

# Appendix 1: National Disability Complaints Commissioners group: Safeguards and the NDIS

# Safeguards and the NDIS

In July 2014, the Commonwealth, State and Territory governments began consultations to inform the development of a Consultation Regulatory Impact Statement to seek community input on the development of a national disability safeguards and quality framework. Set out below are the minimum safeguards the Disability Complaints Commissioners<sup>1</sup> agree should form part of a national quality and safeguards framework for people with disability under the National Disability Insurance Scheme (NDIS).<sup>2</sup>

The Commissioners recognise the importance of dignity of risk and its central role within a person-centred service system based on choice and control, and they welcome the NDIS's commitment to enabling participants to exercise their rights not just in planning and managing their supports, but in their wider lives as well.

Within this context, the Commissioners recognise that each person with disability faces different risks and different levels of vulnerability. This can be for a range of reasons, including the impact of a person's disability, the extent of their informal and formal support networks, the type of support required and the setting in which its delivered, and the availability of appropriate supports in the local community.

Any national safeguards system must, therefore, take a sophisticated and proportionate approach to managing risk.

It should not duplicate the responsibilities of other independent community or mainstream oversight and safeguarding bodies<sup>3</sup> but instead work with them to promote the rights of people with disability to speak up and access the same range of protections available to the rest of the community.<sup>4</sup> Such an approach acknowledges that not all people with disability will require the same level or type of protection, and a person's level of vulnerability may vary from setting to setting, or change over time.

A proportionate safeguards framework supports service providers by identifying the characteristics of particular services or settings where people with disability will benefit from a more structured approach, enabling providers to direct their resources and expertise effectively.

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1 The Disability Complaints Commissioners group encompasses NSW, Victoria, South Australia, Western Australia, Northern Territory, ACT, New Zealand, and the Australian Disability Discrimination Commissioner. Queensland and Tasmania do not currently have Disability Complaints Commissioners.

2 This paper updates the previous paper *Safeguards and the NDIS*, published in April 2013. The minimum safeguards outlined in this document are in addition to those relating to quality frameworks and standards for registered and other support providers.

3 Examples include consumer protection bodies, health care complaints authorities, public guardianship and trustee agencies, etc

4 All governments have a responsibility to improve the reach and effectiveness of all complaints mechanisms under the National Disability Strategy (*Areas for future action 2.6*).

# Safeguards and the NDIS

Independent oversight and analysis of the data gathered through the different functions of the safeguarding framework (including complaints, critical incidents reports, inquiries, reviews and monitoring) provides valuable feedback about the evolving disability market. This will assist people with disability, service providers and the NDIS by providing evidence of the quality of services and outcomes.

One of the acknowledged benefits of the NDIS is the drive to develop a nationally consistent approach to disability service delivery. It will take time to build such a system, and any proposed safeguards framework must be adaptable enough to work with the current jurisdictional differences while also driving the shift to a single national approach. The framework will also need to be responsive to any new challenges or risks that emerge from the developing disability sector.

Against the background of our work in the disability sector over many years, and following discussion and agreement with people with disability, the Commissioners strongly believe that NDIS participants and potential participants should have access to the minimum safeguards set out below.

The success of a new system of safeguards is dependent on the needs of people with disability being recognised in the design of the system. A new safeguards function will need to be equipped with disability expertise and resources to ensure that

information is provided through a range of communication methods, and navigation of the system is accessible for people with varying abilities.

We also recognise the critical related need for a solid strategy to support the development and provision of safeguards. In this regard, the Commissioners are keen to work with Commonwealth, State and Territory governments and people with disability on a robust set of arrangements for the delivery of the necessary safeguards.

## 1. Independent oversight,<sup>5</sup> consisting of a body(ies) with:

- complaint handling and investigative powers to:
  - » receive, resolve<sup>6</sup> and investigate complaints
  - » conduct 'own motion' inquiries and investigations<sup>7</sup>
  - » assist people with disability to make complaints, and
  - » review the pattern and causes of complaints, identify systemic issues for service improvement, and make recommendations to improve the handling and resolution of complaints.

Central to these functions is the need to:

- » include the provision of information, education, training and advice about matters relating to complaints and complaint handling

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5 Concerned with supports funded by the NDIS, and people with disability who receive, or are eligible to receive, supports funded by the NDIS.

6 Including the resolution of complaints at a local level, and through alternative dispute resolution.

7 'Own motion' inquiries should be able to be conducted in relation to matters about which a complaint could be made.

