



**United Voice response to:**

**Proposal for a National Disability Insurance Scheme  
Quality and Safeguarding framework Consultation  
paper**

**April 2015**

This response has been prepared by United Voice National Office on behalf of United Voice members across Australia.

**Authorised by David O'Byrne, National Secretary**

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## About United Voice

United Voice is a union of workers organising to win better jobs, stronger communities, a fairer society and a sustainable future. Members work in a diverse range of industries including disability support, aged care, early childhood education and care, cleaning, hospitality, healthcare, security, emergency services and manufacturing.

A large number of United Voice members work in the public sector or in publicly funded sectors. Many United Voice members are in low-paid and under-valued employment, and all rely on government to provide access to quality public services, to ensure a secure retirement, and to monitor and regulate economic activity to ensure a fair and equitable society.

Whilst coverage and titles may differ on a state basis, nationally United Voice has thousands of members who work in the disability sector. As the people working in the disability sector on a daily basis, our members appreciate the opportunity to have their opinions, concerns and experiences considered in this consultation process.

# Contents

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1. Introduction	4
2. Executive Summary	5
3. Summary of recommendations	6
4. General comments on safeguarding system	7
4.1 NDIA provider registration	8
4.2 Complaints system	9
4.2.1 Complaints system	9
4.2.2 Whistle Blower protection	11
4.2.3 National community visitors program	12
4.3 Ensuring staff are safe to work with participants	13
4.4 Safeguards for participants who manage their own plans	16

# 1. Introduction

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United Voice members across the country are deeply concerned about the lack of a consistent and robust safeguarding system for people with disability who access services under the NDIS. Our members support a national framework of safeguards that advance the rights of people with disability and appropriately balance the risk of harm with choice and control.

A number of United Voice members' responses to the consultation paper are included in this submission, many of whom not only work in the sector, but whose children or other family members use disability support services.

United Voice members understand the vital role the disability sector paid workforce has in safeguarding people with disability. Quality support that respects and advances the rights of people with disability to live free from harm and exercise choice and control in their own lives requires a stable, professionally trained, qualified and dedicated workforce.

Due to the massive workforce growth projected under the NDIS, it is essential that systemic workforce issues, particularly attraction and retention issues are adequately addressed to ensure the provision of quality support services remains sustainable into the future.

United Voice acknowledges that workforce issues are beyond the scope of this consultation paper. However, it is vital to understand that workforce issues are inextricably linked to the quality and safety of support services. Regardless of how robust a quality and safeguarding framework is, the sector will be continually constrained by these workforce issues if they are not appropriately addressed.

We invite the NDIS Quality and Safeguards Consultation Team to review the United Voice submission to the Senate Inquiry into violence, abuse and neglect against people with disability in residential and institutional settings dated 9 April 2015, which addresses the workforce issues under the NDIS and makes recommendations to ensure the sustainability of quality support services.

United Voice welcomes the opportunity to make this submission on behalf of our members. We urge the NDIS Quality and Safeguards Consultation Team to support the recommendations contained in this submission.

## 2. Executive Summary

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People with a disability deserve the highest quality support services that are provided in a manner that is safe, accountable, respectful and responsive to an individual's needs and goals. The capacity of the Australian disability sector to provide quality support services is brought into question by reported instances of abuse and exploitation committed against people with disability by those who have been entrusted to provide a service.

We acknowledge that while most disability support services are delivered in a way that does not put people with disability at risk, United Voice members know that violence, abuse and neglect against people with disability does occur.

United Voice members completely oppose violence, abuse, and neglect against people with disability and fully support the introduction of a nationally consistent regulatory framework that ensures quality support services and the strengthening of existing developmental, preventative and corrective safeguards through the NDIS.

We support the following safeguards raised in the consultation paper;

- A robust registration system for all NDIS providers
- A national, independent and centralised complaints system that has the power to investigate and prosecute claims
- A nationally consistent independent pre-employment screening process for the workforce.

### 3. Summary of Recommendations

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#### Recommendation 1

United Voice recommends a registration system as described by option 4 in the consultation paper is the most appropriate. With the addition that quality assessment auditors are independent, assessment reports are publically available and the assessment is reviewed on a three yearly basis.

#### Recommendation 2

United Voice recommends the establishment of a national, independent complaints body, consistent with option 3 in the consultation paper. In addition United Voice recommends national whistle blower protection and the establishment of a community visitor scheme.

