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NATIONAL ETHNIC
DISABILITY ALLIANCE

Submission on the Proposed NDIS Quality and Safeguarding Framework

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*This publication has been prepared by **National Ethnic Disability Alliance Inc**. The views expressed in this publication are those of **National Ethnic Disability Alliance Inc**. and do not represent the views of the Australian Government.*

About NEDA

The National Ethnic Disability Alliance Inc. (NEDA) is the only national peak organisation representing the rights and interests of people from culturally and linguistically diverse backgrounds (CaLD) and/or non-English speaking backgrounds (NESB) with a disability, their families and carers throughout Australia. NEDA is a member of the National Cross- Disability Alliance and reports directly to Government as a national peak.

NEDA advocates at the Federal level for the rights and interests of people from CaLD and/or NESB communities with a disability, their families and carers so that they are able to participate fully in all aspects of social, economic, political and cultural life; and provide policy advice to the Government and other relevant agencies to secure equitable outcomes for people from CaLD and/or NESB communities with a disability, their families and carers.

NEDA also works collaboratively and builds partnerships with other key organisations within disability and/or multicultural sectors. NEDA endorses the submission prepared by the Federation of Ethnic Communities' Councils of Australia (FECCA) and supports all recommendations therein.

General Comments regarding the Proposed Framework

The NDIS Quality and Safeguarding framework will replace current existing state arrangements and will work to ensure NDIS participants have increased choice and control about their supports. It also provides the opportunity for people to take risks while working towards their identified goals.

The Department of Social Services (DSS) invited the public to comment on the proposed NDIS Quality and Safeguarding system/framework. In response to this, NEDA undertook research by attending various consultation sessions on the topic held in Canberra, Sydney, Darwin and Perth. A wide cross-section of the public attended the consultations; NEDA heard the views of people living with disability, their families/carers, disability advocates, service providers and other key stakeholders. NEDA also invited key partners to contribute to this submission.

It is important to note that the many people living with disability, particularly individuals from Aboriginal and Torres Strait Islander (ATSI) and culturally and linguistically diverse backgrounds (CaLD) are not aware of the National Disability Insurance Scheme(NDIS), let alone the proposed NDIS Quality and Safeguarding system. This is a significant hindrance to many people with disabilities and their communities being heard- or even contributing to- discussions around the NDIS.

The framework proposed in the DSS consultation paper is divided into three general domains: developmental, preventative and corrective. Although each domain is important and plays a role within the overall framework, NEDA is of the opinion that the *developmental* and *preventative* realms should be *prioritised* over the corrective domain as they are best positioned to promote true choice and control, and to ensure quality service delivery.

The NDIS aims to place people with disability at the centre of the decision making, enabling them to make decisions about what supports they want, and who they want to access them from. This movement to a new volition-based system of disability support provides significant opportunities for people who are informed and empowered.

However, for many individuals who are reluctant to engage, who are uninformed, disempowered and often marginalised, the new system itself presents some real risks and challenges. It can't be assumed that forces within the marketplace will naturally produce equity. Therefore, NEDA is of the opinion that a rigorous framework is needed.

Concerns regarding the exclusion of Advocacy Services from the NDIS Quality and Safeguards Framework.

NEDA echoes the repeated concerns within the community that advocacy is largely overlooked in the proposed framework. Although the Government is confident that advocacy services, and the role they play, are addressed outside of this framework, NEDA are of the opinion that advocacy should play a much bigger role in the proposed system. This is especially important when taking into consideration how advocacy is central to quality and safeguarding, as well as possessing oversight and compliance functions.

The role and importance of independent and systemic advocacy for people with disability was continually raised during NEDA's consultations.

The role advocacy services can play in building safeguards and ensuring quality services include:

Individual Level

- Empowering people with disability to be self-advocates.
- Supporting people with disability, their families and natural supports, to access the NDIS, and to navigate NDIS processes along with the wider service system
- Supporting people with disability and their families to identify poor service or unwanted risk and to manage it appropriately e.g. support through complaints mechanisms.
- Providing an independent and impartial voice in complex or challenging situations

System Level

- Systemic advocacy that identifies key themes and challenges and works to improve policies and practices of service providers and Government
- System Advocacy for legislation change and social and cultural change.

Block funding of advocacy is essential. Individual and systemic advocacy will be accessed by people with disability who are and *are not* NDIS eligible, across all domains of life e.g. to tackle challenges experienced within disability support services, housing, education and other sectors.

The NDIS Quality and Safeguarding Framework needs to include a planned system that ensures a robust and adequately resourced advocacy system throughout Australia.

NEDA strongly supports the role of independent advocacy in the NDIS. Furthermore, self-advocacy and supported advocacy needs to be recognised as a main driver in the promotion of quality services.

