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NDIS Provider and Worker Registration Taskforce

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By email: ndisregistrationtaskforce@dss.gov.au

To the NDIS Provider and Worker Registration Taskforce Secretariat

Re: NDIS Review recommendation - mandatory registration of NDIS service providers

Thank you for the opportunity to provide a submission on the proposed mandatory registration system for NDIS service providers and workers.

Scarlet Alliance, Australian Sex Workers Association, is the national peak sex worker organisation. Formed in 1989, our membership includes state and territory-based and national sex worker organisations and individual sex workers across Australia. Scarlet Alliance uses a multifaceted approach to strive for equality, justice and the highest level of health for past and present workers in the sex industry. We achieve our goals and objectives by using best practices including peer education, community development, community engagement and advocacy.

Scarlet Alliance is a leader when it comes to advocating for the health, safety and welfare of workers in Australia's sex industry. Through our work and that of our member organisations and projects, we have the highest level of contact with sex workers and access to sex industry workplaces throughout Australia. Scarlet Alliance represents sex workers on a number of government and non-government committees and advisory mechanisms.

People with disability in Australia have a legally recognised right to access reasonable and necessary sex, sexuality and relationship supports, including services provided by sex workers. The implementation of the NDIS Review recommendation 17 presents a real danger of completely eroding this right. It is vital that the NDIS Provider and Worker Registration Taskforce listens to people with disability and sex workers with experience providing services to people with a disability. It is contrary to the intent of the NDIS that the Review removes access to reasonable and necessary support through the implementation of an inappropriate registration scheme. Any system of mandatory provider registration must provide safety, usability and increased access for both participants and sex workers providing services under the NDIS.

Scarlet Alliance also endorses the submission of our member organisation Touching Base, who have worked for 20 years to provide advocacy and education on the rights of people with disability to safely explore their sexuality, and to connect people with disability with sex workers trained to provide sex, sexuality and relationship supports.

Yours sincerely,

Mish Pony
Chief Executive Officer

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In the course of preparing this submission, we have seen political commentary, media reporting and public discourse on the rights of people with disability to access supports allowing them the equal opportunity to express their sexuality which uses offensive language to describe sex workers and our work. NDIA policy makers, NDIS call centre staff, support workers and people with disability and their families should be aware that **the words ‘prostitute’ and ‘prostitution’ are widely considered to be offensive and ‘sex work’ and ‘sex worker’ should be used.**

Background

People with disability - sexuality, access inclusion and choice

As a party to the *Convention on the Rights of Persons with Disabilities*, the Australian Government must ensure that people with disability can access ‘personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community’,¹ and to ‘take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships’.²

The equal right to sexual expression and autonomy for people with disability remains an ongoing advocacy area, both in Australia and across the globe. The societal attitudes surrounding the discomfort of human sexuality more broadly, are compounded for people with disability. Pervasive stereotypes portraying disabled people as ‘childlike’ or inherently asexual perpetuates a systemic lack of recognition of sexual rights as an integral part of the human rights of people with disability. This widespread misconception and lack of support from families, support workers, organisations and government services undermines efforts to foster understanding and support for people with disability in asserting their sexual autonomy.

In Australia, our member organisation Touching Base have worked in partnership with People with Disability Australia (PWDA) to advocate for the rights of people with disability to have fulfilling sexual

¹ [Convention on the Rights of Persons with Disabilities](#), opened for signature 30 March 2007, [2008] ATS 12 (entered into force 16 August 2008) art 19(b).

² *Ibid* art 23(1).

experiences. This includes supporting disabled people in accessing sex, sexuality and relationship services provided by sex workers.

The right to access reasonable and necessary sex, sexuality and relationship supports was upheld by the Federal Court of Australia in 2020.³ Litigation with the NDIA generated significant burdens for the applicant, who was vilified in the media by a former Minister for the NDIS for opening the floodgates to ‘average Australian(s)...paying billions of dollars for the services of prostitutes.’⁴ Both the disability community and sex workers in Australia are indebted to the applicant for her fearless determination in pursuing this case.