#### Recommendation 3

United Voice recommends a robust national pre employment screening process consistent with option 3 in the consultation paper and with the features described in section 4.3.

#### Recommendation 4

United Voice recommends that NDIS participants be required to access providers registered by NDIA.

## 4. General comments on a safeguarding framework

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People with a disability deserve the highest quality support services that are provided in a manner that is safe, accountable, respectful and responsive to an individuals needs and goals.

United Voice supports the introduction of a nationally consistent regulatory safeguarding framework for the NDIS. This will ensure high quality service provision and preserve choice and control while minimising risk of harm for participants. All NDIS participants across Australia must have the same access to quality service.

Ensuring people have access to transparent and accurate information is a vital safeguard. Information about NDIS service providers should be available and accessible for all potential participants. Information should include details about NDIS providers, costs of services and services offered. Participants are only able to make real choices about their participation when all this information is made available.

For a quality and safeguarding framework to be effective all of the elements discussed below (provider registration, complaints system and pre-employment screening) must be present. Provider registration without pre-employment screening and a comprehensive complaints system for example will not suffice to ensure quality and safety. For the NDIS to be truly operating in a quality and safe way all these elements must exist.

Regulatory frameworks alone however can not ensure quality and safety without other measures that support and complement the regulatory framework. United Voice is concerned that the following issues, at least, are also considered;

- Participants in the NDIS should have access to strong independent individual and systemic advocacy and
- the access to justice issues faced by peoples with disability in their interactions with the police and criminal justice system must also be addressed.

## 4.1 NDIA Provider registration

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United Voice recommends that all NDIA providers must be registered.

A national registration system will ensure that all NDIS providers have met requirements of the registration system and all participants of NDIS can be satisfied that regardless of which provider they chose to access they will deliver a quality service.

A registration system must require providers to meet basic legal requirements, to adhere to an NDIS code of conduct, to establish the existence of an internal complaints process and to be subject to a quality assurance assessment.

The quality assurance system should focus on continuous improvement. The assessment should be undertaken by specially trained independent auditors and the quality reports should be made public. Making the reports public improves accountability of service providers and improves access for participants to transparent information. The quality assurance process should be reviewed every three years to ensure services maintain and/or improve across the assessment measures over time. An aspect of the assessment should include unannounced visits by the auditors. This is to prevent providers changing normal processes for the period of assessment then returning to lesser practises. Our members report that where a service is undergoing assessment it will improve, for example, staffing levels for the period of assessment and then return to lower staffing levels after the assessment process is over. This type of practise obviously undermines the purpose of a quality assessment process.

### Recommendation 1

United Voice recommends a registration system as described by option 4 in the consultation paper is the most appropriate. With the addition that quality assessment auditors are independent, assessment reports are publically available and the assessment is reviewed on a three yearly basis.



## 4.2 Complaints System

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Where a recipient of services is unable or unwilling to make a complaint, in the absence of other external supports, there will be increased reliance on the paid workforce to act. A workplace culture where people are supported and encouraged to speak up requires an accessible, transparent and robust complaints system that workers have received appropriate education and training about, and a national whistle blower policy that allows workers to raise concerns without fear of persecution.

### 4.2.1 Complaints System

Providers of NDIS services must be required to have an internal complaints handling process. Most funding contracts already require providers to have internal complaints handling mechanisms in place. This requirement is also reflected in Standard Four of the National Standards for Disability Services.

We receive constant feedback from our members that they have not received any formal training in the complaints system that exists in their workplace. Clearly the first step in a successful complaints process is ensuring employees are aware of it and understand their obligations when making a complaint.

It is concerning to receive feedback from members who feel discouraged from raising concerns where they don't perceive any value in their employers complaints system. Having a complaints procedure that is not transparent or effective is arguably just as bad as a complete absence of any system.

*"I saw a worker hitting and verbally abusing clients. When I reported it all that happened was that the worker was moved to another house and put on as a casual. It promotes a culture of encouraging people to not speak up when the employer just simply sweeps the problem under the rug and moves the trouble maker on"*

- Disability Support Worker, WA

While provider level internal complaints handling processes may effectively deal with some complaints, this alone is not satisfactory. It is of paramount importance that there exists

an effective and accessible external complaints body for people with disability or their advocates to make a complaint regarding a service.

