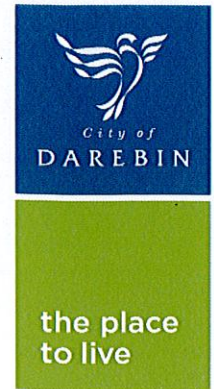


30 April 2015

In reply please quote reference:

**Ref: A2580064**

Department Social Services  
NDIS Quality & Safeguards  
PO Box 7576  
Canberra  
ACT 2610



Dear Department Social Services

**Re: submission to the NDIA Quality and Safeguarding framework Consultation paper**

I am writing on behalf of the Darebin Disability Advisory Committee (DDAC). DDAC acts an advisory body to Council on issues relating to access and inclusion for people with a disability in Darebin. DDAC is chaired by a Councillor and its membership is made up of community representatives with a disability, carers, local disability services providers, and relevant Council staff.

We would like to thank the Department of Social Services for the opportunity to feed into a key component of the NDIS. Quality and safety of service provision is paramount to ensure people with disabilities can achieve independence, while feeling safe and having their rights and dignity protected.

Our attached submission will be addressing some of the eight specific topic areas that has shaped the framework.

Again we thank you for the opportunity to be a part of this important discussion in supporting people with a disability to exercise greater choice and control in a safe and dignified manner. To clarify any points made throughout this submission, please contact Gillian Damonze, Coordinator Community Participation and Development on 8470 8339.

Yours sincerely

**On behalf of Darebin Disability Advisory Committee  
Katrina Knox  
Director Community Development  
Darebin City Council**

Darebin City Council  
ABN 75 815 980 522  
**Postal Address**  
PO Box 91  
Preston VIC 3072  
T 03 8470 8888  
darebin.vic.gov.au

**National Relay Service**  
TTY dial 133 677  
or Speak & Listen  
1300 555 727 or  
iprelay.com.au  
then enter  
03 8470 8888

**Speak your language**  
T 03 8470 8470  
العربية  
繁體中文  
Ελληνικά  
हिंदी  
Italiano  
Македонски  
Soomalii  
Tiếng Việt

## **NDIA Quality and Safeguarding framework consultation paper**

### **PART 2: Detail of key regulatory elements of the Quality and Safeguarding framework**

#### **NDIA provider registration**

**Which NDIA provider registration option, described above, would provide the best assurance for providers? Which option would provide the best assurance for participants?**

It is important that a balance is struck between a registration process that is robust and also ensures quality and standards are met, without it being so onerous that smaller and/or low-risk providers are discouraged from registering – taking away flexibility for participants to choose their own provider of choice.

#### **Recommendation:**

- A combination of Option 3: Mandated independent quality evaluation requirements and Option 4: Mandated participation in an external quality assurance system would allow a balance to be achieved.

There is concern that new providers will have a 12 month period to establish themselves *before* obtaining independent certification. During this period they can commence contact with participants in the NDIS, provide services and receive funds for services. Participants of the NDIS will present with variation in their needs, capacity and vulnerabilities. Establishing regulations that are robust and takes into account the variation in capacity and vulnerability that will be found across the NDIS must be built into the process at the very outset. Twelve months is a significant period of time to entrust new registrants to be providing high risk services and also to be trading without certification.

#### **Recommendation:**

- That all providers registering with the NDIA undertake certification prior to commencing trade and providing services to NDIS participants. Alternatively that the period of time is reduced e.g. 3 months to 6 months for new providers to seek certification.
- That the results of the certification for all NDIS providers are published and accessible to the public.

**Should the approach to registration depend on the type of support? For example, imposing additional registration conditions on providers offering supports that carry a higher risk of harm?**

All providers, regardless of the level of service they provide, low or high risk, should be required to undergo some form of quality assessment. The Framework describes *'low-risk supports' as businesses operating in the general marketplace eg. Gardening or household supports, taxi services, and suppliers of aids and equipment, who would be exempt*. While

these services may not pose a high-risk to participants, there are still concerns associated with them.

