



Villamanta
DISABILITY RIGHTS LEGAL SERVICE

NDIS Quality and Safeguarding Framework

Response to “Issues Paper on the NDIS Quality and Safeguarding Framework
Independent Review of the National Disability Insurance Scheme”

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Executive Summary

The most significant issue with the NDIS Quality and Safeguarding Framework is encapsulated in the phrase “nothing about us without us”. Almost entirely the Framework has been imagined, designed, implemented and enacted without the involvement of the people it is intended to serve.

The person best equipped to recognise an abusive situation is someone who has experienced abuse, not a public servant with a checklist.

The person best equipped to identify an inaccessible process is a person unable to access that process, not a policy document.

The person best trusted for a disclosure of coercive control is someone who has more in common with the victim than the perpetrator.

Until the people visiting group homes to check on residents are people who have lived in group homes, there will not be significant disclosure of what is happening behind closed doors and on night shifts.

Until the people taking complaints about provider abuse are people who are reliant on providers, there will be no real understanding of the impacts of a sudden shift cancellation after concerns are raised.

Until the people hearing issues about assistive technology failures are people who themselves rely on assistive technology in every aspect of their life, there will be no real accountability for providers who promise and don't deliver.

Until restrictive practices are regulated by agencies informed by people with lived experience of restrictive practices, they will continue to be applied inappropriately and continue to cause harm.

While we detail many issues and problems with the current implementation and strategies of the Framework, none of them is as important as the fact that the entire system has been designed and implemented by people who do not need the safeguards it is intended to provide.

About Us

Villamanta Disability Rights Legal Service Inc. (**Villamanta**) has been providing advocacy and legal services to people with disability since 1990. Villamanta's mission is to protect and advance the rights of Victorians with a disability by advising, informing and representing them and acting as an advocate on disability related legal and justice issues, with a focus on issues affecting people with intellectual disability. We are located in Geelong, Victoria and provide a statewide service.

We are funded to provide advocacy under the National Disability Advocacy Program; NDIS Appeals and the National Legal Assistance Partnership Agreement.

We provide legal advice and representation for matters where a person with disability has their rights restricted, or where a particular law applies to people with disability and not to other people. This includes the *Disability Act 2006 (Vic)*, *Guardianship and Administration Act 2019 (Vic)* and *National Disability Insurance Scheme Act 2013 (Cth)*.

The types of legal issues involved include:

- Issues with disability specific accommodation (group homes, SRS, Specialist Disability Accommodation etc) including quality, safety, and notices to vacate.
- Supervised Treatment Orders.
- Guardianship or administration applications.
- Issues with disability service providers, especially where they are restricting the rights of the person with disability.
- Financial abuse.
- NDIS Appeals
- Sexual harassment in supported workplaces

We work collaboratively with other disability advocacy organisations to carry out [systemic advocacy](#) where broad change is required, recently this has included:

- [NDIS Appeals issues around the NDIA and limiting the scope of "disability"](#)
- [Capability and Culture of the NDIA](#)
- [Issues around the NDIA acting as a model litigant](#)
- Issues around service providers defrauding residents of Supported Residential Services of the NDIS funding
- [Issues around the experience of the NDIS Quality and Safeguards Commission](#)
- [Issues of violence in group homes](#)

Introduction

Villamanta thanks the NDIS Review for the opportunity to provide feedback on the NDIS Quality and Safeguarding Framework (**Framework**).

Our feedback below is based on a range of experiences, including:

- Advice calls where individuals seek advice following unsuccessfully attempting to resolve issues with service providers and making complaints and dealing with the NDIS Quality and Safeguards Commission.
- Providing legal representation to clients who have suffered neglect, violence or abuse by service providers and are seeking prevention and redress.
- Providing advice and support to disability advocates whose clients are experiencing these issues.
- Supporting clients to make submissions to the Disability Royal Commission.

We have provided case studies as examples throughout this document. All names are pseudonyms, and where consent could not be obtained we have generalised the details so as to not identify a specific individual. These generalisations do not fundamentally change the narrative for the individual concerned, and in most cases we have seen multiple scenarios where this has occurred such that the case study holds true regardless of which individual it refers to.

Is there still a need for a Framework?

It is our view that there is still a need for a Framework, and indeed that the review of the Framework plays an important role in ensuring the efficacy and cohesiveness of the various mechanisms involved and the ways in which they are expected to interact.

A Framework articulates the expectations, roles and responsibilities, and can then be used to understand why outcomes were different to what was expected.

What is working well?

The best safeguarding of NDIS participants comes from within the community itself and has developed outside of and alongside the Framework. This looks like word of mouth, recommendation, local community networks, and social media groups connecting participants for peer support and self-advocacy.

