NDIS Quality and Safeguards

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**Response to the Consultation Paper: Proposal for a National Disability Insurance Scheme Quality and Safeguarding Framework**

Thank you for providing Northcott with the opportunity to provide a submission to the current consultation on the proposed NDIS Quality and Safeguarding Framework.

**About Northcott**

Northcott was established as the NSW Society for Crippled Children in 1929 by the Rotary Club of Sydney. Northcott's purpose is to build an inclusive society where people can live the life they choose. This is achieved by assisting people with disability to develop their skills and achieve their goals - including their potential for independence and ability to participate in their community. Northcott supports over 14,000 people with disability and their families across NSW and the ACT. Northcott employs over 700 staff, providing more than 100 services from 34 sites and offices across NSW and the ACT.

Northcott provides services to people with a broad range of disabilities including physical, intellectual, sensory, acquired and degenerative disabilities. Our services broadly fit into six streams: Accommodation; Individual and family support; Employment and life skills; Recreation and respite; Therapy; Equipment and technology.

Northcott also has a Person Centred Behaviour Support team who support all our services by providing specific intervention for people with disability and their support people when there are behaviours present that others find concerning. Operating under the guidance of an Internal Restrictive Practice Review Committee, this team specifically focusses on developing positive strategies to reduce restrictive practices, strategies that enable staff and carers to operate in the least restrictive way whilst meeting best practice guidelines.

In both the NSW Hunter and ACT NDIS trial sites, Northcott delivers a range of NDIS supports including; Shared Living, Therapeutic Supports, Capacity Building, Personal Assistance, Behaviour Support, and Early Childhood Intervention services.

**About our submission**

Northcott makes its submission from the point of view of a service provider that is currently involved in two NDIS trials as well as delivering a wide range of other services across the whole on NSW which are now preparing for NDIS transition. Some of our services are funded through parallel sectors such as Health, Education and Community Services and will not transition to the NDIS.

Northcott has not included the views of clients and families in this submission. We have, however, made the people we support aware that they may make their own submissions and have encouraged this across a range of platforms.

Our submission responds to a number of the questions posed in the consultation paper, specifically:

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**Part 1: Proposed Quality and Safeguarding Framework for the NDIS**

Northcott supports the introduction of a nationally consistent, risk based Quality and Safeguarding framework for the NDIS. From our experience in delivering disability services, particularly in the NDIS trail sites in NSW and the ACT, Northcott submits the following information for consideration.

Developmental domain - Providing information for participants

Northcott supports the concept of enabling people who use our and other services to share information about their experience. This is standard consumer behaviour in most markets. It empowers people who have used a service to make known whether they have had a positive or negative experience, whether they would return to a service and what their reasons are for their choice. It also creates a platform for organisations on the supply side to engage with participants who have not been happy with their service and, if done well, to demonstrate a constructive approach to service improvement.

This is already happening. Whether via an endorsed channel or not, there are thousands of people engaged in sharing their experiences and views regarding disability services and broader disability policy across social media. As at 23 April 2015, Northcott’s Facebook page had over 4000 followers, almost 25,000 people followed the Every Australian Counts page and over 46,000 people followed the NDIS Facebook page. In each of these examples, there was strong evidence of engagement with these three entities via ‘liking’ of posts to the page, discussion threads and direct posts to the page made by members of the community. There were also private groups with names such as “NDIS Grassroots Discussion” and “NDIS SA School Age Parents.” It would be naïve of a provider to assume they are not being spoken about already via online media.

In determining the best approach to supporting participants to share information about their experience, the role already played by existing media should not be ignored. There may still, however, be value in creating alternate options for people with specific access issues which are not well met by platforms such as Facebook, Twitter or existing consumer review sites such as TripAdvisor. Whatever approaches are selected, it must be recognised that each system will not hold all participants’ feedback on services, as different participants will choose different means to express their experiences and views. It will not be possible to create a single, ‘source of truth’ portal for all participant experience.

Preventative Domain - What kind of support would providers need to deliver high-quality supports?

