National Disability Insurance Scheme

Quality and Safeguarding Framework

Submission

Children with Disability Australia
May 2015

INTRODUCTION

Children with Disability Australia (CDA) welcomes the opportunity to provide a submission regarding the proposal for a National Disability Insurance Scheme (NDIS) Quality and Safeguarding Framework (the Framework).

CDA is the national disability representative organisation for children and young people aged 0-25 years. It receives its core funding from the Department of Social Services (DSS) and presently receives additional funding from the Australian Government Department of Education. CDA has over 5000 members nationally.

The Framework must uphold the rights of each person with disability to equal participation and inclusion and ensure that participants in the Scheme are afforded respect and dignity through service provision. It is critical that this is reflected in the organisational culture of service providers if the provision of high quality services is to occur. CDA acknowledges the challenges implicit to defining and measuring quality in service provision, given differing preferences and expectations.

As a society, we recognise the specific developmental needs, rights and vulnerabilities of children and afford the corresponding increased protection. As such it must be ensured that specific considerations around additional protections afforded to children and the fundamental role that families play in their lives are embedded in the Framework.

Children and young people with disability are a particularly vulnerable group where abuse and neglect is concerned. CDA frequently hears of experiences of abuse in a range of settings. These include children being subjected to violence, seclusion and chemical, mechanical and physical restraint without accompanying positive behaviour support strategies in place.

The typical experience of abuse reported by CDA members is reflected in available research, which states children with disability are 3.4 times more likely to be abused than other children.[1] Children with communication difficulties and high behaviour support needs are believed to have a significantly higher risk of experiencing abuse.[2]

It is imperative that the final Framework is strong, effective, promotes high quality and provides robust safeguards. This submission focuses on issues of relevance to children and young people with disability. It responds to the questions included in the consultation paper and then discusses broader considerations regarding the proposed framework.

---

[1] P Sullivan et al. 2000, 'Maltreatment and disabilities: A population-based epidemiological study,' *Child abuse and neglect,* Vol. 24, No. 10, p. 1257.
[2] S Robinson 2012, *Enabling and protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability,* Children with Disability Australia, Melbourne, p. 10.

SPECIFIC RESPONSES TO QUESTIONS

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

The NDIS information system needs to reflect the intent of the Scheme to "promote the provision of high quality and innovative supports"[3] in providing necessary information to participants and families about rights, entitlements and the range and quality of supports available.

Information must be easily locatable and available through a range of formats. It is CDA's experience that consultation and information provision cannot only be completed through online mechanisms, as many families and young people with disability have limited access to the internet. Further often people prefer or require access and receipt of information via hard copy information, telephone or face-to-face contact. This experience is reflected in available statistics, with it being reported that just 62 per cent of people disability have internet access at home.[4]

CDA frequently hears from families who are completely exasperated by their fruitless attempts to locate and obtain information regarding available and appropriate services and supports. Families typically contact a wide range of government departments, organisations and individuals in attempts to locate this information.

The difficulty in acquiring knowledge about what services and supports exist for children and young people with disability is a huge challenge. This has been articulated in previous inquiries numerous times, including the Productivity Commission *Inquiry into Disability Care and Support,* which found that "there is no one to help navigate the system and as a result it is often difficult for people to determine what services exist, let alone whether they are appropriate or of high quality."[5] Presently, this continues to be a major problem experienced by young people with disability and families.

Developing a centralised and accessible source of information about services and supports will make significant practical changes in the lives of families and people with disability. The lack of such a system presently means young people and families must expend large amounts of energy tracking down information. The information system needs to balance the need for information to be readily comprehensible with ensuring it provides an appropriate level of detail to families and young people with disability.

There has been much talk of the importance of co-design in relation to the Scheme and this is also applicable to the area of information provision. The NDIA needs to ensure people with disability, including young people, families and care givers have ongoing opportunities to contribute to the development of the information system and that there are mechanisms

---

[3] *National Disability Insurance Scheme Act 2013 (Cth),* s. 2.3.
[4] Australian Bureau of Statistics (ABS) 2011, 'Internet and computer use by person's with a disability,' *Household Use of Information Technology, Australia, 2010-11,* Commonwealth of Australia, Canberra, viewed 11 May 2015, http://www.abs.gov.au/ausstats/abs@.nsf/0/51518390AD522456CA25796600152CE8?opendocument.
[5] Productivity Commission 2011, *Disability care and support, Productivity Commission inquiry report volume one,* Commonwealth of Australia, Canberra, p. 150.

available which allow feedback to be provided. In turn there must be scope to refine the information provision system if required.

The Purple Orange *NDIS eMarket* project discussed in the consultation paper provides some important learnings and involved co-design. It involved national consultations, face-to-face meetings and online surveys with people with disability, families and service providers. The project collated perspectives on what features would be useful and valuable in an online information platform for the Scheme. Key features that resulted from the consultation were:

- A central gateway or 'go to' website;
- The capacity for participants to share their experiences with services;
- The capacity to buy supports online; and
- The capacity to set up an account through the information system and manage Individual Funding Packages. [6]

The three information types to be provided in the NDIS information system that are identified in the consultation paper, discussed below, relate to:
a) Navigating the system and knowing your rights;
b) Support types and availability; and
c) Service quality and choosing a provider.[7]

a) Information on navigating the system and knowing your rights:
It is important that participants and families are fully informed about their rights within the Scheme and for service use. Examples include: statutory response rates; privacy; and complaints mechanisms.