An influx of new people into the industry has certainly refreshed the culture of those working most closely with NDIS participants, including support workers, allied health professionals and others. Presumptions of capacity and inclusion have been more common, and these have contributed to a greater focus on participant choice and equality of rights.

What is not working well?

We answer this question in detail below, and in the context of the intents and assumptions articulated in the Framework.

Individuals: Supporting and Empowering People with Disability

INFORMATION FOR DECISION MAKING

The information available to participants has not been clear and has not been conducive to decision making, including:

- Poor training of NDIA staff at all levels, resulting in inconsistent and unreliable advice being provided by contact centre staff, LACs, planners and other.
- Absence of information about appropriate terms and conditions applicable to service agreements, resulting in confusing, lengthy and unenforceable contracts terms.
- Insufficient (and contradictory) publicly available information about how funding can be used, and public claims of participant roting and “crackdowns” resulting in participants being too afraid to make decisions and plan managers policing spending.
- Unavailability of information about service provider complaints volumes. (We discuss industry ombudsmen further below, but for the moment note the value of their public reporting on complaints data volumes, which can assist consumers to make better informed purchasing decisions).

Critically, funded independent advocacy was anticipated to assist participants in accessing and understanding information relevant to the decisions they needed to make. The massive surge in numbers of NDIS appeals at the AAT, and the significant time and resourcing required to resolve them, has stripped the advocacy sector of any capacity to undertake this type of capacity building work. As a result participants are often fighting on two fronts simultaneously:

1. Seeking to have their NDIS funding reinstated after a significant and unexplained cut – a process which takes 12-18 months in our experience;¹ and
2. Disputes with service providers over the types, level and style of service provision, appropriate service agreement terms, service failures and other consumer issues.

This can be exhausting and overwhelming, but most importantly leaves participants and their allies in a perpetual reactive state where they are attempting to avoid further deterioration of their options and supports, rather than a proactive developmental state where they are able to investigate alternatives and have space for innovation in their thinking about the future.

Decisions about providers also become very reactive in this context; participants are reluctant to change providers when they feel themselves constantly threatened with loss of funding or supports. They can remain with a provider that doesn't meet their needs long after it has become apparent that change is inevitable. When the provider withdraws service they are then forced to urgently find a replacement; rather than finding a better fit they must accept any service available so as to ensure continuity of supports. This is a real risk to participant safety and wellbeing.

¹ We note the averages provided by the NDIA and AAT are always lower than ours. It is our understanding that there are two causes of this discrepancy. Both the NDIA and AAT include appeals that were withdrawn or dismissed in the very early stages – for example because they were incorrectly made – which skews the averages downwards. We base our average on those appeals we have worked with, and they are not withdrawn. Secondly, we include the entirety of the time the person has been underfunded – which dates back to the date of the plan, through the internal review process, and including the time taken to lodge the appeal. The NDIA and AAT only count the time from the date the appeal was lodged.

Market information

Ten years into the scheme there is still not an independent and easily accessible source of information about the service providers in this market. There is no reliable database that can be searched to provide information about services, their scope and style of supports, cost structure and terms. Rather the NDIS price guide has become the de facto cost structure and all providers, regardless of whether they provide a wraparound support (which would include training staff for specific needs, rostering, covering absences, recruiting for specific preferences, ongoing development and feedback mechanisms) or a very basic support (often a sole trader whose personal availability and preferences dictates the supports provided) bill at the same rate.

Outside of the online platforms such as HireUp and Mable, there has been no development of accessible real time information about service availability that would allow participants to ensure continuity of supports when a staff member is suddenly unavailable (which was made very clear during COVID). This also allows providers to charge cancellation fees when a participant is suddenly unavailable, despite the fact that it is often highly unlikely they were unable to book another client for this time.

If the rest of the public is able to book, reschedule and cancel their appointments for their GP, hairdresser and yoga class online, it is inexplicable that the large providers have not been able to provide such accessibility.

Despite multiple websites attempting to provide it, there is no significant online customer review of services available so that participants can make informed choices about whether a provider is a good fit for them, or a significant risk.

Building capacity

We note the Framework's reliance on participants building their own capacity to assert their rights, recognise good and bad quality supports, recognising and responding to violence abuse or neglect, and making a complaint or suggestion.

In our view this has not occurred to the extent anticipated due to:

- The extremely negative interactions with the NDIA undermining participant confidence; and
- The failure of the NDIS Quality and Safeguards Commission (**Commission**) to ensure that making a complaint has any outcome for the participant.

As noted above, the inexplicable and unexpected funding cuts for NDIS participants, coupled with the unreliable (and at times deeply offensive) comments from NDIA staff, have had an extraordinarily negative impact on the confidence and resilience of participants, and this has had a flow on effect in relation to their capacity to assert their rights and take action in relation to abuse or neglect. When the Commonwealth agency responsible for upholding your CRPD rights treats you like their enemy, it can be impossible to even contemplate taking action against the provider who won't let you eat dinner any later than 5pm. An early dinner is better than not eating at all.