A market-based provider system driven by participant choice will assist in driving a quality system, but a high quality system will be reliant on participants having high quality options from which to choose, and providers having adequate resources to provide a quality service. There are many important factors key to achieving this. Two in particular are support pricing and the standard of training for support staff.

In the NDIS trail sites, support pricing rates are determined by a fixed maximum level price list for the majority of supports. These prices were determined by modelling conducted by the NDIA with limited consultation with the existing disability services sector and, it seems, limited regard for what feedback was provided by the sector with regards to the true cost of delivery a quality service.

As a current provider of services in both the NSW and ACT NDIS trial sites, it is Northcott’s experience that the general capacity building support hourly rate of $39.52, for example, does not cover the full cost of delivering a high quality service to people with disability and will continue not to be viable as pricing is stepped down.

**Recommendation:**

The pricing model and proposed step down of prices should be reviewed to ensure providers can remain viable and continue to deliver high quality supports.

Pricing must be able to cover:

* The salaries/wages and full on-costs of appropriately qualified, skilled or trained staff at a rate if pay that is suitably attractive within the labour market to retain good workers;
* Back-office costs that support efficient, consistent service delivery and both participant and staff satisfaction;
* Compliance costs necessary to maintain appropriate levels of registration to deliver various types of service, discussed later in this document;
* Maintenance and replacement of physical resources, plant and equipment necessary to deliver services safely;
* A modest margin so that providers may remain sustainable and thereby maintain a range of high quality choices for participants.

All of these elements are key to a sustainable, quality service, yet not all can be covered within the existing pricing model.

Quality of service for people with disability is often dependent on the quality of staff training and support. Staff delivering supports under the NDIS will need increased skill development and understanding of how to support people to achieve outcomes and build their capacity towards achieving goals. This will take time to develop across the workforce and will require personal investment by motivated staff, as well as investment by organisations in ensuring their staff maintain contemporary standards of best practice and sector-level investment in creating opportunities for continuous improvement.

Further, national systems which support a view of the disability sector as a sector of choice that offers rewarding careers on an even stand with other human and community service would be highly valuable in addressing the chronic difficulties this sector has in attracting and recruiting high quality staff.

**Recommendation:**

The Australian Quality Training Framework (AQTF) Standards for disability related training ought to be reviewed to ensure they incorporate a greater focus on capacity building, person centred service delivery and an understanding of the NDIS system so that graduate have the contemporary skills required and so that disability related careers are seen by people accessing vocational training as a valid and rewarding option.

Corrective Domain - Should there be an independent oversight body for the NDIS?

NDIS legislation has already provided for existing oversight structures that operate independent of the NDIA board including the NDIS Independent Advisory Council, the Disability Reform Council, the Commonwealth Privacy Commission and the Commonwealth Ombudsman.

A Disability Complaints Office that is independent of the NDIA would be a sufficient addition to this independent oversight without creating an entirely new separate body with additional prescribed powers.

**Part 2: Detail of key elements of the Quality and Safeguarding Framework**

NDIA provider registration

Considering the options described in the paper, which option would provide the best assurance for Providers and Participants?

Provider Registration needs to provide people with disability, the NDIA and the Australian tax payer confidence that a registered provider has the necessary experience, capacity, quality and expertise to deliver service. In the current disability service system, this has been conducted through high levels of contractual and legislative compliance not always directly linked to the actual level of risk. The current practice is expensive and not well suited to a market-based service system.

Similarly, a single option “catch-all” approach to provider registration will not provide the best assurance for either Providers or Participants under the NDIS.

*Basic Registrations Requirements*, as outlined in the discussion paper, for all Providers would at least provide a minimum level of assurance for people with disability. It could also encourage new providers to enter the market increasing choice, as well as reducing the red tape burden and cost on providers. It would not, however, provide sufficient assurance and protection for support provided to highly vulnerable people or in high care support settings such as 24/7 shared living arrangements.

At the other end of the range of options presented, *Mandated Participation in Independent Quality Evaluations or External Quality Assurance Systems* would provide a high level of assurance for participants for all supports but would place a high red tape burden and compliance cost on providers, a cost not reflected in the current NDIA pricing structure or proposed step down of funding model.

