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Thank you for the opportunity to provide a written submission in respect to the operation of the NDIS Quality and Safeguards Commission since it commenced operation on 1 July 2018.

Autism Spectrum Australia (Aspect) is Australia's largest not-for-profit provider of services and supports for people on the autism spectrum and their families/carers and support networks. Our mission is to provide person centred solutions which are flexible, responsive and evidence informed. In our work, we focus on the strengths and interests of people on the autism spectrum, and we work in partnership with them, their families/carers and their support networks. We work to understand people on the autism spectrum from their perspective. Our approach is autism-specific. Our research focuses on best practice. We expect positive change and progress towards positive goals and outcomes.

We provide comment and recommendations on the terms of reference most relevant to our organisation and the participants with whom we work.

**a. The monitoring, investigation and enforcement powers available to the Commission, and how those powers are exercised in practice;**

Issues experienced by Aspect relating to powers available to the Commission relate to three main areas – inadequate communication during initial roll out, unclear policies and procedures and inconsistent communication from Commission staff.

The initial roll out of the Commission and communication from the Commission has been poor. In many cases the sector has been left to discover important information/updates on the Commission's website. Some regional and remote providers are only becoming aware of the Commission two years after implementation. Preparation for the disability sector in terms of the cost of meeting Commission requirements, as well as an understanding of how these requirements impact on provider service provision has been limited.

Powers of enforcement, investigation and monitoring have also been significantly impacted by a lack of processes and procedures, particularly across the first years of implementation. Inconsistent language and terminology as well as issues in recording conversations and advice accurately has been regularly experienced in interactions with the Commission.

The monitoring, investigation and enforcement powers available to the Commission have appeared inconsistent in all interactions with the Commission. In practice, the Commission has been "heavy handed" about compliance. At other times the Commission has been slow to respond, or advised that organisations need to make decisions for themselves despite the severity and risks involved in these decisions. This inconsistency seems largely linked to difficulties in communicating with the Commission, particularly as there are many different representatives and it is difficult to talk to the same representative twice. In addition to this different representatives at the Commission will have differing opinions or views on how a matter should be managed, meaning that messaging and communication is conflicting. Monitoring and enforcement powers have been particularly problematic in the area of restrictive practices where delays in monitoring can occur for months, meaning that enforcement can come suddenly and swiftly with no warning to implementing providers.

The ability to monitor, investigate and enforce requires an understanding of the disability sector, and the issues disability support workers and other professionals are experiencing on the ground. It is apparent from interactions with the Commission that Commission staff do not understand what is happening for disability service providers and more importantly for those living with disability. At times their inability to advise on more complex matters seems to be a difficulty in Commission staff skill set and knowledge for complex cases.

**Recommendations:**

- Increased Commission staff training and understanding of the Commission's role and interpretation of guidelines
- Increased Commission staff exposure to the reality of disability service provision
- Clear and consistent communications to all registered providers
- Centralised communication or the ability for a provider to have a "key contact"

**b. The effectiveness of the Commission in responding to concerns, complaints and reportable incidents – including allegations of abuse and neglect of NDIS participants;**

Responding to concerns, complaints and reportable incidents is an area in which the Commission has made some improvements. However, some considerations need to be implemented to more thoroughly develop significant and practical outcomes of these functions.

The complaints function of the Commission seems to have the highest investigative power, at the same time there is limited communication back to providers who have made initial complaints. This causes concern for providers due to not knowing whether the people with disability they support are safe, and limiting provider collaboration and support to achieve better outcomes for people with disability.

Whilst complaints seem to be noted and taken seriously at the time, it has been hard to see any positive outcomes for people with disabilities who are subject to abuse and neglect as an outcome of these complaints. It is apparent that people with disabilities are still subject to abuse, neglect and exploitation despite implementation of the Commission, and the thresholds for action or what can be done by the Commission (for example, removing people with disabilities from supported accommodation that is abusive) seems limited.

