



CHILDREN & YOUNG PEOPLE COMMISSIONER

Submission by the ACT Children & Young People Commissioner to NDIS Quality and Safeguards
In response to the NDIS Consultation Paper:
'Proposal for a National Disability Insurance Scheme Quality and Safeguarding Framework'
April 2015

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2. Overview

This submission begins with some general comments before addressing three of the five proposed 'key elements' of the NDIS Quality and Safeguarding Framework outlined in the consultation paper: NDIS provider registration, complaint handling systems, and pre-employment screening.

The primary aim of this submission is to outline the important work undertaken in the children and youth services sector towards building capacity for 'child safe child friendly organisations'. The NDIS must take account of the research and evidence on child safety in institutions in order to protect children, young people and vulnerable adults with a disability.

3. Child safe and child friendly organisations

In broad terms, a ‘child safe and child friendly’ organisation is one which consciously and systematically:

- creates conditions that reduce the likelihood of harm occurring to children and young people,
- creates conditions that increase the likelihood of any harm being discovered, and
- responds appropriately to any disclosures, allegations or suspicions of harm.

National Framework and National Guidelines

The *National Framework for Creating Safe Environments for Children*¹ and the *National Guidelines for Building the Capacity of Child Safe Organisations*² were developed by the Community and Disability Services Ministers’ Conference in 2005, and are described as ‘nationally agreed good practice’ in building the capacity of organisations to maintain child safe environments.³ They outline a series of recommended strategies, listed below in Table 1:

1. Systems to ensure adaptation, innovation and continuous improvement	a) Mechanisms to regularly review, update and refine policies and procedures b) Accountability for maintaining child safe practices and systems is allocated to all levels of the organisation
2. Governance and culture	a) A Child Safe Policy <ul style="list-style-type: none"> • Child protection awareness training for employees • Processes for reporting and managing concerns/incidents • Disciplinary processes and grievance procedures • Guidelines for physical contact between adults and children • Guidelines for outside hours contact with children and their families • Standards for adult/child ratios • Cyber safe guidelines • Support and guidance for employees, children and their families when concerns are expressed about harm to a child • Attention to situations where a child may harm another child b) Risk Management c) A Code of Conduct d) Privacy and Data Collection
3. Participation and empowerment of children	a) Enabling and promoting the participation of children <ul style="list-style-type: none"> • Seriously consider children’s views • Create opportunities for children to participate in planning, policy development and decision making • Create opportunities for children to take on leadership roles • Engage children in the review of policies, practices and systems improvement a) Inclusive and empowering language

¹ Community and Disability Services Ministers’ Conference (2005) *National Framework for Creating Safe Environments for Children: Organisations, Employees and Volunteers*, National Framework (www.ccp.vic.gov.au/childsafetycommissioner/downloads/childsafesched02.pdf)

² Community and Disability Services Ministers’ Conference (2005) *National Framework for Creating Safe Environments for Children: Organisations, Employees and Volunteers*, Schedule 1: Guidelines for Building the Capacity of Child Safe Organisations (www.checkwwc.wa.gov.au/NR/rdonlyres/E2CFD196-2BC7-4298-8D78-0E238BF6F5A6/0/DCDPOLFinalCapacityBuildingPDFfinal2006.pdf)

³ Community and Disability Services Ministers’ Conference (2005) *National Framework for Creating Safe Environments for Children: Organisations, Employees and Volunteers*, Schedule 1: Guidelines for Building the Capacity of Child Safe Organisations, page 1.