Using the example of 'household supports', it is unclear how this is defined including the types of actual supports that may be included under this area. Supports provided in a person's home can easily result in changed dynamics and power imbalances between the person receiving supports and the service provider. Low risk activities or services can easily become high risk. One example is a participant requesting a maintenance person, whose original task was outside the home, to help undertake some extra tasks inside the participant's home.

As a provider of Home and Community Care services, there can be a culture between the client and support worker where boundaries become blurred and where staff will perform tasks and activities that are high risk at the client's request. In an open market, where new providers will enter the NDIS sphere, we should anticipate the capacity for risk and where there may be great fluidity between low and high risk activities depending on individual circumstances.

Any service provided within the home (whether this has been negotiated or not) will increase risk and vulnerability for some participants in the NDIS. Therefore, while a service might be deemed low-risk, exemption from any form of NDIS quality check and registration does not take into consideration the variation in capacity and vulnerability of NDIS participants across the scheme.

### **How can we achieve the right balance between providing assurance and letting people make their own choices?**

Allowing providers to register under either option 3 or 4, depending on the services they provide, allows a balance to be achieved between providing quality assurance and flexibility for participants to choose a small local business who might otherwise be deterred from registering as a provider if the process is too onerous.

Regardless of whether a service is registered under option 3 or 4 *the results of their assessment (should be) made publicly available to existing and future participants*. This would assure participants that a service provider has met certification requirements. The assessment results could assist participants to make informed choices about service providers as well as provide an avenue of promotion for a service provider in the open market. It would also contribute to natural attrition of those providers not meeting the standards.

### **Systems for handling complaints**

#### **How important is it to have an NDIS complaints system that is independent from providers of supports?**

The Framework paper states *that a complaint is the expression of dissatisfaction with a decision, service or product*. As the disability sector moves towards an open market, NDIS participants will become purchasers of goods and services and should be afforded the same consumer rights as the general public to make a complaint about a purchase.

Complaints should be dealt with quickly and effectively. In order to achieve the most effective complaints system, it should operate independent of service providers of supports. An independent system would provide greater transparency of the complaints process and increased protection for service users making a complaint.

*As noted in the framework paper some NDIS participants will face particular challenges exercising their rights without support. Others may be fearful that a complaint may cause further problems; including retribution from their provider. In some circumstances, the effect of this power imbalance may result in injustice and intolerable harm and suffering.*

An independent system responding to participant complaints will be essential in creating a culture of trust and transparency for everyone including providers of supports. A system for managing complaints separate to the NDIA will also help protect the NDIA from real or perceived conflict of interest that will naturally arise because of the link between the NDIA and the purchase of supports from providers using NDIS funding. It will also acknowledge the power imbalance that exists between the participant and the NDIA as the funding body.

### **Recommendation**

- An independent complaints system should operate independently of both service providers and the NDIA through adoption of Option 3 – Disability Complaints Office

### **Should an NDIS complaints system apply only to disability-related supports funded by the NDIS, to all funded supports, or to all disability services regardless of whether they are funded by the NDIS?**

The focus of an NDIS complaints system should be to support the participant. Given participants will be able to purchase services from non-NDIS funded services, the complaints system should apply to all disability services regardless of whether they are NDIS funded or not. As noted *the current consumer protections may not extend to the full range of NDIS supports* and as identified above participants need to feel safe and supported to make a complaint regardless of whether it may be perceived minor or major. One system reduces confusion in what is already a complicated and convoluted service system and is more likely to contribute to a culture where all parties involved can feel reassured they will receive consistent information and support regarding making a complaint.

At a broader level having one complaint handling system means there is greater capacity to track systemic issues that emerge from the implementation of the NDIS that will help stakeholders learn and respond to the gaps in the system.

### **Recommendation**

- The NDIS complaints system should apply to all services, regardless of whether they are NDIS-funded or not.

## **Ensuring staff are safe to work with participants**

### **Of the options described, which option, or combination of options, do you prefer?**

A combination of Option 3: Working with vulnerable people clearances and Option 4:

Creation of a barred persons list would provide comprehensive risk minimisation and increased safety for service users.

