



**Response to Consultation Paper:**

**Proposal for NDIS Quality**

**and Safeguarding Framework**

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## **About Women With Disabilities ACT (WWDACT)**

Women With Disabilities ACT (WWDACT) is a systemic advocacy and peer support organisation run by women with disabilities for women with disabilities. Established in 1995, WWDACT follows a human rights philosophy, based on the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention on the Elimination of (All Forms Of) Discrimination Against Women (CEDAW) and works with government and non-government organisations to improve the status and lives of women with disabilities in the ACT and surrounding region. WWDACT, through its membership, has strong links to relevant ACT advocacy organisations and also has a close association with Women With Disabilities Australia (WWDA), the peak organisation for women with all types of disabilities in Australia. The success of WWDACT relies heavily on the volunteerism of its members who are committed to improving the status of women with disabilities in the ACT. WWDACT is funded by the Community Services Directorate of the Australian Capital Territory.

Women With Disabilities ACT acknowledge the Ngunnawal people as the traditional owners and continuing custodians of the land of the ACT and we pay our respects to their elders past and present. We acknowledge that the forced removal of Aboriginal and Torres Strait Islander children from their families as well as past racist policies and actions have an effect which continues today.

## **Rationale for a gender informed Quality & Safeguarding framework**

Women With Disabilities ACT believes that the Quality & Safeguarding Framework for the NDIS must have, as its basis, recognition of the gendered nature of violence, abuse and neglect experienced by women with disabilities compared to non-disabled women and to their male counterparts with disabilities. Women with disabilities experience violence and abuse that is more frequent, more diverse, and of longer duration than for their male counterparts, and includes a higher proportion of partner abuse, as well as that perpetrated by personal care givers, support workers, co-residents and staff at mainstream or community activities<sup>1</sup>.

In addition women with disabilities experience high levels of hate crimes, sexual assault, harassment in the community, and in the workplace<sup>2</sup>. Sexual harassment disproportionately affects women, with at least one in 5 experiencing sexual harassment in the workplace<sup>3</sup>. For women with disabilities, there is little specific data or research, but it would be naïve to suppose that the incidence of assault against women with disabilities was not *at least* replicated. Irrespective of the model of Quality & Safeguarding framework which is ultimately developed, there must be training of commissioners and staff which recognises the gender based nature of the abuse.

In addition there must be specific research into the gendered aspects of the violence and a gender impact analysis of any programs developed to address the violence. Data collection must be coordinated nationally, and collected in a standardised way which enables gender disaggregation and analysis of findings. Current reports and data on violence and abuse, sex discrimination and sexual assault, whilst taking into account its gendered nature, are silent on the impact of disability in this context. This must be rectified in any national Quality & Safeguarding framework.

## **Important Features of an NDIS Quality and Safeguarding Framework**

It is imperative that there is independent oversight of the national Quality & Safeguarding framework.

### **Developmental**

#### **Providing information for participants**

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<sup>1</sup> Elman, R., Confronting the Sexual Abuse of Women With Disabilities, VAWnet, National Online Resource Centre on Violence Against Women, viewed online 26 April 2015 at: <http://wwda.org.au/wp-content/uploads/2013/12/elman1.doc>

<sup>2</sup> Tarczon, C. & Quadara, A, *The nature and extent of sexual assault and abuse in Australia*, Australian Institute of Family Studies, viewed online on 30 April 2015 at: <http://www.aifs.gov.au/acssa/pubs/sheets/rs5/>

<sup>3</sup> Centre Against Sexual Assault (CASA), Fact Sheet: Statistics about Sexual Assault, viewed online 26 April 2015 at: [http://www.casa.org.au/casa\\_pdf.php?document=statistics](http://www.casa.org.au/casa_pdf.php?document=statistics)

There will need to be provision of education, information and training of people with disabilities to exercise their rights as consumers. In conjunction with this, a peer based online navigational tool needs to be developed, which ensures that people can seek high quality and safe providers of services. Such a service would be economical to access, and self-regulating. The Participant becomes the 'buyer' of services, and is able to blacklist any individual who 'sells' a service in this web-based marketplace, and whose service is not of high quality and without risk. The 'seller' is thus automatically removed from further engagement. These systems are economical for the 'buyer', but exist at a cost to the 'seller' who has to pay registration fees at some level. The Registration process could include a requirement for a basic level of qualification for specified areas of work, and could include the requirement for a screening check (see page 5: *Serious Incident Reporting*).