A model that allows for different options of registration and ongoing compliance, determined by the type of service delivered and the degree of associated risk would provide a sufficient level of assurance to both participants and providers, whilst still ensuring choice in the market place.

**Recommendations:**

A risk-based model of registration and compliance should be adopted which reduces red tape where compliance requirements are low but ensures adequate safeguards and monitoring where risks to a person are higher.

The NDIS pricing model must be adjusted to reflect the higher compliance costs associated with some types of service delivery under this model.

Any mandated registration and compliance activities for any provider should be aligned with the National Disability Services Standards.

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

Yes, different options for registration should be directly linked to the types of supports to be delivered.

A graded approach to registration needs to be carefully constructed to ensure it:

* does not become overly complicated;
* will be applicable for both small and large enterprises;
* is clear and easily understood by the purchaser;
* is cost effective and efficient.

Providers of NDIS services in the trial sites are already required to register at a support cluster level, proving their individual experience and capacity to deliver against each of the different kinds of support grouped under different clusters. This current practice could adapt directly to a National approach. At entry, providers could undergo a National level registration against each support cluster under which they wish to provide services.

Providers that operate across multiple states and territories would only be further required to demonstrate capacity to deliver in each region, along with other local providers, rather than having to replicate the registration process multiple times as has been seen across trial sites to date. Ongoing compliance requirements would then be linked directly to the support clusters delivered. This would ensure the system did not become overly complicated.

The consultation paper, however, suggests four options. This could be further simplified to only three levels of compliance requirement, by removing Option 3 as follows:

* Level 1 (Option 1) would have limited application and only meet the requirements of registered providers not providing any direct care supports to people with disability. This would primarily include services registering under the “Assistive Products and Equipment cluster” proving services such as specialist equipment retail, orthotics, prosthetic manufacture, etc.
* Level 2 (Option 2) could be the minimum entry level for all other providers and would apply to services who provide lower risk services under support clusters such as Household tasks, Transport, Interpreting & Translation services. In essence, this level of registration and compliance requirement could apply to all services for people with disability that don’t involve direct personal care.
* Level 3 (Option 4) could apply to all other support clusters where personal care, capacity building, therapeutic services, and daily support services are provided in home and in community settings where there is a high degree of expectation around safety, intimacy risk, and staff training requirements.

**Recommendation:**

A three-level framework should be implemented to govern the registration and compliance requirements of different support clusters which reflects the risk inherent in the delivery of different support clusters and avoids further complexity.

**Systems for handling complaints**

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

As with existing complaints systems at both the commonwealth and state/territory levels, it is very important that an NDIS complaints system has independence from both registered providers and the NDIA.

Northcott supports a complaints system that would operate as per *Option 3: Independent Statutory Complaints Function*, incorporating *Option 3b* with a Disability Complaints Office that is independent of the NDIA. This independent body would establish and monitor a nationally consistent framework and process for handling complaints.

This should include processes for handling complaints directed to the Disability Complaints Office itself, processes for the NDIA and registered providers to follow in response to serious complaints (for example, allegations of reportable conduct), as well as practice guidance for registered providers to manage complaints of a less serious nature internally. It should not include mandatory reporting of all complaints brought directly to a registered provider, as in the Victorian Annual Complaints Reporting example, as the compliance costs would outweigh the benefits of a system which captures data on non-serious matters.

The NDIA currently has an established internal complaint process as do many existing specialist disability services. A clear, transparent and published (website, brochure etc.) complaints process could be a condition of national registration to deliver NDIS supports, requiring all services to demonstrate processes relevant to the types of supports they wish to deliver. Referral of serious complaints and complaints unable to successfully be resolved through an internal complaints system to a formal external complaints body could be mandated as a component of any internal system.

An alternate approach could be the administration of a nationally consistent framework and process by the local state and territory authorities such as the Ombudsman, Disability Commissioner or other state/territory counterpart. This would ensure that entirely new infrastructure would not need to be created or replicated. It would also facilitate continuity of complaints management for people with disability accessing other, parallel systems such as Health, Education, Community Services and the Justice System, all of which are currently subject to state/territory-based complaints and monitoring systems.