- » establish a nationally consistent complaints reporting system, requiring the prescribed reporting of key information about complaints to the independent oversight body(ies),<sup>8</sup> and
- » include legislative provisions to ensure protection of complainants from any detrimental action (or threat of detrimental action) linked to a complaint.
- Legislative responsibilities to conduct ongoing reviews into the effectiveness of aspects of the NDIS (ie: monitoring, review and inquiry functions)<sup>9</sup>
- Responsibility for promoting access to advocacy and supported decision-making.

Service providers' actions would be assessed against the relevant standards, in the expectation that these would vary according to the type of support. Where the complaint is best dealt with by a mainstream complaints handling body, for example, a consumer affairs regulator, the complainant would be assisted in making contact with the proper body.<sup>10</sup>

The analysis of complaint data collected through a national reporting system will identify systemic weaknesses that can pose a risk to participants and the sustainability of the NDIS, allowing these to be addressed proactively.

## 2. Safeguards to prevent and effectively respond to abuse, neglect and exploitation – including:

- development of a comprehensive national framework for preventing, identifying and effectively responding to abuse, neglect and exploitation of people with disability
- a requirement to report critical incidents,<sup>11</sup> particularly in the context of high risk service settings [with oversight of the handling of matters by an independent oversight body(ies)]
- the introduction of a consistent national system for screening people engaged to support people with disability under the NDIS, using a comprehensive clearance and bar model<sup>12</sup>

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8 In this regard, we refer to the provisions of s.105 and s.106B of the *Disability Act 2006* (Vic), requiring services to provide an annual report to the Disability Services Commissioner, including information about the number, type, and the outcome of complaints. NSW has adapted the Victorian online reporting system and included quality framework recording for use in its own sector, and WA has developed its own complaints reporting technology based on the same parameters as Victoria and NSW.

9 See the *NSW Community Services (Complaints, Reviews and Monitoring) Act 1993* (and related provisions in the *NSW Ombudsman Act 1974*).

10 It will be important for people with disability to be provided with support throughout the complaints process, where necessary.

11 See Part 3C (*Protection of people with disability*) of the *NSW Ombudsman Act 1974*.

12 This model is largely consistent with the probity checking arrangements in place in the ACT and Queensland under the *Working With Vulnerable People (Background Checking) Act 2011* (ACT), and the *Disability Services Act 2006* (Qld). However, these systems would be enhanced by ensuring that adverse findings from the proposed critical incidents reporting system are factored into the screening (and related risk management) system.

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- the introduction of an ‘unconscionable conduct’ (or exploitation) offence,<sup>13</sup> and
- regulation and effective oversight of the use of restrictive interventions.<sup>14</sup>

## 3. Community Visitors

At a minimum, we consider that Community Visitors should be available to people with disability living in residential care funded under the NDIS, given their relative vulnerability.<sup>15</sup>

Among other things, Community Visitors perform a critical role in independent monitoring, resolution of complaints and emerging issues, and advocacy support.<sup>16</sup>

## 4. Public Guardian/Public Advocate

We would expect that the national system would incorporate the best aspects of the public guardian/public advocate roles, in the context of a person-centred approach.<sup>17</sup>

## 5. Disability Advisory Council(s)

We recognise the importance of an advisory council(s) that represents people with disability.

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- 13 The creation of an offence for exploiting people with disability would serve as a ‘safety net’ for all service delivery arrangements, including those that will fall outside of the safeguards proposed for providers registered under the NDIS.
- 14 Restrictive interventions include chemical, mechanical and physical restraint, and seclusion. The *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector*, endorsed by the Disability Reform Council in March 2014, identifies accountability as a guiding principle and specifies this should be supported by transparent reporting mechanisms. These include: detailed independent monitoring; access to independent processes for complaints, or review and appeal of decisions to use restrictive practices; analysis of trends to evaluate the effectiveness of the strategies and identify any increased reliance on the use of restrictive practices.
- 15 There would be merit in committing to ongoing dialogue between relevant stakeholders regarding the scope for expanding the Community Visitor scheme to potentially include other kinds of care arrangements that will emerge under the reform agenda. We consider that there is also likely to be an important and increasing role for ‘independent persons’ more generally under the NDIS, particularly where the person with disability does not have an informal support network, or where there are higher levels of vulnerability and/or risk involved. For example, the use of independent persons who could: visit people with disability in the community, where the planning process identifies this need; discuss proposed restrictive interventions (and the person’s rights) with the person with disability and report where the person does not understand or legislative requirements are not being met; and provide supported decision-making assistance.
- 16 It is worth noting the model of advocacy and assistance provided under New Zealand’s National Health and Disability Services Advocacy Service, which provides a combined visiting and advocacy approach (outlined in Part 3 of the *NZ Health and Disability Commissioner Act 1994*).
- 17 Important aspects include supportive and substitute decision-making, investigating complaints or allegations that a person is under inappropriate guardianship or is being exploited or abused or in need of guardianship, and promoting the development of the ability and capacity of persons with disability to act independently. We note the approach outlined in the *Victorian Guardianship and Administration Bill 2014* and the introduction of a ‘supportive guardian’ function.