	<p>b) Strategies to reduce the potential for undiscovered or ongoing harm</p> <ul style="list-style-type: none"> · <i>Ensuring children are aware of the organisation’s commitment to child safety</i> · <i>Providing protective behaviours training adapted to the needs of children in particularly vulnerable situations</i> · <i>Encouraging children to speak out</i> · <i>Develop strategies to communicate and engage with all children involved with their services and programs</i> · <i>Providing information about the availability of independent advocacy or persons with whom children may discuss concerns about their treatment or experience</i> · <i>Consulting with children and seeking their views about their safety in dealing with organisations</i>
4. Human Resource Management	<p>a. Recruitment and selection practices acknowledge the importance of child safety</p> <ul style="list-style-type: none"> • <i>An explicit statement of commitment to child safety in all advertising</i> • <i>In information packages for potential applicants, include the organisation’s child safety policy, code of conduct and screening and complaints/grievance procedures</i> • <i>In the statement of appointment to a position, include a reference to what is expected in terms of commitment and responsibility for child safety</i> • <i>In addition to criminal history checks, confirm the applicant’s identity, and verify their qualifications and professional registration</i> • <i>During interviews with applicants, highlight the priority of child safety</i> • <i>Undertake work history reports and thorough reference checks</i> <p>b. Job descriptions/duty statements</p> <ul style="list-style-type: none"> • <i>Provide clear and comprehensive statements of what is expected of employees, their responsibilities and accountability</i> <p>c. Staff support, supervision and performance management</p> <p>d. Complaints management and disciplinary proceedings</p>
5. Education and training	<p>6. Awareness and understanding of child abuse and organisational responsibilities</p> <p>7. Support for organisations in building, maintaining and strengthening child safe capacity</p>

Resources to guide organisations in the development of policies and procedures

A range of free resources are available to guide organisations in the development of child safe and child friendly practices, and these are listed below in Table 2:

Table 2: Existing resources available to guide organisations in the development of child safe and child friendly practices	
Organisation	Resource title
Community and Disability Services Ministers’ Conference	<p><i>National Framework for Creating Safe Environments for Children: Organisations, Employees and Volunteers</i> (‘National Framework’)⁴</p> <p><i>Schedule 1, Guidelines for Building the Capacity of Child Safe Organisations</i> (‘National Guidelines’)⁵</p>
Child Wise	<p><i>Choose with Care</i> program⁶</p> <p><i>Choose with Care: 12 Steps to a child safe organisation</i>⁷</p>

⁴ (<http://www.ccp.vic.gov.au/childsafetycommissioner/publications/childsafepubs.htm>)

⁵ (<http://www.dss.gov.au/our-responsibilities/families-and-children/programs-services/protecting-australias-children/working-with-children-checks/guidelines-for-building-the-capacity-of-child-safe-organisations>)

⁶ (<http://www.childwise.net/page/25/choose-with-care>)

⁷ (http://childwise.blob.core.windows.net/assets/uploads/files/Online%20Publication/12_Steps_to_building_child_safe_orgs.pdf)

Victoria Commission for Children & Young People	<i>A Guide for Creating a Child Safe Organisation</i> ⁸ <i>Information for Parents: Things to look at when selecting child safe activities or services for your child</i> ⁹ <i>Wise Choices: safe children</i> (DVD and fact sheet in eight languages) ¹⁰
Queensland Commission for Children & Young People and Child Guardian	<i>Creating Safe and Supportive Environments for Children and Young People: Child and youth risk management strategy toolkit</i> ¹¹
NSW Office of the Children's Guardian	<i>Become a Child Safe Organisation</i> (training program and online resources) ¹² <i>Participation Resources</i> ¹³
Western Australia Commissioner for Children & Young People	<i>Involving Children & Young People: Participation Guidelines</i> ¹⁴ <i>Are you Listening? Guidelines for making complaints systems accessible and responsive to children and young people</i> ¹⁵
Australian Children's Foundation	<i>Safeguarding Children</i> program ¹⁶
NSW Ombudsman	<i>Reviewing Child Protection Policies: An agency self assessment checklist</i> ¹⁷ <i>Child Protection in the Workplace: Responding to allegations against employees</i> ¹⁸ <i>Guidelines for Dealing with Youth Complaints</i> ¹⁹
NAPCAN	<i>How Can I Play My Part?</i> (online resources) ²⁰

Creating and maintaining a 'child safe and child friendly' organisational culture

Organisations providing services to children and young people should work consciously and continually to improve their capacity to provide a child safe and child friendly environment. While a concrete and universal definition is elusive, we do have guidance on what such a culture looks like.