It is vital that both individual and collective voices of people living with disabilities are heard, as this allows Government and non-government organisations, service providers and other mainstream services to improve services in response to this feedback.

Significant Concerns for People living with Disability in Rural and Remote Australia

NEDA has significant concerns for people living with disability, their families and communities, residing in rural or remote Australia. This was also specially flagged by many of the attendees at Darwin and Perth consultations.

This submission will not provide an in-depth analysis of the challenges that Aboriginal and Torres Strait Islanders living with disability, their families and communities, face in regards the NDIS. However, this submission will repeat the expressed anxieties and frustrations that were raised in response to the proposed Government framework, that being that it is not feasible to develop a quality service system and safeguarding framework for rural or remote Australia in the face of a profound lack of infrastructure and services.

NEDA advises and urges the NDIA and DSS to work collaboratively with the First People's Disability Network to identify ways in which this injustice can be addressed, and more holistically, how to tackle the impediments to access and equity Aboriginal and Torres Strait Islander's living with disability are experiencing.

Responding to each question in the proposed NDIS Quality and Safeguards Framework

Q. What are the most important features of an NDIS information system for participants?

Participants, along with their supports, need to be informed about NDIS systems, policies and practices to enable them to access the relevant information required to make informed decisions about the supports they want to access. Education and working to enhance people's capacity for self-advocacy, while at the same time increasing awareness around one's human rights, is the best way to promote and protect choice and control.

The strongest possible safeguard comes from the NDIA having fully informed and empowered participants (and their families/supports) who have knowledge of how systems work, have the skills to identify quality service, while at the same time possessing a solid understanding of their rights.

Self-protection is the best safeguard against abuse.

Many people living with disability will require considerable support to make decisions and exercise real choice and control in their lives. Advocacy services are often fundamental in this process, as they work to ensure people with disability understand their rights and, if required, support them to resolve problems and/or make complaints, navigate service systems and to access the services and supports available to them.

It is hoped that the policies within the Information, Linkages and Capacity Building (ILC) framework work to ensure NDIS participants and their supports are able to recognise and chose the type of support they want, and navigate systems effectively in the process. In respect to both the ILC and the Quality and Safeguards Frameworks, focus needs to be placed on increasing the independence, autonomy and capacity of people with disabilities.

It is essential that reliance for the delivery of ILC services is not solely placed within the Local Area Coordinator (LAC) role. Concerns have been raised within the consultations about the LAC's potential to actual effectively build the capacity of individual's living with disability, taking into consideration the varying skills of planners, time and resource limitations, and the general speed in which the NDIS is rolling out.

Again, self-advocacy, independent supported advocacy and the active participation of Disabled Person's Organisations (DPOs) and/or peer support groups are best positioned to facilitate real choice and control. Building the capacity of people with disability, their families and communities, is best achieved through skills development and education; targeted funding to a wide variety of community organisations should be adequately resourced to achieve this.

Nonetheless, NDIS Participants (and their family/supports) require a substantial amount of information to fully exercise choice and control. This will include:

- Knowing one's rights, including how does the system work? What does a quality service look like? What can one do if they're not happy with services? For both the person with disability and their family/natural supports
- Ability to obtain information via telephone or in person face-to-face. Free access to appropriate interrupters where required, including information on how to access the interpreter.
- Information about the kind of supports available, e.g. differing types of supports/services, their availability and effectiveness. This information needs to be well researched, accurate and reliable, and most importantly: *impartial*.
- Information around the quality of a service and relevant information to choose appropriate service providers. e.g. service provider information including price of services, safety of service, quality and effectiveness of service, and, people with disabilities experiences of accessing the particular service.

Q. How can the information system be designed to ensure accessibility?

There are significant barriers for many people living with disability, and their families and natural supports, in accessing the NDIS. Presently, many people and their communities are either not aware at all about the NDIS and/or unsure how to access the NDIS and/or aren't informed about what supports they may be eligible to receive within the NDIS.
This could stem from a variety of factors e.g. language, cultural, geographical, and/or socioeconomic related.

The NDIA needs to work to remove these barriers to access, and implement a strong outreach campaign to engage various communities and to begin and/or continue conversations about the NDIS with people living with disability, their families and communities.

The NDIS Information System needs to ensure participants (their family and supports) have access to information available to them.

This can be achieved by:

- Producing material in various formats and communicating information through diverse modes and mediums E.g. online; online in a variety of translated languages; online and accessible for screen reader users; in pictorial and easy English forms; via community radio; via television; via community newspapers; via apps ad video; one-on-one in discussions with people with disability, their families and communities, etc.