The vast majority of specialist sex workers providing sex, sexuality and relationship supports to NDIS participants are **independent sole-traders**. The NDIS Provider and Worker Registration Taskforce must understand our unique challenges in terms of privacy, safety and administration, in order to ensure sex workers and people with disability can maintain our vital connections.

NDIS Review - Recommendation 17

During the NDIS Review, stakeholders raised concerns that most NDIS providers are unregistered, limiting the NDIS Commission’s ability for oversight, harm prevention and quality assurance.⁵

In response, the NDIS Review recommended the development of a ‘provider risk framework’, identifying the risk profile of each type of support and provider, accompanied by a mandatory registration scheme for *all* providers based on their assessed risk level, with four categories of enrollment/registration involving varying obligations for providers.⁶

It is likely that sex, sexuality and relationship supports provided by sex workers to NDIS participants would be assessed as requiring sex workers to undertake ‘General Registration.’ The NDIS Review proposes that General Registration would require service providers to:

- Submit personal details to a NDIA database (e.g. legal name, address, phone number, email address, ABN, bank details, services provided)
- Apply for NDIS Worker Screening and undertake accompanying mandatory basic online training (NDIS Work Screening currently costs \$80-\$145 depending on state/territory, and *all applicant* information is accessible to any registered NDIS provider)
- Undertake NDIS Code of Conduct training
- Develop and implement a formal complaints processes
- Develop and implement a formal incident reporting process
- Ensure services meet the required NDIS Practice standards
- Be subject to audits and ongoing performance measurement by the NDIA, which may include ‘observational review’ and ‘suitability assessments’
- Possibly be subject to new NDIS-set price caps on services provided.

³ *National Disability Insurance Agency v WRMF* [2020] FCAFC 79.

⁴ Luke Henriques-Gomes, [‘Stuart Robert on ‘crusade’, says woman who hired sex worker on NDIS’](#), *The Guardian* (online, 28 March 2021).

⁵ Department of the Prime Minister and Cabinet, *Working together to deliver the NDIS - Independent Review into the National Disability Insurance Scheme* (Final Report, October 2023) 207-8 (‘NDIS Review’).

⁶ *Ibid* 214-5.

Many people with disability, as well as community advocates and allies, are concerned that the proposed mandatory registration scheme will remove their choice and control over who they engage to access supports, and decrease the kinds of supports they are able to access.⁷

Scarlet Alliance shares concerns that the proposed mandatory registration scheme will significantly limit the choice and control of participants in the service providers they engage and the support services they can access. The proposed category of General Registration generates several problems for sex workers and sex services supports, which are outlined below. If sex workers providing services under the NDIS will be required to undergo General Registration, several changes are required to ensure safety, viability and sustainability in providing services under the scheme.

A graduated and risk-proportionate approach to sex work services

The requirement for a provider to either be enrolled or registered, and the intensity of any regulatory requirements, should be determined by the risk and complexity of different supports and providers.⁸

Scarlet Alliance is concerned with the lack of detail as to how risk would be assessed for sex, sexuality and relationship supports and similar intimate services. It is imperative that any framework for sex work services within the NDIS acknowledges and accommodates the diverse needs and preferences of people with disability. The proposed approach fails to recognise inherent variability and overlooks the fundamental principles of choice and control as promised by the NDIS.

Given the inherently personal nature of sex work services, which typically involve 1:1 interactions and are always initiated by the NDIS participants within highly negotiated contexts, we advocate for a nuanced approach to safeguarding and regulation. Recognising the deeply intimate and private nature of sex, sexuality and relationship supports, sex workers providing these services should not be subjected to risk assessment within the framework. Upholding the principle of dignity of risk, we believe that the appropriate categorisation for sex workers should be 'enrollment', rather than risk-assessed registration.