It is the experience of CDA that knowledge of the rights of children and young people with disability is critical to informing expectations and standards of service provision. It allows young people and families of children with disability to identify when rights are not being met in practice and advocate for change. It is therefore critical that information about rights be clearly conveyed to people accessing the NDIS information system. This information also needs to include discussions around expectations of service delivery and what is and isn't acceptable conduct. There also needs to be pathways for people to access additional information about the Scheme, service providers and independent advocacy if required.

Further, the NDIS is underpinned by a rights framework that derives from the United Nations (UN) *Convention on the Rights of Persons with Disabilities* and the *Convention on the Rights of the Child.*[8] The rights of NDIS participants to access quality supports and be safe in service contexts are therefore central to the intent of the Scheme.[9]

b) Information about support types and availability:

---

[6] Coalition of Australian Governments (COAG) Disability Reform Council 2015, *Proposal for a National Disability Insurance Scheme quality and safeguarding framework,* Commonwealth of Australia, Canberra, p. 13.
[7] Ibid, p. 15.
[8] *National Disability Insurance Scheme Act 2013 (Cth),* s.2.3.
[9] Ibid, s.2.3.

For most young families with a child with disability there is a requirement to gain significant knowledge around a vast range of issues. These include: the roles of allied health professionals; the roles of organisations; available types of practice; what is best practice; and a range of other areas and issues which often arise. Learning 'the system' is an ongoing process and a central information source which includes this broader information would be of significant assistance.

CDA believes that information needs to be readily available regarding: service type and role; location; how a service can be accessed; eligibility criteria; cost; whether the service has expertise in working with children and if so what this is; and accreditation status. Further, the information system should include not only disability-specific services but relevant generic children's and family services.

The information system should have the capacity to a filter for services and supports through a range of search criteria including population groups, type of service, location, cost, eligibility criteria and any other identified areas.

c) Information about service quality and choosing a provider:
It is important that NDIS participants and families have access to information that will support informed decision making about which services are used. Presently, it is exceedingly difficult to access information around what the markers of a quality service are and whether specific services meet those standards. It is the view of CDA that the NDIS should develop a series of fact sheets that detail the measures of a quality service.

CDA thinks that it is critical that a fact sheet also pertains to risk factors for abuse and neglect occurring in service contexts. This fact sheet should identify known risks including:

- Casualisation of the workforce;[10]
- Minimal or no supervision of staff;[11]
- Minimal or no qualifications and ongoing training of staff;[12] and
- Segregated or disability-specific services."[13]

In addition, information and data on the above factors in each service should be available to NDIS participants or their representative.

2 How can the information system be designed to ensure accessibility?
As previously stated, young people and families currently experience significant difficulties in locating and accessing information about services and supports. Common experiences reported are: the use of bureaucratic or esoteric language; the need to search through large amount of information to find what is applicable to a situation; or having to contact innumerable organisations. This compounds frustration experienced. There needs to be

---

[10] S Robinson et al. 2011, 'Preventing abuse in accommodation services: From procedural response to protective cultures,' *Journal of intellectual disabilities,* Vol. 15, No. 1, p. 65.
[11] Robinson 2012, *Enabling and protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability,* p. 12.
[12] Ibid, p. 25.
[13] *National Disability Insurance Scheme Act 2013 (Cth),* s. 2.3.

clear pathways to further information. Information available should avoid the use of jargon and meet accessibility requirements, including the Australian Government Web Content Accessibility Guidelines.

It is the view of CDA that the NDIS website in its current form is extremely difficult to navigate and requires users to know what they're looking for in order to locate information. The NDIA recently sought feedback on the website, and where relevant, the findings should be applied to the new information system under development.

Further, there is a need to develop specific strategies to provide information to people who have limited internet access. One option that CDA believes merits consideration is to include funding to access the internet and information technology in Individual Funding Packages to enable this. The NDIS also needs to consider how it will support people who access the Scheme through Information, Linkages and Capacity Building (ILC) supports to access the internet.

3 What would be the benefits and risks of enabling participants to share information, for example, through online forums, consumer ratings of providers and other means?
CDA's experience is that there is frequently a desire to prevent other young people and families from having to endure the frustration they experienced trying to access information. As a consequence extensive networks to share information, including online forums and other support groups are developed by families and young people. Generally people are highly generous with sharing their experience and knowledge. It is important to consider if these existing knowledge networks can be accessed, supported, extended and enriched through the NDIS information system.

The wealth of information created through parent and family networks demonstrates the benefits of setting up an NDIS consumer rating system. It can be extremely valuable to gain an understanding of how a particular service has been experienced by consumers and often reveals information that would not be otherwise available.