- Increase awareness and facilitate access by working closely with identified organisations as part of a targeted communication strategy that aims to inform specific cohorts of groups in ways which are appropriate and relevant to them. This would be best achieved through grass-roots communication engagement strategies and strong outreach programs.

- Strong investment in block funded, quality controlled community and not-for-profit ILC services and programs that build the skills and capacity of people with disability, their families/supports and communities

Empowered and fully informed participants demand quality service. Independent advocacy services, DPOs, and peer support networks are central to achieving this.

Q. What would be the benefit and risks of enabling participants to share information, for example, through online forums, consumer ratings of providers and other means?

In today's age, online forums and social media platforms may possibly be great tools to keep NDIS participants informed and up to date about the supports and services available to them. In principle it could also play a significant role in providing transparency and accountability to the market.

To ensure the accuracy and authenticity of information presented, an external and independently funded moderating system should be in place to filter the information, and to curtail inaccurate contributions.

If a system were to exist without a mechanism of external and independent moderation, then there is a real risk of NDIS participants being misinformed or purposely misled by service providers undertaking profit-driven marketing campaigns.

Q. What kind of support would providers need to deliver high-quality supports?

It is in a service provider's best interest to deliver quality and effective services to people with disability. However, legitimate concerns have been voiced around the consequences of a rapid NDIS implementation resulting in people with disability being exposed to a wide-range of risks due to poor or ineffective service delivery.

Clear quality service delivery standards should drive and shape all sector/ system development schemes.

Service providers need to be governed by fair quality compliance systems that work to ensure quality of service. This compliance system should dictate the minimum standards expected of a service provider to enter the NDIS market. Provider registration is important and assessment of compliance against identified quality standard (including self-managed plans) is to be consistent and reasonable.

To minimize this risk, strong investments in provider and workforce capacity is required, such as:

- *Sector development funded by Government, driven by research/industry organisations that work to:*

- Increase staff awareness and understanding around the social model of disability, people's rights and responsibilities, and other important social and cultural values that underpin the Convention on the Rights of Persons with Disabilities (CRPD), facilitate choice, and drive respect and equity. This is important for all staff employed by an organisation, but more so for frontline support staff.

- *Create effective mechanisms that promote quality service systems.*

- It is vital that service systems hear and respect the voice of people with disability, appropriately respond to concerns and/or complaints in a timely manner, collect information on service user experience and strive to maintain best practice principles while investing in education and continuous improvement.

Q. Are they additional ways of building natural safeguards that the NDIS should be considering? What can be done to support people with a limited number of family or friends?

NEDA supports the proposed community development methods within the framework that work to build the natural safeguards for people with disability. It is important to reaffirm that after self-protection, capacity building and strengthening informal social and community networks is essential to building natural safeguards, most particularly for participants who have little to no informal supports (as they are at increased risk). The proposition that community capacity building and the promotion of self-advocacy takes place via funding community organisations that deliver targeted community development programs is ideal.

As previously stated, legitimate concerns have been raised in response to the framework asserting that individual capacity building and skills development will occur during plan development and be undertaken by NDIA planners and Local Area Coordinators (LACs). NEDA is unconvinced that the LAC's and planners with be appropriately skilled and resourced to fully achieve this. Even if staff possess the required skills and knowledge, they may not be provided the time to develop a relationship with a participant and/or investigate meaningful ways in which people and their families can be engaged in, or undertake, capacity building and skills development.

These advocacy and community organisations should focus on developing self-advocacy in individuals and communities; this works to promote strong and interconnected communities. This is important for all people with disabilities,

particularly individuals and communities from Aboriginal and Torres Strait Islander (ATSI) or culturally and linguistically diverse (CaLD) backgrounds.
Education/skills development and capacity building also has to occur for communities to be able to identify, and respond to signs of possible abuse or neglect. This should be a part of a wider grassroots education and engagement campaign that informs the public about how to ensure the rights of people with disability are upheld.

LACs, planners and service providers need to continually investigate ways in which people with disability can broaden and strengthen their networks and communities. This will most often occur by linking participants (including people with disability who aren't eligible for a package) to other mainstream or community organisations.

It is vital to ensure that these block-funded organisations are adequately resourced to undertake these tasks.

Therefore, again, strategic investment in developing self-advocacy, independent advocacy services, peer support groups, disabled person organisations, mentoring and other education/skills development programs is required outside of, or adjacent to, the NDIA.

Q. Should there be an independent oversight body for the NDIS? What functions and powers should an oversight body have?
What powers should a complaints body have?

NEDA holds the strong opinion that the NDIA, service providers and all aspects of the NDIS sector should be subject to an apolitical statutory oversight body. The body needs to be a statutory authority to ensure bipartisanship, transparency, accountability and efficiency; it should have oversight and possess authoritative powers over all disability services throughout Australia (i.e. both NDIS and non NDIS services). In addition to this, it should also have an arm that is a national disability industry regulation body.

