

# Independent Review of the National Disability Insurance Scheme

## ***Issues Paper on the NDIS Quality and Safeguarding Framework***

Occupational Therapy Australia submission

May 2023

## Introduction

Occupational Therapy Australia (OTA) welcomes the opportunity to provide a submission to the Independent Review of the National Disability Insurance Scheme (NDIS) in response to the Issues Paper on the NDIS Quality and Safeguarding Framework (the Framework).

OTA is the professional association and peak representative body for occupational therapists in Australia. There are over 27,666 registered occupational therapists working across the government, non-government, private and community sectors in Australia<sup>1</sup>. OTs are allied health professionals whose role is to enable their clients to engage in meaningful and productive activities.

## Occupational therapists and the NDIS

Occupational therapy is a person-centred health profession concerned with promoting health and wellbeing through participation in occupation. Occupational therapists achieve this by working with NDIS participants to enhance their ability to engage in the occupations (activities) they want, need, or are expected to do; or by modifying the occupation or the environment to better support their occupational engagement. Occupational therapists provide services across the lifespan and have a valuable role in supporting participants living with developmental disorders; physical, intellectual, chronic and/or progressive disability; and mental health issues.

OTs have a critical role in providing services within the NDIS, supporting people living with physical, intellectual, psychosocial and other disabilities. OTs work in a diverse range of settings to deliver NDIS services, or support NDIS participants, including small, medium and large private practice, rehabilitation settings, paediatric services, and community services.

Occupational therapists help to unlock the value of the NDIS by working with scheme participants to identify goals and engage them with appropriate supports and services that promote independence, social connection, economic participation and protect and sustain physical and mental health. They deliver services including:

- functional capacity assessment;
- prescription and implementation of assistive technology and/or environmental modifications;
- positive behaviour support;
- disability-related chronic disease management;
- driving assessments (when specifically trained to do so); and
- targeted, goal-focussed capacity building, for example, activities of daily living (ADL), or ADL training with participants with physical and/or psychosocial disability.

Occupational therapists are highly skilled in assessing the degree to which a person's disability affects their level of function in daily tasks. Based on these assessments, occupational therapists make recommendations for, and then deliver, interventions that enhance and maintain an individual's functional capacity, and prescribe supports, aides and

---

<sup>1</sup> Occupational Therapy Board of Australia (Australian Health Practitioner Regulation Agency), 2022; <https://www.occupationaltherapyboard.gov.au/News/Annual-report.aspx>

assistive technology that help everyday Australians live as engaged, valued and contributing members of society.

OTA has long recognised the value of NDIS and welcomes reforms to the Framework that will improve the experience and outcomes of participants and enhance service quality and safety. OTA fundamentally supports NDIA's commitment to giving people choice and control over how their disability-related services and supports are delivered, and empowerment of participants to fully utilise their funded supports and make decisions about their care and support services.

## Maturing the Framework

- **Update to include references and alignment with recent strategies, policies and guidelines**
- **Redraft to reflect mature, standalone approach of the Framework**
- **Include easy to follow diagrams**

The provision of support of persons with disability is a potentially high-risk area which can result in harm to NDIS participants. Additional safeguards are needed to provide protection for persons with disability, especially in specific high-risk settings, which are outlined in the Framework. The current Framework correctly states that “Workers and providers delivering supports considered to pose a higher risk will have higher compliance requirements.”

The Framework provides an important safeguard to protect participants and influence the provision of quality and safe supports for NDIS participants. OTA supports the retention of the Framework, and this review presents an opportunity to enhance some aspects that are not clearly described, out of date, duplicated or otherwise not performing as intended, which are discussed below.

The initial Framework was published in response to public consultation process and the Framework is written in a way that both summarises and responds to that consultation process, before detailing the approach it will take across at the individual, workforce and provider level to ensure safety and quality within the scheme.

The NDIA and NDIS Commission have both matured as organisations since its publication and numerous policies, guidelines and resources have been issued to support the Framework and its purpose, and successive Federal Governments have also introduced reforms and strategies in this disability space including the most recent Australian Disability Strategy.

The Framework should undergo a redrafting that reflects its maturing status as a regulatory framework, that results in a standalone document that outlines the key elements of the Framework. A separate document can retain and summarise the previous feedback that has been received regarding the scope and role of the Framework. This could also summarise the feedback received through the NDIS Independent Review. This separate document could map the key areas of importance to participants, their families, advocates, providers and others, and then link to areas within the Framework where they have been reflected.