# Appendix 2: Annual Complaints Reporting

The Annual Complaints Reporting process is designed to collect information from service providers about the number and type of complaints and the outcome of the complaints in accordance with sections 105 and 106B of the *Disability Act* 2006 (the Act).

All registered, funded and contracted service providers under the Act providing services to a person with a disability, must report annually to the Disability Services Commissioner in accordance with the sections 105 and 106B of the Act.

Services include DHHS disability funded activities, activities purchased through (Individual Support Packages) ISPs and activities purchased through an NDIA package.

Service providers are required to specify the number and type of complaints received and the outcome of the complaints.

The information gathered through ACR is used to identify ways to improve complaint handling, to understand what has worked well for services and to support research, education and share examples of good practice with the disability services sector.

Reports can be submitted on line via the ACR tool. The ACR tool is hosted by ORIMA Research and provides a user friendly process for service providers to report their complaints to the Disability Services Commissioner annually.

## Appendix 3: Online Complaints Reporting Tool

# ORIMA Research Online Complaint Reporting System

## About the System

The ORIMA Research Online Complaint Reporting System is a **purpose-built online data collection and reporting platform** that allows disability service providers to report their complaints and other feedback to their quality regulator.

The system was developed by ORIMA Research in 2010 for the Victorian Disability Services Commissioner to: collect **valid and reliable data** for DSC's Annual Complaint Reporting (ACR) process; provides data to support the **promotion of better practice** in complaints handling and service delivery; and **maximise insights** from complaints data by supporting a range of analysis.



Since its establishment the system has been **adopted by New South Wales and Western Australia** (from July 2015) to support their disability complaint reporting processes and adapted to other quality reporting applications in the disability sector (including the NSW Quality Framework Reporting Process).

In 2012 the system won the Highly Commended Award in the Technology Effectiveness category of the Research Industry Council of Australia Research Effectiveness Awards.



Winner – Highly  
Commended Award  
Technology  
Effectiveness

## Key features

The system combines flexibility and user-friendliness with robust security to provide a highly-functional and effective reporting solution. Key features include:

- **Flexible options for tool set-up** at the provider level - adapted to an individual provider's structure (e.g. allowing reporting by organisational unit, service type, function or region)
- **Providers control usage of the system within their organisation by being able to create users** with varying access/permissions on the system
  - Providers can create, update and delete users, reset passwords and control user access to complaints
- A **live online monitoring page** for the quality regulator
  - Provides an at-a-glance real-time report on complaint numbers, usage statistics, providers' reporting status and other key metrics
- **Customised online reporting** for providers, including a provider dashboard and unit-record complaints reporting, both of which can be downloaded (in Microsoft Excel or PDF form) or printed by the provider, to assist with internal complaints management
- **Easy storage and retrieval of complaints** data entered over several sessions, allowing providers to update complaints throughout the year
  - Users can access and modify complaints as many times as required, navigate forwards and backwards without loss of responses. Complaints can be



edited, removed or added to at any stage during the reporting period

- An **easy-to-use online interface**, including:
  - professional design, easy to fill out and accessible forms – utilises a ‘scrolling-page’ approach, whereby service providers see a number of questions, rather than a single question per page
  - question-specific help and hover text
  - clear navigation (including disabling/enabling questions) to assist in the provision of accurate responses
- **Secure password-protected access** to complaint records – users log on to the system using their email address and a unique password
  - The system is hosted by Conexim Australia, an Australian Government endorsed supplier and protected by 256-bit Secure Socket Layer (SSL) encryption
- An **upload function** where providers can import data into the tool from an appropriately formatted spreadsheet
- **Online help and resources** within the tool – the tool can be used as a central repository for complaint-related information and links
- A **certification page** to enable service providers to certify the accuracy and completeness of their submission through a checkbox confirmation and submit button process.

## Provider Feedback

The reporting system has been strongly endorsed by disability services providers as an easy to use system that has a range of benefits for them, including:

- improved efficiency of reporting
- strengthened internal compliant management processes
- greater awareness and ownership of the complaint reporting process by operational staff to foster a positive ‘complaints culture’

*“I would just like to pass on my appreciation for this easy to use [complaint reporting] tool. I have completed a number of reports in the last few weeks and this is by far the most straight-forward. I recommend other organisations take your lead and shift to this type of online system.”*

**Example of service provider feedback about the system**

## Further Information

For further information on the online system please contact Andrew Lenihan (Partner, ORIMA Research) on 1800 806 950.