NEDA supports a co-regulation model.

The oversight body is to be independent of the NDIA and not attached to any existing organisation. It should be headed by a Disability Commissioner operating branches in each state and territory within Australia. The Disability Commissioner should have similar statutory powers to the Commonwealth Ombudsman and be appointed for a term, preferably 5 years. The body should be required to submit an Annual Report to Parliament.

The Disability Commissioner and oversight/regulatory body should not only oversee the NDIA and everything NDIS related, but it should also have oversight and be responsible for the implementation of the National Disability Strategy (NDS) by governments across Australia.

In addition, the oversight and monitoring body should be guided by a Disability Advisory Council that represents people living with disability.

As a national disability industry regulation body, its powers and functions should include:

- The development and audit of a provider Code of Conduct (aligned with the National Disability Standards). The body would have the power to sanction providers and recommend de-registration to the NDIA
- Provide clarify to the sector and community that it is the organisation where people can complain.
- Receive and resolve complaints about the NDIA and service providers
- The establishment of self-governance structures that respond to potential conflicts of interest and maintain independence from providers it investigates (similar to current structures of professional registration bodies)

The independent statutory body should also be responsible for:

- Monitoring to identify system problems and market failures
- Decisions around clearances and appropriateness of staff to work with people living with disability
- undertaking investigations into complaints involving serious incidents; conduct ‘own motion’ inquiries and investigations make a determination based on the balance of probabilities (rather than reasonable doubt)
- managing a community visitor scheme
- Monitoring of mandatory quality evaluations scheme and quality assurance scheme
- Addressing actual or potential conflicts of interest
- The mandatory reporting of serious incidents; and,
- The management of a barred persons scheme
- **Possibly**, monitoring of restrictive practices: *NEDA discusses this in-depth later in the submission*

The oversight system needs to improve the response of pre-existing external statutory and universal bodies but also address and encompass all disability related matters.

The body should have a mandate for close consultation with people with disability, advocacy and representative bodies, service providers, and other government and non-government organisations.

In addition to overseeing the NDIS and NDS, this body should also work collaboratively with The National Cross-Disability Alliance and other peak organisations within the disability sector to drive research, best practice and to shape Government policy.

It is expected that the national oversight body will incorporate the best aspects of the public guardian and public advocate roles (within the context of a person-centred approach). The Public Guardian/Advocate role would include supportive-decision making, investigating complaints or allegations concerning guardianship and most importantly promoting the development of persons with disability to act independently. The 'supportive Guardian' function outlined in the *Victorian Guardianship and Administration Bill 2014* would be something to possibly consider.

Furthermore, the body along with the NDIA should be responsible for market stewardship and should work closely with other market regulators e.g. Consumer Affairs and the Australian Competition Commission to prevent anti-competitive practices. It should therefore collect and monitor relevant and important data such as consumer demand/preference, quality practices and outcomes/impact, etc.

Q. How important is it to have an NDIS complaints systems that is independent from providers of supports? Should an NDIS complaints system apply only to disability-related supported funded by the NDIS, to all funded supports, or to all disability services regardless of whether they are funded by the NDIS?

The NDIA and/or the oversight body need to significantly invest in self-advocacy community development and capacity building initiatives and similar education and skill development programs to ensure people with disability, their families and communities, are empowered to recognise- and respond appropriately to- inadequate service delivery or abuse and/or neglect.

Furthermore, many people living with disabilities and their families/supports/communities are often reluctant or scared to ask questions or complain. This reluctance has only been amplified by a service system culture that has forced many people and communities to feel that they should be grateful for any service or support they receive.

NEDA is of the view that as a part of a NDIS Code of Conduct, all service providers should have internal complaints processes. It is assumed that many complaints can be resolved between the participants and their supports, and the service provider.

NDIA registration conditions should prescribe minimum standards for provider level complaints handling. This would include ensuring that providers provide participants with information about how to complain, the complaints process, and what to do if they are not happy with the response. This information should be provided in a variety of modes and mediums, but most importantly, in a way that the service user and their natural supports understand.

Nonetheless, an external complaints system is essential to quality and safeguarding and also provides a basic level of accountability. NEDA also supports many of the proposed functions of an oversight body listed in Option 3 of the Framework.

NDIS providers and support staff are to be required to mandatory report any critical/serious incident pertaining to allegations of sexual or physical assaults of people with disability to the police and the independent oversight body.
If complaints are not resolved at a service provider level, then they should be referred to the previously mentioned independent industry/oversight body.