It is important to balance the legal issues around privacy, particularly for children, and defamation when making personal judgements of service providers publically available. It will be important to develop guidelines around anonymity of people contributing to the consumer rating system. Further it is believed that contributions will need to be consistently moderated and whose role this is needs to be carefully considered. It is CDA's view that this should be a role and function that is independent of the NDIA.

4 Are there additional ways of building natural safeguards that the NDIS should be considering?
It is the experience of CDA that families typically have to be highly vigilant in their attempts to ensure their children with disability are safe given the high vulnerability that they experience with regards to abuse. It is important for the Framework to acknowledge the critical role that families play in ensuring that children are safe in service contexts. It is therefore critical that the Scheme and service providers listen and respond to families around service provision and safety and ensures families are provided with support and

information to make decisions around the best interests of their child. This role of families as a safeguard needs to be supported and enhanced through the Framework.

CDA recognises as important research suggesting that stress is a risk factor for familial abuse of children with disability.[14] While this is an important consideration and it is critical that families are supported, familial abuse does not relate to quality and safeguarding in services and supports and is outside the role of the Scheme. It needs to be addressed through existing child protection systems.

A further issue is that children with disability can have limited opportunities to gain an understanding of healthy relationships, learn to recognise inappropriate behaviour of adults and other children and identify unsafe situations when they arise.[15] Some children with disability require a high amount of personal care, with a number of different people involved in their day to day care. These children have less opportunity to define and protect their personal space and are more reliant on adults to behave respectfully and with consideration and to impart the importance of boundaries.

Knowledge about safety is empowering and assists children and young people to develop a sense of ownership over their own body and a greater awareness of what is expected in a healthy relationship. This is additionally protective if children are not receiving positive relationship modelling at home, or need support to read cues from others. This should be paired with advice on how to tell an adult if someone makes you feel unsafe. Whether it is the role of the Scheme to decide if this is required is questionable but availability and affordability of this education could be addressed through the NDIS. It is the view of CDA that the Scheme should not provide this education or assume that it will be relevant to all children and young people accessing supports. However, if it is identified as a need in the planning process of a child, the Scheme should be able to fund it.

Information around the importance of education about healthy and respectful relationships and safety for children should be available to families. Again, a fact sheet would be appropriate in this case.

Additional considerations regarding safeguards

Creating child safe organisations:
An important approach to addressing the risk factors around child abuse is creating child safe organisations. In 2005, state, territory and Commonwealth community and disability service ministers agreed to the *National Framework for Creating a Child Safe Environment.* This is a non-binding document that allows the states and territories to develop and implement their own standards and accreditation processes for child safe organisations. Broadly, child safe organisations emphasise the rights of children to protection and having a

---

[14] Australian Institute of Family Studies 2013, *Risk and protective factors for child abuse and neglect,* Melbourne, viewed 11 May 2015, https://aifs.gov.au/cfca/publications/risk-and-protective-factors-child-abuse-and-neglect.
[15] Skarbek et al. 2009, *Stop sexual abuse in special education: An ecological model of prevention and intervention strategies for sexual abuse in special education*, p. 157.

safe childhood, with these values underpinning workforce culture. Further, the organisation *Child Wise* have developed a 12 step guide for creating a child safe organisation. The steps identified are:

1. Understand child abuse;
2. Develop and maintain an open and aware culture;
3. Identify and manage the risks and dangers to children in your programs and activities;
4. Develop a Child Protection Policy;
5. Create clear boundaries;
6. Adopt best practice in recruitment and selection;
7. Screen all staff and volunteers;
8. Support and supervise staff and volunteers;
9. Ensure there is a clear complaints procedure for reporting concerns;
10. Know your legal responsibilities;
11. Empower children and encourage participation in your programs; and
12. Provide education and training to all participants.[16]

Consideration needs to be given to whether specific services under the NDIS should be required to be accredited child safe organisations. How this aligns with state and territory child safe accreditation processes will need to be addressed and reflected in NDIS policy.

Organisational culture:
A key area that is lacking from the proposed framework relates to organisational culture within service providers and how this can act as a safeguard. CDA's issues paper, *Enabling and protecting: Proactive approaches to addressing the abuse and neglect of people with disability,* summarises research about environments where abuse of children and young people with disability was more likely to occur:

> *The kinds of environments…have a closed culture, and cover up reports of abuse, and/or fail to protect people who report. They justify and rename abusive practices (e.g. behaviour management), readily accept excuses for abuse, and have low accountability and little outside scrutiny. Finally, these environments have a strong power imbalance between workers and people using the service (children and their families).[17]*

Institutional culture and discriminatory attitudes that position children and young people with disability as inferior, helpless and dependent increase children and young people with disability's vulnerability to abuse.[18] Fostering an organisational culture in which people with disability are valued, and behaviour is understood as communication, is a significant natural safeguard that should be addressed in the Framework. This requires consideration around

---

[16] Child wise, *Choose with care: 12 steps to a child safe organisation,* South Melbourne, viewed 11 April 2015, https://www.dcp.wa.gov.au/servicescommunity/information/Documents/Service%20Excellence/Choose%20with%20Care%20Manual%20-%20Child%20Wise%2012%20Steps.pdf.
[17] Robinson 2012, *Enabling and protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability,* p. p. 12.
[18] Ibid, p. 12.

how the Scheme will support and set expectations around organisational culture among service providers and where resources will be targeted.