This will result in a simpler Framework document that is easy to read, understand, and guide those seeking to administer or operate within the scheme.

The current consultation paper for the review of the Aged Care regulatory system, *A new model for regulating Aged Care*<sup>2</sup> is an example of a Framework document that clearly demonstrates the objectives, approach, functions and tools, and importantly also lists the expected results and outcomes for safety and quality that will be achieved in the use of these tools and approached. While it is noted this document is subject to feedback and has not been adopted, its format and approach are much easier to understand and follow, in understanding the proposed framework.

The redrafted Framework should also include references and clearer links and alignment to other key strategies and documents which have been published as the scheme has been implemented, including the NDIS Workforce Capability Framework, Compliance and Enforcement Policy and Australian Disability Strategy 2021-2030 (it currently refers to the previous strategy).

The Framework should include a simple easy understand diagram that details the components of the Framework, what they seek to achieve and links to key policies, strategies, guidelines and other elements within the NDIS and more broadly across Government.

## Build awareness of the regulatory framework

- **Develop tools and communications to promote the Framework and its role in a simple easy to understand way for participants and providers.**
- **Improve complaint pathway process and utilisation**

OTA understands from our members that occupational therapists are familiar with the scope and role of the NDIS Commission, the Code of Conduct, Practice Standards, Worker Capability resources and other important guidelines and policies that sit underneath the Framework. However, they are less aware of the Framework itself and its role it plays in delivering the NDIS.

For example, many OTs only understand the role of the NDIS Commission in investigating complaints and registering providers, and not its role in market stewardship, or driving broader quality outcomes. This is also the case with many NDIS participants who are not aware of the Framework, the role of the Commission, or their ability to make a complaint.

OTA members also report that participants and their families are unclear on the role and responsiveness of the NDIS Commission, particularly in relation to complaints. OTA members report that participants have found the complaints process to be hard to understand (who can make a complaint, and in what situations), under-responsive, and they are unsure of what sort of response they will receive.

---

<sup>2</sup> Department of Health and Aged Care 2022, Consultation Paper No.1 – A new model for regulating aged care, [https://consultations.health.gov.au/best-practice-regulation/aged-care-regulatory-framework/user\\_uploads/final-new-model-for-regulating-aged-care-sep-2022.pdf](https://consultations.health.gov.au/best-practice-regulation/aged-care-regulatory-framework/user_uploads/final-new-model-for-regulating-aged-care-sep-2022.pdf)

Simplification and updating of the Framework provides a perfect time to develop training and resources that explain the role of the Framework and the NDIS Commission to increase participant and provider awareness about its role within the scheme, and enhancement of the complaints process to make it easier to understand and simpler to use.

## Expanded scope for complaints and investigations

- **Increase pathways within the Framework to resolve the provision of advice, investigation and resolution of poor service provision identified by other providers.**
- **Provide guidance on the expected scope of specific services**

The Framework should include within its scope the ability to refer issues identified by service providers, about the scope, quality and appropriateness of services offered to participants. Occupational therapists are often one of several providers servicing an NDIS participant under their plan and in the course of their work may hear feedback from participants about the kind of services they are receiving.

OTA is aware of many instances where occupational therapists working with a client have identified that another service provider is working outside of their scope of practice and/or not in the best interest of participants. A key example of this is where support coordinators provide recommendations to clients about aides and equipment, without being skilled in the clinical assessment of functional need, or the ability to ensure appropriate commissioning and training for use of aides or equipment. This creates issues for participant safety.

Another example is where a provider approaches a client to promote their service, when it is not within their clinical capability. OTA is aware that some providers claim to deliver the same types of services that an occupational therapist can perform (e.g. functional assessments, prescription of aides and equipment), when they do not have appropriate skills or qualifications, again creating risk for participants.

This also occurs in other contexts outside of occupational therapy services, for example where a support coordinator does not provide opportunity for participants to have choice and control, referring them to their preferred provider, or their own or a connected company, to maximise billing opportunity.

Under the Framework there doesn't appear to be a regulatory focus or appropriate pathway to report or investigate this issue, even though it creates a risk for participants. Currently the NDIS Commission Complaints Form<sup>3</sup> states: "Anyone receiving NDIS supports or services can make a complaint about a NDIS Provider". This appears to exclude a provider who identifies an issue.

