2024 RESEARCH SEMINAR SERIES

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The Disability Royal Commission & the regulation of disability service provision

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What I will cover

Set the scene
What the DRC said and recommended
Additional critique
Setting the scene
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


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