As the workforce plays a vital safeguarding role, particularly where an individual may be considered vulnerable due to their specific circumstances, it is also necessary that workers be afforded the opportunity to make a complaint. In the absence of nationally consistent, comprehensive whistle blower protections in the private disability sector this access is particularly important.

United Voice is supportive of option 3 in the discussion paper. That is the establishment of an independent and external complaints body. The complaints body should be resourced to;

- Receive, investigate and resolve individual complaints, from an NDIS participant, their advocate or worker (in their own right).
- Receive investigate and resolve provider wide complaints, ie those that affect more than one NDIS participant.
- Instigate own investigations and inquiries of its own accord or based on information or complaints received
- Monitor and record the type and nature of complaints that would help identify systemic issues and form recommendations for systemic change
- Provide publically available data on complaints
- Have enforcement capacity to ensure resolution of complaints, including the capacity to deregister a provider
- Provide education, information and resources for providers about the complaints system
- Support a national community visitors program
- Support whistle blower protections

A national complaints body would clearly assist in resolving individual issues in a consistent manner. Where the body is subject to transparent reporting requirements, this would improve data collection across the sector, which in turn would help identify systemic issues and form the basis of recommendations for systemic change.

#### 4.2.2 Whistle blower protections

We recognise that disability in itself does not necessarily make a person vulnerable. However, some people with disability may be more vulnerable to abuse due to their specific circumstances including; isolation, mobility constraints, dependence, lack of community relationships and language or communication barriers. In the absence of family and other external relationships there will be an increased reliance on the paid workforce to identify and respond to indicators of harm.

Maintaining a stable and quality workforce is a vital safeguard against violence, abuse and neglect against people with disability in a service environment. As indicators of harm will be highly individualised and identification will largely rely on a positive relationship between the person with disability and the worker, a stable, professionally trained and qualified workforce that can provide continuity of care and support is imperative.

*“I have been working in the same job for almost 15 years so I know the guys really well by now. Even though they might not be able to verbally articulate it, I can tell when something isn’t right, I know them well enough to recognise the signs”.*

- Disability Support Worker, WA

United Voice members report that they can feel discouraged from raising concerns, either where they think they will not be addressed or they fear repercussions from their employer. Members report that due to insecure hours and shift arrangements, they perceive that their financial livelihood may be threatened if they speak up. Merely establishing a complaints system will not be a sufficient safeguard in a workplace culture where workers are disinclined or are not supported to make a complaint or raise a concern. Protecting potential whistle blowers will improve workplace cultures and attitudes to raising concerns.

*“Sometimes it’s not easy to say what you see or what you suspect. It seems that staff either won’t speak up because they are scared of what might happen to them, or they feel that management won’t do anything with the complaint anyway”*

- Disability Support Worker, WA

### 4.2.3 National Community Visitors Program

An independent, centralised complaints body as recommended above does not negate the need for additional external safeguards that monitor and report on the quality of disability services.

The Community Visitors program run through the Victorian Public Advocate is an example of a successful external safeguard that aims to protect and advocate for the rights of people with disability.

Community Visitors are empowered under legislation to visit community residential units and supported residential services, without prior notice, and report on the quality of the services being provided to residents<sup>1</sup>. In the year 2013-14, a total of 2,935 visits were made and 147 incidents relating to abuse, violence and neglect were reported to the Office of the Public Advocate<sup>2</sup>.

Although a community visitors program would not be applicable to services provided in an individual's private residence, the introduction of a national (or nationally consistent) community visitors program, based on the established program in Victoria, would strengthen safeguards for people with disability in residential environments.

*"The importance of having someone who can visit the homes, unannounced, and make a true report on what's going on is cannot be understated. The element of surprise is essential if you want to see the true picture of what is going on in the house"*

- Disability Support Worker, WA

#### Recommendation 2

United Voice recommends the establishment of a national, independent complaints body, consistent with option 3 in the consultation paper. In addition United Voice recommends national whistle blower protection and the establishment of a community visitor scheme.

<sup>1</sup> Supported Residential Services (Private Proprietors) Act 2010; Mental Health Act 1986; Disability Act 2006.

<sup>2</sup> Community Visitors Annual Report, 2013-14.