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?

A single complaints system should apply to all disability services including services funded by the NDIS, Information, Linkages and Capacity Building services as well as all any other relevant disability services that will still be funded under state and territory funding. Whether this is through a single national system or through a federated system where each state and territory complies with and administers a set of National standards and processes, the key features needs to be navigability for a person with disability.

If the complaints system is fragmented and doesn’t apply to all disability services, the burden of navigating the system will be placed directly on people with disability and their families and carers. This is not appropriate. A minimum requirement of the new system ought to be that all commonwealth, state and territory bodies involved in the management of complaints to any community or human service adopt a no-wrong-door approach to the handling of complaints by people with disability, their families and carers.

What powers should a complaints body have?

All States/Territories currently have existing external complaints bodies such as Ombudsman and Anti-Discrimination Commissioners as well as the Complaints and Resolution Referral Service operating at a commonwealth level. These various commissions and bodies already have prescribed and legislated powers to investigate services and follow up on complaints. The best aspects of all current practice in each jurisdiction should be captured in a nationally applied framework, such as we have seen in the recent harmonisation of the Work, Health and Safety sector.

At a minimum, a complaints body should have power to investigate serious complaints with the voluntary participation of all parties and refer any matters to the criminal justice system if warranted.

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

Northcott support the current community visitors schemes seen in NSW and the ACT. Such a scheme should be continued (or rolled out in any jurisdictions where it does not currently exist) and would play a role in the national complaints system similar to its current role: providing monitoring and follow-up in community and accommodation settings where required.

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

Who should make the decision about whether employees are safe to work

with people with disability?

At a minimum, all staff who will work with people with disability in direct personal contact should be subject to a check to determine their safety and lack of prior seriously inappropriate conduct. This should be done independently by appropriate authorities.

In determining how such a checking scheme works, it should be noted that current schemes for checking a person’s criminal record and suitability to work with children and/or vulnerable people are largely managed by the states and territories and extend into many other human and community services sectors. It is Northcott’s firm view that a single, national checking system ought to be implemented, but this will require the cooperation of all jurisdictions in employment areas beyond the NDIS.

**Recommendation:**

A National system for checking a person’s suitability to work with children and other vulnerable people is necessary, taking in all industries which work with vulnerable people and not limited to the NDIS.

A *National Working with Vulnerable People Check* as presented in Option 3 of the discussion paper should be introduced, where records are shared across state and territory boundaries so that a person’s record travels with them. The necessity to conduct checks could be incorporated into the *NDIS Code of Conduct*. This nationally established framework and process could be administered, however, by the local state and territory authorities who conduct the checks now, so that new infrastructure does not need to be created.

Potential staff could be made responsible for getting their own general clearances as with the current Working with Children Check in NSW and the ACT Working with Vulnerable People check, with an employment check conducted by the employers, whether a registered provider or an individual with a disability, prior to paid employment.

This high level approach may affect the growth of a potential workforce and increase the cost of service delivery, but is essential to maintaining the integrity of disability services and safeguarding participants as well as users of other services. The introduction of an establishment fee would help to offset the cost of this compliance for providers. A similar fee could be provided to people with disabilities and their carers and families who wish to pursue employment of their own staff.

**Recommendation:**

An establishment fee mechanism should be established within the NDIS pricing framework, so that providers or individuals have the available resources to undertake necessary checks to mitigate risk and work towards safety.

**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, or does the NDIS have a duty of care to ensure that all providers are safe and competent?

NDIS registered providers may not always be able to meet the needs of people with disability, particularly in some regional and remote areas where formal services may not be able to meet the diverse needs of small but geographically spread communities and remain viable. Participants in these situations who self- manage should be able to choose the greater flexibility of purchasing some services from non registered providers.

For this reason, in the spirit of equity, other participants should also be able to choose to receive some of their services from unregistered providers. All participants should be educated about the costs and risks associated with making a choice to engage either a registered or an unregistered provider.