5 What can be done to support people with a limited number of family and friends?
CDA acknowledges the concerns presented in the Framework around a lack of natural safeguards for people who are socially isolated. However, CDA is concerned around how the role of the Scheme is positioned to have a role in this aspect of someone's life.

The consultation paper refers to participants having specific goals within their individual plans "to establish and maintain personal friendships with others in their local community."[19] It is believed the Scheme should ensure that goals reflect a support role in this area rather than stipulating a prescribed outcome based goal to "develop personal friendships." It is acknowledged that this is an important natural safeguard but it cannot be artificially created. It is also unclear as to what it would mean for a person if they don't achieve this goal when articulated in its present form. The role of the Scheme is to support children and young people to have capacity and opportunity to make friends and have social connections if this is an identified area of a participant.

Some young people don't enjoy social contact and state this clearly as a personal preference. It is important to acknowledge and respect and consider this as a personal choice for some people.

6 What kind of support would providers need to deliver high-quality supports?
One challenging issue the Scheme will need to address is ensuring services do not mask poor practice through misleading messaging. For example, CDA is aware of day services which purport to support independence and participation of young people with disability, however in practice they amount to segregated activities which have been designed with no consideration of the individual interests and needs of young people accessing the service.

The Scheme has significant work to do to ensure that expectations are set around service provision which is innovative and promotes control and choice, a core vision of this new system.

Service providers will need to have the capacity to provide high quality supports and implement and embed adequate safeguards which include ensuring:
- Appropriate training and ongoing professional development for staff;
- Thorough pre-employment screening;
- Appropriate supervision and monitoring of staff;
- Obtaining child safe accreditation when necessary;
- Provision of legally required and positive working conditions for staff; and
- The development and continual assessment of a positive organisational culture.

---

[19] COAG Disability Reform Council 2015, *Proposal for a National Disability Insurance Scheme quality and safeguarding framework,* p. 15.

7 Should there be an independent oversight body for the NDIS?
CDA supports the creation of a national independent oversight body for the NDIS. This could take the form of a national disability services commission with state and territory based offices.

8 What functions and powers should an oversight body have?
It is envisaged that the NDIS oversight body would have a number of functions. These include:
- Monitoring compliance with the Quality and Safeguarding Framework by the NDIA and service providers;
- Independent responding and management of complaints made against disability services;
- Oversight of quality in services;
- Compiling and publishing national data on the Scheme and disability services;
- Educative role;
- Fostering a positive organisational culture with regards to children and young people with disability; and
- Market monitoring to prevent predatory practices, collusion, and manipulative or exploitative behaviour among service providers.[20] Consideration needs to be given to the role of other market regulators such as the Australian Competition and Consumer Commission and their intersection with this oversight body.

It is imperative that the oversight body has sufficient powers to address issues regarding poor quality supports, the implementation of safeguards and implement sanctions for non-compliance. In addition, it is important that has the ability to be proactive regarding specific issues or rather than being restricted by a requirement for complaints to be received.

NDIA provider registration

9 Considering the options described, which option would provide the best assurance for participants?
CDA acknowledges the need to ensure flexibility around who can provide supports under the NDIS so that participants are able to exercise choice and control around supports received. However, it is also important that all services meet consistent standards for quality and safeguards. It is the view of CDA that components from options two, three and four would provide the best assurance for children and young people with disability accessing the Scheme.

- *Option two - additional registration requirements*: CDA supports the provisions outlined in this option. The adoption of quality and safeguarding provisions, such as pre-employment screening, should be required for registration with the NDIA.

- *Option three – Mandated independent quality evaluation requirements:* Independent quality evaluation requirements should be included in the NDIS registration process

---

[20] COAG Disability Reform Council 2015, *Proposal for a National Disability Insurance Scheme quality and safeguarding framework,* p. 22.

in addition to compulsory registration requirements. It is important that the Scheme is able to draw upon an independent voice to examine service providers. Particularly important will be the ability to have an independent assessment of the quality of service provision. However, the consultation paper states that a "provider would not be excluded from registration on the basis of a below average assessment, provided they continued to meet all other registration conditions."[21] If this is the case, there needs to be clear processes in which services are accountable for improving the quality of supports. It is also seen that there needs to be the capacity to deregister services if issues are not resolved in a timely manner.

- *Option four – Mandated participation in an external quality assurance system:* CDA also supports the option of external quality assurance checks when necessary.

Registration with the NDIA should require collecting the information discussed in relation to the information system, including casualisation of the workforce et cetera. Further, registration needs to be contingent upon having policies that mandate reporting of serious incidents and making appropriate referral to the police.

10 Should the approach to registration depend on the nature of the service?
CDA believes that registration processes and safeguards should be commensurate to the risks associated with the particular service, as these do vary for children and young people. When children and young people rely on others for personal care and have multiple care providers, there is an increased risk of maltreatment.[22] In these cases, registration requirements around screening and supervision of staff (as well as any other identified necessary safeguards) should be compulsory.

