# Response to the
# National Disability Insurance Scheme
# Public Consultation Paper

THE AUSTRALIAN
ORTHOTIC PROSTHETIC
ASSOCIATION

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

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## 1. Introduction

The Australian Orthotic Prosthetic Association (AOPA) welcomes the opportunity to provide feedback on the *Consultation Paper: Proposal for a National Disability Insurance Scheme Quality & Safeguarding Framework* (Consultation Paper). AOPA congratulates the Disability Reform Council on the development of the Consultation Paper which provides an excellent basis for robust conversations regarding regulation and safety within the National Disability Insurance Scheme (NDIS).

In this submission, AOPA address several, though not all of the consultation questions. It is our conclusion that a Quality and Safeguarding Framework for some of Australia's most vulnerable people should begin at the highest level, with a lightening of the touch based on a risk assessment of both the service type and individual participant capacity.

AOPA wishes to make a number of points regarding the discussion paper:

- It is essential that individual's with a disability are empowered to exercise their personal choices when accessing services. The paper focusses on the options for managing risk associated with providers of disability services. There is however also significant variability in the capacity of people with a disability to make decisions regarding the service type and provider. In many instances a service which may be deemed low risk, such as gardening services, might be high risk for others due to their specific set of vulnerabilities and capacity. This must be recognised in the Framework and a risk matrix should be used which assesses the total risk, combining both service risk and participant capacity in relation to the service.
- The approach within the Consultation Paper appears to view risk in a relatively static manner. Risk in relation to the capacity of an individual participant will change over time as physical and mental capacity, access to social supports and family and/or carer networks may change. The framework must be flexible such that changing capacities and risks are accommodated.
- The Discussion Paper does not clearly separate the regulation of provider organisations and the provider of services, such as Allied Health Practitioners. The organisational and individual level of services should be addressed through different regulatory approaches and touches.

## 2. Response to consultation topics

### Supporting individual capacity

AOPA supports sustained information provision and support through an extended planning process, allowing access to a wider range of knowledge and opinions prior to participant decision making. Currently the plan development process is a large component of information provision and therefore participant capacity building. Planners hold a significant role in the planning process however AOPA questions the breadth and depth of knowledge in assistive technology, in particular orthotics and prosthetics, and therefore the planners' role in the provision of information to build capacity. Information needs to be provided in a variety of formats and from a wide range of sources to enable participants to make informed choice. Further to this, information provision may increase knowledge but does not guarantee the development of competencies or capacity for a participant to make decisions regarding service provision.

The building of participant capacity creates a natural safeguard which will require substantial resources by the NDIS and providers but will deliver significant benefit. All service providers and providers of supports have a role in the building of natural safeguards. This may require a shift in approach to service provision for some however education delivery and promoting connectedness through referrals should be an integrated part of the role of any provider within the NDIS and integral to a successful participant journey. Providers need support through greater clarity of role in capacity building and education and appropriate resourcing to develop this within their services.

Social media provides another invaluable method for building natural safeguards, through timely information provision and sharing of experiences, supporting an informed participant. The provision of information through social media would be enhanced and the quality of information strengthened through input from relevant skilled professions, ensuring information is provided from both a participant and provider perspective. Two examples of effective sites which provide information and support decision making are www.therapychoices.org.au which guide consumers regarding their allied health choices and www.myhealthcareer.com.au which provides education to guide student career choices.

Participant feedback is an important component of building a disability services market, however rating systems and feedback mechanism should be robust and in line with regulation. AOPA believes that current regulation may restrict the adoption of a trip-advisor style rating

system for service providers. The Australian Health Practitioner Regulation Agency (AHPRA) has stringent requirements that prohibit the use of testimonials and advertising and these restrictions have been adopted by many self-regulating professional bodies also. It is possible that the use of a trip-advisor approach to collecting experiences and feedback may contravene these regulatory requirements. Further to this, NIB Health Fund has developed a similar system called Whitecoat (www.whitecoat.com.au) which is an ancillary health service rating. Whilst this is reported as heavily moderated, with all comments and ratings reviewed prior to upload, it has been met with criticism from practitioners due to concerns with comment moderation, and the voracity and integrity of the comments. It is our understanding that a large percentage of practitioners have elected to opt out of the rating system, especially those under the AHPRA registration where it is unclear whether comments that constitute a testimonial would breach AHPRA Advertising Guidelines.

## Registration and regulation of providers

Regulation is required at both the large contract provider (organisational) and service provider (practitioner) level which should be proportionate to the service type risk and the participant's individual capacity. Clarity is required regarding the difference in quality and safeguarding frameworks at these levels and the approach to regulation should depend on the nature of the service.

AOPA proposes that regulation be the universal starting point, with the opportunity for exemptions when conditions are determined as safe for the particular individual. AOPA supports Option Four of the Consultation Paper and where safety risks are assessed as more minimal then a lesser option can be applied in a stepped down approach. As previously mentioned, whilst risk varies according to the service type, it also varies according to the capacity of the participant to manage that risk and the strength of their natural safeguards.

