



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

Office of the Chief Executive

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Further Information

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INTRODUCTION

Novita Children's Services (Novita) appreciates the opportunity to provide submissions in relation to proposals for the NDIS quality and safeguarding system.

Novita Children's Services is a South Australian non-government, not-for-profit organisation, established in 1939 as the Crippled Children's Association of SA, to care for children diagnosed with polio. Today, Novita provides state-wide services and research for children and young people living with disabilities and their families.

Novita's range of services includes therapy, equipment, rehabilitation and family support services to more than 3,000 children and young people with disabilities and acquired brain injuries; in addition, Novita provides a variety of services to approximately 400 children with special needs and social disadvantage, and to their families, across South Australia. Novita's specialist services are delivered by multi-disciplinary teams that include occupational therapists, physiotherapists, psychologists, social workers, speech pathologists, educators and support workers. Through its work with families and communities, Novita has a direct impact on more than 12,000 South Australians.

In relation to children with disability, Novita considers that quality and safeguarding systems should reflect these norms:

- Children and young people with disability should have the right to feel valued in Australian society and to be free from discrimination; they are entitled to have access to opportunities, along with non-disabled children and young people, which assist them to achieve self-esteem.
- The rights of children and young people with disability accrue to them as individuals and are separate from those of adults.
- Children and young people with disability have the right along with other Australian children and young people to access education, training, and social options that equip them to take their place as adults in the community; their needs are the same as individuals who do not have a disability, but they have additional needs because of their disability.
- Children and young people with disability who live in Australia are entitled to be included in government and community programs set up to benefit all young Australians.
- Children and young people with disability are entitled to participate in governments' social inclusion agendas.

The impact and importance of the NDIS Quality and Safeguarding framework in relation to children and young people with disability must be emphasized and take account of specific issues relating to them.

PART 1: PROPOSED QUALITY AND SAFEGUARDING FRAMEWORK FOR THE NDIS

Novita supports the risk-based framework and advocates strongly for national consistency in the framework. Inconsistent approaches across jurisdictions are not compatible with the nationwide concept and reach of the NDIS. There will always be room for differences in application and scope that take into consideration specific, targeted issues, or relate to regional and remote communities; however, the structure of the framework must be consistent across Australia and underpinned by universal, consistent principles.

The framework around the three domains of development, prevention and correction, is acknowledged. Across those domains, there are broad considerations in relation to paediatric disability services that require emphasis. They include:

- In the paediatric disability area, specific consideration needs to be given to the role of the family, family centred practice and best practice for early intervention.
- Best practice in the area of early intervention is inclusive of the support of families to best support their child to participate and develop in everyday settings.
- Specific consideration of quality assurance frameworks, relevant to the area of early intervention, should be considered for any provider of early intervention supports, with a focus on the demonstration of quality practice.
- Quality, in terms of demonstration of outcomes for young children and families, needs to be considered in the early childhood context.
- Safeguard frameworks should be in place to ensure that families are supported throughout their engagement with NDIA and service providers, including access and planning phases.
- Service providers seek registration to provide certain support types. For true quality there needs to be consideration of the support type for which the provider has registration.
- Registration to provide other specific support types, such as assessment and prescription of assistive technology, requires specific quality frameworks in addition to that of overarching disability standards.

1.1 Important features of an NDIS information system

Links must be built with local area co-ordinators and collaborative work with them is required. A national approach is necessary for consistency and quality of information which must be available to all participants.

This information needs to be available on-line and also by hard copy.

Consideration must be given to the supply of information about disability, which includes:

- information and advice including from specialist disability organisations
- access to information networks
- information about independent advocacy services and the types of support that advocacy can provide

- access to information about human rights and legal capacity
- research into disability types, services, treatment and equipment.

The design and delivery of information systems should give consideration to the range of communication needs of children and young people with disability, their families and carers. It must also take account of developmental milestones through childhood, adolescence and into early adulthood.

It is particularly important that teenage children with disability are able to access a wide range of information about disability that can assist them in education, vocational planning, social networks and personal development.