Option 3 provides a comprehensive approach to vetting employees, while still being flexible to both participants and potential employees. There may be a perception that this option is too onerous on low-risk providers and new employees however, *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 communication.*

The NDIS will also see new providers and new individual workers enter the market place, again increasing potential risk to participants. Therefore, it is not unreasonable to require existing and new employees to undertake a more extensive check than has previously been required. As noted earlier, some low-risk services are delivered in and around the home setting, therefore increasing the inherent risk by virtue of the service being delivered in a person's home even if the service is defined as low risk.

The history and credibility of overseas workers from their country of origin is another factor that needs to be considered. The disability sector has always had to balance paying staff low wages with ensuring minimum standards are in place to ensure participants receive quality services and are not exposed to risk associated with employment of staff. Option 3 would allow *further information, than is currently sought, to be gathered about a person's history and involve a new system of centralised checks.* This will provide a more comprehensive system than is currently in place, while still providing flexibility for participants who choose their own workers.

However, in order to keep costs at a minimum for both participants and individual workers and as an incentive to encourage flexibility in the market, individuals who are approached by an NDIA participant for services, but who are not connected or associated with a service provider, should have costs associated with the vetting processes covered by the NDIA.

A cost neutral process such as this could become an incentive for smaller providers and individual workers, particularly people employed directly by a participant. It also means there is less likelihood that hidden costs will be added onto the costs of services provided to a participant impacting on their overall budget.

The new vetting system should also be aligned with other sectors to enable a worker to transfer and/or work across multiple sectors (eg. aged care, working with children) at the same time.

Option 4 provides an added layer of protection for high-risk services through the creation of a barred persons list. *Under this option, employers would be required to verify, through the NDIA, that a proposed employee was not on the barred persons list, and to report misconduct. It has the advantage of preventing employees found to have engaged in workplace misconduct from moving to another job in the sector.* If the barred persons list was aligned with other sectors, it could also prevent workers from moving between sectors and a nationally consistent approach would prevent people from going undetected by moving between states. People who employ their own workers should also have access to this list (after justification) and be required to report misconduct.

## **Recommendation:**

- Implement a combination of Option 3: Working with vulnerable people clearances and Option 4: Creation of a barred persons list to provide comprehensive risk minimisation and safety for service users.

## **Safeguards for participants who manage their own plans**

**Should people who manage their own plans be able to choose unregistered providers of supports on an 'at your own risk' basis (Option 1), or does the NDIS have a duty of care to ensure that all providers are safe and competent?**

Participants who manage their own plans should be able to choose unregistered providers of support with safety provisions provided by the NDIS.

Option 3a: Separate registration process with limited conditions, provides flexibility for participants and their nominated employees, while still providing a safety net to all parties involved. It is also positive to see that this *registration process would not include financial costs for participants and individuals.*

**What kind of assistance would be most valuable for people who want to manage their own supports?**

Access to a third party - such as an advocate or case manager role - who could provide assistance and support to participants who manage their own funds. The role of the Local Area Coordinator and its functions remain unclear including the breadth and depth of their role. For assistance to be valuable though, the person/role needs to have a sound understanding of the complexities and considerations that come with self-management of funds and services including knowledge and responsibilities in the areas of accounts management (budgeting, invoicing and booking keeping), employee vetting, meeting occupational, industry and insurance requirements.

Striking the right balance will be key in supporting individual participants in the NDIS who will bring their own level of skill, experience, knowledge and interest through the self-management process.

## **Reducing and eliminating restrictive practices**

**Who should decide when restrictive practices can be used, and what safeguards will be needed?**

Option 4: Restrictive practices could only be authorised by an independent decision maker *establishes a clear separation between the provider and the decision maker and creates clear pathways of accountability.* This option should be accompanied, and strengthened, by providing access to the complaints process of both the provider and the NDIS.

**Would you support mandatory reporting on the use of restrictive practices? Why or why not?**

There is full support for mandatory reporting of restrictive practices. The Framework acknowledges that *current practice does not support the use of restrictive practices as a way of responding to challenging behaviors*. It also notes that *evidence indicates that people with intellectual disability or cognitive disabilities or autism and people with communication difficulties ... are at greater risk to being exposed to restrictive practices*.

