



The Hon Kevin Andrews MP
Chair
Joint Standing Committee on the
National Disability Insurance Scheme
Parliament House
CANBERRA ACT 2601

Dear Mr Andrews

I write in relation to the evidence received by the Joint Standing Committee on the National Disability Insurance Scheme (JSC) at the Caloundra public hearing on 28 June 2021 regarding NDIS Worker Screening Checks. The evidence posed a number of questions for the NDIS Quality and Safeguards Commission (NDIS Commission) concerning NDIS Worker Screening requirements and processes, which you requested the NDIS Commission provide information to the JSC.

Background to NDIS Worker Screening

In December 2016, the Council of Australian Governments (COAG) endorsed the National Disability Insurance Scheme (NDIS) Quality and Safeguarding Framework (the *Framework*), setting out a new nationally consistent approach to regulation under the NDIS.

The Framework is designed to support the rights of people with disability by ensuring they have access to quality and safe services under the NDIS. A nationally recognised approach to worker screening is an important element of this Framework that minimises the risk of harm to people with disability from the people who work closely with them.

In 2017, COAG also agreed to the *Intergovernmental Agreement for Nationally Consistent Worker Screening for the NDIS* (the *Intergovernmental Agreement*), setting out a new nationally consistent approach to the screening of workers under the NDIS. Under the *Intergovernmental Agreement*, the Australian Government, through the NDIS Commission, is responsible for regulating NDIS provider compliance with their obligations in respect of worker screening. State and territory governments undertake the screening of individuals who seek a clearance, in accordance with state and territory laws.

NDIS Worker Screening commenced nationally on 1 February 2021, and in the Northern Territory on 1 July 2021 and replaces existing arrangements around the country to set a single, national standard for all workers.

Worker screening functions of the NDIS Quality and Safeguards Commissioner

Section 181E of the *National Disability Insurance Scheme Act 2013* (Cth) (NDIS Act) sets out the Commissioner's core functions that includes *to develop and oversee the broad policy design for a nationally consistent framework relating to the screening of workers involved in the provision of supports and services to people with disability*.

In accordance with the Intergovernmental Agreement, the screening of workers is conducted by the states and territories in accordance with state and territory laws.

Further, under section 181Y of the NDIS Act, the Commissioner is responsible for establishing, operating and maintaining the NDIS worker screening database (the database), which:

- contains a register of cleared and excluded workers from all states and territories to enable national recognition and portability of clearances;
- supports national ongoing monitoring of the conduct of workers with clearances;
- means NDIS providers across the country can sponsor applications and check the clearances of prospective workers directly, without needing to contact individual state and territory worker screening units; and
- helps NDIS providers with record-keeping requirements.

In accordance with these functions the NDIS Commissioner has established the *National Disability Insurance Scheme (Practice Standards—Worker Screening) Rules 2018*. As Rules made under section 73T(1) of the NDIS Act that deal with the screening of workers involved in the provision of supports or services to people with disability under the NDIS, the NDIS Commissioner is required, in order for the Rules to be made, to seek the agreement of each participating host jurisdiction where the Rules relate to an area of law of the host jurisdiction. Specifically, this is due to the requirements relating to Category B Rules under section 209 of the NDIS Act.

Requirements for workers engaged in risk assessed roles

The *Framework* and *Intergovernmental Agreement* outline the policy goals of nationally consistent worker screening. NDIS providers registered under section 73E of the NDIS Act are required, as part of compliance with a condition of registration (section 73F(2)(c)), to ensure that ‘risk assessed roles’ are restricted to workers or personnel with an NDIS Worker Screening Clearance.

A risk assessed role is defined under section 5 of the *National Disability Insurance Scheme (Practice Standards—Worker Screening) Rules 2018* (the Rules) as:

- a key personnel role of a person or entity (key personnel is defined in s11A of the NDIS Act and ordinarily includes roles such as CEO or Board Member);
- a role for which the normal duties include the direct delivery of specified supports or specified services to a person with disability; and
- a role for which the normal duties are likely to require more than incidental contact with people with disability.

More than incidental contact is defined under section 6 of the Rules as including:

- a) physically touching a person with disability; or
- b) building a rapport with a person with disability as an integral and ordinary part of the performance of those duties; or
- c) having contact with multiple people with disability:
 - i. as part of the direct delivery of a specialist disability support or service; or
 - ii. in a specialist disability accommodation setting.

Contact includes physical contact, face-to-face contact, oral communication, written communication and electronic communication.

Registered NDIS providers are required, as part of compliance with a condition of registration (section 73F(2)(d)), to assess and identify risk assessed roles and maintain records concerning risk assessed roles. Therefore, the Rules provide a framework for the elements of risk assessed roles to provide registered NDIS providers with the flexibility to identify roles that meet the definition under section 5 of the Rules within the context of their organisation and duties of their workers.