11 How can the right balance be reached between providing assurance and letting people make their own choices?
Children accessing the Scheme have specific vulnerabilities and require additional protections. This necessitates stricter processes, requirements and safeguards across a range of areas, including registration requirements, supervision, child safe accreditation and others. These safeguards should equally apply to families who are self-managing plans on behalf of their children.

CDA acknowledges concerns that implementing safeguards and requirements for services providing NDIS supports can be seen as onerous and may restrict the choice and control NDIS participants have over supports received. This may be particularly the case for smaller providers and individuals. However, it is the view of CDA that facilitating choice and control for people with disability accessing the NDIS does not necessarily preclude the implementation of strong and robust safeguards.

---

[21] COAG Disability Reform Council 2015, *Proposal for a National Disability Insurance Scheme quality and safeguarding framework,* p. 37.
[22] Robinson 2012, *Enabling and protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability,* p. 12.

Systems for handling complaints

12 How important is it to have an NDIS complaints system that is independent from providers of supports?
CDA believes that an independent complaints body is the best way to ensure complaints are adequately managed and responded to. It is believed that complaints handling should be included in the role of the independent oversight body (or national disability services commission) as previously discussed).

CDA supports a combination of aspects of options two and three discussed in the consultation paper:

- *Option two - Internal and external complaints handling requirements:* It is important that service providers have an accessible internal complaints resolution process, provided that "NDIA registration conditions would prescribe a set of minimum standards for provider level complaints handling."[23] Standards around complaints handling must mandate timely resolution of complaints, and ensure that adequate communication occurs with the person who made the complaint about the outcome.

  The consultation paper suggests that internal complaints management should also include "assurance that participants who receive supports have access to information about how to complain, what to expect and what to do if they are not happy with the response."[25] This information must be accessible and proactively provided to families and young people.

  Adoption of internal (or within service providers and organisations) and external (independent oversight body) complaints systems will require clear guidelines around when the different systems are applicable. Internal responses are viewed as appropriate for minor complaints. Non-resolution of minor complaints after an identified period of time should allow referral to the external complaints system. If NDIS participants and families choose to do so, they should always be able to complain to the external complaints body. Additionally, there needs to be clear definitions about what constitutes the different complaints categories.

- *Option Three (b) – disability complaints office:* CDA supports this option as the best way to ensure independent resolution of complaints. This body needs to have statutory powers to enforce regulations, including the ability to de-register services in specific circumstances. The national complaints office should also make available certain data and information about complaints made so there is a clear picture of service provision. This will require consideration around what level of complaint would be appropriate to make public and what the legal issues, particularly around participants' privacy, will be. For example, if a service provider has received a large

---

[23] COAG Disability Reform Council 2015, *Proposal for a National Disability Insurance Scheme quality and safeguarding framework,* p. 53.
[25] Ibid, p. 53.

number of proven complaints on a particular issue, it would be important for this information to be made available.

13 Should an NDIS complaints system apply only to disability-related supports funded by the NDIS, to all funded supports, or to all disability services regardless of whether they are funded by the NDIS?

It is the view of CDA that having two separate systems for complaints about disability services, one for NDIS-funded services and one for services outside the Scheme, would create unnecessary duplication. Having one complaints body would ensure a simpler system and make it easier for participants to know where to go to complain.

CDA acknowledges that there are legal issues around disability service standards. Consideration needs to be given to consistency around statutory regulation of disability services, including those that are and are not funded by the NDIS.

14 What powers should a complaints body have?

It is the view of CDA that the independent complaints body cannot have a solely reactive role and will need to devote significant resources around education and monitoring regarding the quality of services. Again, it is important for organisational culture among service providers to be a key focus.

In terms of power to respond to complaints, for the independent body to be effective, it is important that it have the statutory authority to enforce a range of responses with service providers who are non-compliant and do not address the source of complaints. This may include fines and the ability to de-register providers. Of course, all criminal matters must be referred to and addressed by the police and this needs to be embedded in all relevant policies.

15 Should there be community visitor schemes in the NDIS and, if so, what should their role be?

For some participants in the Scheme, community visitors may be an appropriate option, particularly for people with limited family or social connections. However, it shouldn't be assumed that community visitors will be relevant or necessary for everyone accessing the Scheme. For example, having community visitors enter a child's family home would most often be highly inappropriate.

Ensuring staff are safe to work with participants

16 Who should make the decision about whether employees are safe to work with people with disability?

It is important for the Framework to clearly define what is meant by 'safe' in this context. It is the view of CDA that 'safety' needs to be defined more broadly that free from maltreatment or abuse. It should also cover instances when participants are uneasy or uncomfortable with service providers.

Ultimately, participants or their representatives where relevant should be able to make decisions about whom they would like to work with or whether employees are 'safe.'

Further, this right needs to be recognised for people with high communication support needs. For people who communicate predominantly through behaviour, sudden changes to behaviour need to be acknowledged, understood and responded to.

Service providers need to be responsible for implementing adequate safeguards around employees. It is therefore imperative that the Framework includes strong and robust policies regarding staff screening and supervision. Services in which the management and governance staff have inadequate processes for the safety of clients create a high risk environment for abuse to occur.[29] This demonstrates the need for defined lines of responsibility for the safety of people with disability in services.