As a compounding factor, the Commission has not built confidence that complaints will actually be dealt with and that there will be an outcome for the complainant. While further details is provided below, it is important to note that capacity building will not change participant confidence if the mechanism they are relying on is powerless and does not result in any meaningful outcome.

Preventative: Preventing harm and promoting quality

THE INVOLVEMENT OF INTERMEDIARIES

There is an element of safeguarding that was not anticipated in the Framework, and which we have experienced as being very effective.

The simple addition of people to participant's lives has resulted in a significant increase in the number of calls we receive about asserting rights. Sometimes these come from the participant and their support worker. Our understanding of how this has come about is a casual discussion between participant and support worker and a disclosure by the participant of something the support worker finds concerning. Some examples of this include:

- My mother handles all my money, I have to ask her
- I'm not allowed to do that
- I have a guardian, they choose for me

Freya

We were contacted by Freya's sibling's support worker after her provider withdrew services abruptly.

Freya did not have the ability to work out what was happening and understood this to be a service problem. As it turned out, the NDIA had cut her funding by 93% and a new plan had come into effect a couple of months ago the funding was now entirely spent.

Freya was unaware of any of this, and had no idea what to do. Her situation was dire by the time contact was made with us, and her life was at risk.

Generally these are long standing issues, but the participant has never discussed it with anybody before. Once they reach out, we are able to help them understand the situation, their rights and choices, which may include:

- Ending financial abuse and having an administrator appointed to resolve issues in the short term, while supporting participant to build capacity to manage finances in future
- Supporting the participant to assert their right to make their own decisions, and confirming with third parties that they do not have the right to impose restrictive practices
- Confirming there is not VCAT order and the person claiming to be "guardian" has no legal decision making authority

The second category of people are called the **Funded Connectors** in this submission, and include support co-ordinators, local area co-ordinators, some planners, some plan managers and some recovery coaches. Often these people are noticing issues with provider conduct, with the rate of spending on a plan or with the arrangements in place for the person. The skilled people in these roles dig a little deeper and have uncovered a range of issues which they have assisted the person to engage with us about:

- Providers coercing residents of Supported Residential Services to use 1:1 supports instead of the funded group supports, rapidly depleting all funding in a plan and then ceasing service
- Family violence, including incest and rape
- Unlawful restrictive practices

The calls we receive from Funded Connectors have redirected in the past 12-18 months and now the majority are about NDIS Appeals. This is unfortunate, because there is no evidence to suggest that these situations are not still occurring – more likely the people who need this support are not

being funded for support co-ordination.² This poses a significant risk to participants at risk of abuse, neglect or violence.

Lastly, from time to time we receive calls from social workers in hospitals (or similar) about a scenario we have heard over and over, and which should not be happening with the NDIS in place. It involves an adult participant (or participants) who lives at home with a sole remaining parent who has suddenly become unavailable (through dementia, accident, illness or death) and the participant has no other supports. They don't know how to pay the bills, they don't do the shopping, they can't use the washing machine, and don't have capacity to make the decisions that now need to be made. Most likely they have never stayed anywhere else, so any transition is going to be traumatic for them.

When an NDIS planner is looking at a situation like this, there must be future planning being built into the plan, and there must be people being brought into the participant's life. Nobody lives forever, and where a parent's plan appears to rely on that, action must be taken to ensure the participant is not exposed to harm.

SUPPORTED DECISION MAKING

We have seen no evidence whatsoever that the NDIA is advocating supported decision making over substitute decision Making (such as guardianship and administration). We have seen the NDIA request people make a guardianship application for participants, and NDIA lawyers arguing that an administrator must be running an AAT Appeal.

The NDIA's own use of nominees is problematic and is often used because it is easier for the NDIA to communicate with someone other than the participant. We assume we do not need to spell out the risks when the NDIA:

- Appoints a third party (eg family member or service provider) as NDIS nominee
- Does not meet with the participant at all
- Funds supports based on the input of the nominee
- Allows the nominee to then make decisions about using the funding under the plan

We note the Framework states that if a person needs supported decision making, that this can be funded through their plan – we have never seen this happen.

Gendered violence

We continue to see NDIS participants subjected to family violence because the abusive family member speaks to the NDIA and service providers on their behalf and is allowed to make decisions that should be made by the participant\.

CALD and ATSI

We continue to see NDIS participants who are culturally and linguistically diverse and/or Aboriginal and Torres Strait Islander, struggle to engage with the NDIA's processes, and to find appropriate supports.

People with intellectual disability

We continue to see people with an intellectual disability left out of their own planning process while the NDIA speaks to service providers instead. We have seen no evidence of capacity building for these clients (especially in group settings) to understand the NDIS process, what funding they have, and what decisions they can make.