This industry/oversight body should have targeted engagement and diverse communication strategies that inform people how to complain, taking into consideration specific language, cultural and disability related communication needs and are in ways in which people understand. In addition, the oversight body should enact provisions to protect complainants or 'whistle-blowers' within the sector from reprisals, and should also ensure that confidentiality and respect/dignity is upheld.

Again, NEDA needs to highlight the importance of an independent, robust and adequately funded advocacy system for people living with disability. This system works to provide a voice for people with disability by assisting with the promotion of self-advocacy and/or community advocacy practices. An advocacy system also assists people with disability, their families and supports to identify, lodge, and resolve complaints with service providers and navigate processes of the independent oversight body and other mainstream services.

A well-funded advocacy system is also vital in supporting people with disability to have their rights upheld within their social networks and within education, housing, justice and other service sectors.

Q. Considering the options describe above, which options would provide the best assurance for providers? Participants? Should the approach to registration depend on the nature of the service?
How can the right balance be reached between providing the assurance and letting people make their own choices?

Firstly, it is important that the NDIA has agreed minimum standards for provider entry into the market. All Disability Support Providers should be required to sign on for minimum quality standard that are clearly documented in the NDIS Code of Conduct. Failure to meet the Code of Conduct should result in de-registration.

Secondly, NEDA is of the opinion that the quality of a service is unable to be determined by reviewing service providers policies and procedures, as this rarely provides insight into the *actual* service being delivered 'on the ground', per se.

Hearing and acknowledging people with disabilities (and their families/informal supports) experiences and views of service delivery is fundamental to assessing quality.

NEDA is of the opinion that option 4 presented in the prosed framework appears to possess the best mechanisms to ensure people with disability access quality supports. Although option 4 presents the most regulation, it is believed that it works to ensure that people with disability are provided with quality services and have their rights upheld.

If it is operationally unrealistic to roll-out the systems/mechanisms noted in option 4 immediately, then NEDA would accept the Quality Assurance system presented in Option 3 with a commitment from Government and the NDIA that work is progressing towards developing and implementing the Option 4 system in the very near future.

Service providers should undertake rigorous quality assurance and improvement processes to meet minimum agreed industry government and management standards. The quality assurance system developed should reflect the principles and standards of the NDIS and the NDS.

An independent, trained and accredited assessor/auditor should undertake an evaluation of the service provider by conducting in-depth interviews with individuals with people with disability and their families/natural supports who utilise the supports. They should collate people's experiences along with their observations about the governance and operational systems of the organisation to ensure viable, safe and effective organisations and service delivery. Again, NEDA is of the opinion that the quality assurance system needs to place heavy reliance on the experience of service users as experts on measuring and gauging quality of service.

Quality assurance standards force service providers to engage in quality improvement practices and work to ensure best practice. Once an auditor agrees that the organisation meets the agreed minimum standards then a certificate is issued for a set period of time. Quality assurance standards should also be relevant to, and reflective of, the type of service that systems claim to provide. Quality assurance would not need to be replicated if registration and accreditation is undertaken by another professional body. For example, an Occupational Therapist must be accredited and registered by the Occupational Therapy Board of Australia to practice in Australia. Registrations like this are vigorous enough, and should suffice.

Quality evaluation reports should be made public and be able to be accessed freely. This would assist people with disability, their families/informal supports, when making decision around choosing a service provider.

It may be appropriate to exempt some providers who are not engaged in direct support, or who have been identified as being of low risk; exactly what 'low risk' is would need to be identified and should be based on a wide variety of factors associated with a person's individual circumstances and perceived vulnerability.

All service providers that predominately provided personal care and social support, respite or support accommodation services and have high direct staff-participant contact would be required to undertake quality assurance measures.

This system would be applied proportionally and may not apply to all providers. Nonetheless, these exempt providers would still be required to meet NDIS provider registration and the agreed NDIS Code of Conduct.

If providers were unable to meet the standards for certification within the agreed timeframe (and after being directed to make improvements) they will be ineligible for registration and operation.

NEDA is aware that Option 4 contains the most 'red tape' and regulations for existing service providers and/or service providers wanting to enter the market.

Nonetheless, it is our opinion that implementing a quality assurance/industry certification system provides the best possible mechanism and system for people with disability to access quality services.

To assist some service providers to meet the benchmarks associated with becoming (or maintaining) registration, the government and the NDIA should strongly invest in, and make available, business support for some organisations to meet regulatory and accreditation requirements. Most particularly, this assistance should be available to service providers who often face additional barriers to entering the NDIS market place e.g. service providers predominately run by people with disability, Aboriginal and Torres Strait Islanders, or people from CALD backgrounds.

