



In May 2020, the NDIS Quality and Safeguards Commissioner, Mr Graeme Head, commissioned the Hon. Justice Alan Robertson SC to conduct an independent review into how the NDIS Commission carried out its functions in relation to the provider of NDIS supports and services to Ms Ann-Marie Smith. Ms Smith was an NDIS participant who died in South Australia in 2020. Mr Robertson was asked to consider any changes to the processes or systems, or the legal framework governing the NDIS Commission's functions.

Mr Robertson submitted his report to Mr Head on 31 August 2020. Mr Robertson's report included a recommendation that:

*No vulnerable NDIS participant should have a sole carer providing services in the participant's own home. The relevant statutory instruments and guidelines should be amended to provide expressly for this.*

In October 2020, as an interim measure in response to this recommendation, the NDIS Commission applied a condition of registration on providers registered to deliver the class of support 'Assistance with daily personal activities.' The focus of the interim measure was to address the heightened risk of potential harm to participants where certain circumstances apply to them. This [condition](#) was applied to more than 2,400 providers and has been the subject of targeted compliance monitoring since it was introduced. The condition was designed following extensive compliance actions with these 2,400 providers delivering this class of support from May 2020.

In March 2021, the NDIS Commission engaged Discourse Consulting to consult with a wide range of stakeholders to gauge views on a possible change to the NDIS Rules to make more permanent the requirements imposed through this condition of registration. The NDIS Commission was eager to understand the disability sector's views and responses to the issue of balancing safeguarding for NDIS participants living in their own homes who may be at risk of harm or poor practice because of sole worker arrangements, against the fundamental principle of the NDIS that participants have autonomy, expressed as choice and control by the participant in relation to their supports and their providers.

The NDIS Commission identified organisations and individuals that would represent the interests of people with disability, and industry to participate in the consultation. This included people with disability, and a mechanism for obtaining views of NDIS Participants.

Discourse Consulting has provided its report to the NDIS Commission. The consultation indicated strong support for the current condition on the registration of providers delivering 'Assistance with daily personal activities', provided the Commission continues to review the application of the condition so its intent remains effective. Other themes relating to the topic of the consultation included:

- the use of the term "vulnerable" should be avoided for participants, instead consider risks to participants, and frame regulatory responses around that concept

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- the need to assess risk based on broader risk factors, than just the risk of the sole carer living in their own home
  - there should be an evidence-based view of participant risk to inform risk minimisation activities
  - recognition of the risk mitigation possibilities on the range of interactions with participants within the NDIS
  - maintaining maximum choice and control for participants.

The project raised a number of other views and interests that were not directly related to the specific subject of consultation. These views have also been captured and will be of value to the NDIS Commission in other aspects of our work.

The NDIS Commission considers that, whilst the consultation did not expressly surface the need for adjustments to subordinate legislation establishing obligations on NDIS providers (the Rules), the themes identified through the consultation indicate there remains benefit in making Rule adjustments so that:

- The matters contained in the interim condition can be applied in a broader safeguarding context than personal care, participants living in their own home, alone, and sole carer arrangements.
- The NDIS Practice Standards can reflect other findings of Mr Robertson, mainly the establishment of an agreed approach to identifying and responding to a greater risk of harm for some NDIS participants for whom the NDIS Commission's system level approaches may be less effective.
- Incorporating the key themes and actions from condition of registration into the NDIS Practice Standard would have the effect of embedding these matters in the quality assurance processes for providers, regardless of the types of supports being delivered, and enables assessment through the registration process, both at the point of registration, and through the mid-term audit.

The NDIS Commission will therefore now progress work on adjustments to the NDIS (Provider Registration and Practice Standards) Rules 2018 to respond to these matters. Further consultation will be undertaken by the NDIS Commission with stakeholders, on the form of those amendments, including with states and territories as required under the NDIS Act 2013.