

# Proposal for a National Disability Insurance Scheme Quality and Safeguarding Framework

## Ability First Australia Response April 2015

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Ability First Australia (AFA) welcomes the opportunity to provide input into the National Disability Insurance Scheme (NDIS) Quality and Safeguarding Framework. AFA is a national body of leading disability service providers with member organisations in all states and territories. Our members have a long and trusted history, having supported people with disability for between 50 and 85 years. Each member delivers services to people with disability independently. Through its membership, AFA is one of the largest not-for-profit's in Australia representing the interests of \$420 million worth of support services to over 150,000 people with disability.

AFA provides a national brand for promotion, awareness raising, cost efficiencies, strategic alliances both domestically and globally, as well as advocacy. Our member organisations share information and best practice, benefit from economies of scale, and are involved in research and learnings that benefit people with disability. The members of AFA are:

- CARA – (South Australia)
- Carpentaria Disability Services – (Northern Territory)
- Cerebral Palsy League – (Queensland)
- Cootharinga – (Queensland)
- Montrose Access – (Queensland)
- Northcott – (New South Wales, and the Australian Capital Territory)
- Novita – (South Australia)
- Polio Australia – (National)
- Rocky Bay – (Western Australia)
- Scope – (Victoria)
- St Giles – (Tasmania)
- The Ability Centre – (Western Australia)

AFA offers particular value for this consultation. In particular AFA:

- Brings a rare national perspective on behalf of service providers
- Draws on its members' corporate memory reaching back a number of decades
- Draws on extensive member experience working with people who have high support needs.

Our experience in relation to people who have high support needs has particularly informed our response to this consultation. We argue that the NDIS Quality and Safeguarding mechanisms must work for this group above all others, as they are the most susceptible to abuse of power and will most likely suffer the most negative consequences when quality is compromised.

## **How can the information system be designed to ensure accessibility?**

An NDIS information system for participants needs to be both comprehensive and nuanced. It also needs to draw on existing, and develop new, information pathways to ensure the right information gets to the right people at the right time. To achieve this, the NDIA needs to work with organisations that have already developed information pathways and who often develop content tailored to the needs of end users of that information. An overly centralised system will collapse under the volume and complexity of information required. Similarly, embracing a technological solution (e.g., social media and websites) as a panacea at the expense of a diversity of channels will fail NDIS participants.

Currently, there are a range of organisations operating in this space. These include advocacy groups, diagnosis-focused organisations operating at a national and state level, and also mission-driven service provider organisations such as the members of AFA. All these organisations have considerable expertise, and have built communication platforms, resources and information systems that can get information to NDIS participants quickly. The NDIA should support and encourage this diversity to ensure multiple, highly targeted information pathways are available to NDIS participants.

## **What kind of support would providers need to deliver high-quality supports?**

There are a number of supports needed by providers to ensure delivery of high-quality supports. AFA endorses the ideas outlined in the submission by NDS that relate to this. In addition to these, AFA wishes to draw attention to the value of voluntary industry-level benchmarking activities as a means of driving high-quality support. Such benchmarking, when done at arms-length from the NDIA, provides a safe space for service providers to share commercially sensitive data that highlights differences that become the basis for quality and cost improvement activities potentially at a national level.

By way of example, AFA has recently established the Ability Roundtable. The Ability Roundtable aims to improve safety, effectiveness, timeliness, efficiency, customer-centeredness, and service equity in services provided by participating organisations through providing credible benchmark data on inputs, outputs and outcomes of services delivered by those organisations. AFA has set up the Roundtable to operate at arms-length from AFA to facilitate the participation of organisations that are not members of AFA.

The strengths of the Ability Roundtable are:

- A national focus
- Capacity to compare like services through the development of nationally consistent datasets
- Compatibility with the NDIS due to NDIS bringing in nationally consistent pricing, service descriptions and data collection requirements

- A “space” for data sharing that facilitates shared problem solving while maintaining high levels of commercial confidentiality

While the success of such benchmarking initiatives is built on their independence from government and its instruments, there can be a role for the NDIA in supporting these industry initiatives, particularly through providing subsidies to lower the initial costs of participation as these initiatives are built up to a sustainable scale. These initiatives can then quickly move to self-sustainability. This investment should be seen as part of the necessary building of the architecture of a marketplace of high-quality service providers.

### **Should there be an independent oversight body for the NDIS?; and what functions and powers should an oversight body have?**

AFA believes that there is a need for independent oversight to provide an additional level of assurance for the NDIS. AFA endorses the NDS view that oversight of the NDIS is the shared responsibility of the disability sector, the wider community, and universal systems. The importance of the wider community in promoting service quality and safeguarding the rights of people with disabilities, particularly those with high support and complex communication needs, should not be ignored.

