registered NDIS provider until a decision about their suitability to work with NDIS participants was made. The Worker Screening Unit found that the worker was subject to a criminal conviction and pending charges that related to their alleged involvement in online scamming and large-scale operations designed to financially extort others. The Worker Screening Unit decided to issue the worker with an NDIS Worker Screening Check Exclusion. This means that the worker cannot be employed in any risk assessed roles in NDIS work while the exclusion is current. If the worker commences or continues any employment



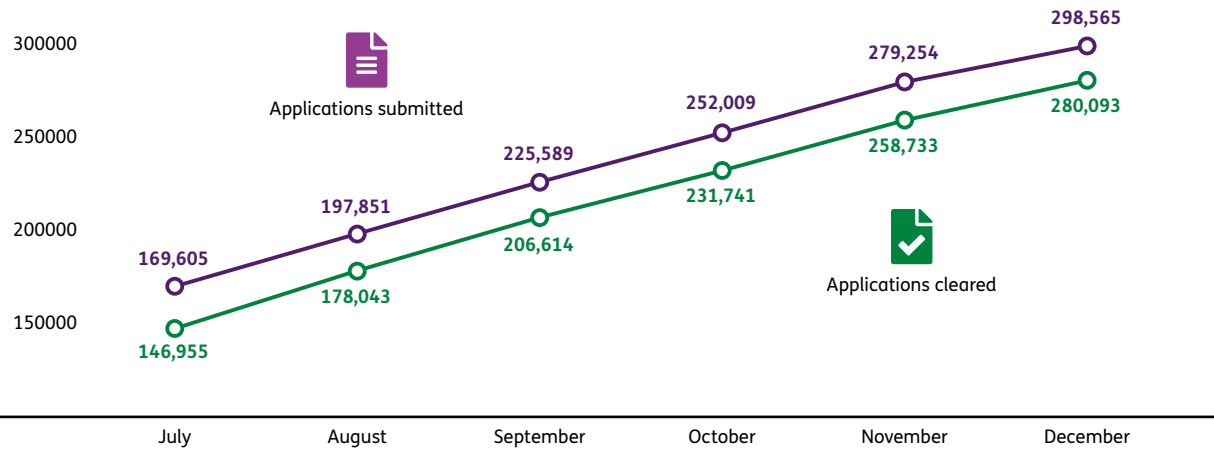
that is defined as a risk assessed role for a registered NDIS Provider, whilst an exclusion is in place, they will be committing an offence which carries penalties of imprisonment and/or fines depending on the laws of the state or territory.

The provider that had intended to engage the worker provides a range of high risk supports and services, including assistance with daily personal activities, assistance with daily tasks, community participation and transportation. Through the NDIS Worker Screening Database, registered NDIS providers are able to identify that the worker is excluded from working in a risk assessed role, and prevent that worker from being engaged to provide supports or services to NDIS participants.

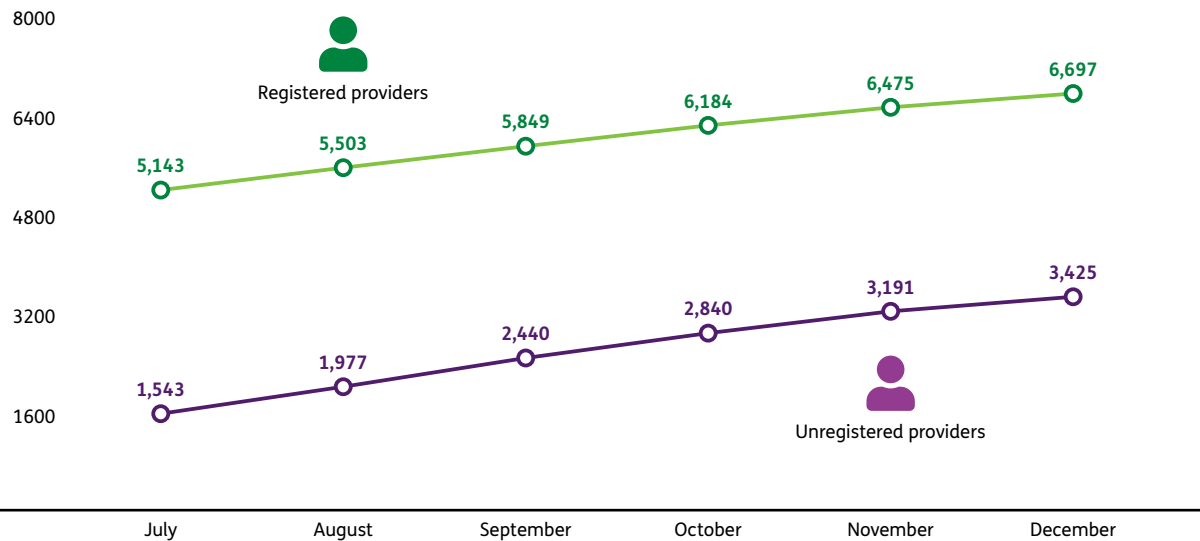
The NDIS Commission is also considering whether the worker should be banned from working in the disability sector with both registered NDIS providers and unregistered providers.