Within the Victorian funded disability sector there are formal processes for documenting and monitoring people subjected to restrictive practices as part of their behavior support plan which includes lodging this information formally through the Office of Senior Practitioner. However there are many others subjected to restrictive practices that have been put in place based on the recommendation of a psychiatrist. In these instances, restrictive practice may not necessarily be lodged with the Office of Senior Practitioner.

It should be understood that even when included in a person's positive behavior plan, restrictive practices are a serious intervention that should include clear timeframes for review. While a restrictive practice can be implemented to protect the individual or others from harm, it does involve restricting that individual's rights or freedom of movement. Such restrictions impinge a person's human rights and can cause significant physical and psychological harm as a result.

A new culture needs to be fostered where all restrictive practices are lodged so that vital information is captured; participants subjected to restrictive practices can be protected and there is a natural conduit for plans to be reviewed. Given the most vulnerable of people with the least capacity to communicate their situation are most likely to be subjected to restrictive practices, there is need for a consistent national approach that draws on considerations adopted through the Human Rights Charter.

**If you support mandatory reporting on the use of restrictive practices, what level of reporting do you believe should occur to provide adequate accountability.**

To achieve maximum accountability of service providers and protection for service users, any use of restrictive practices included in a person's positive behaviour plan should be reported, along with any subsequent times the restrictive practice is used. This would enable the reduction and elimination of restrictive practices, which is a *commitment made by all Australian governments*.

A consistent and robust approach would also moderate the current inconsistencies regarding the handling of restrictive practices in each state and territory. Finally, the most important reason why the NDIS needs to approach restrictive practices with the highest diligence and uniformity is because *evidence indicates that people with intellectual or cognitive disabilities or autism and people with communication difficulties who also have impaired capacity are at greater risk of being exposed to restrictive practices*. Therefore, protecting and supporting people with disabilities, who are more vulnerable are less likely to be able to communicate their understanding and needs, should be a priority that is handled consistently. Particularly in circumstances where they are supported and/or decisions about restrictive practices are being made by another person on their behalf.

## **Building participants' capacity**

### **What approaches to delivering information, such as web-based information, peer review sites and consumer expos, might best meet participant information needs?**

All of the above approaches should be implemented to deliver information to NDIS participants including traditional methods such as hard copy material sent to participants. No one individual will receive or access information in the same way as the next person. Therefore, scheme, provider and consumer information should be provided in different formats. Regardless of how materials are provided, it should be delivered in formats that are accessible to people with different communication and cognitive processing needs.

### **What would be the benefits and risks of being able to share information publicly, such as through online forums, consumer ratings of providers and other means?**

The benefits and risks to sharing information publicly is no different to that of other service sectors, whereby consumers share their personal views and reviews of services provision and receipt. The most important thing would be to include a consumer clause that participant views are based on personal experience or perspectives being expressed and other participants need to take this into account in making their own informed decision about a service provider. In the instances where a participant/consumer expresses specific concerns about a provider, they should be supported and encouraged to make a formal complaint and follow the appropriate processes.

### **Are there any other ways of supporting people to build natural safeguards that the NDIS should be considering?**

The paper identifies *many participants have limited experience in identifying their own goals and exercising choice and control in decision making. Making it critical to build the capacity of these participants to self-direct and self-advocate.* Self advocacy can empower people with a disability to be more active participants in their own life and a more active citizen in their community. Self advocacy skills can give a person more confidence to ask for what they need and want, and to make life decisions. Most importantly good self advocacy skills equip people to know what their rights and responsibilities are and what options they have to realise their rights.

Access to and the provision of advocacy supports, both individual and systemic advocacy, is a key mechanism to supporting people to build on natural safeguards that the NDIS should be considering.

### **How can the NDIS better support people with disability who are isolated or who have few or no people in their lives to help ensure they are safe and their rights are protected?**

Access to advocacy supports is even more important for people with a disability who may be isolated or disconnected from carers or other independent (non-paid workers) people in their life. Therefore, we reiterate the above point and encourage better access to and promotion of advocacy supports as an important mechanism to recognising people are safe and their rights are protected.



## Monitoring and oversight

### Should reporting of serious incidents be mandatory under the NDIS?

Reiterating our thoughts on restrictive practices, serious incidents should also involve mandatory reporting. *Serious incidents are events that threaten the safety of people and property*; therefore, reporting should be mandatory. Reporting not only ensures an incident is responded to in a timely and thorough manner, it also provides transparency and due process for all parties involved, as well as valuable learnings and information that can contribute to systemic improvements.