The research literature describes examples of poor organisational practices in responding to disclosures of abuse, such as:²¹

- staff ignoring signs of abuse, or dismissing or failing to act upon disclosures,
- managers attempting to protect reputations of institutions by not reporting abuse, and

⁸(http://www.cyp.vic.gov.au/childsafetycommissioner/downloads/childsafes_organisation.pdf)

⁹ (http://www.cyp.vic.gov.au/childsafetycommissioner/downloads/childsafes_parent_guide.pdf)

¹⁰ (http://www.cyp.vic.gov.au/childsafetycommissioner/publications/cald_strategy.htm)

¹¹ (<http://www.cypcg.qld.gov.au/pdf/bluecard/rmst/RMS-toolkit-update-081012.pdf>)

¹² (<http://www.kids.nsw.gov.au/Working-with-children/Become-a-Childsafe-Organisation>)

¹³ (<http://www.kids.nsw.gov.au/Publications---resources/Participation-resources>)

¹⁴ (<http://www.cyp.wa.gov.au/files/Participation%20Guidelines.pdf>)

¹⁵ (<http://www.cyp.wa.gov.au/content.aspx?cid=741>)

¹⁶ (<http://www.safeguardingchildren.com.au>)

¹⁷ (<http://www.ombo.nsw.gov.au/news-and-publications/publications/fact-sheets/child-protection/reviewing-child-protection-policies-an-agency-self-assessment-checklist-cp08>)

¹⁸ (<http://www.ombo.nsw.gov.au/news-and-publications/publications/guidelines/child-protection/child-protection-in-the-workplace-responding-to-allegations-against-employees>)

¹⁹ (<http://www.ombo.nsw.gov.au/news-and-publications/publications/guidelines/youth/guidelines-for-dealing-with-youth-complaints>)

²⁰ (<http://napcan.org.au/resource-hub/what-role-can-i-play/>)

²¹ Sullivan & Beech (2002) and Nunno (1999) cited in Irenyi, Bromfield, Beyer, Higgins (2006) 'Child maltreatment in organisations: Risk factors and strategies for prevention', *Child Abuse Prevention Issues* no.25.

- reluctance by employees to cooperate with investigations.

The research literature also suggests that, in contrast, a positive organisational culture is one in which:²²

- adults and children have high confidence that disclosure will be treated seriously and acted upon promptly and appropriately,
- children are treated as individuals with rights,
- high risk offender-like behaviour is not accepted and is challenged directly and immediately,
- all people connected to the organisation are empowered and feel confident to raise concerns, including children and young people,
- environments are monitored to avoid situational risks developing,
- all employees and volunteers are comprehensively trained in aspects of child abuse such as child and adult grooming, and
- there is a focus on being 'child friendly' not just 'child safe'.

Participation of children and young people

It is not possible to become a 'child safe and child friendly' organisation without seriously considering the views of children and young people. Children and young people have knowledge and experience which is different to that of the adults in the organisation, and they can make a unique contribution to planning, policy development and decision making.

Consulting with children and young people is an essential task if we are to understand safety issues in organisations, particularly as '[c]hildren and young people can identify strengths, weaknesses, risks and dangers in activities that may go unreported'.²³

Becoming a 'child safe and child friendly' organisation means developing strategies to communicate and engage with all children who are involved with the organisation. It is important to ask children and young people when they feel safe, and when they feel unsafe. 'Their comments and insight will always be different from the adult perspective'.²⁴

The NDIA should make clear to providers, participants and carers that a child or young person's age, their cognitive disability, or their communication disability, do not undermine their right to participation under Article 12 of the United Nations *Convention on the Rights of the Child*. There are adaptive methods of consultation suitable for young children, and for many children and young people with cognitive or communication disabilities. Some of the Australian Childrens Commissioners, Guardians and Advocates will be willing to assist the NDIA in developing such tools and methods for use by NDIS providers.

4. General comments about the importance of safeguards in the NDIS

Acknowledge the potential risks to children, young people and vulnerable adults receiving services through the NDIS

The NDIS consultation paper acknowledges the possibility of 'a major failure by a provider to ensure the safety of participants' (page 6), and that there is 'a risk that people with a disability could be harmed in some way' (page 10):

'People with disability are at an increased risk of abuse, harm, exploitation and neglect due to a range of factors, including reliance on others for support, social isolation, fear of retribution, and difficulties with

²² Various publications cited in Irenyi, Bromfield, Beyer, Higgins (2006) 'Child maltreatment in organisations: Risk factors and strategies for prevention', *Child Abuse Prevention Issues* no.25.

²³ Child Wise (undated), *Choose with Care: 12 steps to a child safe organisation*, page 19.