Ideally this would be addressed through both soft and hard regulatory responses which could include:

- education of participants and providers on what is considered an appropriate service,

---

<sup>3</sup> NDIS Commission Complaints Form, accessed 09/05/2023 via <https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=PRD00-OCF>

- enhancement of the arrangements for the NDIS workforce that is not registered through existing regulatory frameworks (including support workers, support coordinators and recovery coaches) via revised Codes of Conduct, and training and upskilling on duty of care, and trauma informed care; and
- expansion of the NDIS Commission remit to investigate the provision of unsuitable or unsafe services to participants, referred by non-participants.

The NDIS Commission can also provide clear guidance around the expected scope of services and the qualifications and skillsets that align with these to ensure that participants and their families can identify where they are receiving services that are out of scope or not appropriate. Any guidance on this topic should be developed in consultation with the participants, their advocates, the disability sector and the allied health sector.

## Enable performance monitoring of the NDIA

- **Include the performance of the NDIA and its role as a decision maker about scheme services within the remit of the Framework, as this is a key area that impacts outcomes for participants**

OTA is of the view that the Framework is missing a vital component if it does not also include the NDIA and the performance of its functions within its scope. The NDIA is an essential element in the NDIS ecosystem and plays an important role in the delivery of outcomes that participants experience within the scheme, as a key decision-maker about participant access, and plans.

OTA recently made a submission to the NDIS Review regarding issues experienced by occupational therapists in interacting with the NDIA. This included poor communication, delayed decisions, poor decisions (i.e. decisions that went against clinical evidence regarding participant need), issues with staff capability (with some staff not having an adequate understanding of disability), and attitudes (some staff lacking empathy or being able to communicate effectively with participants and their families or providers).

All of these aspects impact the delivery of quality and efficient services for NDIS participants and can result in poor outcomes for participants when decisions about plans and equipment/home modifications are delayed, plans are reduced, or when there is poor or ineffective communication with providers or participants.

It is noted that the NDIS has its own complaints management system, and there are also appeal pathways that exist to challenge NDIA decisions including internal review and the AAT. However, these are pathways to address individual issues/claims, and there is no external systemic oversight of the performance of the NDIA as it relates to quality and sustainability of the NDIS.

For this reason, the Framework should include monitoring and reporting on key aspects of the performance of the NDIA within its remit. This could include:

- Time taken to assess an access request
- Time taken to issue an initial plan

- Time taken to make a decision on a request for Assistive Technology for Home Modifications
- Number of complaints received and responded to.

## Role in market oversight

- **Expand and mature the Framework’s approach to market oversight and include a bigger scope for the NDIS Commission in providing advice to government on cross-sector risks, and influence over policy levers that can effect quality service outcomes.**

Since the publication of the Framework in 2016, the NDIS market has continued to develop and mature, however the scheme is not operating as designed and participant choice and control is not being realised due to a number of critical factors. Major staff shortages continue to exist across multiple service offerings, including occupational therapy. Thin markets also continue to impact service availability, and while this was always expected to be an issue in remote and regional areas, OTA is aware of service withdrawal from some providers in metropolitan areas, mostly driven by pricing pressures and staff availability.

To demonstrate the real risk that pricing plays in scheme sustainability, OTA collected some data from our members. In December 2022 OTA conducted a survey of its members who deliver NDIS services. 320 responses were received. OTA asked its members the question “If there was a reduction in the NDIS fee payable for OT services how likely is it that you/your employer would stop providing services under the NDIS scheme?” Of 320 respondents, 52% reported it was ‘very likely’, and 31% reported it was ‘likely’ that they would stop providing NDIS funded services. Cumulatively, this is 83% of surveyed recipients, and demonstrates that the current pressures are placing scheme operations at risk, and any real fee reduction that occurs through further inflation and no fee indexation or increase will create a significant risk of scheme exit by OT providers.