Responsiveness to concerns, complaints and reportable incidents can be inconsistent in terms of time frames. In some circumstances reportable incidents have not been investigated for months, and escalation of action to service providers has taken up to nine months. Investigations into reportable incidents seem to be focused on documents and compliance rather than providing practical, on the ground support to providers. In general, these responses from the Commission seem to prioritise "catching providers out" rather than working proactively to improve the sector and the quality of care people with disability experience. Responses and queries regarding reportable incidents by the Commission have demonstrated a lack of understanding about the complexity of need and behaviours of concern. When representatives from the Commission have questioned why there are difficulties in completing a behaviour support plans in times dictated by the Commission, there has been limited understanding or acceptance of barriers and challenges to plan development such as family disengagement, participant homelessness or risk of homelessness and disagreement between practitioner and implementing provider around restrictive practice definitions and implementation. In addition, when speaking with behaviour support specialists at the Commission, the usual response is that they have to consult with management for responses. Responses are general and mostly unhelpful to support the complexities of individual situations.

**Recommendations:**

- Reciprocal transparent communications and support to providers
- Commission developing timelines for communication back to providers

**c. The adequacy and effectiveness of the NDIS Code of Conduct and the NDIS Practice Standards;**



The NDIS Practice Standards and Code of Conduct are appropriate and effective. Whilst these Standards and Code aim to provide the best service possible to people with disability, it would appear that many service providers are encouraging participants to utilise plan management and self-managed NDIS plans. Plan managed and Self managed often enable the service provider to undertake the verification process rather than the certification process, which it is less onerous. It also means that participants being provided with the exact same service may have different levels of protection depending on how their plan is managed. This means that larger organisations have to follow higher standards of practice, which smaller organisations do not. This leads to inconsistency in implementation of disability practice standards and codes across the disability sector.

**Recommendations:**

- Consistency for all providers across the sector, with additional support and guidance provided as needed to smaller organisations

**d. The adequacy and effectiveness of provider registration and worker screening arrangements, including the level of transparency and public access to information regarding the decisions and actions taken by the Commission.**

The adequacy and effectiveness of provider registration was initially more challenging but has become easier since implementation of a national framework. However, as a national provider we are still facing the legacy issue of having multiple state registrations from the transition days. This has created confusion in terms of responses to the Commission to requests for information. We are currently working through the process of deregistering the numbers not required. However, Aspect is yet to be advised of the timeframe when this may occur. In the meantime, we are required to respond with the same information three times. It is also concerning that newer organisations may not be subject to the same level of oversight.

Aspect has only just been advised that it's registration has been renewed, even though the application process commenced over 12 months ago. This has created uncertainty for the Organisation and there has been little to no communication from the Commission with regards to the reason for the delay. In fact Aspect was forced to reach out to it's auditing body who was able to gain information from the Commission as to the delay being related to an IT issue, even though Aspect had made many phone calls seeking an update on the delay to it's registration with no mention of an IT issue provided.

In addition, worker screening arrangements have not yet been released or implemented by the Commission. Aspect has made preparations to be ready to implement the new process in line with the communicated timeframe three times, only to have that timeframe pushed back by the Commission. In the current climate it is generally more challenging to get screenings done in regional and remote areas. As a multi-state provider we are still working with the different requirements in each state to maintain compliance. During the COVID-19 pandemic Aspect has expanded its tele-therapy services but has experienced confusion in terms of identifying the requirements for screening of staff when services may be delivered remotely from a different state to the participant's location. We continue to await the introduction of the long awaited promise of a single national system.

**Recommendations:**

- Consistency for all providers across the sector
- Finalising and implementing worker screening
- Assistance from the Commission to rectify legacy issues from transitional arrangements

**e. The effectiveness of communication and engagement between the Commission and state and territory authorities;**

Communication and engagement between the Commission and state and territory authorities has been incredibly complicated and, historically, very limited. In the first year of implementation of the Commission it was noted that staff from the Commission had not met with other state bodies such as the ADHC Commissioner and the Guardianship Tribunal. During the second year of implementation the Commission and state body Senior Practitioner in Victoria and territory body Senior Practitioner ACT openly disagreed

about definitions of restrictive practices and processes for providing and implementing behaviour support plans. Whilst this was confusing and overwhelming for implementing providers and behaviour support practitioners, it was even more so for people with disability and their support networks.