There must be a community focus which enhances and facilitates access to local and informal networks.

In relation to the question of the benefits and risks of enabling participants to share information through online forums, consumer ratings of providers and other means, it would not be appropriate for the NDIA to be involved in this type of activity. Note that the NDIA has a responsibility to provide accurate information (s15 [2]) National Disability Insurance Scheme Act:

“The Agency must use its best endeavours to provide timely and accurate information to people with disability and other people in order to assist them in making informed decisions about matters relevant to the National Disability Insurance Scheme.”

The need for accuracy in the provision of information is critical and the NDIA must protect its integrity and ensure the integrity of information that it disseminates.

Additional ways of building natural safeguards that the NDIS should consider could include:

- encouraging community inclusion and support, which can be extremely important for families with an infant with a disability
- access to independent advocacy, mentoring and informal support
- intensive support with planning particularly for new participants, and for participants who have difficulties with communication.

Participants, naturally, should make decisions based on their risk assessments, but as with any consumer product and service, marketing activities may offer something that looks good, but is ultimately less than expected.

Quality protections and monitoring activities are likely to be the only barrier to such behaviour and therefore the bar should be set at a reasonable level that ensures a consistent level of quality is maintainable by providers. This may be difficult as the bar cannot be set so high as to exclude small operators and not be too low for larger organisations.

While confusion across jurisdictions is to be avoided, it must be understood that certain areas, such as remote communities, have very different needs and some regulation may be needed to ensure these areas are not discriminated against. For example, travel time and costs may need to be taken into account in any key performance measures.

Unless regulated, market forces will set the price and quality benchmarks for services delivered through the NDIS and there will be continual competitive downward pressures on price, which could ultimately affect the quality of services.

The effects of the move from 'block funding' to 'fee for service' should not be underestimated. Such a move introduces the industry to productivity imperatives that may or may not have been so evident to workers previously. This paradigm shift introduces a focus on time spent with each client, travel costs associated with getting to service delivery points and overheads that are not included in service plans. It is very easy for all of this focus to appear to be driven only by commercial factors; however, there needs to be a clear understanding of business drivers and overheads that ensure ongoing viability of the service providers, and consumers will need to understand that costs will include non-contact time to allow workers to compile reports and undertake other non-contact actions. Understanding of the costs associated with services and providing sufficient funding to providers to meet essential overheads is the first step in ensuring providers can confidently strive for service quality excellence. The better the funding model meets industry needs, the more the focus can be turned towards quality goals as a primary driver.

PART 2: DETAIL OF KEY ELEMENTS OF THE QUALITY AND SAFEGUARDING FRAMEWORK

2.1 NDIA provider registration

For balance in national registration requirements and noting the need for a proportionate approach, Novita supports the proposition set out at pages 21-22 of the Consultation paper, namely:

"... providers delivering supports that have a low risk for participants (such as a group recreation activity) will have fewer requirements, while those providing supports of a type likely to create a greater risk (that is, supports that involve more direct staff-participant contact or lack supervision such as personal care, respite or accommodation supports) will have more requirements to address."

Provider registration is necessary; it will assist to give basic levels of assurance to participants, encourage levels of expertise, and bring efficiencies. In addition, entry barriers to the market will assist in protection of minimum standards of service delivery.

Providers of generic services, including basic domestic services, such as shopping, house cleaning and gardening, need not comply with disability standards.

However, disability support providers should be required to comply with minimum quality standards. Those standards can be set out in the provider Code of Conduct.

Novita acknowledges that it is difficult to determine the appropriate level of external quality control across a diverse, national industry. However Novita has been certified for many years to the IOS 9001:2008 standard and values the rigour, independent scrutiny and continuous improvement initiatives that arise out of the annual external surveillance process complemented by the methodical, internal, continuing audits. Service providers that have succeeded in third party accreditation should not be disadvantaged in the new framework, and they should have a competitive advantage with regard to quality assurance and recognition.