Applications submitted and cleared by State and Territory Worker Screening Units (Month to Month, Cumulative)



Number of providers linked to a worker



Number of NDIS Worker Screening Exclusions issued

110



Number of NDIS Worker Screening Check applications under Interim Bar

231



Number of NDIS Worker Screening Clearances under Suspension

46



9) Engagement

Number of contacts received via contact centre (1800 Number) or via email during reporting period



Total number of contacts

74,251



Total number of contacts from Participants

9,530



Emails

20,772

10) COVID-19

The NDIS Commission supported participants and providers in response to the COVID-19 pandemic. We reinforced the obligations of providers to maintain supports critical to the health, wellbeing and safety of NDIS participants, to plan for adjustments to services, to communicate and consult changes with participants, and to have plans in place to prevent and respond to infections. We managed complaints from participants about how NDIS providers and workers supported them when restrictions were in place. We used registered NDIS provider conditions of registration to monitor changes and risks in the NDIS market.

The key strategies employed were:

- Being an active player in whole of government processes to ensure that the safety of people with disability was fully considered in the development of plans and the implementation of responses;
- Adapting internal governance, process and operations to meet the demands of the crisis;
- Communicating widely to participants and providers so that they could understand how the NDIS Commission was responding and what it might mean for them;
- Supporting providers to fully understand their obligations under the NDIS Act in the circumstances of the pandemic and ensuring they had access to the information that they require to meet those obligations;
- Engaging extensively with peak bodies in the disability sector, with organisations representing people with disability and with states and territories, and with a range of experts on key issues.
- Working closely with the National Disability Insurance Agency (NDIA) in responding to identified risks to participants as a result of the pandemic, including impacts on the ability of providers to continue to deliver supports and services.



NDIS Quality
and Safeguards
Commission

Registered NDIS providers are required, under conditions of registration, to notify the Commissioner of certain changes and events that significantly impact their ability to deliver NDIS supports and services that they are registered to provide. The NDIS Commission has established an online form for providers to notify impacts of COVID-19.

As at the end of the reporting period, the NDIS Commission was notified of 1,395 participants who returned positive tests for COVID-19.

Sadly, the NDIS Commission was notified of 28 participants who have died with COVID-19. The NDIS Commission maintains COVID-19 infection rates for participants as notified to the NDIS Commission by registered providers which are published by the Department of Health.



Number of Infections as at 31 December

Infections by state/territory

New South Wales		Victoria		All other States and Territories	
Participant Active	179	Participant Active	57	Participant Active	45
Participant Recovered	336	Participant Recovered	724	Participant Recovered	26