*Organisational regulation*

Whilst Option 4 provides the highest level of quality and safety to people with a disability it may present significant costs to disability services providers and/or providers themselves. Many providers in the allied health sector who deliver services to people with a disability are small private businesses who could not afford substantial set-up or ongoing accreditation fees. For many allied health professionals the remuneration under the NDIS is not competitive and many may perceive little benefit in seeking accreditation, particularly in rural areas where NDIS client numbers may be low. They may therefore choose not to enter the scheme as a provider. This would have a negative effect on participants, particularly if the market became dominated by a small number of large

service providers and would be in contrast to the NDIA goal to develop a competitive market. Unless the cost of achieving accreditation is managed and/or subsidised it will significantly impact on service accessibility. It is also therefore vitally important that regulation is stepped according to a risk matrix and that a one-size-fits-all approach is not adopted.

AOPA supports organisational regulation in order to ensure quality and safety is guaranteed more broadly than the face-to-face provider level. Individual providers and their employing organisations must do all that is reasonable to ensure the safety of people using their services. This requires a comprehensive range of strategies for safeguarding to embed quality as a feature of an organisation's culture. These strategies may include:

- Recruitment processes
- Complaints mechanisms
- Quality Improvement programs which incorporate consumer feedback
- A culture of zero-tolerance
- A culture of accountability, open discussion and support for reporting/complaints

*Practitioner regulation*

For providers of supports at the practitioner level, the current registration process via state schemes offers minimal safeguards and/or assurances for participants. In many cases practitioner credentialing is inadequately conducted and annual credential renewal processes are not in place. For Allied Health Practitioners the recognition of registration through the National Scheme (Australian Health Practitioner Regulation Agency) or credentialing through a recognised self-regulating body (as recognised by Allied Health Professions Australia) must be mandatory. Credentialing through a recognised external entity ensures practitioners meet minimum qualification requirements, annual continuing professional development requirements and suite of regulatory standards and codes. AOPA does not believe that an alternative credentialing process is required for Allied Health Practitioners, with current systems providing appropriate safeguards in the insurance and public health sectors. This type of practitioner credentialing is already in place in legislation for Private Health Insurers through the Private Health Insurance Accreditation Rules (2012), specifically *Rule 9: "*Treatments provided by allied health professionals":

1. *If the treatment is a service within a field mentioned in regulation 3A of the Health Insurance Regulations 1975 as in force from time to time, the standard is that the treatment within that field must be provided by an allied health professional who is qualified in that field.*

2. *In subrule (1), an allied health professional will be qualified in the field if he or she meets the qualification requirements for a service within that field as specified in Schedule 1 of the Health Insurance (Allied Health Services) Determination 2007 or if that instrument is repealed and remade, with or without modifications, the remade instrument.*
3. *If the treatment is provided by an allied health professional practising in a field not mentioned in subrule (1), the standard is that the allied health professional must be a member of a professional organisation which covers health care providers who provide that type of treatment and which is an ordinary member of Allied Health Professions Australia Ltd or any successor organisation.*

   (Rule 9 [sub-rule 1-3] http://www.comlaw.gov.au/Details/F2013C00093)

## Staff Vetting

The vetting of staff provides assurance of quality and safety at the provider level and at the participant service encounter level. This process should be imbedded into all disability service providers' human resource procedures and be a regulation component at the organisational level. Staff vetting should be in line with other sectors such as the health sector, in which staff undergo police and referee checks. AOPA also supports the development of a vulnerable people clearance to prevent dishonest individuals from providing services across jurisdictional boundaries.

Where an Allied Health Practitioner is involved in service delivery, only appropriately qualified and credentialed practitioners should be recognised. This should include credentialing through AHPRA or through self-regulating peak professional bodies, as previously outlined.

## Complaints

Complaints processes are integral to safeguarding participants and should feed into quality improvement processes, however different approaches to different types of complaints must be adopted. At the service provider (Allied Health Practitioner) level the NDIS should utilise existing complaints mechanisms for Allied Health Practitioners, being AHPRA and self-regulating professional bodies. At the organisational level the NDIS should require as a mandatory component of registration that disability services providers demonstrate a complaints process which is transparent and accessible for participants. AOPA believes that service providers should be the first point of contact for complaints where reasonable to enable swift and effective management and to feed into a quality improvement process. Where this is not possible, such as for serious complaints, there must be another independent avenue of complaint and associated funded advocacy services to support navigation for those without supportive networks.

An independent avenue of complaint is required to ensure independence and transparency of the complaints process and should build on existing complaints frameworks. A conflict of interest would exist should the NDIA be granted a national oversight role for the management of complaints and incidents. It is important that the oversight function include oversight of the NDIA itself as well as service providers, in order to maintain confidence in and accountability of the overall system. This oversight function may include a National Disability Complaints Office in line with the current framework for the Commonwealth Ombudsman. This would offer sufficient power to investigate and respond to complaints and incidents within both the NDIS funded services and state funded services, as well as complaints against the NDIA itself.

## Self-managing participants

AOPA believes that the NDIS has a duty of care to participants to ensure all providers of services and supports are safe and competent. The NDIS also has a responsibility to the Australian public and NDIS stakeholders in the judicious use of funds. Successful outcomes against participant's goals are at greater risk through the use of non-credentialled providers where the appropriate qualifications and competencies cannot be assured. Therefore, self-managed participants should be restricted to the use of registered/approved NDIS providers based on the capacity assessment of the individual and the risk profile of the services being provided. This may be assessed in the similar risk matrix with a stepping of the regulation requirements based on the assessment outcome.