#### Recommendation:

- Consider rolling out 'a serious incident pilot'. This would involve using initial data collected on serious incidents to inform the need for mandatory reporting at a national level.

### Should there be community visitor schemes in the NDIS and, if so, what should their role be?

The framework paper acknowledges the success of the Community Visitor Scheme (CVS) used in some states and territories. Community visitors currently *assist people to raise concerns on behalf of participants who might otherwise be unable or unwilling to make a complaint on their own behalf*. We believe these functions will still be required under the NDIS and therefore the program should not only continue under the NDIS, it should be expanded.

Community visitors provide invaluable support and advocacy to people with a disability. The advocacy sector sits outside the NDIS and has undergone significant funding cuts and changes in the last 12 months. Therefore, access to advocacy services, particularly local and specialist services, (for example of the advocacy bodies funded under the new advocacy alliance, there is no autism specific or intellectual disability specific advocacy services) will be more challenging. It therefore makes sense to continue a program that is known to be effective and is still required.

However, the CVS would need to be strengthened and expanded to ensure it can continue to be effective and has appropriate powers to adequately support a participant in making a complaint. For example, while *there is a range of legislative powers given the community visitors*, they are only volunteers. Community visitors need to be paid and adequately supported and trained to be able to provide timely and effective support. The expansion of the CVS also enhances the overall NDIS quality and safeguarding framework.

## Key themes not addressed by the Framework

### Impact of diversity and disability

There is no reference made to people with disabilities from diverse backgrounds, such as Aboriginal and Torres Strait Islander people with disabilities or people from culturally and linguistically diverse backgrounds with disabilities. *People with disabilities of cultural backgrounds often have to deal with multiple issues on multiple fronts—their cultural*

*background can act to complicate and compound issues associated with disability* (Shut Out report 2009). They will inevitably experience the NDIS differently and will most likely require extra and/or different supports to ensure they don't experience undue risk due to their background or experience of disability. The NDIA needs to include a cultural framework to ensure both the NDIS and service providers are culturally safe and responsive to the needs of people with a disability from diverse backgrounds. A cultural framework would also act as a quality and safeguarding mechanism.

### **Clarity regarding building capacity through Local Area Coordinators**

The Framework paper states that *the NDIA has a role in developing individuals' natural safeguards through its Local Area Coordinators (LACs). LACs will help people with disability connect to providers, including providers of mainstream supports.* Local Area Coordination was also a heavy focus of the recent Information, Linkages and Capacity Building (ILC) paper. While the objectives of Local Area Coordination have been outlined and emphasised as an important component of the NDIS, the capacity of the LAC to achieve the prescribed outcomes is unclear and somewhat disconcerting.

Greater clarity is required regarding:

- The breadth of the LAC role/small team.
- Will a LAC will have a caseload of participants?
- If so, how many participants will be assigned per LAC?
- What geographic area will a LAC be expected to cover?
- How many LACs will be allocated per geographic area?
- Is there an expectation that a LAC will be able to work one on one with a participant while performing community capacity building initiatives at the same time?

### **Building capacity of participants of NDIS**

The Framework Paper makes many references to building capacity of participants to enable active participation in the scheme and for participants to exercise control and choice in the purchase of services and supports.

For some participants of the scheme, taking control of a package of funding will be a significant and potentially overwhelming step. Access to paid staff to help people navigate this pathway will be an important first step to building trust and capacity.

There also needs to be opportunity for participants to access advocacy that sits outside of the NDIS system or where advocacy supports are not paid for. An independent complaints handling system is as important as an advocacy body that participants can access which is not connected to the NDIS. Independent advice and assistance that is separate to the NDIS and assures no conflict of interest; will be crucial to building the capacity of participants and families in the Scheme.

Providing opportunities for participants to seek independent advice also contributes towards building a culture of transparency for everyone. In order to protect the rights of all participants, access to cost neutral independent advocacy support should be available to anyone participating in the NDIS, not just those who are allocated support as part of their funding.