Total Participant Active	281
Total Participant Recovered	1,086





Number of COVID related complaints

1,658



Number of COVID related contacts via calls to contact centre

1,032



Number of providers making COVID related notifications of support change

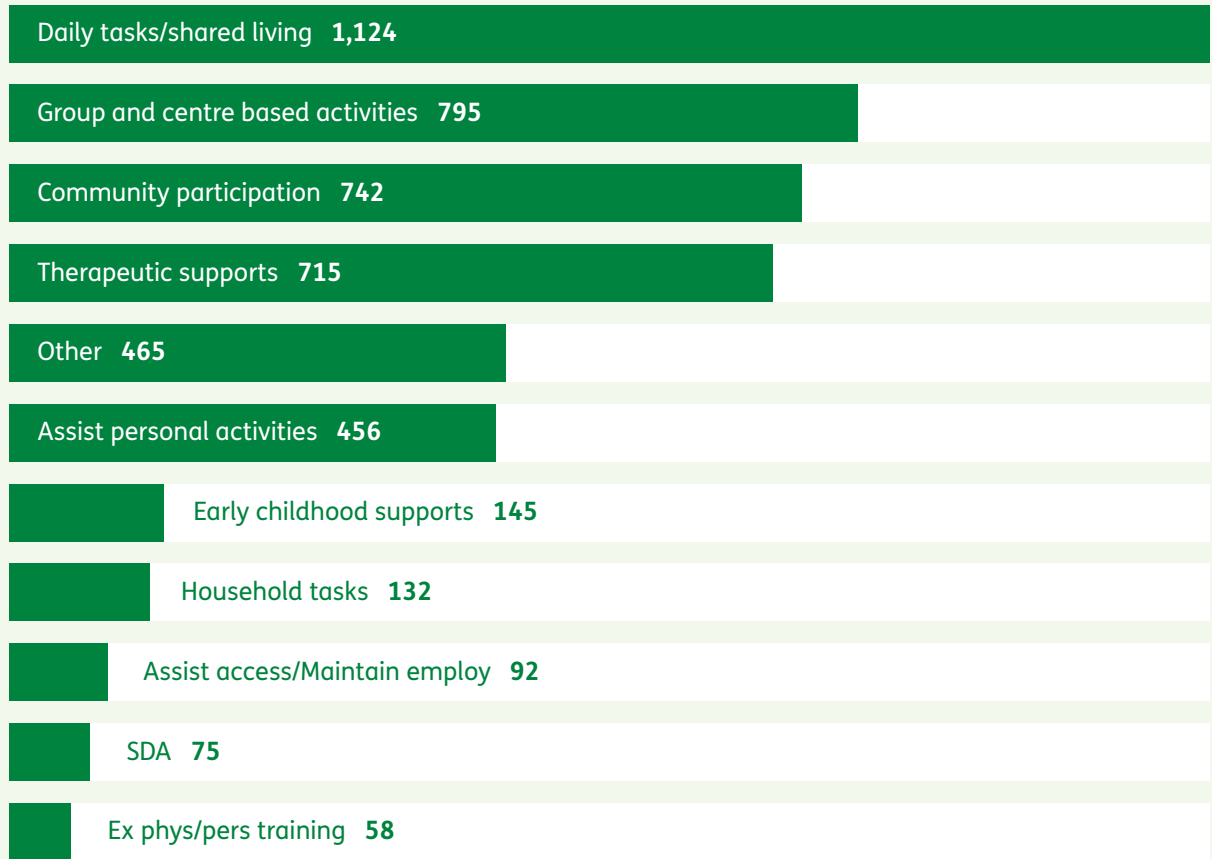
1,481



Number of COVID related notifications of support change

4,051

Number of COVID related notifications of support change, by Registration Category



Total notifications 4,051

(note: a single notification can be about more than 1 registration category)





Number of registered providers
associated with Worker
Vaccination Notices

12,037

Worker vaccination Rates by State

ACT	98.8%
NSW	96.2%
NT	96.2%
QLD	92%
SA	92.7%
TAS	96.3%
VIC	96.8%
WA	90.9%
Total	94.8%

Note: Data was extracted for this section in late January 2022

COVID-19 Pandemic

The NDIS Commission has continually provided information to service providers about their obligations to safely and competently provide supports and services to people with disability during the pandemic. Since the beginning of the pandemic we have issued:

Providers: 172 provider alerts; 7 fact sheets; 8 e-newsletters containing information relating to COVID-19; 1 information pack for NDIS providers and workers.

Participants: 4 fact sheets; 4 e-newsletters (SAFEGuard) containing information relating to COVID-19; 1 information pack for NDIS participants; 1 joint NDIS Commission and NDIA open letter to all Victorian participants and their support networks.