Disability Support Worker Accreditation & Registration

NEDA calls for all disability support workers to be registered with a national accredited registration body to ensure consistency across state and/or territory, quality services, and that all staff possess minimum required competencies, these being: CHCCS601B[1] , CHCDIS301C[2], HLTHIR403C[3] and HLTHIR404D[4] from the Australian training framework.

This industry registration could be managed by the proposed monitoring and oversight/regulatory system.

Presently, no set of nationally recognised competencies, accreditation or registration systems exist for staff who provide direct support. NEDA proposes a registration model and system similar to the *Scottish Social Services Council.*[5] All support workers would be required to hold a minimum of a Certificate III in Disability Work to work in a direct support role.

The core competencies covered within the Certificate III should be identified by the disability sector; most importantly the certificate would include key units/courses that educate people on the social model of disability, human rights, and how to uphold the human rights of people with disability. Other core units should include how to work appropriately and respectfully with people from Aboriginal and Torres Strait Islander or culturally and linguistically diverse (CALD) backgrounds.

Currently, the core units of a Certificate III do not cover this training and therefore don't adequately inform or prepare staff on how to work respectfully and effectively with people living with disability.

Registered training Authorities (RTA) tasked to deliver Certificate III programs should be adequately screened and assessed by the proposed regularly oversight body (in

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[1] CHCCS601B - Work with clients with unique needs (Release 1) https://training.gov.au/Training/Details/CHCCS601B

[2] CHCDIS301C - Work effectively with people with a disability (Release 1) https://training.gov.au/Training/Details/CHCDIS301C

[3] HLTHIR403C - Work effectively with culturally diverse clients and co-workers (Release 1) https://training.gov.au/Training/Details/HLTHIR403C

[4] HLTHIR404D - Work effectively with Aboriginal and/or Torres Strait Islander people (Release 1) https://training.gov.au/Training/Details/HLTHIR404D

[5] Scottish Social Services Council: http://www.sssc.uk.com/about-the-sssc

conjunction and collaboratively with training/education oversight bodies) to ensure they demonstrate and possess the knowledge and expertise to run accredited training programs. This would ensure minimum education standards are consistent and upheld, while allows ineffective RTA's to be eliminated from the marketplace.

The core induction program would commence upon employment and ideally would be completed within 6-12 months (flexibility should be allowed). Service providers would be provided with a range of information regarding how support staff can access the training.

People living with disability should be able to access an 'opt out' provision if they want to hire a person who is not accredited. Nevertheless, this individual would still be required to be vetted by the oversight body.

The Certificate III should be heavily subsided by Government so that the cost does not act as a deterrent.

NEDA is aware that the development of a national registration and accreditation system for disability support workers will not be appropriately fleshed out in this submission. Nonetheless, we urge the Government- as a priority- to work with the National Cross-Disability Alliance (and many other key organisations in the sector) to bring about these changes.

Q. Should there be a community visitor scheme in the NDIS and, if so, what should their role be?

Yes. NEDA is of the opinion that a Community Visitor Scheme would be an effective monitoring and oversight system for people who live in supported accommodation settings or for other people who may be vulnerable and lack strong informal supports. Community Visitors should be tasked to:

- Engage with people with disability to help them identify/resolve and problems or concerns
- Enquire, monitor and provide independent comment about the quality of services provided to people with disability
- Ensure people with disability are at the centre of all decision-making and that systems are upholding their rights
- Determine if people living with disability are encountering unreasonable risks and to respond where required

Having a scheme where visitors can enter premises unannounced adds an additional layer of accountability and compliance and supports people who may be socially isolated and vulnerable. The Community Visitor scheme could potentially be expanded, with independent 'visitors' supporting people with disability within the wider community who have been identified by planners as being at risk or vulnerable, or who lack informal supports.
An 'independent person' within a community visitor role could also ensure people with disabilities' rights are upheld, particularly in response to restrictive practices.

The Community Visitor scheme should fall under the independent monitoring body, with visitors being directly staffed and/or attached to the oversight body or to a local state or territory public advocate. Community visitors should be paid in their role and also should take religious and/or cultural needs aspects into account when determining the appropriateness of engagement.

It is worth exploring the some of the operational components within the advocacy model in *New Zealand's National Health and Disability Services Advocacy Service* that supports a combined community visitor and advocacy approach.

Q. Who should make the decision about whether employees are safe to work with people with disability?
How much information about a person's history is required to ensure they are safe to work with people with disability?
Of the options describe above, which option, or combination of options, do you prefer?

When a service provider hires a staff member they should be required to undertake a regulated screening process, and relevant referee checks. Presently, the differing regulatory and staff screening systems that exist across state and territories which determine the appropriateness of people to work within the disability sector produces inconsistencies and duplication.