Applying for an NDIS Worker Screening Check

In accordance with the *Intergovernmental Agreement*, workers engaged by registered NDIS providers, unregistered NDIS providers, plan-managed and self-managed participants to provide NDIS supports and services to people with disability are able to apply for an NDIS Worker Screening Check through the relevant state or territory agency.

Each state or territory has a 'worker screening unit'. The worker screening unit is responsible for accepting and processing NDIS Worker Screening Check applications from people required to be screened, and will undertake risk assessments to determine whether a person receives an NDIS Worker Screening Clearance. Worker screening units are responsible for determining and managing the timeframes for the processing of applications for NDIS Worker Screening Checks.

The timeframe for the processing of an application for an NDIS Worker Screening Check can be influenced by a range of matters including the complexity of a risk assessment, the accuracy of information provided by a worker as part of their application and timeliness of responses of workers to enquiries of a worker screening unit. For example, applications requiring risk assessment will take longer than applications where the applicant has been identified as committing a disqualifying offence.

Verification of a worker's application for an NDIS Worker Screening Check

The *Intergovernmental Agreement* provides that applications for an NDIS Worker Screening Check must be verified by an employer or organisation delivering NDIS supports or services. Self-managing participants and self-employed workers will be recognised as an employer for the purposes of NDIS Worker Screening.

The *Intergovernmental Agreement* further provides that employers are responsible for verifying that an applicant for an NDIS Worker Screening Check is a worker in their organisation or that they intend to engage the applicant as a worker delivering NDIS supports and service. This means that workers cannot apply for an NDIS Worker Screening Check unless an employer or organisation delivering NDIS supports or services engages, or intends to engage them to deliver NDIS supports or services.

Employers may factor into their recruitment processes time for prospective employees to apply for and receive an outcome of their application for an NDIS Worker Screening Check. Further, employers have flexibility in relying on acceptable checks under transitional arrangements where possible, rather than requiring all prospective employees to apply for an NDIS Worker Screening Check and obtain an NDIS Worker Screening Clearance.

The policy framework covered in the *Intergovernmental Agreement* concerning verification has been implemented by the Commonwealth, states and territories and has the effect of ensuring that NDIS Worker Screening is not extended to other sectors and those not involved in the delivery of NDIS supports and services. Further, NDIS Worker Screening was designed to provide an additional preventative safeguarding measure for NDIS participants and therefore may not be fit for purpose if it were to be extended in an uncontrolled manner.

Working in a risk assessed role at a time in which a worker does not hold an NDIS Worker Screening Clearance

The Rules, reflecting state and territory laws, provide for exceptions whereby a worker may engage in a risk assessed role for a registered NDIS provider at a time when they do not hold an NDIS Worker Screening Clearance. The exceptions include when a worker holds an acceptable check under transitional arrangements that apply in a state or territory that may be relied upon during a transition period.

Further, state and territory laws determine whether or not a person applying for an NDIS Worker Screening Check can begin working in a risk assessed role whilst their application is being processed. This is variable across the states and territories:

- As a result of the NDIS worker screening laws that applies in Queensland, Victoria and South Australia, registered NDIS providers are unable to allow workers to commence or continue working in a risk assessed role whilst in the process of obtaining an NDIS Worker Screening Clearance.
- In all remaining states and territories, registered NDIS providers may allow a worker to commence or continue working in a risk assessed role whilst in the process of obtaining an NDIS Worker Screening Clearance if certain conditions are met, including:
 - The worker has submitted a complete application to a worker screening unit, is appropriately supervised by a person with an NDIS Worker Screening Clearance, and the registered NDIS provider is implementing a risk management plan developed and maintained in accordance with section 12 of the Rules.
- In all jurisdictions, registered NDIS providers can engage a worker in a risk assessed role if the worker does not have an NDIS Worker Screening Clearance, whether or not they are in the process of applying for an NDIS worker screening Clearance, if:
 - The worker meets the requirements of the transitional arrangements that apply in the relevant state or territory, and is not subject to an interim bar, exclusion, suspension or cancellation in relation to an application for an NDIS Worker Screening Check; or
 - The worker is a secondary school student on a formal work experience placement with the registered NDIS provider and is directly supervised by a worker who has an NDIS Worker Screening Clearance or an acceptable check under the transitional or special arrangements.

For all conditions that are required to be met in each state and territory, the NDIS Commission has published a table at www.ndiscommission.gov.au/document/2776.

I trust that this information is of assistance to the Committee.

Yours sincerely

Samantha Taylor PSM
Acting Commissioner

21 July 2021