Novita supports a combination of Options 2, 3 and 4 in the consultation paper. Option 3 requires compliance with a provider Code of Conduct for all registered providers, external quality evaluation for some higher risk support types, and third party quality accreditation for high risk areas of service. Option 4 includes the quality assurance/industry based evaluation. There are numerous instances of the higher risk area such as invasive, personal care support; services to people with severe intellectual disability and limited communications skills, young children with physical disabilities, services that are delivered in isolated settings. Extra funding may be necessary in regard to Options 3 and 4.

Third party verification is a tried and tested method of assurance that providers are working at or above quality benchmarks. In addition, Novita supports cross-recognition of quality systems across disability and human service systems.

There is high risk to consumers (and providers) in setting the standards too low and, of course, the higher the bar is set, consumers will have access to fewer services per dollar. This is a risk judgement that must be made and should not be left to market forces alone.

2.2 Systems for handling complaints

In response to the question in the Consultation paper, Novita considers there must be a rigorous, independent complaints system that applies to disability related supports funded by the NDIS.

Further, Novita contends that there should be a single, national disability industry regulatory agency. It should be independent and it should draw on statutory powers. It needs to have a central, dual role in relation to complaints and professional standards. It should be established by legislation and it should have defined statutory roles and responsibilities.

Within the national disability industry regulatory body, there should be a **complaints and review agency** to receive and investigate complaints about providers. Its statutory powers would include the capacity to:

- exercise oversight of restricted practices
- receive, investigate and help to resolve complaints about service providers, and
- undertake serious incident investigation, review and reporting.

Within the single national disability industry regulatory agency there should be a **professional standards agency**, which would draw upon statutory powers to carry out functions that include:

- provider registration
- employee screening (including barred persons list)
- oversight of the provider Code of Conduct
- disability quality management and accreditation systems; National Disability Service Standards
- oversight of independent advocacy support.

All disability service providers, which would also include service providers with self-managing participants, should comply with the provider Code of Conduct.

The future role of community visitors should be assessed in the light of progress with an emerging strategy for independent advocacy.

It is essential that a 'no-blame' culture (whistle-blower protection) is promoted throughout the industry, to support open and honest reporting of service quality issues and complaints. While there may already be a good level of service quality ethics and cultural awareness applied, this could slip as commercial pressures bite and providers seek to maintain a 'good name' through low complaints measures and trends.

2.3 Ensuring staff are safe to work with participants

Studies in Australia and overseas have identified that children with disability are at significantly higher risk of abuse and neglect than other children. Accordingly, Novita has regularly called for stronger protection for children with disability, including improved advocacy, research, alternative care and support to children and families. Comprehensive measures must be in place to protect children's safety and well-being. Child protection is the foundation for all of paediatric service provision.

In work undertaken with National Disability Services on the Zero Tolerance Project, Novita confirmed its agreement with the following propositions:

- Introduce a consistent national legislated requirement on criminal history checking for people working with vulnerable people in the aged care, disability and child support sectors.
- Allow the screening process to be provided by the market.
- Allow employer discretion, within guidelines, in managing and mitigating on-the-ground risks posed by particular employees or work settings that may be revealed in the criminal history check.

Accordingly, in relation to employee screening, the necessary features are:

- Employers have the responsibility for screening as it is their duty of care and their fundamental reasonability under employer-employee contracts and terms of engagement.
- It is the employer's role to manage identified risks.
- Employers must operate within regulatory parameters around employee history information through national criminal history checks and referee checks
- If a check identifies certain prescribed offences, there would be a prohibition from employing the person to work with people with disability; equally the prohibition would apply to persons named in a "barred person scheme".
- Screening checks provided through accredited process are demonstrably reliable, efficient and quick and they provide the efficiency, reliability and speed which are missing in compulsory use of government schemes.

It is not difficult to develop a national approach to screening. In effect, section 19 of the Australian Government Terms and Conditions/Standard Funding Agreement is, for Commonwealth subsidised services, the oversight of a national framework for screening which promotes a consistent approach across those services.