It is the view of CDA that service providers have a key role in providing a safe environment. The sanctions and penalties for failing to provide safeguards and having abuse occur in a service context need to reflect the nature of the incident itself. Statutory responsibility for safety therefore should be clearly included within the role of Boards of Governance. Services will be required to take an active approach to prevention, in the same manner that actions are taken to ensure the occupational health and safety of workers.

17 How much information about a person's history is required to ensure they are safe to work with people with disability?
The safety of children with disability must be the primary concern when considering what information about a person's history is a requirement of employment of people who will work with this cohort.

The Royal Commission into Institutional Responses to Child Sexual Abuse recently published a review on the available research about pre-employment screening practices for child-related work that aim to prevent child sexual abuse[31] which contains significant learnings. These include:
- Criminal background checks appear to be "universally considered as an important component of pre-employment screening."[35] However, they have a number of limitations, including the risk that an applicant has changed their name and the risk that offences occurred in another jurisdiction.[36] Because of this, the review found that criminal background checks must be conducted in conjunction with other screening practices;
- Other screening practices that should occur in tandem with criminal background checks include: conducting thorough reference checks, conducting employment interviews with questions aimed at determining an applicant's suitability to work with vulnerable clients; obtaining information from alternative registries (such as child abuse registries); thorough examination of an applicant's employment history (for example identifying and verifying the reasons for employment gaps); verifying

---

[29] Robinson 2012, *Enabling and protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability,* p. 12.
[31] Parenting Research Centre 2014, *Scoping review: Evaluations of about pre-employment screening practices for child-related work that aim to prevent child sexual abuse,* Commonwealth of Australia, Canberra.
[35] Ibid, p. 6.
[36] Ibid, p. 6.

an applicant's identity with photo or other identification; and verifying an applicant's education history;[37]

- There is a clear need for "legislation permitting employment prohibitions based on the outcomes of pre-employment screening practices," so that findings from the screening practices can be effectively acted upon;[38]

- Pre-employment screening cannot be the only safeguard used to protect vulnerable clients from abuse but "when combined with other policies and practices that promote a positive organisational culture, comprehensive pre-employment screening practices are likely to contribute to safeguarding children against child sexual abuse,"[39]

- It is also important to ensure that ongoing monitoring and supervision of staff occurs to ensure that participants are safe and are not experiencing maltreatment;[40]

- Service providers do not adopt a 'tick a box' approach to implementing safeguards and that preventing abuse is seen as core to the operations of each service; and

- Employment screening should be completed on new and existing staff.

18 Of the options described, which option, or combination of options, do you prefer?
It is critical that multiple safeguards operate concurrently, to ensure they are robust. CDA's comments on each of the options are outlined below:

- *Option one – risk management by employers:* This option provides weak and limited safeguards. Strong employment screening and monitoring processes need to be mandatory and applied to all staff who work directly with participants in order to be effective.

- *Option two – requirements for referee checks for all roles and police checks for certain employee roles:* As discussed above, criminal background checks are an important aspect of pre-employment screening. These checks needs to be applied to all NDIS funded staff. There cannot be any exceptions for staff working with children. However, an assessment of risk could mean that further checks would be applied to people providing personal or in home care.

- *Option three – working with vulnerable people clearances:* A 'working with vulnerable people clearance' would provide a good model for pre-employment screening in NDIS services. However, in order for this model to be effective, a national check should be implemented. This would mitigate the risks associated with offenders moving between jurisdictions. CDA notes the work undertaken to establish a national working with children check, notably through the *National Framework for Protecting Australia's Children.* However, significant work needs to occur to ensure this reform occurs. Particular consideration should be given to the recommendations

---

[37] Parenting Research Centre 2014, *Scoping review: Evaluations of about pre-employment screening practices for child-related work that aim to prevent child sexual abuse,* p. 37.
[38] Ibid, p. 7.
[39] Ibid, p. 8.
[40] Ibid, p. 8.

of the Royal Commission into Institutional Responses to Child Sexual Abuse on this matter.

One of the risks associated with option three cited in the consultation paper states that "centralised checks may encourage employers to rely unduly on clearances at the expense of appropriate interview screening, supervision, referee checks and other measures."[41] This is a legitimate concern and as previously stated, it is important that additional screening processes beyond a working with vulnerable people clearance are included as mandatory practice for NDIS-funded services.

An additional issue is when prospective employees have recently arrived from overseas. While this group should not be automatically excluded from being employed through the Scheme, there is a need to develop procedures to ensure that background checks can be completed with an equal level of rigour as previously espoused for other providers. Requirements for foreign criminal background checks or other screening practices are seen as a mandatory prerequisite when working with children with disability.

- *Option four – create a barred persons list:* CDA supports the creation of a national barred person's list, in conjunction with previously mentioned safeguards.

Safeguards for people who manage their own plans

19 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?
CDA is of the view that certain measures, such as national police records, working with children or vulnerable people checks (option 3c) are not so onerous they would preclude providers or individuals from being employed with NDIS funding. One option may be that participants are notified of any relevant information that comes out of criminal background checks and can make decisions based on that information. The decision however about whether to proceed with employment where children are the participants however must accompany an imposed decision making criteria in which certain convictions preclude employment. CDA also supports the creation of a barred persons list (option 2b). This should prohibit employment in any NDIS-funded services, including when people self-manage.