²⁴ Child Safety Commissioner, Victoria (2006) *A Guide for Creating a Child Safe Organisation*, page 14.

communication. Research suggests that the most vulnerable groups, such as those with intellectual disabilities and women, face greater risks' (page 56).

Children and young people should also be included in this list of the most vulnerable groups.

The consultation paper also notes that '[r]isk in the disability sector is likely to increase as the demand for workers grows and competition for staff with aged care and other community services sectors increases' (page 56).

The NDIS consultation paper states that preventative measures that can prevent harm to people with disability fall into three groups (page 19):

1. Formal individual safeguards
2. Service level safeguards
3. System level quality measures

The National Guidelines (listed above in Table 1) provide guidance for all three approaches.

While some types of risks can be managed by individual participants, other types of risks will require formal regulation:

'Some types of risks can be managed by individuals and through strategies agreed between the NDIS and participants as they develop and monitor individual plans. Other types of risk may require regulatory approaches in order to ensure the rights of people with a disability to be free from harm, abuse, exploitation or violence are upheld' (page 10).

Requiring providers who work with children and young people to adopt child safety standards is a necessary form of regulation in the NDIS. This is acknowledged in the consultation paper:

'The aim of a risk based framework is to target those areas where the dangers are greatest and the consequences of harm the most severe. This means that providers of support types where there is potentially a greater risk to participants will have to comply with a stronger regulatory framework than providers in low risk areas like some handyperson services' (page 10).

The disability services which involve potentially greater vulnerability and risk to participants include all services for children and young people (aged under 18 years) and their carers, particularly:

- services for children and young people with cognitive disabilities or communication disabilities (where the nature of the disability may increase the child's or young person's vulnerability), and
- services that place children and young people in vulnerable situations with a support worker (involving unsupervised environments and/or close personal contact), such as personal care services, residential care services, respite services, and transport services.

NDIS case managers should be transparent and direct in discussing the types of services that create a greater risk to participants. NDIS should provide children or young people with a disability, and their parents/carers, with information about 'child safe and child friendly' organisations, to assist them to identify the best provider to meet their needs. Children, young people and their parents/carers should be advised to choose a provider who can demonstrate they are following the best practice standards outlined in the National Guidelines (see Table 1 above).

Child safety should be a primary objective of the NDIS quality and safety framework

The goals of 'maximising choice for participants' and 'reducing/minimising regulation' must not be pursued at the expense of child safety.

The NDIS consultation paper states that '[t]he objectives of the quality and safeguarding framework are to advance the rights of people with disability and minimise the risk of harm, while maximising the choice and control they have over their lives' (page 11).

One of the principles to guide the development of a quality and safeguarding framework for the NDIS is '[r]educing/minimising regulation'. 'The quality and safeguarding framework should create the least burden possible on individuals and providers of supports while still achieving the agreed quality and safeguarding aims of the framework' (page 4). The NDIS system of provider registration aims to 'set national registration requirements that allow only suitable providers to participate in the scheme, while at the same time not creating unnecessary barriers for providers to enter or remain part of the scheme' (page 21).

'Maximising choice for participants' and 'reducing/minimising regulation' are beneficial aims only if child safety is made a primary objective of the NDIS quality and safety framework. Participants can only exercise real choice in selecting providers if they have assurance that the NDIS has systems in place to address the risk of harm to children, young people and vulnerable adults receiving personal care, residential care, respite, or transport services.

Build natural safeguards by informing participants and parents/carers of best practice standards for 'child safe and child friendly' organisations

The NDIS consultation paper outlines the importance of building participants' 'natural safeguards' (page 11), and of '[strengthening] natural supports for people with a disability, who often rely on the support of those they trust (such as family and carers) to make important decisions about their lives' (page 15).

The consultation paper also acknowledges the important role of the NDIA in providing information for participants (page 12). The NDIA has an important role in promoting awareness among participants and carers of the features of child safe organisations, so they can act protectively, and choose providers which adopt best practice standards. The generic list of resources provided in Table 2 (above) will be of benefit to some children and young people with a disability, or their parents and carers, in helping them identify what a 'child safe and child friendly' provider looks like. These existing resources should be promoted through the proposed NDIS 'information system' (page 13).

