



Communication Rights Australia

"For people with little or no speech but plenty to say"

Response to the National Disability Insurance Scheme Quality and Safeguarding framework (NDIS)

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Key Element of framework –

What is not clear within the framework is the role of governments, both state and federal, once the rollout of the NDIS has occurred.

Consideration should be given as to *their* duty of care towards participants of the Scheme and the use of public monies.

Although human rights seem to be the underpinning the NDIS it appears to be missing from the Quality and Safeguard Framework. Human rights needs to be strongly articulated in all parts of the framework influencing both the practice and the complaints mechanisms to ensure participants have an overarching principle to consider their rights.

Recommendation 1: Human rights have a stronger presence within the Quality and Safeguard Framework.

Supporting Individual Capacity

When developing the capacity of individuals it should not be assumed that:

- There is an understanding of rights;
- Capacity to exercise rights; and
- Established natural safeguard that is ready to assist when necessary.

Access to an independent information service needs to be available to assist individuals with decision making. This may include opportunities to discuss issues of concern, consider options available, and support them in the final decision making process. These services need to be independent of service provision as well as NDIA and be blocked funded. Each individual requesting support needs to be provided with the capacity building skills tailored to their requirements. It may take time to develop their skills and it should not be restricted by the pressure of a funding formula.

To support an individual with capacity building, information and supports there need to be:

- Accessible and in different format, range of venues, have someone to explain it and support in the use of it (including an understanding of the person's method of communication);ⁱ

- Free from influence;
- Potential for one–on-one session.

The Framework assumes that people have internet/phone access but this is not always the case. Less than 50% of people with communication or speech difficulties have access to online servicesⁱⁱ

Outreach component is essential for isolated members of the community. For true engagement of isolated and vulnerable individuals bridges of trust need to be built them. The worker then needs to have a clear understanding how to present the information to them.

The *one hour planning* meeting provided by NDIA is insufficient for individuals to be organised and to consider all the information necessary when making a decision.

Recommendation 2: Independent Information Services be funded to support individuals in their capacity building program.

Recommendation 3: Information empowers but it needs to be accessible, available and supportive in its usage and not all online.

Recommendation 4: Community outreach is an important part of engaging isolated and vulnerable communities.

Recommendation 5: People need time to develop capacity building

NDIA Registered Provider

It is essential that under the new arrangements no NDIA registered provider should discriminate against providing services for 'more complex needs' individuals where higher levels of scrutiny are required. The monitoring body must be mindful that *there is no indirect discrimination* against individuals who require staff to have this higher level of scrutiny.

A Code of Practice may be workable for house improvements or gardening but anyone working or having contact directly with vulnerable clients' require a 'vulnerable persons check'.

For those providing services to people with communication or speech difficulties there must be training of all staff in the participant's method of communication. It is important to keep in mind if you want to know what a person wants you must be able to communicate with them.

Recommendation 6: The highest level of scrutiny is required for staff working with people who are vulnerable and marginalised.

Recommendation 7: A national registration program needs to be established to register, monitor and remove inappropriate staff.

Recommendation 8: No individuals who require high levels of support should be discriminated against because they require staff with a higher level of scrutiny.

Ensuring staff are safe to work with participants

For staff working with people who are vulnerable and marginalised it is essential that the highest level of scrutiny is provided. This requires a *national registration* of 'Working with vulnerable clients' check. Each staff member should be responsible to keep their own registration current and not be reliant on service providers to maintain their records. These checks may also need to include international criminal records checks and the establishment of an 'exclusion list' for those not to be employed.

Casual staff needs to maintain their registration.

Service providers need to sign onto the National Disability Standards and Quality Frameworks with at least two external auditors involved with their registration and accreditation. For those providers' not in direct contact with vulnerable individuals a lower level of registration could be negotiated but as result they do limit their market access.

The national registration body needs to be mindful of those participants who wish to employ family members and the potential risk attached. Some form of monitoring needs to occur to ensure there is no abuse.

Participants should have access to independent advocacy service to assist them with staff complaints. Not all people have the skills to access complaints process independently.

Recommendation 9: Staff must be responsible for their own registration.

Recommendation 10: Self-managed participants need to have staff registered to ensure no abuse and appropriate levels of training.

Handling complaints

It is essential that all possible people have a *functional method of communication and receive training to increase their skill*. This will reduce the risk of individuals being vulnerable and isolated.

Most registered service providers will have a documented complaints handling process. Unfortunately some people with communication or speech difficulties find these processes have structural barriers as they rely on phoning, online systems or having to seek out a person who may not understand their method of communication to make a complaint. It is not always possible for people with multi disabilities to access someone who understands their method of communication to make a complaint. Many people require support from an independent advocate to make a complaint to service providers for a range of reasons including fear of retribution, not being able to access the system or not having the confidence to lodge a complaint.