NEDA recommends a consistent, nationally legislated requirement on criminal history checking for people working within the disability sector. Preferably, this one system should be the same across disability support, children services and aged care sectors. This system should be similar to the *Accountability Principles 1998* that presently exist within the Aged Care system. This scheme should ensure portability between employers and states/territories and should also be statue based with a right of independent review by an appropriate tribunal. Decisions should not solely rely on the outcome of a criminal history check, but should also take in a wide range of information relevant to determining if an individual is appropriate to work in the sector. The current South Australian system is an example of this. A centralised database would be advantageous and could also hold information pertaining to findings of misconduct against support workers. The screening system should be kept up to date (similar to what presently occurs for the Working with Children check).

The proposed independent oversight and monitoring body should oversee this system of staff vetting. The 'Screening providers' could be non-government organisations, as this may reduce times of processing applications. Nonetheless, if employers are allow to choose a screening provider, than the oversight body is to have appropriate system in place to ensure that screening providers are registered as a quality operator/business.

It would be beneficial to have employer/service provider discretion, within guidelines, to manage and/or mitigate and risks posed by employees if an adverse finding is revealed by the criminal history check. A rigid, centralized and overly impersonal approach has the risk of restricting potentially good employees from working within the sector. Ideally, if adverse findings are noted, the service provider is to determine if that risk is manageable and/or acceptable and the appropriateness of that individual working in the role.

A national employee exclusion, or ‘barred persons list’ is something, in principle, that NEDA would consider supporting. The scheme would prohibit workers who are established, on the balance of probability, to have committed unacceptable breaches of the agreed NDIS Code of Conduct. Both the ‘Barred persons list’, along with the system of staff vetting is to be funded adequately and should be managed and overseen by the proposed independent industry and monitoring body.

Lastly, this oversight body should collect all disability related data, particularly data on incidents of abuse and/or neglect that is gathered through mandatory reporting.

Q. 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? What kind of assistance would be most valuable for people wanting to manage their own supports?

The NDIS will allow four options of plan management:

1. The participant manages their plan
2. A plan nominee
3. A registered plan manager
4. The NDIA

The framework argues that options 1-3 are, in essence, self-management. It is assumed that the vast majority of participants who will chose to self-manage their plans independent of a service provider are likely to be less vulnerable than other NDIS participants.

NEDA is of the opinion that all disability providers (including those supporting self-managing participants) should be required to adhere to the NDIS Code of Conduct and be overseen by the proposed industry regulation/monitoring body.

If a person wants to self-manage their plans independent of a service provider then they should not be required to register as a NDIS Provider. They should, however, be required to comply with some identified minimum set of conditions.

For example, all support workers should be vetted through the criminal history system/barred person list (within the scheme that will be managed by the proposed regulatory body). If an adverse finding is discovered, then the participant- in collaboration with the NDIA- should make a determination of their suitability for employment.

The NDIA cannot handover its duty of care just because a participant has decided to self-manage. The NDIA should monitor direct employment to ensure compliance with the identified minimum standards. This will ensure that the participant is compliant, and that all practices relating to taxation, insurance, induction, industrial relations, etc., are above board.

The NDIA should provide all participants with the information required to effectively self-manage their plan. Additionally, any participant who chooses to self-manage should have access to education, training or mentoring programs that provide them with the skills to effectively manage and direct support staff, and comply with worker rights and other legal requirements.

Q Who should decide when restrictive practices can be used?
What processes or systems might be needed to ensure decisions to use restrictive practices in a behaviour support plan are right for the person concerned?
Are there safeguards that we should consider that have not been proposed in these options?
Would you support mandatory reporting on the use of restrictive practices? Why/why not?
If you support mandatory reporting on the use of restrictive practices, what level of reporting do you believe should occur (based on one, or a combination of the presented options).

NEDA has concerns in regards to the development of a system that works to administer, monitor and regulate restrictive practices, especially when considering that restrictive practices often constitute torture and other cruel, in human or degrading punishment which are prohibited in international law.

Although the Government has stated it is committed to the *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Services Sector*, there is a serious risk that implementing a national regulation body potentially legitimises the use of restrictive practices throughout Australia.

Creating an oversight system that manages and administers the use of restrictive practices for people with disability opens the door for the sanction of potentially very serious human rights breaches. The system is also discriminatory because it is only applied to people living with disabilities.

The UN Special Rapporteur on torture and other cruel , inhuman or degrading treatment or punishment has stated that restrictive practices ‘when perpetrated against persons with disability remain invisible or being justified, are not recognised as torture or other cruel, inhuman or degrading treatment or punishment.[6]

Restrictive practices aim to manage behaviour that is 'challenging' or that is of danger to the person with disability or others. However, restrictive practices can 'constitute humiliation and punished, and can be imposed as a means of coercion, discipline, convenience, retaliation by staff, family members or by others providing support. People with disability are often subjected to unregulated practices which can cause physical pain and discomfort, deprivation of liberty, prevent freedom of movement, and alter thought and though processes' [7].