The caveat to this exists around the provision of high-risk services such as personal care. In such cases, a person wishing to engage a person or entity which is not a registered provider should not be able to do so without some level of scrutiny. One solution could be to support a person to make their choice of provider and then through an establishment payment support that provider to undertake the registration process. A sliding scale could be applied to the establishment fee depending on the complexity of the entity (e.g. sole trader or large organisation), as well as the likelihood that that entity may go on to provider NDIS supports to other people as a registered provider once they have been through the process (where direct family members have a low likelihood of this but another sole trader may view it as a business opportunity, for example).

**Recommendations:**

All participants should be given the choice to engage unregistered providers, regardless of their status as a person who manages their own plan or a person whose plan is managed by the NDIA or a third party.

A system should be put in place to protect people from utilising unregistered providers for high-risk services, including adequate financial compensation for a prospective provider chosen by an NDIS participant to undertake registration.

Third party plan managers should be given the opportunity to make business decisions about the risks they are willing to take on behalf of a participant, as long as those limits are clearly communicated to the participant in the way that meets their communication needs prior to commencement of any plan management activities.

All participants should be educated about the costs and risks associated with making a choice to engage either a registered or an unregistered provider.

**Reducing and eliminating restrictive practices in NDIS funded supports**

Northcott supports the NDIS aim to continue implementing the Australian government’s commitment to the reduction and elimination of restrictive practices for people with disability.

NDIS-funded Behaviour Support Plans which meet contemporary best practice should be mandatory to support participants who display behaviours that challenge others where those behaviours pose a risk of harm to the person or others. Robust national systems should be in place to ensure the authorisation and reporting around the use of restrictive practices, but those systems should be practical and affordable to implement.

Who should decide when restrictive practices can be used?

Of the four options presented in the consultation paper, Option 3 would provide the best starting point for a national system. Options 1 and 2 would not provide sufficient safeguards nor ensure the continued reduction of restrictive practices. Option 4 would not be practical to implement, would exceed the capacity of the guardianship system and would create substantial delays in people receiving appropriate support.

Northcott currently provides a Person Centred Behaviour Support service in NSW and ACT that operates under the Provider Initiated Panel model as required in NSW and described under Option 3. This panel is staffed by suitably qualified personnel and has a suitably qualified independent representative on every panel. This panel has the responsibility of authorising the use of restrictive practices. It is a model that we find works well, and we have seen significant reduction in the use of restrictive practices since its inception. Other providers also make use of our panel where they do not have the capacity to establish their own internal systems.

Are there safeguards that we should consider that have not been proposed in these options?

The Provider Initiated Panel model could be further strengthened through the introduction of Tribunal/Guardianship level monitoring of panel operations.

Currently under the NSW model, panels are required to keep registers of plans and approved activities. Rules of operation could be introduced at a National level that require all panels to submit regular register data to the Tribunals and submit to an audit sampling of registers and Behaviour Support Plans on a schedule basis. This addition would increase the safeguarding of panel operation and allow for the Tribunal to detect “trends” in activities of particular panels they may indicate the need for increased monitoring.

Would you support mandatory reporting on the use of restrictive practices? What level of reporting should occur?

Northcott supports mandatory reporting on the use of restrictive practices to ensure accountability and transparency in the use of restrictive practices, with a view that this is a key element of reducing the use of restrictive practices over time.

In regard to the three options presented in the consultation paper, Northcott would support the introduction of a National approach to mandatory reporting consistent with Option 2.

*Option 1: Mandatory Reporting for Emergency Use Only* would not provide sufficient accountability nor act to ensure a reduction in the use of restrictive practice. *Option 3: Mandatory Reporting on Each Occasion Where a Restrictive Practice* *is Used* would create excessive administration and cost that would need to be met and would be difficult to implement in all cases of service delivery.

*Option 2: All Positive Behaviour Plans which include a Restrictive Practice must be Reported* would ensure appropriate levels of safeguards if emphasis is placed on the development and quality of Positive Behaviour Support Plans. Reporting could be managed via the panel register process which would provide a level of safeguarding without introducing burdensome administrative processes for both providers and the Tribunal.

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