Due to a lack of communication and engagement between the Commission and state and territory authorities there has been a large amount of administrative “doubling handling”, for example, the need to submit a behaviour support plan on two different systems and in different formats to meet both Commission and state requirements. This has led to experienced behaviour support practitioners leaving the sector, resulting in a significant shortage of practitioners to complete this work for people with disability.

With a lack of behaviour support practitioners in the disability sector many people with disability have had to wait for lengthy periods for these services. Whilst waiting for behaviour support, implementing providers have potentially had to complete an overwhelming amount of reporting for the use of necessary but unauthorised restrictive practices. This has been particularly difficult in the case of chemical restraint, which is often not prescribed or recommended by disability support workers but required by medical professionals to be implemented. As a result providers have had to engage in an overwhelming amount of reporting for practices they do not recommend.

**Recommendations:**

- Commission to collaborate with relevant state authorities to streamline systems and provide consistency for providers across state boundaries
- Clear and consistent messaging from all relevant bodies
- Agreed terms and language used by all relevant bodies
- A focus of the reduction of red tape and duplicated reporting

**f. The human and financial resources available to the Commission, and whether these resources are adequate for the Commission to properly execute its functions;**

The current amount of human and financial resources available to the Commission is unknown, however a lack of collaboration and challenges to effective implementation would indicate under-resourcing. As mentioned previously, communicating with the Commission often means talking with multiple different people each time, making collaboration difficult as well as inconsistency and time wasted re-telling key factors of a situation.

Internal communication within the Commission would indicate a lack of resourcing, often one part of the Commission is unaware of issues and situations in another. Behaviour support practitioners have been taken off the ground to work within the Commission, again leading to a lack of behaviour support practitioners on the ground providing services to people with disability

**Recommendations:**

- Transparency on resourcing of the commission

**g. Management of the transition period, including impacts on other commonwealth and state-based oversight, safeguarding, and community engagement programs; and**

Transition periods were generally managed poorly and not communicated well across the sector. It was apparent in the first year of implementation that “the plane was being built whilst flying” and there were limited processes and procedures in place, as well as thought to how specific challenging situations would be managed (for example, people with disabilities attending service in one state/territory but living in another).

Community engagement has been quite limited with most communication around changes to the Commission or updates coming from other disability providers and governing bodies. The transition period was particularly managed poorly in Victoria where state-based oversight and safeguarding already existed. Conversations with the Senior Practitioner at the time indicated that there was significant disagreement and conflict between the Commission and state based systems. Transition issues and consistency has not yet

been resolved, in some states for years. The promise of a single nationwide consistent system has yet to be realised and for national providers the current system has actually increased the workload to identify and monitor compliance requirements across states and territories.

***Recommendations:***

- Review current arrangements and provide consistent process across states

**h. Any related matters**

The Commission portal is very difficult to manage and use. The interface is not user friendly or easy to use, functional reports cannot be run and it does not link well with other incident reporting systems. As a result the workload for incident reporting has doubled as we are required to capture incidents in our own system (a requirement of the NDIS rules) and then complete another report within the Commission portal. Capturing behaviour support plans seems to largely be about data collection, rather than allowing for practical implementation of behaviour support strategies by implementing providers. The portal seems limited in its ability to create oversight and be able to see all components for one organisation. In addition, any reports or data run from the portal need to be manipulated and re-written to create meaningful data.

***Recommendations:***

- Develop an interface to allow data to be transmitted from existing systems into the portal to reduce the burden on providers
- Enable reporting from the portal that provides meaningful data through a simple process