The question of whether all providers should be registered is more complex. Option 3a (separate registration process with limited conditions) could possibly provide a balance, in that criminal background checks would still be required, while more onerous bureaucratic registration requirements that are more suited to larger providers could be forgone for individuals who participants would like to employ through the Scheme.

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

---

[41] COAG Disability Reform Council 2015, *Proposal for a National Disability Insurance Scheme quality and safeguarding framework,* p. 65.

There needs to be the same level of rigour in the safeguards provided for children whose families have opted to self-manage as those that do not.

The information and fact sheets around the markers of a quality service and risk factors for abuse are one form of assistance that could be valuable for people wanting to manage their own supports. One possibility would be the development of a kit specific to families who self-manage of behalf of their children around safeguards, risk factors and other relevant information.

Reducing and eliminating restrictive practices in NDIS funded supports

Restraint and seclusion is frequently experienced by children and young people with disability and has been reported to CDA as occurring in a number of service contexts. The consultation paper defines restrictive practices as relating to "a person with a disability who displays challenging behaviours."[42] However, it is the experience of CDA that children and young people with disability experience restraint and seclusion without displaying 'challenging behaviours,' including as punishment or for the sake of convenience. For example, it has been reported to CDA that students with disability have been strapped into chairs as because they 'weren't listening' to teachers. There is a clear need for national consistency in the regulation and reporting of restrictive practices and in policy that mandate the use of PBS planning.

20 Who should decide when restrictive practices can be used?
It is the view of CDA that an independent decision maker (option four) should be the only body with powers to authorise restrictive practices beyond a first unplanned emergency. This will need to be separate from the NDIS oversight and complaints body previously discussed in this submission. The organisation charged with overseeing restraint and seclusion could adopt features of the Victorian Senior Practitioner (now in the Office for Professional Practice). However, unlike the Senior Practitioner, which is part of the Victorian Department of Health and Human Services, the organisation under the NDIS should be completely independent from service providers, government and the Scheme. This will ensure clear accountability for the use of restraint and seclusion. It is also important to note that the Senior Practitioner role in Victoria does not cover seclusion. This is a significant gap and should not be replicated in the final model adopted by the Scheme.

Further, this body should also apply to the use of restraint and seclusion outside the NDIS. A context in which children with disability frequently experience restraint and seclusion is in both mainstream and disability-specific education settings. CDA hears frequently of students being restrained, locked in rooms for extended periods of time and enduring other forms of abuse as accepted 'behaviour management.' It is important that oversight is not restricted to services funded by the NDIS.

21 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?

---

[42] COAG Disability Reform Council 2015, *Proposal for a National Disability Insurance Scheme quality and safeguarding framework,* p. 75.

Under the system adopted by the Scheme, an important consideration is around the quality of PBS plans. There is a need to ensure that PBS plans are established by professionals who have appropriate training to ensure that individual plans reflects best practice. The Australian Psychological Society's (APS) *Evidence-based guidelines to reduce the need for restrictive practices in the disability sector* is a key document that should inform NDIS policies around restraint and seclusion. CDA recommends adopting requirements to ensure quality PBS plans that adopt a rights-based framework that respects the dignity of each person with disability. Additional considerations will be required to ensure the unique needs, including protective needs, of children are met.

22 Are there safeguards that we should consider that have not been proposed in these options?
It is important to ensure appropriate training and qualifications of individuals who are implementing PBS plans and working with children and young people with high behaviour support needs.

23 Would you support mandatory reporting on the use of restrictive practices? Why/Why not?
CDA is of the view that there must be mandatory reporting of restrictive practices. Accurate information will contribute to ensuring consideration of the use of restrictive practices in public and policy debates. Currently, there is a fundamental gap in data on the current experience of restraint and seclusion of people with disability, including children and young people across the country. In order to ascertain whether efforts to reduce the use of restrictive practices are effective, it is imperative to obtain accurate data. Rigorous monitoring also progresses further accountability regarding the use of restrictive practices.

This data should be publically available, including at the national, state and territory levels and and in relation to specific services. It is important to have a national picture of the use of restrictive practices so that the full extent of the issue is clear. This will require nationally consistent definitions of restrictive practices to be adopted.

The following definitions, used by the APS would provide a good option for the Scheme to adopt:

> *Physical restraint refers to the prolonged use of any part of a person's body to restrict the free movement of that person.*

> *Chemical restraint involves the use of medication to control a person's behaviour when that medication is not prescribed by a registered medical practitioner for treating a formally identified physical or mental illness.*

> *Mechanical restraint refers to the use of devices such as harnesses or straps to restrict the free movement of an individual or to prevent self-injury, with the exception of an authorised device recommended by a medical practitioner or therapist for therapeutic purposes, or devices required by law to transport a person safely.*

Psychosocial restraint is the use of social or material sanctions, or verbal threat of those sanctions, to attempt to moderate a person's behaviour. Psychosocial restraint includes practices such as response cost and restricted access. Banks et al. (2007) define response cost as withholding a valued item or activity from the person in response to a specific behaviour. Restricted access refers to the process of using a physical barrier, increasing supervision, or implementing limits or boundaries beyond normally accepted community practices as a means of limiting a person's access to items, activities, or experiences with the intention of manipulating a particular behaviour or managing risk — for example, locking a cupboard where food is kept.

