



LA TROBE
UNIVERSITY

LIVING WITH DISABILITY
RESEARCH CENTRE

2024 RESEARCH

SEMINAR SERIES

10 April

The Disability Royal Commission & the regulation of disability service provision

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PURPOSE AT WORK

LIVING WITH DISABILITY RESEARCH CENTRE, LA TROBE UNIVERSITY

What I will cover

Set the scene

What the DRC said and recommended

Additional critique

Setting the scene

Context

Focus is on NDIS Commission's role of regulating providers, not broader regulation

The importance of a regulator getting it right, and the near impossibility of doing so (on every occasion)

Other research

Hough, A. (2021). Regulating disability services: the case of Australia's National Disability Insurance Scheme quality and safeguarding system. *Research and Practice in Intellectual and Developmental Disabilities*, 8(2), 99-110. <https://doi.org/10.1080/23297018.2021.1942176>

Hough, A. (2023b). Two scandals: the death of Ann Marie Smith in Australia and the Whorlton Hall scandal in Britain. *Research and Practice in Intellectual and Developmental Disabilities*, 10(1), 65-82. <https://doi.org/10.1080/23297018.2022.2109194>

Hough, A. (2024). The Disability Royal Commission and the regulation of disability service provision. *Research and Practice in Intellectual and Developmental Disabilities*. <https://doi.org/10.1080/23297018.2024.2312530>

Hough, A., Bigby, C., & Marsh, D. (2023). Australian work health and safety enforcement regarding service provision to people with disabilities: lessons for service providers. *Research and Practice in Intellectual and Developmental Disabilities*, 10(2), 91-112. <https://doi.org/10.1080/23297018.2023.2210580>

Marsh, D., Hough, A., & Bigby, C. (2024). Enforcement of work health and safety laws in services for people with disabilities: issues for policymakers and regulators. *Research and Practice in Intellectual and Developmental Disabilities*, 1-15. <https://doi.org/10.1080/23297018.2024.2308287>

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Davy, L., Robinson, S., Idle, J., & valentine, k. (2024). Regulating vulnerability: policy approaches for preventing violence and abuse of people with disability in Australian service provision settings. *Disability & Society*, 1-22. <https://doi.org/10.1080/09687599.2024.2323456>

Yates, S., Dickinson, H., & West, R. (2023). 'I've probably risk assessed this myself': Choice, control and participant co-regulation in a disability individualised funding scheme. *Social Policy & Administration*. <https://doi.org/https://doi.org/10.1111/spol.12940>

Six recent developments

The LiveBetter prosecution: likely \$1.8M civil penalty

The Irabina scandal and the resulting Boland Review

The Minister's s. 181K Direction

The NDIS Review

Proposed criminal penalties in Aged Care: providers, directors and executives

The changes in NDIS Commission leadership

About the NDIS regulatory system

One of many regulatory systems

Introduced from July 2018

Providers only – not the NDIA, hospitals, schools, etc.

Complex: Some elements apply to all providers (170K+) and some just to registered providers (16K)

Compliance pyramid (Ayres & Braithwaite 1992)

NDIS Commission is key regulator. 528 staff; \$90M

One of the Commission's challenges is the huge number of participants and providers

The information sources used by the DRC

The DRC's information sources

- Private hearings
- Public hearings – with evidence from NDIS Quality & Safeguards Commissioner(s)
- Submissions
- Other Royal Commissions
- Research on Complaint Mechanisms, etc.

The DRC did not seek:

- Expert advice on regulation

What the DRC said & recommended

What the DRC said about NDIS Commission regulation

Commentary was favourable and sympathetic

Volume 10 (NDIS Commission, 23 explicit recs) & Volume 11 (Safeguarding, 6 explicit recs)

- “Motherhood and apple pie”
- Around the edges, not root and branch reform

Particular issues for people with intellectual disabilities*

Complaints

Increase face-to-face engagement

Connecting people in supported accommodation to advocacy

Community visitor schemes

Investigator experience

Of course, none of these strategies are complete solutions

Issues for all people with disabilities

Provider registration: Did not call for compulsory registration

Worker registration: Call for compulsory registration and screening

Enforcement

Resourcing of the regulator

Resourcing and restrictive practices

Quality auditing

Additional critique

Additional critique

Trade-offs and unintended consequences not acknowledged

- Compliance ≠ Quality (necessarily) (Beadle-Brown et al., 2008)
- Action to drive compliance ≠ Action to drive quality (necessarily) (Hillman et al. 2013, aged care)
- Limited research on drivers of improved quality: Can we learn from Implementation Science?

Policy equity

- Regulation of 'closed employment' -v- 'open' employment
- Allied health professions working in NDIS provision -v- in health (labour shortages)
- Registered NDIS providers -v- unregistered
- NDIS providers -v- hospitals

Additional critique cont.

Resourcing trade-offs

What is the optimal investment?

Restrictive practices: Controlling volume to focus on risk; the Restrictive Practices Outrage Machine©

Enforcement: Don't get caught up on tools (such as notification and enforcement), but do "Find important problems and fix them" (Sparrow 2000)

Quality auditing (Braithwaite et al. 2007)

Thank goodness for the NDIS Review