AFA endorses the NDS co-regulation model, with a national industry regulatory body alongside an independent oversight body. AFA broadly endorses the division of functions and powers except in relation to the managing of complaints. AFA argues that there should not be an industry body acting as a buffer between complainants and the independent oversight body. For NDIS participants to have confidence that their complaints will be addressed without prejudice, should they be unable to resolve them directly with a service provider, they need to be able to take their complaints directly to a genuinely independent and appropriately empowered body that sits outside the system. We draw attention to the ongoing Royal Commission into Institutional Child Sexual Abuse to highlight what can happen to people vulnerable to the abuse of power when the “system” they are part of also manages the complaints processes. Even the NDIA can find itself compromised where complaints raise systemic issues at a service-provider level that may paint the NDIA in a bad light regarding its management of the system. Participants must be able to go directly to an independent “umpire” so they feel confident there is no conflict of interest for the body handling their complaints.

AFA supports the concept of expanded functions for the Office of the Aged Care Commissioner. However, the powers of the Commissioner would need to take into account an “end-to-end” complaints handling responsibility and an “individual-to-system wide” authority to identify and enforce necessary changes to address the causes of complaints. AFA’s response is particularly informed by our experience working with people with high support needs. The power imbalance between them and those from who they receive services is perhaps the greatest within the disability support system. Access to independent,

powerful and proactive complaints handling is critical for this group if we are to provide any meaningful guarantee of service quality.

AFA also argues that an integral element of the safeguarding system, particularly for people with high support needs, is independent advocacy. Well resourced, nationally available advocacy is a minimum requirement for effective oversight of the NDIS.

AFA provides further details on its views of appropriate complaints handling powers for the oversight body in its response to the questions relating to the complaints system, which need to sit alongside the body's capacity to identify system-level implications of complaints.

Notwithstanding the separate management of complaints by an independent oversight body, this leaves the industry regulatory body with a wide range of responsibilities, including provider registration, employee screening, development and monitoring of a Code of Conduct, National Disability Standards, Quality Management/ Assurance and accreditation systems.

AFA would like to draw particular attention to the need for the industry body to develop national frameworks for police checks and Working with Children Checks that address the current system failures. Currently, each state and territory has their own procedures. The procedures of the state or territory in which staff are working must be fulfilled. The requirements differ according to type of screening, what records are checked, and who is required to undergo checks. This inconsistency in requirements and approaches has meant that, at times, the screening processes have failed to screen out people who should not be working with people with disabilities.

In addition to professional standards and sector compliance, the industry oversight body should monitor market development to explore trends and identify unmet need, monitor and investigate serious incidents, and have oversight of restrictive interventions.

**Considering the options (for registration) described above, which option would provide assurance for (1) providers; and (2) participants?**

AFA agrees with the position outlined in the consultation paper that it is important to consider new ways of ensuring the suitability of providers while not creating unnecessary costs or other barriers for those who want to register with the scheme. Regulation and registration is, however, critical in order to provide safeguards for people with disabilities, particularly those who are most vulnerable due to high support needs and complex communication, and those who do not have natural supports or people to advocate on their behalf. There is a need to find a balance between empowering people with disabilities, supporting them to be independent and make choices, and ensuring that people with disabilities are safe from harm and exploitation. Consent is clearly a factor that should be taken into account, and investing in building capacity to make informed decisions is vital, but it is critical that people with disabilities are not left to make decisions which remain outside

their knowledge and competence, and that harm is not justified on the grounds that it is the person's choice when they do not have the capacity to make that decision.

Given that people with disabilities are a vulnerable population, especially those with high support needs and complex communication, AFA believes that Option 4 provides the best assurance for both providers and participants. As highlighted in the Consultation Paper, there should, however, be flexibility within the system so that registration requirements are not applied in all circumstances and, where they are required, are influenced by the nature of support that will be provided and the vulnerability of the participant. Factors such as participant age, type and severity of disability, the extent of dependency on others, communication skills, and range of existing support networks should be taken into account. The nature of support should also be considered, as well as the setting that it will be provided in. In general, the more vulnerable the participant, the greater the need for stronger safeguards and more robust registration requirements.