Instances arise where a National Police Clearance for an applicant gives details of a criminal record, and a corresponding State Government clearance deletes the individual's criminal history, on the basis that it isn't relevant to the job which was being applied for. The sanitisation of the record, made through an unaccountable process, is completely unsatisfactory. This is just not good enough.

In an NDIS system, there is no room and no justification for cumbersome, slow, expensive, localised, State Government-based safety screening in disability. This is especially the case as State governments rapidly withdraw from service delivery and service engagement in the NDIS rollout.

Novita supports the concept of a national barred persons register as a suitable and necessary means for increasing safety in disability services, and working with children.

An essential feature must be portability of checks, which would enable workers to provide an up-to-date check to various employers.

2.4 Safeguards for participants who manage their own plans

All organisations providing disability support services funded through the NDIA should have to register and sign up to the Code of Conduct, including those working only with self-managed participants.

Novita supports Option 3b *"that all NDIS participants would be required to procure supports from providers registered under conditions imposed by the NDIA."*

In this way, the Code of Conduct can be enforced and adherence to the appropriate quality frameworks, according to the support types, is a requirement of being able to

provide a service. This is particularly important in the early intervention sector, where work needs to take place through the family as well as with the child.

Novita supports the concept of education and training for self-managing participants, which could assist in sharing information about engaging with support staff. Novita also encourages the notion of mentoring programs for self-managing participants, provided by people with experience in managing plans.

2.5 Reducing and eliminating restrictive practices in NDIS funded supports

The NDIS Code of Conduct should apply to all providers of support, whether the participant is agency- or self-managed.

There must be an external authorisation and review process for restrictive practices. Novita urges that this be within the jurisdiction of the proposed national disability industry regulatory body. There must be a national approach that provides consistency in the regulation of restrictive practices.

Novita agrees with the comments of the Australian Law Reform Commission (ALRC) in its report on restrictive practices that might operate under the NDIS. In particular the need for a person-centred approach, consideration of the need for a behaviour support plan in relation to restrictive practices, and requirements around supported decision-making, are critical areas that need a suitable focus.

As the ALRC stated:

8.36 “The ALRC recommends the development of the NDIS system takes into account the National Decision-Making Principles. Among other things, this would mean that provisions regulating restrictive practices would: encourage supported decision-making before the use of such practices; provide for the appointment of representative decision-makers only as a last resort; and require that the will, preferences and rights of persons direct decisions about any use of restrictive practices.”¹

Sometimes restrictive interventions are necessary to prevent serious harm, but high quality services can reduce or eliminate the need to use these interventions.

There is no lawful justification for restrictive interventions that are not authorised through legislated process. That process, properly regulated and enacted, should ensure that expert practice advice is reviewed in the decision to authorise a restrictive practice. In that way, an independent process will take into account all relevant issues, often arising in highly difficult circumstances, which place a focus on rights and preferences and

¹ ¹ Equality, Capacity and Disability in Commonwealth Laws (Australian Law Reform Commission Report 124)

provide a legal basis for an intrusion that otherwise should be regarded as illegal. These measures are long overdue in the disability sector.

While there may be an increase in compliance costs in some instances, it is a price that must be paid. This is a clear issue about fundamental human rights.

As the ALRC states:

8.3.7 “Restrictive practice must be least restrictive of the person’s human rights; appealable; and subject to regular independent and impartial monitoring and review”²

With the understanding of the necessity for restrictive practices to have legislative sanction, there will be a self-education process in the disability sector that will result in better understanding about restrictive practices, a reduction in resorting to those practices, and fewer violations of human rights.

In relation to children, there are a number of significant issues that will come into focus. It is important to elevate the understanding of those issues in the context of family roles and rights, the developmental needs and the individual rights of the child, and the nature of the supports and potential constraints, including safety issues, that may be relevant. The approach must be one that promotes and protects the best interests of children at all times and incorporates zero tolerance of child abuse.

² Equality, Capacity and Disability in Commonwealth Laws (Australian Law Reform Commission Report 124)