Additionally, *child safe and child friendly organisations* is a topic on which NDIS should 'commission appropriate content' for the proposed 'information system' for people with disability (page 14). Some of the Australian Children's Commissioners, Guardians and Advocates will be willing to assist the NDIA in developing new and additional child safety resources that are specifically tailored to disability services and the NDIS.

Pre-employment screening does not demonstrate a person is a 'safe' employee

The language in the NDIA consultation paper in relation to pre-employment screening should be rephrased. NDIS providers cannot conclude that an employee is 'safe' to work with people with a disability, they can only assess whether an employee poses an acceptable level of risk. The suggestion that NDIS providers can guarantee that their staff are 'safe to work with participants' encourages the community to adopt the dangerous assumption that, because a person has completed a pre-employment screening process, they are therefore 'safe' to work with children.

The Working with Vulnerable People Check framework in the ACT uses the language of 'acceptable level of risk' and 'registration', rather than 'approval' or 'clearance'. This language reinforces to employer organisations that WWVPC registration does not mean their staff and volunteers pose no risk to clients. The organisation must still undertake a continuous process of reviewing and strengthening its policies and procedures to create a safe environment for children and vulnerable adults (as discussed above).

Pre-employment screening is necessary but not sufficient to protect children and young people

The NDIS consultation paper acknowledges that '[a] particularly important issue to be considered at the provider level concerns the risk of criminal or exploitative behaviour by employees, something that is a known risk in the disability services sector. As the demand for workers in the NDIS grows, the risks associated with poor or hurried recruitment processes will increase' (page 21).

'People with disability have the right to feel safe and be safe when accessing supports under the NDIS. An essential element in achieving this is to minimise the risk that those who work or volunteer with people with disability pose a threat to their wellbeing and safety. Employee recruitment practices, including criminal history screening, are regarded as an important first step in preventing abuse' (page 56).

It is certainly important to conduct proper pre-employment screening. However it is also important that the NDIA does not rely solely on pre-employment screening to protect children, young people and vulnerable adults. The case study provided on page 44 of the consultation paper suggests that, should safeguard option 2 be adopted in the NDIS, the type of 'additional condition of registration' imposed by the NDIA on providers who 'deliver supports to people in their home in an unsupervised environment' would be simply to 'require [the provider] to prove that all staff in direct support roles have obtained a police check'. Under the National Guidelines for Child Safe Organisations this is not sufficient protection for children and young people (see Table 1 above).

On its own, no system of pre-employment screening can ensure children and vulnerable adults will be completely safe from harm. Pre-employment screening should be promoted as one part of a broader approach to create safe environments for children and vulnerable adults. As listed above in the National Guidelines, the wider organisational strategies necessary to protect children include:

- policies and procedures (child safe policy, risk management, responding to incidents and concerns, complaints management, privacy and data collection),
- staff training on child safety awareness,
- human resource management (codes of conduct, rigorous recruitment and selection processes, clear job descriptions and duty statements, effective staff supervision and performance management), and
- enabling the participation of children (mechanisms for children to express their views, and to be involved in planning, policy development and decision making within an organisation).

I encourage the NDIA to think about ways to cultivate the development of 'child safe and child friendly organisations' within the NDIS. We can do more to protect children and vulnerable adults than conducting pre-employment screening, and on its own pre-employment screening is not sufficient:

Organisations can best manage risk of child maltreatment by developing policies and procedures that extend far beyond screening for criminal history at the time of employment. Developing a child centred, child safe culture of respect within an organisation that supports early disclosure, accountability by all adults, and challenging unacceptable behaviour is now identified as the future direction in managing organisational risk.²⁵

NDIS Code of Conduct should clearly define unacceptable behaviour when working with children

I welcome the proposal for an NDIS Code of Conduct (page 33). It is intended to address 'behaviours that may not technically breach a law but should never be acceptable in the NDIS, such as neglect, financial or sexual exploitation, harsh or rough treatment, depriving a person of food, sleep or basic needs, bullying, or intimidation or vengeful behaviour in response to a complaint' (page 33). And it will establish 'a set of behavioural requirements for providers and creates a baseline for assessing and responding to complaints made against providers' (page 42).

²⁵ Irenyi, Bromfield, Beyer, Higgins (2006) 'Child maltreatment in organisations: Risk factors and strategies for prevention', *Child Abuse Prevention Issues* no.25, page 21.