Since 2001, Touching Base has operated a referral list connecting people with disability and sex workers, and sex workers providing services under the NDIS are already subject to the NDIS Quality and Safeguards Commission complaints process. Touching Base and Scarlet Alliance are not aware of **any** official complaint made in Australia by a person with disability against a sex worker, **nor** of any similar complaint from a sex worker against a client with disability.

If sex workers providing sex, sexuality and relationship supports are deemed to be a risk-assessed role, the NDIS Provider and Worker Registration Taskforce must consult with Disabled People's Organisations Australia (DPO Australia), Touching Base and Scarlet Alliance to ensure that sex

⁷ Sam Bennett and Hannah Orban '[Choice and control: the NDIS was designed to give participants choice, but mandatory registration could threaten this](#)', *The Conversation* (online, 17 April 2024); Every Australian Counts '[NDIS Participants and Families Slam the NDIS Review Recommendations, Survey Shows](#)' (Media Release, 7 April 2024).

⁸ *NDIS Review* (n 5) 216.

workers providing sex, sexuality and relationship supports are subject to informed, fair and appropriate risk assessments.

Practice Standards, suitability assessment, quality compliance and performance measurement

The new National Disability Supports Quality and Safeguards Commission, working with the Department of Social Services, should design, test and implement an approach to measure and publish metrics of registered provider performance.⁹

Immediate priorities should include improving communication of expectations and good practices for providers, as well as strengthening compliance activities.¹⁰

Scarlet Alliance is highly concerned that proposals for the development of Practice Standards, the introduction of a suitability assessment as part of provider registration, audits and performance measurement of registered providers by the NDIA and the publication of metrics related to provider performance are completely inappropriate in the context of sex, sexuality and relationship supports provided by sex workers.

Assessing suitability, quality and performance in the context of intimate services is extremely subjective, and the proposition that sex workers and their clients could be subjected to 'observational audit'¹¹ or that the NDIS Quality and Safeguards Commission should 'publish metrics' on sex workers' 'performance'¹² is dehumanising and humiliating.

Sex workers providing services under the NDIS are already subject to the NDIS complaints process (as are all NDIS providers, whether registered or unregistered). Touching Base requires the providers on its referral list to offer non-discriminatory services. Some may also have high levels of experience, and/or have undertaken specific training on providing services to clients with disability, including NDIS participants. These various levels of experience or training provide choices for clients with disability to enable them make the appropriate decision for their own uniquely intimate, personal and subjective needs which occur in the context of sex, sexuality and relationship supports.

If providers of sex, sexuality and relationship supports are required to be 'risk-assessed roles' and sex workers are required to register, any associated performance assessment and monitoring must be treated with the utmost confidentiality, developed in consultation with Touching Base and Scarlet Alliance, and with assessors receiving appropriate training.

⁹ NDIS Review (n 5) 177.

¹⁰ Ibid 217.

¹¹ Ibid, see 214.

¹² Ibid, see Action 12.3 at 217.

Stigma, privacy and safety

The NDIS Worker Screening Database holds a register of workers who have applied for an NDIS Worker Screening Check. As a registered NDIS provider, your organisation will automatically have access to the NDIS Worker Screening Database.¹³

Despite our work facilitating connection, pleasure, well-being and social inclusion for both people with disability and people without disability, sex workers face stigma and discrimination in many areas of life. Sex workers report experiencing stigma and discrimination in areas such as accommodation and housing, employment, healthcare, family law and banking/financial services.¹⁴ The Northern Territory and Victoria are currently the only states/territories where sex workers are specifically protected from discrimination.¹⁵

Due to this stigma and discrimination, sex workers have a high need for privacy, especially in relation to the separation of their sex work status from their legal identity. It is highly inappropriate that a sex worker's information would be accessible to all other registered NDIS providers. Even the prospect of registering with our legal identification poses a significant risk to sex workers' safety. No database is completely secure, and any leak or hack of the registration database could also generate significant privacy and safety consequences for sex workers.

