

Midlas
Submission to the Department of Social Services
in response to the “Proposal for a National Quality and Safeguarding Framework”

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Introduction

Midlas is a community legal centre based in the Midland area. We provide disability advocacy for people with disabilities living in the City of Swan, Town of Bassendean, Shire of Mundaring and Shire of Kalamunda. We assist clients with disabilities, their families, carers and guardians to ensure that they understand their rights and responsibilities and can participate fully within their community.

Midlas have been providing assistance for participants eligible for the National Disability Insurance Scheme (NDIS). This has included assisting people to test their eligibility for the Scheme, fill in the relevant forms, liaising with the Agency and attending meetings with the participant to help them through the planning process. Midlas ensures that participants agree with their Plan and understand how their Plan is meant to be implemented.

Additional assistance is offered for clients who want to appeal decisions made by the Agency. Midlas have assisted clients to navigate through the Internal Review process. If a participant does not feel that they achieved the appropriate outcome through the Internal Review process, they can apply to the Administrative Appeals Tribunal (AAT) to have an External Merits Review. Midlas is the selected advocacy organisation for WA to act as an independent advocate with the participant during the EMR.

Below is the response to the proposed safeguard options featured in the paper. These are:

- Participants who self manage their Plans;
- NDIA Provider Registration;
- System for handling complaints;
- Ensuring staff are safe to work with participants;
- Reducing and eliminating restrictive practices in NDIS funded supports;
- Monitoring and oversight.

Safeguards proposed

Participants who self manage their Plans

The ability for participants with disabilities to self-manage their Plans allows for a higher degree of choice and control in their lives. Participants who self manage have greater flexibility to choose providers and manage those services independently. However, there is a concern that self-management could expose people with disabilities to a higher level of risk. Although self management places the control more with an individual, the Agency should still have a duty of care to all NDIS participants.

Midlas believe that Option 3 is the most appropriate for participants who are self managing their Plans. Through this option participants are required to use an approved provider or have that provider screened by the NDIA. Providers must comply with relevant Commonwealth and State legislation as well as adherence to relevant industry accreditation and licensing measures. A provider registered with the NDIA must comply with the NDIS Code of Conduct and the Terms of Business.

It should be mandatory that participants and providers establish a Service Agreement. This could be using the NDIS template Service Agreement or developing an individualised agreement. It is important for that participant to understand the type of supports that will be provided, the costs of supports, how those supports will be delivered, entry and exit procedures and participant and provider responsibilities.

The proposed requirements for Provider Registration and an established Service Agreement need to have set timeframes. The timeframes need to be flexible for providers who have been engaging with people with disabilities or families before they transitioned to the Scheme. An additional safeguard (Option 3a) would ensure that for providers who are not registered with the NDIA are placed on a more restrictive list. This would restrict the type of services they are able to provide for a participant until successfully registered.

Initially it could be proposed that a self-managed participant could choose their own provider with the expectation that they will be registered before the Plan Review is conducted with the NDIA (at the 12 month mark). The participant should be well informed about the requirements for provider registration with the NDIA. However, if at Plan Review stage, that provider has not completed necessary requirements for registration, that participant should not be able to receive services from that organisation. The participant should then be given alternative options as that organisation has failed to comply.

NDIA Provider Registration

Due to the increased number of people with disabilities with an approved NDIS Plan, disability and mainstream services have needed to expand the services they offer. This has included increased access for people with disabilities to mainstream supports like gardening or cleaning. Safeguards need to be implemented with appropriate registration requirements, to allow participants to determine quality providers of support.

Midlas believes that Option 4 is the best outcome to ensure safeguarding for participants with a disability. Option 4 would ensure that participants are still able to have choice and control but there would be additional level of requirements for higher risk based services. This includes services like care and support work, respite and accommodation services. These organisations should be required participate in an independent quality evaluation. Quality evaluations should focus on participant's experiences of accessing the service.

Along with independent evaluation, having a Quality Assurance audit in place for higher-risk providers would ensure that the organisation has appropriate governance systems and risk measures in place. Organisations should have the option to make this information publicly available for participants to access. Although independent evaluation and quality assurance requirements may create additional costs to some organisations, this is often a requirement for disability

organisations accreditation. In turn this would also be compliant with the National Standards for Disability Services (Standard 6: Service Management).

Participants and families need to have the ability to gauge the quality of an organisation and the services they provide. This can be challenging for a person with a disability, often due to the differing amounts of unbiased information available. By making quality evaluation and quality assurance publically available, this could aid participants in determining which service would be best fit for them. This would also be beneficial to service providers, advocacy organisations and NDIA Planners to assist participants to determine quality organisations based on independent evaluations.

It should be noted that there needs to be allowances made for private and smaller scale providers of supports who provide direct care work. For example a private carer, who only works with 5 people with disabilities, should not be expected to go through the same quality evaluation and assurance requirements as a large disability organisation. If the process discourages smaller grassroots providers, this may have an impact on the level of choice for a participant if only larger organisations have the capacity to comply with the provider registration process.