I recommend the NDIS Code of Conduct also include behaviour outlined as concerning in the National Guidelines (see Table 1 above) as these can be signs of grooming (for example, giving gifts to children or young people without their parents' knowledge, inappropriate online communication, inappropriate physical contact, displaying favouritism to certain clients, secretly arranging to meet children or young people outside work hours, spending time at the child or young person's house outside work hours, etc).

Codes of conduct must be clear and specific, and leave no room for the exploitation of ambiguity. They should make it possible for high risk offender-like behaviour to be challenged directly and immediately. If it is made clear to an employee working with a child through the NDIS that they must not communicate with their client online, or give gifts without parental consent, they cannot later claim they thought such behaviour was reasonable in the circumstances.

Complaints should be resolved by providers, but an external complaints authority is a necessary backup

I agree with the stated aims of a complaints mechanism under the NDIS, that:

- 'providers of supports have adequate internal complaints handling mechanisms in place,
- effective, fast and accessible external dispute resolution mechanisms are available to consumers,
- serious and systematic concerns are able to be identified and addressed' (page 51).

However a further necessary element of an effective complaints mechanism is the option (if a complaint is not resolved at the first instance) of progressing to an external authority who will assess the complaint with impartiality and independence.

Complaints should be resolved directly by providers, but when this is not possible, NDIS participants and providers must have access to an external authority with jurisdiction to take complaints. An external complaints authority would not preclude providers from resolving complaints directly in the first instance; indeed it should be created on the basis that (unless there are exceptional circumstances) the complainant must first attempt to resolve their complaint directly with the provider. Providers' complaint mechanisms will be more effective if there is the possibility of an impartial external avenue at the end of the process. Further, an external complaints authority can assist providers to resolve difficult disputes, and to design effective complaint handling systems.

Access to an external complaints authority benefits:

- *participants* – if the provider has not responded properly to their complaint, the external authority can compel a response,
- *providers* – if the provider has taken genuine steps to resolve a complaint, but the complainant is confused or presents unreasonable demands, the external authority will help explain to the participant why the outcome is reasonable,
- *the NDIA* – by quickly identifying significant issues affecting the safety and wellbeing of participants.

It costs money to provide an external resolution point for complaints, but it will also be costly to go without one. While there would be costs associated with establishing dedicated complaints mechanisms (which need to be independent of the NDIA), this is a sensible investment. Consideration also needs to be given to providing opportunities for local resolution of complaints, as disability complaints are often complex and involved, and mediation or conciliation with the parties is generally the most effective way of resolving complaints. An expansion of the current infrastructure within many States and Territories may be the best solution.

Without an independent avenue for people to express their grievances or frustrations or concerns, vulnerable participants will remain in unsuitable situations without means of redress, and participants with

queralent personalities will cycle through multiple providers, taking up the time of their NDIS caseworker with a sequence of complex problems.

Serious incidents and allegations need to be reported and monitored by an external authority

According to the NDIS Terms of Business for Registered Support Providers, '[p]roviders are required to report serious incidents to the NDIS State Manager and to the relevant statutory authority in the local jurisdiction.' 'Serious incidents' include death, serious injury, allegation of physical or sexual assault of a participant, serious injury to another person or significant property damage by a participant. The NDIS consultation paper acknowledges that '[i]t is important to gather information about these events so that providers can make improvements' (page 24).

NDIS providers should be required to report serious incidents and allegations to the NDIA and an independent oversight body. The oversight body should provide external monitoring of the effectiveness with which incidents are managed, and oversee the agency's investigation into allegations, to ensure they are properly conducted and appropriate action is taken. The oversight body could then report back to the NDIA if there are concerns about the registration of particular service providers.

Ensure consistency with the Royal Commission into Institutional Responses to Child Sexual Abuse

The NDIA should liaise with the Royal Commission into Institutional Responses to Child Sexual Abuse before making any significant decisions on safeguards in the NDIS. I am concerned the NDIS consultation paper opens the possibility of deregulation of services for children and young people with disability, which would lead to reduced protections, reduced oversight, and greater risk to children and young people.