This is summed up well by one OTA Member:

*“I’m a registered provider and business owner and am considering deregistering due to the stress associated with the NDIS. There are increasing costs associated with running a business (especially in the current financial environment) and the NDIS price cap makes it difficult to sustain my business. There is a significant skill shortage in OT, and therefore salaries are increasing substantially. The price cap makes this very difficult and profit margins are extremely thin as a result. To be frank, the amount of additional work and stress associated with being a registered NDIS provider with very minimal profit to show”.*

Both workforce shortages and thin markets directly impact the quality and sustainability of NDIS services and the achievement of outcomes for participants. The Framework is silent on the role that NDIS Commission takes in relation to influencing the major government policy levers that can influence these risks including NDIS pricing, and funding structures under other schemes including aged care, compensable schemes, skilled migration, university course availability, and other sector specific policies to attract workers to re-engage with their profession after exit.

The NDIS Commission could have an expanded scope to provide advice and advocacy to Government to address these issues and influence broader government policy that directly impacts the NDIS market.

## Find an appropriate regulatory balance

- **Mature the regulatory framework and develop a culture of safety and quality culture**
- **Introduce further nuance and proportionality to the registration model that acknowledges other high-quality regulatory schemes e.g. AHPRA registration**

The Framework currently focuses on the regulatory tools that the NDIS Commission can utilise to drive quality and safety. This includes registration, notification of incidents, deregistration investigation and prosecution, among others. Ideally a mature regulatory approach uses a mix of compliance and enforcement tools, and softer approaches that build understanding of quality and safety culture, so that participants and providers understand what quality services look like, and this can influence participant choice and control. Softer tools that are frequently used by other regulators include communications, awards, events, public awareness campaigns, and other educative activities to build a cultural awareness of what 'good quality' looks like. This could function alongside the expected competencies and 'bare minimum' compliance requirements that are currently featured in the Framework.

NDIA could also play a stronger role in benchmarking quality service delivery across specific high use services/settings to provide additional guidance to providers of what quality looks like. This could also have the advantage of assisting participants and their families to exercise choice in their selection of service providers.

### Registration

OTA is of the view that the Framework could take a further nuanced approach to registration and auditing, that is based on a risk profile of certain support services, and size of business, and the existing regulatory frameworks that exist. This would have the advantage of reducing the administrative burden and on-costs for providers and may also lead to further update of registration by currently unregistered providers.

Registration cannot guarantee quality and safe services in isolation and must exist alongside a range of other safeguards. In the case of occupational therapists, NDIS registration and workers screening checks duplicate many of the requirements that occupational therapists must hold with the Australian Health Practitioner Regulation Agency (AHPRA).

Occupational therapists who practice in Australia must obtain and maintain a current registration with AHPRA. The AHPRA registration process is comprehensive and provides a level of rigor to ensure that occupational therapists have the appropriate competencies, skills and qualifications to deliver quality and safe services, including:

- **Qualifications:** Occupational therapists must have completed an approved program of study in occupational therapy that meets the educational standards set by the Occupational Therapy Board of Australia (OTBA). This generally involves obtaining a



bachelor's or master's degree in occupational therapy from an accredited institution (minimum 4-year degree).

- **English Language Proficiency:** Occupational therapists who received their qualifications from non-English speaking countries may need to demonstrate English language proficiency by providing evidence of their English language skills. This can include achieving specified scores in English language tests such as the International English Language Testing System (IELTS) or the Occupational English Test (OET).
- **Criminal History Check:** AHPRA requires occupational therapists to undergo a criminal history check to ensure they meet the necessary standards of character and fitness to practice. This may involve providing a national police check or equivalent documentation.
- **Professional Indemnity Insurance:** Occupational therapists are required to hold professional indemnity insurance coverage that meets the standards set by the OTBA. This insurance provides protection in case of any professional negligence or malpractice claims.
- **Continued Professional Development (CPD):** AHPRA expects occupational therapists to engage in ongoing professional development activities to maintain and enhance their competence and knowledge. Occupational therapists are required to complete a specified number of CPD hours or points over a defined period and document their participation in relevant activities.

AHPRA and the OTB also establish a range of other practices and standards which support occupational therapists to deliver quality services, including:

- **Establishing Professional Standards and Codes of Conduct:** AHPRA, in collaboration with the OTBA, develops and enforces professional standards and codes of conduct for occupational therapists. These standards outline the expected behaviors, ethical considerations, and professional obligations of occupational therapists. By adhering to these standards, practitioners are expected to maintain the quality and safety of their services.
- **Complaints Management and Investigations:** AHPRA receives and manages complaints against registered occupational therapists. They have the authority to investigate complaints related to professional misconduct, impairment, or other concerns regarding the competence or conduct of a practitioner. AHPRA can conduct investigations, gather evidence, and take appropriate action, including disciplinary proceedings, if necessary. AHPRA can also issue a public statement about a practitioner if they consider they present a risk to public safety due to their practice.
- **Monitoring and Compliance:** AHPRA monitors compliance with registration requirements, continuing professional development (CPD) obligations, and professional standards. They have the authority to conduct audits, assessments, and inspections to ensure practitioners meet the required standards of practice. Non-compliance may result in disciplinary action or conditions imposed on registration.