Seclusion involves solitary confinement of a person in a room or area (e.g., garden) from which their exit is prevented by a barrier or another person. Seclusion includes situations in which people believe they cannot or should not leave an area without permission.

Timeout is a procedure in which the person is separated temporarily from a rewarding environment as part of a planned and therapeutic program to modify behaviour…Timeout may be exclusionary, which refers to forcibly moving individuals from one setting to another or non-exclusionary where a person remains in a particular setting but is prevented from engaging in activities.[44]

24 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 options above)?

CDA supports introducing a combination of options two and three outlined in the consultation paper. This would involve the reporting of all PBS plans that include a restrictive practice and reporting each occasion a restrictive practice is used. This would provide an accurate account of the experience of restraint and seclusion by people with disability and should be nationally consistent.

ADDITIONAL COMMENTS ON THE CONSULTATION PAPER

Role of families

It is important that the role of families of children accessing NDIS-funded supports are embedded in the Framework. All children have the right to grow up in a family environment.[45]

Children's right to family is set out in the UN *Convention on the Rights of the Child.* For example, article 18 obliges State Parties to the Convention to:

use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the

---

[44] Australian Psychological Society 2011, *Evidence-based guidelines to reduce the need for restrictive practices in the disability sector,* p. 11.
[45] United Nations General Assembly 1989, *Convention on the Rights of the Child*, preamble.

upbringing and development of the child. The best interests of the child will be their basic concern.[46]

As a society parents and families are afforded the responsibility for care and protection of their children until they are 18 and to have flexibility around the different decisions made in relation to their children.

Children's transitions into adulthood and the critical role of families during this process also needs to be acknowledged and respected. CDA envisages that the transition as children begin to make decisions independently (with regard to the Scheme or otherwise) should be as organic as possible and depend on the context of each young person.

Language used in the Framework
There is a need to examine some of the language used in the Framework to ensure that it does not position people with disability as an inherent cohort with assumed similarities that discounts each individual's distinct experience of disability – a process often referred to as 'othering.' Examples include the term 'disability-aware communities,' which could be replaced with 'inclusive communities.' Further, there are a number of instances where the Framework refers to people with disability as 'them.' For example, page 12 of the paper discusses providing participants with information and states high-quality information can "give them the tools to choose the best providers of their supports." This could easily be changed to "give tools to choose best providers of supports."

CDA would like to raise some concerns around the definitions provided for key terms used in the Framework:

- Challenging behaviours – The definition provided is "behaviours of such intensity, frequency or duration that the physical safety of the person or others is likely to be placed in serious jeopardy, or behaviour which is likely to seriously limit the use of, or result in, the person being denied access to ordinary community facilities." However, it could be clarified by including what "serious jeopardy" means.

  It is the view of CDA that the following definition obtained from the Office of the Senior Practitioner in Victoria better captures the social consequences of challenging behaviours and should be considered as an alternative:

  any behaviour that: (1) is a barrier to a person participating in and contributing to their community (including both active and passive behaviours); (2) undermines directly or indirectly a person's rights, dignity or quality of life; and (3) poses a risk to the health and safety of a person and those with whom they live and work.[48]

- Corrective actions – 'corrective' is not seen an appropriate term to characterise "responses to incidents after they have occurred." While CDA understands that

---

[46] United Nations General Assembly 1989, *Convention on the Rights of the Child*.

[48] K McVilly 2008, *Physical restraint in disability services: Current practices; contemporary concerns and future directions,* Office of the Senior Practitioner, Melbourne, p. 7.

'corrective' is intended to denote that a situation has been addressed, it will not be applicable in all cases. For example, the NDIS is unable to 'correct' a situation of sexual assault. 'Responsive actions' or something similar may be a more broadly applicable term for the Framework to adopt.

- Disability aware communities – As previously discussed, this terminology is problematic. Promoting the need to be 'disability aware' evokes the charity model that relies on 'feeling sorry for' people with disability, rather than understanding disability as a positive aspect of a diverse community.

- Positive behaviour support plan – this definition refers specifically to adults only, however it also needs to include children.

- Restrictive practices – The definition should clearly state the nature of the practice, rather than the intent. While CDA acknowledges that more detailed definitions of restrictive practices are provided in the Appendix F of the consultation paper, they should be clearly stated within the Framework. CDA recommends adopting the previously quoted definitions provided by the APS.

CONTACT

Please do not hesitate to contact CDA if you would like to discuss further any aspects of this submission. Thank you for the opportunity to provide a submission to this consultation.

Contact: Stephanie Gotlib, Chief Executive Officer
20 Derby Street, Collingwood VIC 3066
Phone 03 9417 1025 or 0425 724 230
stephanieg@cda.org.au
www.cda.org.au