



NDIS Quality
and Safeguards
Commission



Joint Statement on the Approach to Supporting at Risk NDIS participants

The NDIS is a universal scheme for Australians with permanent and significant disability who are likely to require lifelong supports to assist them to participate in, and contribute to, social and economic life.

The NDIS gives effect to Australia's obligations under the Convention on the Rights of Persons with Disabilities. It is designed to support the independence and social and economic participation of people with disability, by providing supports necessary to enable them to realise that independence and participation, and to exercise choice and control in their lives, and in how the supports they require are delivered.

The National Disability Insurance Agency (NDIA) and the NDIS Quality and Safeguards Commission (NDIS Commission) are each established under the National Disability Insurance Scheme Act and together implement the principles and objects of the NDIS Act, through fulfilment of their respective functions.

The NDIA and the NDIS Commission each work to build the capacity of NDIS participants to achieve outcomes in the NDIS that promote their rights, health, safety and wellbeing.

The NDIA administers the scheme, providing eligible participants with individualised funding to access reasonable and necessary supports to maximise their social and economic participation in their communities.

The NDIS Commission regulates the providers of the supports and services that NDIS participants receive through the NDIS.

In addition the Department of Social Services (DSS) leads policy and legislative work in relation to the NDIS Quality and Safeguarding Framework and provides policy advice to the Minister with responsibility for the NDIS.

A joined up approach to at risk participants

We recognise that the needs of participants are diverse, and that everyone in the NDIS should have equitable access to effective, safe and quality supports that meet their needs no matter what their circumstances, the nature of their disability, or where they live.

We also recognise that some participants may be at greater risk of poor outcomes, including risk of harm.

In April 2020 Ms Ann-Marie Smith, an NDIS participant, died in appalling circumstances in her home in Adelaide. Her carer pleaded guilty to manslaughter and was sentenced to 6 years' jail in early 2022. An independent inquiry was undertaken by former Federal Court judge, the Hon Alan Robertson SC, into the systems and processes of the NDIS Commission in its regulation of Ms Smith's NDIS provider, Integrity Care. Mr Robertson also considered the actions of the NDIS Commission in response to Ms Smith's death.

Mr Robertson's report was released to the public on 4 September 2020. His review did not identify any significant failings in the nature or timing of the steps taken by the NDIS Commission in response to Ms Smith's death.

In making his findings Mr Robertson made recommendations on further actions that should be taken by the NDIS Commissioner. Mr Robertson also made suggestions relating to the NDIA that required joint or coordinated action with the NDIS Commission and the broader NDIS quality and safeguarding policy framework.

Taking action to address risk

The Australian Government through the NDIA, NDIS Commission and DSS, has adopted a shared approach to identifying and responding to NDIS participants who may be at greater risk of harm and for whom the current system level approach to regulating and safeguards under the NDIS Quality and Safeguards Framework may be less effective.

Further, a Targeted Action Plan is being developed as a part of Australia's Disability Strategy and is aimed at improving safety in supports for people with disability using mainstream service systems such as health, education, justice and housing who may have interactions with the NDIS.

This shared approach includes consideration of the role of both the NDIS Commission and the NDIA in safeguarding participants.

The NDIS Commission has taken action in respect of those recommendations made by Mr Robertson that fall within its purview and will continue to develop additional responses and monitor progress.

The NDIA has similarly responded to Mr Robertson's suggestions as they relate to its area of responsibility and its interactions with the NDIS Commission including establishing a framework for identifying at risk participants and addressing that risk through its functions. In recognition of this shared responsibility, the NDIA and NDIS Commission have also jointly developed an Operational Protocol for potentially vulnerable or at risk participants.

The following steps have been taken to address the risk of harm:

- **Developed approach to identify at risk participants** by both the NDIA and the NDIS Commission to: identify those participants that need additional focus to reduce the risk of harm to them; identify how, from time to time, and at any particular time, such participants can be identified; and implementing arrangements to ensure that the risks experienced by those participants are responded to at the individual level, relative to the role of the NDIA and the NDIS Commission, or other parties. Specific measures include planners conducting periodic check ins with identified at risk participants, and complaints officers conducting provider site visits according to refreshed guidelines.
- **Strengthened the NDIS Act** to enable the sharing and use of protected NDIS Commission information where it is necessary to prevent any threat to a person's life, health or safety.
- **Updated existing joint protocols** between the NDIS Commission and the NDIA to permit freer, two-way sharing of information reflecting the changes to the NDIS Act.
- **Established an enduring arrangement for the sharing of certain data** between the NDIA and the NDIS Commission to enable seamless planning, a no wrong door approach for complaints, and management of active risks.

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- **Established an approach to escalating certain risks about the wellbeing and safety of participants and respond to participants with critical support needs** between the NDIS Commission and the NDIA.
 - **Placed additional obligations on registered NDIS providers** supporting people in their own home, to provide added oversight and protection where a person has a sole support worker, and associated compliance oversight of those obligations by the NDIS Commission.

The NDIS Quality and Safeguarding Framework will be reviewed in 2022-23, which will provide an opportunity for stakeholders to provide feedback on how quality and safeguarding arrangements can continue to be further improved.

By working together to identify and provide additional focus to reduce the risk of harm to those participants who need additional protections, we are continuing to improve the outcomes for all Australians participating in the NDIS, no matter what their circumstances.

June 2022

Tracy Mackey

Commissioner

NDIS Quality and Safeguards Commission

Martin Hoffman

Chief Executive Officer

National Disability Insurance Agency