People with Disability (PWD) tackle the perception of issues around 'challenging behaviours' when writing:

> 'Overall, the research shows that many behaviours that are identified as "behaviours of concern" which should be resolved with the use of restrictive practices are a form of resistance or protest to maladaptive environments, and that these should be viewed as legitimate responses to problematic environments and situations. Changing services, systems and environments should be the starting point for changing behaviour, rather than changing the person themselves, or providing methods for the person to consent to the practices which lead to their "behaviours of concern."[8]

The NDIA and the Government need to significantly invest in awareness campaigns and education programs informing people with disabilities, their families/informal supports, service providers and the wider community what restrictive practices are, and how they typically constitute a breach of human rights. A broadening of the definition of restrictive practice also needs to occur to include more everyday restrictive interventions e.g. locking of doors/refrigerators, etc.

The Government should also drive systemic change and promote service providers to be trauma informed practices. Additionally, to truly reduce restrictive interventions, the NDIS needs to appropriately investigate and fund positive behavioural supports.

Ensuring that there is a strengths-based approach to planning with a focus on 'choice' and other principles in the CRPD, pushing for a re-consideration of how to develop and establish dignity of risk, employing a person centered approached model at the heart of alternative strategies and having strong self-advocacy and/or independent advocacy all work to reduce restrictive practice interventions.

NEDA urges the Department to refer to the *Office of the Senior Practitioner- Roadmap to dignity without restraint*[9] which is an innovative, evidence-based practice tool kit that promotes dignity and self-determination for people with disability.

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[6] Manfred Nowak, Special Rapporteur, *Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 63rd sess, UN Doc A/63/175 (28 July 2008) 9.

[7] People with Disability (PWD), *Submission to Australian Law Reform Commission: Equality, Capacity and Disability in Commonwealth Laws Inquiry'*, Available at: http://www.pwd.org.au/pwda-publications/submissions.html

[8] Ibid

[9] Available at: http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/reports-publications/office-of-the-senior-practitioner-roadmap-to-dignity-without-restraint

In the acceptance of a nationally consistent system to manage, authorise and administer the use of restrictive practices, it must

- be based on a human rights approach
- be shaped directly by the experiences of people with disability and their representative organisations.
- work from the premise that behaviours 'of concern' are not a product of disability nor the individual, but are produced from interaction, environment and a person's history.
- work from the premise that 'challenging behaviours' often represent behaviours of resistance or behaviours of protest. They are adaptive behaviours to maladaptive environments, interactions and histories.

Within this system, all restrictive practices need to be subject to external authorization and review processes. A panel of expert practice advisors could be tasked with both advising on and monitoring the reduction and elimination of a restrictive practice; this could be managed by a system similar to the Civil administration tribunal, incorporating the expertise of the Offices of Senior Practitioners, falling under the jurisdiction of the proposed oversight and monitoring body.

Expert practice advisors should have a strong working knowledge of the social model of disability and the CRPD. The expert advisors/advisory panel should also be informed by people with disability, their families, and independent advocates. Additionally, the national system for authorising and monitoring restrictive practice should also collect data and disseminate reports demonstrating how it is working towards eliminate restrictive interventions.

The NDIA needs to ensure people with disability and their families, communities and advocates are aware of the processes involved to seek a review of the use of restrictive practices and how to participate in complaints processes and review mechanisms.

NEDA is dubious that the mandatory reporting of restrictive practices will work to reduce the incidence of such practices, or that it is a true or accurate reflection of the prevalence of restrictive practices. Nonetheless, the system does need to have robust mandatory reporting, monitoring and oversight processes.

Most importantly, the Government needs to make real its commitment to eliminate the use of Restrictive Practices throughout Australia, not just within the disability sector.

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About NEDA

The National Ethnic Disability Alliance Inc. (NEDA) is the only national peak organisation representing the rights and interests of people from culturally and linguistically diverse backgrounds (CaLD) and/or non-English speaking backgrounds (NESB) with a disability, their families and carers throughout Australia. NEDA is a member of the National Cross-Disability Alliance and reports directly to Government as a national peak.

NEDA advocates at the Federal level for the rights and interests of people from CaLD and/or NESB communities with a disability, their families and carers so that they are able to participate fully in all aspects of social, economic, political and cultural life; and provide policy advice to the Government and other relevant agencies to secure equitable outcomes for people from CaLD and/or NESB communities with a disability, their families and carers.