Further to make a legal complaint you need to be able to provide clear direction to a lawyer and if your communication method is not clearly understood by the legal representative will not accept the individuals' comments. They then act 'in the best interest' which may be contrary to the wishes of the person.

There is a need for an independent communication support system or Intermediaries, as found in United Kingdom. This will allow a person to access people trained to support their communication and allow them to have a voice.

A national consistent complaint mechanism would be advantageous if it had the capacity to investigate and take action on behalf of the participant. A consistent method of dealing with any complaint including support or individuals during the process is essential. This could be the role of the advocate.

This body should have the right to look at records and fully investigate the complaint. A streamline documented process needs to be developed, published and followed thus allowing all parties to have an understanding of clear expectations.

It should not be a mediation body. Mediation can be entered into as part of an overall process but not directed by the complaints handling body.

Community visitors are also an important part of an investigation although they are not a complaints process.

Independent advocacy is best placed to support individuals to make complaints as they already have a relationship with the community and a good understanding of consumer rights. For people with communication or speech difficulties the advocacy service requires expertise in alternative and augmentative forms of communication to assist individuals to have their say. There must be a commitment to allocate time skill and resources to raise issues on behalf of individuals when necessary.

The existing Disability Service Commissioner in Victoria has been not been a good working model for some time and has caused some disquiet for individuals and advocates attempting to address complaints with service providers. The complaints about the ODSC from advocates included:

- Complex complaints registration process;
- No street face;
- Does not investigate complaints;
- When an advocate is involved they take a back seat; and
- Little understanding of complex cases and they normally fail to act.

It must be remembered that a competitive market does not necessarily provide an environment and supports to effectively resolve complaints on behalf of individuals.

Recommendation 11: Establish an 'Independent Communication Support' system that gives people with communication/speech difficulties the same rights as those who are Deaf using Auslan interpreters.

Recommendation 12: A national complaints handling body needs to be independent of government, NDIA and service system.

Recommendation 13: Each individual needs a functional communication system so they can communicate with their environment.

Recommendation 14: Access to independent advocacy services to be available for people with communication or speech difficulties to enhance access to complaints processes.

Recommendation 15: The complaints handling body is required to utilise its investigatory powers.

Monitoring and Oversight

A national system with monitoring and oversight for the operation of the Scheme is essential. The body should be independent of the NDIA and of service provision. It should have the capacity to collect data, respond to market failure, and identify trends/ gaps for future planning of the scheme.

Recommendation 16: The complaints handling body will collect data, identify trends and gaps within system for improvement.

Self-managing participants

For those who choose to self-manage their packages it is essential that their staff have some form of registration as it is public money. There have been a number of cases where families have decided to assist their young adult to manage their package only to find that the individual has been disadvantaged by this structure. There always needs to be check and balances to protect the rights of the individual and public money.

Guardians who make the decision on behalf of their family members need to have some understanding as to the potential areas of risk for their family members if they employ people outside the system. A Code of Conduct may not necessarily work unless it is monitored.

Recommendation 17: Self-managed participants requires a risk management strategy

Reducing and eliminating use of restrictive practices

If participants display challenging behaviour the least restrictive practice should be the response. There needs to be an agreed policy, procedure, and arrangements established prior to working with a participant. A national external monitoring and investigating body needs to be established. All restrictive practices should be mandatory to report to a tribunal.

A positive behaviour support plan needs to be established by a qualified professional. There needs to be a register, monitoring, training and support provided to all involved.

An independent person should be involved to ensure the rights of the person are protected at all times. The role of the independent person should also have the skills of understanding the individual's communication and level of comprehension of the implications. A family member may not be the best placed person for this role.

Code of Practice is inadequate for this process alone.

Providers could be authorised to make decisions under certain circumstances (emergencies) but guidelines need to be agreed to prior to action. Capacity of the person to make decisions should be independently verified by an external person. There should be supporting evidence to show that consideration of all options has been considered.

Tribunals (Snr Practitioner) need to review all decisions. There needs to be accountability and transparency in the decision making and practices. No unauthorised person should take action.

All positive behaviour plans need to be registered and monitored by the external body to ensure the appropriate level of support is being provided.

The system should be national with standards attached and monitoring with data collection for analysis.

Recommendation 18: All service providers who use restrictive practices must sign onto the National Framework for Reducing the Use of Restrictive Practices in the Disability Service Sector

Recommendation 19: National Tribunal or Snr Practitioner to oversee and register all Positive Behaviour Plans.

Recommendation 20: Each service provider needs to develop policies, and practices that are compliant with the National Framework to Reduce the Use of Restrictive Practices.

Recommendation 21: Service providers should nominate an appropriate trained person to approve action under emergency situations.

ⁱ Owens, etal: Telecommunication Access for people with communication or speech difficulties, Deakin University, 1998.

ⁱⁱ Owens, J: Accessible Information for People with Speech and Communication Impairment, 2002