A quality evaluation where the perspectives of the participants are sought is imperative, particularly as it relates to safety and to achieving outcomes and goals. The information obtained through the Quality Evaluation can contribute to the evidence-base and be used along with other data collected through the Scheme to make decisions about which supports to fund. This information should be made public in order to assist participants to make decisions about who to purchase services from. Industry certification is also important, however, it should be up to providers to decide whether or not to make their certification reports public. It should be noted that the costs associated with auditing are well in excess of \$5000. For a large provider, the cost is in the vicinity of \$25,000, which does not include the costs associated with the preparing for, and maintaining audits. If the NDIS is to support both competition and quality the pricing of services needs to factor in reasonable costs relating to quality compliance.

### **Should the approach to registration depend on the nature of the service?**

The approach to registration should depend on the nature of the service provided. In general terms, registration requirements should be proportionate to the level or risk associated with the type of support provided, as well as the vulnerability of the participant.

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

This question has been answered in part in our response to the role of an independent oversight body. The following comments follow on from that response.

Providers should have their own policies and procedures for responding to complaints. In addition, there is a need to also have a complaints system that is independent from providers of supports, where a provider is not able to resolve the complaint to the

participant's satisfaction. To this end, AFA supports a process whereby the independent oversight body investigates complaints about service providers that have not been resolved by the service provider to the participants' satisfaction. The most serious cases should be referred to the oversight body even if they have been resolved as a way of collecting information that can be used to improve the system.

The independent complaints system could function in a similar way to the Victorian Disability Services Commissioner. The Disability Services Commissioner was established in 2007 under the Disability Act 2006 to improve services for people with a disability in Victoria through assisting in the resolution of complaints. It is a statutory body that functions **independent** of Government and service providers to provide support with the complaints resolution process about **Victorian disability services** (including those provided by the Department of Human Services). This model could form the basis of the independent oversight body that manages complaints, however, it would need to be broadened so that it has additional legislative powers to de-register services providers or impose sanctions, or at least to make recommendations that the NDIA is able to act on, with power to de-register or sanction. As with the Disability Services Commissioner, the independent oversight body managing complaints should also have an educative function that builds the capacity of participants, their families and other stakeholders to make complaints, builds the capacity of service providers to respond appropriately to complaints and develop positive organisational complaints cultures.

Complaints systems that are established should be easy to navigate and accessible to people with a range of abilities, including those people with high support and complex communication needs.

### **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?**

AFA recommends that the oversight body handle complaints arising from NDIA-funded support only, at least in the medium term. While there may be an opportunity in the longer term to rationalise the range of complaints handling bodies that may be used by people with disability this is a complex piece of work and the value of such consolidation will only become apparent once the NDIS is fully operational. In the meantime there is a diverse range of disability and universal complaints handling bodies already in place. The oversight body should have responsibility to work at a systems level to ensure these bodies provide appropriate support to people with disability.

### **What powers should a complaints body have?**

The oversight body should be established under legislation with defined statutory roles and responsibilities. It should have the power to investigate complaints, publish outcomes, make

and enforce recommendations, de-register providers, and impose sanctions (e.g., suspension). Alternatively it should be able to make recommendations to the NDIA, with the NDIA having enforceable powers to de-register or sanction.

**Of the options for staff safety screening, which option, or combination of options, do you prefer?**

AFA endorses the NDS response that a combination of Options 2 and 4 is ideal, as well as a national standard for criminal history checking, and a national barred persons scheme.

**Recommendations**

AFA would like to thank the NDIS Senior Officials Working Group for the Disability Reform Council for the opportunity to provide input into the NDIS Quality and Safeguarding Framework. AFA's recommendations are summarised as:

- In addition to building new information pathways, the NDIA should strengthen existing information-provision by the range of organisations already undertaking this work.
- In addition to range of supports to providers proposed by NDS to ensure delivery of high-quality supports, initial subsidies should be provided to facilitate the growth of voluntary industry-level benchmarking initiatives.
- There should be co-regulation of the quality and safeguarding system. Two bodies are proposed:
  - An industry-based body to manage provider registration, employee screening, development and monitoring of a Code of Conduct, National Disability Standards, Quality Management/ Assurance and accreditation systems.
  - A complaints-handling body that is independent of the NDIA and providers that can receive and investigate complaints, with an educative function, but also with enforceable powers to require service providers to undertake corrective actions, and legislative powers to de-register or impose sanctions on services providers. In the first instance, the oversight body should only handle complaints arising from NDIA-funded support only.
- Option 4 for registration would provide the best assurance for providers and participants, however, there should be flexibility within the system so that registration requirements are influenced by the nature of support and the vulnerability of the participant.
- AFA endorses the NDS response that a combination of Options 2 and 4 is ideal for staff safety screening, as well as a national standard for criminal history checking, and a national barred persons scheme.



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