Despite these natural safeguards, WWDACT believes that it is essential that people with disabilities have access to independent Individual Advocacy, so that they are supported to navigate the complaints processes. The funding of Individual Advocacy organisations to assist people with disabilities to make a complaint should be funded on a provider pays system, such as the Telecommunications Industry Ombudsman (TIO), whereby providers pay a base-line levy to the TIO, and then are charged extra according to the complexity of the complaint investigation. These charges could be held in a central interest-bearing fund to be accessed on a case-by-case basis.

## **Preventative**

### **Formal individual safeguards**

The most effective individual safeguard is the reduction of isolation of people with disabilities. We anticipate that Plans for individual Participants will include measures to reduce isolation, put in place supported decision making, and facilitate development of self-advocacy. We anticipate that given choices, people with disabilities will be able to leave group house accommodation, and set up more innovative housing which is more connected to mainstream communities. All these measures will contribute to an individual having a wider and more diverse circle of friends and improved connectedness to the community.

### **System level safeguards – quality measures**

The Quality & Safeguarding framework should include a State/Territory scheme for Official or Community Visitors through which issues of risk could be identified, random spot checks taken of service provider services or accommodation, and referrals made to a pathway for resolution of an issue (including the formal complaints pathway).

## **Corrective**

### **Universal safeguards**

Safeguards need to be proportionate to the risks involved. This means that there should be more stringent safeguarding requirements where personal care is involved and a lower level

required for mainstream services such as gardening or housecleaning. Providers of the lower level risk services could opt-in to the higher level of screening.

### **Complaints handling**

It will be important for there to be capacity for people with disabilities to get assistance to lodge complaints, and to be supported to follow this complaint through every stage of any subsequent investigative process. Funding for independent advocacy will be essential in this context, although this would not preclude the complaints handling body from also having some capacity to facilitate the complainant in making the complaint. Staff in Independent Advocacy organisations would be expected to have staff with training and/or qualifications in gender sensitive support of the complainant.

Complaints handling should be done through existing mechanisms. The network of existing Disability Commissioners is eminently suitable to have their powers expanded to administer a national framework as it applies in their individual jurisdictions. Where such position is not yet in existence, a similar structure, e.g. Health Commissioner should be expanded to include this function. Where no such position exists at present, a new position would need to be created. A Disability Commissioner network is more appropriate for the purpose of a Quality & Safeguarding framework than that of existing Ombudsmen because of the former commissioners' familiar with handling complaints from individuals in the public domain, and have an appropriate culture, often drawn from a Human Rights basis for this work.

The national framework needs to impart an ability for Commissioners to investigate and resolve complaints, and also to undertake inquiries into systemic matters as they arise. There needs to be an ability for such inquiries to be escalated to a national level where necessary, with the initiating jurisdiction funded to coordinate and oversee the national inquiry.

Overall the use of existing mechanisms will be more efficient in the long-term, yet is immediately available for administration of the national framework created. Because it does not require the setting up of a new administrative structure it has the advantage of being value for money and thus meeting the criteria of a national insurance scheme.

### **Serious incident reporting**

There needs to be a requirement to report critical incidents, although there needs to be further research and agreement as to what constitutes a critical incident, and decision on reporting to whom in the first instance.

Because it is essential to keep the Quality & Safeguarding framework as simple as possible, it is questionable whether a national system for screening workers will be effective. It could be costly, and reduce the pool of workers from which a Participant could access staff, without eliminating the risk that an individual perpetrator could do harm. There is little evidence that

the current screening schemes, such as the 'Working With Vulnerable People' check in the ACT has mitigated the risk.

In consideration of serious incident reporting, there must be education and training so that there is universal understanding of when a serious incident constitutes a criminal offence, such as a criminal assault<sup>4</sup> including sexual assault and rape. In such cases the appropriate action is to involve the police. In many cases, the act of reporting a criminal offence should trigger an investigative response into the governance of any organisation which had oversight of the situation or employed the perpetrator. Such investigation should be undertaken by the complaints handling body, as if a formal complaint had been made.

## **Oversight functions**

Monitoring of the Quality & Safeguarding framework needs to involve a disability advisory body (DAB) of some form. At present there is an urgent need for a national DAB to be formed which could undertake a monitoring role for a number of national initiatives, e.g. involvement of disability organisations in the monitoring of the Convention on the Right of Persons with Disabilities is required under Article 33 of that convention. Monitoring of the implementation of the National Disability Strategy also requires the oversight of a DAB. When a national DAB is created, it can also undertake monitoring of the Quality & Safeguarding framework.

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<sup>4</sup> A criminal assault must be recognised, as in common law, as the threat of bodily harm coupled with the apparent, present and actual ability to cause that harm.