



Department of Social Services
Quality and Safeguards consultation
Via www.engage.dss.gov.au

Submission on consultation paper for NDIS quality and Safeguards

ADACAS is pleased to have the opportunity to participate in this important piece of work. As an independent advocacy service we work with people with disability who are often unable to speak up for themselves regarding the quality of service that they receive. Advocates work with individuals on a range of issues including service quality, abuse and neglect, community participation and access to justice.

The move to national system of quality and safeguarding is a key element in the success of the NDIS. The extent to which the system is capable of safeguarding a person's right to have a good life and participate in the community will be a fundamental measure of its success. Traditionally the concept of safety revolved around physical safety, from abuse and neglect but also from perceived dangers in the community. A common response to these safety concerns has been to segregate people with disability, from a young age and continuing throughout their lives, so that a benevolent watch can be kept and they can avoid participating in activities which others perceive as risky. We now know that this approach to safety is fundamentally flawed and indeed has led to potentially greater risk to safety, and certainly to quality of life, than had such measures not been introduced. The current Royal Commissions and inquiries are highlighting on a daily basis the very genuine risk which these approaches represented to people with disability and the consequent harm which they have suffered.

There are also risks associated with conflating quality and safeguarding into a single measure. The two are quite different and by their nature focus on different aspects of the system. Quality frameworks target the work of organisations in providing service; they are generally focused on system level activities such as policy and procedure, reporting, and check box methods of tracking service processes. While there will continue to be a role for quality frameworks, and these are useful triggers for continuous improvement of organizations' systems, they do not necessarily address the genuine experience of quality service to people with disability. Services which have ticked all the boxes and can proudly boast of quality certifications are at the centre of some of the current abuse cases which are under investigation. Clearly quality frameworks have failed in their ultimate measure and the intention to continue with essentially the same system under the new national framework does little to reassure individuals and families of change.

There is a real risk that the culture which led to the existing safety practices will carry over into the new Quality and Safeguards system and that as a result the concept of safeguard will come to mean benevolent imposed safety measures and risk avoidance. Safeguarding however is not about that. Using the model of safeguarding described by Julia Farr in the Model of Citizenship, means that the focus is not on protecting a person from risk, but enabling them to live an active, engaged, valued, visible life embedded within, rather than isolated from, their community and it is the very nature of this good life which acts to safeguard the person. Any national safeguards

process which does not take this approach of safeguarding a good life for a person, as opposed to keeping a person safe, will ultimately fail to achieve its aims. The quality and safeguards framework as described by the five elements in the consultation paper, currently fails to meet this transformative goal. It continues to focus on safety and risk management measures, such as police checks or national registers, and does not address the core issue of what safeguarding needs to be about if it is to be fully implemented. Examples of safeguards could include:

- Ensuring that no person's plan is fully implemented by a single service provider, rather that there are many paid and unpaid interactions built into their plan to ensure that the opportunity for one entity, or individual, to perpetrate abuse or neglect is minimised.
- Ensuring that people who continue to live at home with family, are actively engaging in a range of independent community activities so that they can develop a wider network of people to whom they are known and who will be alert for changes of concern in the persons behaviour, health or wellbeing.
- Responding to 'behaviours of concern' by recognising them to be communication by the person that all is not well with their world and investigating and resolving the triggers for the behaviours rather than focussing on managing symptomatic behaviour.
- Ensuring that individual capacity building activities are built into every plan so that the person continues to have opportunities to grow skills, learning and independence at the pace which is right for them.

Genuine change to risk management strategies is also crucial to a successful quality and safeguarding framework. Risk management is, all too often, focused on avoidance of risk which might vest with service providers; with government departments; or Ministers; rather than risk which might apply to the individuals themselves. The concept of 'dignity of risk' is largely absent from existing risk management approaches and is not addressed adequately in the Quality and Safeguards consultation document. Dignity of risk enables a person to identify their appetite for risk and the level of risk which they are willing to accept. It needs to be central to any risk management policy and procedure which is applied to an individual. Under the new framework, all risk management should include identification of the risk to quality of life and the risk to a good life, rather than focusing on more traditional safety risks. If the Quality and Safeguards framework could develop resources which support individuals, and those around them, to address and manage risk to a good life, it would be a significant improvement over current proposed approaches to risk management. The paper is currently silent on the opportunity to recast concepts of risk away from 'its too dangerous' towards enabling a good life through consideration of identifying and ameliorating risk while going ahead with actions that contribute to good life chances.

ADACAS welcomes the casting of quality and safeguards through the lens of preventative, development and corrective domains as a useful way to consider a wider range of measures which achieve the aims of quality and safeguarding. However, the consultation document does not sufficiently articulate the full range of activities in each of these domains which can and will play a role under the new framework.

A significant gap is the recognition of the role that independent advocacy can and will play across all three domains. This issue has been raised by ADACAS and others in consultations with DSS and through the public consultation processes and we have received indications that it will

be corrected in future versions of the framework. We look forward to the opportunity to contribute to the drafting of these new elements of the framework which recognise the role of advocacy:

In the preventative domain we have significant body of evidence of the impact that the presence of an advocate in the life of a person has on the actions of others. There is a degree to which the behavior of others is moderated by the knowledge that an advocate is alert to the needs of an individual and will be swift to act when required. In addition, one outcome of high quality independent advocacy is to build capacity in the person. Capacity to self advocate, knowledge of rights, knowledge of complaints mechanisms, experience being heard and speaking up, all build capacity of individuals to safeguard their own lives. The work of individual advocates, citizen advocates and self advocacy services are particularly important as preventative safeguards for vulnerable individuals.