OTA has heard from our members that NDIS registration continues to be a deterrent for many smaller providers, due to the costs of registration and auditing, and opportunity cost of meeting registration and auditing requirements (on top of AHPRA registration requirements). Medium and large providers also report that these costs are significant and are impacting the

sustainability of their operations, due to pricing pressures (including the 4-year freeze on some NDIS item codes, including 'Therapy Supports' while inflation has increased dramatically).

It is noted that due to OTA's small size, it is challenging to collect adequate data to gauge impacts across the sector. However, some examples of real and recent costs are listed below for illustrative purposes.

- A large provider reported they need to employ a dedicated Compliance Manager to oversee complex and costly registration and auditing requirements, who must dedicate 3 – 4 hours daily in the month preceding an audit, and other smaller time impacts including collating participant data, and making administrative and clinical staff available to support auditors to visit multiple business locations, and respond to auditor interviews. The provider also reported over 100 hours spent on improvement processes pre audit to develop new policies, procedures and training materials to meet changes to NDIS practice standards rolled out in 2021.
- A medium sized provider estimated that compliance with NDIS requirements costs over \$200,000 per year to prepare for audits and meet NDIS compliance requirements.
- A smaller provider with 5 staff reported that the time and cost impacts were significant for their practice, with upwards of 20 hours annually required to complete these tasks, and they are considered onerous in comparison to other schemes and settings, some of which only require emails of current certificates and other limited inputs.
- Renewal of NDIS Registration through the online portal was reported to take at least 8 hours due to an arduous online portal, and word limits within this system making it difficult to adequately convey the required information.
- It is reported that it takes approximately 90 minutes for an employee to complete the NDIS Worker Screening Check when submitted online, and then additional HR staff time to monitor and report on completion rates (which can be significant in cases of high staff turnover).
- Cost and availability of auditors is also a large factor, and some providers have reported that the cost of sourcing an external auditor is also significant. OTA was unable to source an average amount but heard reports of between \$10K and \$34K in some cases for full certification audit, with additional costs for remote and regional practitioners who must cover travel and accommodation costs for auditors. Providers can only select from a small list of approved auditors, which reduces options, and also makes it hard to access in some areas (e.g. regional and remote, and ACT).
- Cost of 'high risk' registration for providers of Early Intervention services is prohibitive for some allied health providers who already hold AHPRA registration.

These examples are provided to show the impact of the current regulatory levers on provider costs and administration, that also impact provider sustainability and create a risk of market exit.

## Alignment with other regulatory schemes

- **Include an objective to increase alignment and decrease duplication across similar or equivalent schemes, where possible**

The Framework is currently silent on its approach to seek to align its approaches, tools and processes with other similar regulatory schemes, except in the context of investigating or referring complaints where they intersect with other regulatory schemes.

It is noted there is the opportunity for the Framework to broaden its objectives to streamline and align as much as possible with other external frameworks to ensure that participants moving between NDIS and other schemes can expect similar protections, and providers who service across schemes, or move from one scheme to the other can do so easily without a high degree of duplication or administrative burden. OTA understands that the current consultation to enact an Aged Care Regulatory Model will seek to align as much as possible with the NDIS Framework. Where possible, the review and adjustment of the Framework should seek to harmonise and align with this model, while ensuring that safeguards that relate to the specific risks involved with disability support and care are managed appropriately.

## **Conclusion**

OTA thanks the NDIS Independent Review for the opportunity to contribute to the NDIS Quality and Safeguards Framework review. Maintaining a national framework for quality and safeguards is essential to ensure the rights of NDIS participants are protected, and that participants do not experience harm or disadvantage due to their disability. This is an important element of the NDIS, and it is vital that feedback from participants, their carers and families, NDIS providers and others involved in the scheme can contribute to ensure the NDIS provides quality and sustainable support for years to come.