Existing corporate structures, such as discretionary ABN suppression or operating as a proprietary limited company, are not sufficient to protect sex workers from identity exposure if this information is accessed inappropriately.

Administrative burden

The administrative burden generated by mandatory registration for independent specialist sex workers cannot be overstated. Many sex workers who work with people with disability become involved in this work due to prior experience in the wider disability support sector,¹⁶ or because they have a disability themselves.¹⁷

Any initial and ongoing registration requirements for sex workers must facilitate compliance by being appropriate, accessible and achievable.

¹³ ['NDIS Worker Screening Check'](#) NDIS Quality and Safeguards Commission (Web Page, 21 December 2023).

¹⁴ Scarlet Alliance, [Anti-Discrimination and Vilification Protections for Sex Workers](#) (Briefing Paper, February 2022) 3-4.

¹⁵ *Anti-Discrimination Act 1992* (NT) [s 19\(ec\)](#); and ['Profession, trade or occupation'](#) Victorian Equal Opportunity and Human Rights Commission.

¹⁶ *National Disability Insurance Agency v WRMF* (n 3) at [87].

¹⁷ See Scarlet Alliance, Submission to the Australian Disability Royal Commission, [Experiences of Sex Workers with Disability in Australia](#) (December 2022).

Supporting choice and control for NDIS participants

It is clear that sex workers providing sex, sexuality and relationship supports were not considered by the proposed mandatory registration system outlined in Recommendation 17, which is likely true of many individual and small providers of specialist services under the NDIS.

Any system of mandatory registration must deliver safety, choice and control for NDIS participants, and likewise enhance safety and viability for service providers. The current proposed registration system is simply not viable for sex workers. In the course of preparing this submission, sex workers contacted us raising concerns that the proposed mandatory registration scheme amounted to effectively and covertly overruling the decision in *National Disability Insurance Agency v WRMF*. Given the lack of transparency and meaningful consultation from the NDIS Review and the NDIA, this is not an unreasonable conclusion.

Decisions relating to the human rights of people with disability and access to services under the NDIS should not be eroded by stealth, without consultation or debate. Any proposed mandatory registration must be appropriate, safe and usable for sex workers as well as genuinely increasing safety, choice and control for NDIS participants. Without further guidance, the proposed system does not deliver either.

Recommendations and ways forward

1. The NDIA must develop a **comprehensive policy framework** upholding the rights of NDIS participants to access reasonable and necessary sex, sexuality and relationship supports. This framework has been called for by DPO Australia, Touching Base and over 40 other health, disability and community services organisations since August 2019.¹⁸ The framework should be developed in consultation with DPO Australia, Touching Base and Scarlet Alliance.
2. This framework must be accompanied by Operational Guidelines for implementation, accompanied by appropriate training for NDIS plan workers and others in the sector.¹⁹
3. The NDIS Provider and Worker Registration Taskforce must listen to and understand the unique concerns of sex workers providing services under the NDIS, and consult with Touching Base and Scarlet Alliance to ensure that the mandatory registration system:
 - Accurately assesses risks associated with sex, sexuality and relationship supports,
 - Delivers privacy and safety for sex workers providing sex, sexuality and relationship supports,
 - Ensures that any administrative, quality assurance and performance monitoring requirements are achievable and appropriate, and
 - Genuinely enhances the safety, choice and control of participants when accessing reasonable and necessary sex, sexuality and relationship supports.

¹⁸ DPO Australia and Touching Base, [Joint Position Statement: A call for a rights-based framework for sexuality in the NDIS](#) (28 August 2019).

¹⁹ Touching Base's submission to the NDIS Review outlines the significant confusion and misinformation generated by the lack of policy and training in relation to sexuality supports; see Touching Base Inc, [Submission WOLO-003364 Joint Standing Committee on the National Disability Insurance Scheme, NDIS Review](#) (25 August 2023).