## 4.3 Ensuring staff are safe to work with participants

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United Voice supports a national pre-employment screening process for all people working for an NDIS registered provider. The process should be more robust than police or criminal background checks alone. Criminal background checks are a valuable tool for employers during recruitment and clearly reduce the risk of employing those who pose an unreasonable risk to people with disability. The research shows a clear connection between a person's criminal history and their future behaviour<sup>3</sup>.

Importantly however, police checks are limited in their usefulness as they only identify people who have a criminal record at a specific point in time and will not capture criminal activity once a person is actively employed. Further, they will not reveal instances of alleged abuse, which did not result in criminal charges.

The inequities that prevent people with disability from reporting crimes and having them successfully prosecuted further reduces the effectiveness of a system which mandates police checks only. A 2009 study reported that 40 per cent of crimes against people with mild or moderate intellectual disability and 70 per cent of crimes against people with severe intellectual disability went unreported to police<sup>4</sup>. In the absence of improved access to justice safeguards, it is important to also consider non-conviction criminal information and non-criminal information (such as workplace records) to ensure a comprehensive screening process occurs.

There is a real risk that inclusion of non-criminal information, particularly workplace records, would lead to poor quality or biased information being considered. To mitigate this risk, the source, relevance, and reliability of this information must be taken into account and the information should be excluded unless satisfied on reasonable grounds that the information is accurate.

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<sup>3</sup> 'Ensuring a Qualified Long-Term Care Workforce: From Pre-Employment Screens to on-the-job monitoring' US Department of Health and Human Services Assistant Secretary for Planning and Evaluation Office of Disability, Aging and Long-Term Care Policy, May 2006

<sup>4</sup> Phillip French, Julie Dardel and Sonia-Price-Kelly, *Rights Denied: Towards a National Policy Agenda about Abuse, Neglect and Exploitation of Persons with Cognitive Impairment*, People with Disability Australia, 2009

A successful pre-employment screening process must carefully balance the rights of people with disability to be free from violence, abuse and neglect against the rights of workers such as right to privacy and natural justice. Features of a system that are respectful of these rights include;

- The assessment is conducted by an independent body with the employer only provided with the outcome and not the grounds on which the decision was made.
- The assessment is limited to relevant and credible information.
- Penalties are in place to deter vexatious/frivolous referrals against a worker.
- The assessment must have regard to the inherent requirements of working with people with disability.
- Applicants who receive a negative assessment must be entitled to an internal review processes and external appeal.

A newly established national pre employment screening process should replace the current different systems in each state and territory and should have the following features;

- The pre employment screening process is conducted by an independent body
- The process results in a clearance that is held by and therefore can move with the worker
- The process should include training for all applicants of pre employment screening addressing the rights of people with a disability, how to identify risk and indicators of abuse and how to handle these issues
- Once a person has met the pre employment screening requirements they are listed on a national registry of NDIS workers
- Pre employment screening should be repeated every 3 years and at the point of update training on the rights of people with a disability as described above should be repeated
- if an employee receives a banned conviction during the 3 year registration period, or whilst still employed in the sector, the onus is on

the individual as well as the authorities to update the status of their registration.

This pre employment process could ultimately lead to a national registration system for disability workers, which would enhance the public perception of the industry as providing a professional career choice.

United Voice is absolutely opposed to the creation of a “barred persons” list. This only identifies people who have already committed an act of abuse or neglect, is open to vexatious action against workers and does not provide protection to people with a disability as, as mentioned above, most abuse and neglect goes unreported.

*“Most people who work in the sector will not have a problem with undertaking a pre-employment screening process provided it is appropriate and their rights to privacy are being respected. If someone does have a problem, then maybe they aren’t right for the sector”*

- Disability Support Worker, WA

### Recommendation 3

United Voice recommends a robust national pre employment screening process consistent with option 3 in the consultation paper and with the features described above.

## 4.4 Safeguards for participants who manage their own plans

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United Voice believes all NDIS participants should be required to choose from among registered providers and individuals who have undergone the pre employment screening process. As discussed in the previous sections it is only through registration and pre employment screening processes that quality and adequate safeguarding can be ensured.

It is our view that this requirement does not restrict the choice of participants. There will be numerous registered providers available and any provider or individual can seek to be registered in order to provide services to NDIS participants.

Requiring access to registered providers also ensures participants have access to the complaints scheme and complete and transparent information about providers as required by provider registration.

### Recommendation 4

United Voice recommends that NDIS participants be required to access providers registered by NDIA.