System for handling complaints

Participants should be supported and feel safe about providing feedback and making complaints about the services that they are receiving. The proposal under Option 1 for self regulation may not always be appropriate as the onus is on the individual to speak up. For participants without an informal support network, safeguards need to be in place to ensure that making the complaint process is as transparent as possible.

There should be several options through which a participant can make a complaint and this information should be widely accessible. Midlas believe that Option 3 would be the best system for handling complaints. There should be a variety of ways that participants and providers can make a complaint. This should be internal complaints procedures inbuilt within organisations, the ability to lodge a complaint with the NDIA or an external complaints body.

Providers of supports should have relevant internal complaints procedures in place. This should be a requirement that participants receiving the services from a registered provider are fully aware of the complaints process. The Agency should ensure that the provider has an appropriate complaints handling process as part of their provider registration.

Similarly the NDIA should be able to receive complaints by participants and providers. Systemic issues could be identified, relating to the participants experience of the NDIS and complaints about their providers. Participants' should be able to raise concerns about their provider's service delivery and quality standards. Complaints made against providers will need to be investigated when required and for serious breaches NDIA or the relevant complaints office should have the capacity to revoke a provider's registration. Providers should have the ability to make complaints to the NDIA if they are experiencing difficulties in communication with relevant Agency staff or administration issues e.g. issues relating to an organisation not being paid correctly by the Agency.

A complaints office needs to be established which is independent of the Agency. Like the external advocacy that Midlas provides for participants appealing NDIA decisions, an external disability complaints office could be an impartial way for people with disabilities to provide feedback and

lodge complaints. Currently there are complaints mechanisms in Western Australia available to participants such as the Commonwealth Ombudsman and HADSCO (Health and Disability Services Complaints Office). It could be a consideration that this complaints office could be incorporated into a similar complaints body that already exist who has the prior experience and expertise. There needs to be further discussion around whose role is to handle complaints that fall outside of the disability field e.g. health services or other mainstream interfaces, and whether the independent complaints office will deal with all NDIS complaints.

Ensuring staff are safe to work with participants

It is imperative that organisations have qualified and competent staff that have gone through relevant organisational recruitment and induction procedures. For Western Australia this would include adherence to legislative requirements such as Police Clearances and when relevant Working with Children Checks.

Midlas believe that Option 3 would be the best option to minimise the risk to those who work or volunteer with people with disabilities. Organisations should have in place procedures for staff recruitment and induction including the relevant checks. In addition to this, a more comprehensive approach could be used to screen employees using a similar check such as the Working with Vulnerable People clearance. This would allow for more information relating to an employee's history including spent convictions, employee misconduct and dismissals. Ultimately, employers should have the discretion to determine the right employee for the role but the clearance would be a useful aid to assist in reducing a participant's level of risk.

The idea of having a barred persons list (Option 4) may be too restrictive and could limit choice and control for a participant. Establishing a system similar to Working with Vulnerable People clearance may have an impact on the time it takes to recruit staff. A possibility could be to streamline the process so that an employee could apply for the Police Clearance, Working with Children Check and Working with Vulnerable People Clearance in one step, reducing the costs of applying separately. Employees that have been cleared could have an identification badge which would alert people with disabilities that their providers have gone through the proper recruitment requirements.

Reducing and eliminating restrictive practises in NDIS funded supports

As an advocacy organisation, Midlas does not need restrictive practices when working with people with disabilities due to the nature of the services we offer. However, we do support people with disabilities who are on behaviour support plans or do exhibit challenging behaviours. Our clients may be linked with services that do put in place restrictive practices to reduce and protect that person or others from harm.

Behaviour support plans should only be written by qualified medical professionals and organisations should ensure regular training is completed by staff. These plans should be regularly reviewed by the service provider and include a list of approved restrictive practices, the instances which they may occur, and who is qualified to deliver the practice. Regular reviewing of a behaviour support plan would be a way of ensuring that the least restrictive alternative is being used for that participant. Independent audits of participant's behaviour support plans may be appropriate to ensure adherence to best practice.

The paper does highlight the need for the person with a disability to comprehend their behaviour support plan that includes restrictive practices. This could be an independent party, either family member or appointment guardian, not linked to the provider.

Option 4 for the appointment of an independent, qualified person or panel to be involved to authorise behaviour support plans and the use of restrictive practices, may be the most appropriate outcome. The need for an independent party could reduce provider bias and the power imbalance that can exist.

Monitoring and oversight

A necessary component of using restrictive practices is to ensure that proper monitoring and reporting processes are established. There needs to be regular reporting by providers who do use restrictive practices. The frequency of restrictive practices could be monitored to ensure that providers are complying with the relevant behaviour support plan. The use of a reporting database similar to 'Integris' used in Western Australian schools could be a way of easily lodging occurrences of restrictive practice. Reporting should be whenever a restrictive practice has occurred.

There does need to be consideration for whose role it would be to monitor, and if necessary intervene, when there are concerns for provider's inappropriate use or abuse of restrictive practices.