In the developmental domain these same actions, of modelling, supporting and guiding the development of greater independence and self advocacy by advocates is fundamental. Considerable work is being undertaken by advocacy organisations in the developmental domain and this is currently at risk due to the uncertainty of ongoing advocacy funding.

In the corrective domain, advocacy services do much to assist individuals to access their right to justice and other corrective mechanisms. Without advocates, many people with disability do not feel able to engage with corrective systems and lack the confidence to tackle the issue themselves. While much advocacy work focusses in this domain, it does not happen in isolation of the other domains. Restricting the role of advocacy to support for corrective safeguards would limit its effectiveness.

ADACAS makes the following comment on individual elements of the consultation paper:

Supporting individual capacity

This section is overly focused on provision of information and does not sufficiently address other elements of individual capacity building. An articulation of the relationship between the ILC framework and the quality and safeguards system may assist, but the ILC framework consultation document itself was also overly reliant on provision of information. Much is made of providing information through online mechanisms for instance which excludes the large proportion of people with disability who are not digitally connected, who may have low literacy, who may live with physical, sensory or cognitive barriers to accessing online information, people who are socially isolated or whose access is primarily controlled by others. More needs to be done on mechanisms to make information relevant to individual circumstances, make it available through a wider range of mechanisms including mainstream media, and support for people to understand and use the information they access. As articulated above, there is a role for independent advocacy among other measures which act to build individual capacity to act with informed choice and control.

Provider registration

The extent to which provider registration processes limit the choice and control which individuals can exercise is a potential concern for the quality framework. Provider

registration may act to manage risk to governments, or to providers themselves but may do little to actually safeguard individuals. A tiered approach to provider registration is preferable to a 'one size fits all' approach, however the extent to which the information gathered during provider registration is made available to the public will impact upon its usefulness to individuals and families.

Staff vetting

Vetting schemes set a fairly low bar in excluding individuals who may be an identified risk to the wellbeing of people with disability. Staff culture and practice has a more significant impact on the risk to individual service users. The vetting schemes do not address organisational or staff culture issues which are enablers of violence, abuse or neglect.

Complaints

The availability and accessibility of independent complaints mechanisms which are able to use local knowledge and expertise in responding to complaints is crucial. Our experience with the national complaints system in the aged care sector demonstrates that a national scheme that does not have local presence is less effective than schemes with local staff able to respond to local complaint matters. Complaints processes must be able to act on complaints that come in any form, including anonymous complaints and must be able to offer both mediation and resolution, including followup of agreed changes to practice to ensure that changes are actually implemented and maintained not just proposed. Complaints mechanisms should be able to respond to complaints about all supports used by a person not only those funded by the NDIS or within the specialist disability sector. Independent advocacy support to enable people to access complaints mechanisms is essential. Consideration could be given to implementation of a single complaints system which applies across the community rather than specifically to disability.

Monitoring oversight

While the creation of a new monitoring and oversight body is expensive, it is essential that monitoring and oversight is independent of the NDIS. The role of the NDIS CEO, Board and Advisory Body is significantly different from a quality oversight mechanism and they cannot do both roles. Inclusion of community visitor schemes, critical incident reporting mechanisms and connection to independent complaints handling systems is required. A proactive approach, which can contribute to organisational and system quality improvement as well as corrective safeguarding is preferred.

Self managing

The inherent diversity of self managing responses to creating a good life for a person with disability must be protected. It is at risk from the imposition of national standardized safeguarding mechanisms imposed by the quality and safeguards framework. Active preventative resources, made available to self managing individuals which enable them to tailor quality and safeguarding measures which are appropriate to their circumstances would be welcomed over standardized measures which may act as barriers to genuine individual self management activities and relationships. Inclusion of transparency mechanisms – such as the oversight by a community visitor – are likely to be more effective than imposing process safeguards on non-registered providers which

may act to deter participation. Where a person is using an intermediary – such as a plan management provider, consideration of how this relationship can be tested, and a measure of the quality of plan management provider and other intermediaries is appropriate.

Restrictive practice

Restrictive practices have been demonstrated to do considerable harm to the individual and their chances of a good life. Significant limits on the use of restrictive practices are required, it must be an action of last resort and implemented in the least restrictive way for the shortest amount of time possible. As noted above, restrictive practices which manage symptomatic behavior but do not seek to understand and address the underlying issues which lead to that behavior are not useful. Quality frameworks which audit the use of restrictive practice may assist. The loss of availability of a service of last resort – traditionally provided by government service delivery, brings with it the risk of increased restrictive practice. The quality and safeguards framework needs to address options for services of last resort within the NDIS.

The quality and safeguarding framework needs to recognise that the quality of life of people with disability is everyone's business, that communities have a responsibility for safeguarding their members with disability and actively support the community wide cultural change which will be required to achieve this.

In summary, the National framework should:

- Focus on building and safeguarding the valued and engaged lives of people with disability
- Recognise the important role of independent advocacy
- Enable the support and growth of individuals, of sectors and of the community
- Support a whole of community approach to quality and safeguarding for people with disabilities

Thank you for the opportunity to participate in this consultation. Please do not hesitate to contact me if we can be of further assistance.



Fiona May
CEO
24 April 2015