The Royal Commission is undertaking significant research and analysis of the systems and processes necessary to protect children and young people (and by extension vulnerable adults) who are receiving care in institutional settings (such as respite care and residential care). It would be advisable – in order to maintain public trust, and to avoid financial cost and embarrassment to Governments – for NDIA to ensure that the NDIS safeguards framework is consistent with the pending Royal Commission recommendations.

5. NDIS Quality and Safeguarding Framework, Element 1 – NDIS provider registration

Option 1 (Basic registration requirements). This option is unthinkable; if implemented it would create serious risk of harm to children and young people, and to adults with cognitive or communication disabilities. As acknowledged in the consultation paper, this would be 'a significant reduction from what individuals and organisations wanting to provide disability services must currently do to obtain funding' (page 32). Further, NDIA acknowledges that this option 'exposes participants to a greater risk of unsafe providers operating in the NDIS and may not provide the level of assurance and information needed to facilitate choice and drive continuous improvement in the market' (page 42). The NDIA also acknowledges the risks of prioritising the goal of 'enabling providers to enter the market quickly' (page 34).

Option 2 (Additional registration conditions). This option is not sufficient to protect children, young people and adults receiving services that place them in vulnerable situations (such as personal care, residential care, respite or transport services). 'The purpose of these additional conditions would be to enable the CEO of the NDIA to check that a registering organisation or individual has the systems in place to limit risks to participants.' (page 34). If this option is chosen, NDIA should refer to the National Guidelines for Child Safe Organisations when defining the additional registration conditions.

Option 3 (Mandated independent quality evaluation requirements for certain providers of supports). 'The additional element proposed under this option would be a requirement for certain providers to participate in an independent evaluation to evaluate their quality and how they contribute to meeting planned outcomes for participants. The focus would be on the participants' experiences of the supports they receive'

(page 36). I would welcome this approach, as it is important to listen to the views of children and young people, and to consult them on decisions which affect them (discussed above).

Option 4 (Mandated participation in an external quality assurance system for certain providers of supports). This option addresses ‘the governance and operational systems of the organisation to ensure viable, safe and effective organisations’ (page 39). This is the most suitable option. National Guidelines for child safe organisations should be one of the standards against which providers are assessed if they wish to provide high risk services for children and young people. ‘This option may result in some providers being excluded from registration because they are unable to meet standards which may be applicable to some kinds of support (page 41). This is entirely appropriate. Providers should meet a certain threshold before being allowed to provide high-risk services. There are existing resources available to assist organisations to strengthen their child safety policies and procedures. Some of the Australian Childrens Commissioners, Guardians and Advocates will be willing to assist the NDIA in developing template policy documents specifically designed for use by NDIS providers, to ease the process.

6. NDIS Quality and Safeguarding Framework, Element 2 – Systems for handling complaints

Option 1 (Self regulation). This option will create difficulties for participants, providers and the NDIA alike. As discussed above, internal complaints handling processes are necessary but not sufficient. Most complaints should be dealt with directly, but there needs to be the option of an external independent process if the internal response does not adequately address the complainant’s concerns.

Option 2 (Internal and external complaints handling requirements). An industry initiated complaints body is not an adequate option. As the NDIA acknowledges, ‘this approach may not be seen as providing sufficient support for vulnerable participants. Questions could remain for participants about the credibility and independence of a provider level system supported by an industry-initiated review body’ (page 54).

Option 3 (Independent statutory complaints function). Under this proposal ‘[g]overnment would establish a formal external complaints body which would assist providers to manage complaints effectively and support participants in having their complaints resolved quickly and effectively’ (page 54). For the reasons discussed above, this is the best option for participants and their families/carers, for providers, and for the NDIA.

7. NDIS Quality and Safeguarding Framework, Element 3 – Ensuring staff are safe to work with participants (or more accurately, ensuring they pose an acceptable level of risk)

Option 1 (Risk management by employers). This option is dangerous. Any person seeking to work with children and young people must be subject to formal pre-employment screening.

Option 2 (Requirement for referee checks for all roles and police checks for certain employee roles). This approach is necessary but not sufficient. Checking previous work history and undertaking referee checks is an important component of the National Guidelines (see Table 1 above).

Option 3 (Working with vulnerable people clearances). This approach is necessary but not sufficient. As discussed above, developing policies and procedures that create a child safe and child friendly culture is now identified as the future direction in managing organisational risk.