² Or their support co-ordinator is new, struggling with high case load etc

SELF MANAGEMENT AND SAFEGUARDS

We have recently become aware of service providers in Victoria who are encouraging participants whose finances are managed by an administrator to request self management of the NDIS funding. The provider then effectively bills the participant for any and all funding available, and assists them to pay the invoices using self management. While Plan Managers have not always raised issues about provider fraud such as this, they did sometimes. The use of provider assisted self-management offers no third party involvement whatsoever and leaves participants vulnerable to dreadful abuse.

We have seen the NDIA cancel self management (or plan management) with no notice – throwing the participants supports into disarray as the apparent default Agency managed limits the choice of providers – which is a significant risk to participants, and continues to occur. It can take months to have such a simple issue resolved, and meanwhile participants are without supports (which is especially acute in regional and remote areas and where participants required gender or culturally appropriate providers).

It is not clear how much information is available to planners making these decisions, or what training is provided, but the outcomes are inconsistent and at times unsafe.

COMPLAINTS SYSTEMS

The vast majority of our clients would not be able to access their service providers' complaints process without advocacy. Providers continue to ignore complaints and to fail to ensure people are supported to formally make a complaint.

We note the Framework assumes that disability advocates would be able to make complaints on behalf of participants, and assist in the resolution of their issues. It is an ongoing challenge to have the Commission communicate directly with advocates, and not to rely on the same pathway as the NDIA – to communicate with the participant via the service provider – even when that is the provider the complaint is about.

The role of consumer law

There has been no real use of consumer law in ensuring the quality of supports funded under the NDIS. One reason for this is the NDIS planning and funding cycle. If a support was defective and ultimately the participant was successful in a consumer law action, this would be of no benefit to them, because the funds would be returned to the NDIA, and to a plan which has already expired. If people had longer plans, such as 3-5 years, this may change, and there may be incentive to seek refunds or other compensation, but as things stand right now, the time for legal proceedings to run and the duration of a plan are simply incompatible.

In our view the solution is not for participants to be required to take legal action, but for the external complaints mechanism to be strengthened so that it delivers real outcomes for participants, and incentivises providers to resolve issues early, rather than ignore them and wait the participant out.

Robert

We helped Robert make a complaint to the Commission about an NDIS provider.

The Commission advised that they were conducting an investigation into the Provider. We contacted the Commission many times over the next year and a half with both follow-up and further complaints from the client, but still did not hear of any results from the Commission.

After 18 months, the Commission completed their investigation into the Provider. This ended with a finding that the provider had done nothing wrong and resulted in no outcome for the client. There was also nothing done about the client's other complaints.

The Commission finally conceded that they had not communicated with us or our the client about the final outcome of the investigation until now, had closed the matter without speaking to him, and had communicated only with the Provider.

Corrective: Responding if things go wrong

RESPONDING TO SERIOUS INCIDENTS

We have no confidence that providers are taking their responsibilities seriously, or that the complaints process used by the Commission is using ensuring safety.

CONSUMER COMPLAINTS

In our experience the general public expect the NDIS Quality and Safeguards Commission (**Commission**) to provide a function similar to that of an industry ombudsman, examples of which include:

- [Home | Australian Financial Complaints Authority \(AFCA\)](#)
- [The Telecommunications Industry Ombudsman](#)
- [Energy and Water Ombudsman Victoria \(EWOV\) | EWOV](#)

The focus of these organisations is rapid and effective resolution of disputes by agreement or by judgement.³ The Commission, by comparison, does not provide an outcome for the participant, but suggests they should take legal action. If industry ombudsmen can exist for other powerful sectors, it is unclear why this could not occur for the disability sector.

From our dealings and from callers to our service we have consistently understood the following to be the experience of the Commission. Without a robust Commission it is difficult for NDIS

Sam

A complaint was made in relation to ongoing assaults Sam had experienced in a group home ran by a SIL provider, complaining that the SIL provider had continually failed to take any action to prevent these. The Commission received this complaint, but to date no action from the Commission has prevented these assaults.

All methods they have tried have been ineffective, and many excuses have been accepted from the SIL provider. The matter has been escalated multiple times within the Commission over a three-year period but these escalations have not helped to achieve anything.

participants, their friends and families to be sure that there are adequate safeguards that can improve safety and minimize the risk of violence, abuse, neglect and exploitation.

Further to this, there is failure to provide any expectations or timeframes in writing at the commencement of the complaint. This lack of written correspondence leaves complainants with more uncertainty around what to expect and when to expect this as they are relying on phone conversations with the assigned case manager rather than clear documentation from the Commission.

They didn't even turn up

We were contacted about a participant who had died. Their next of kin was seeking answers as to what had happened in the days preceding the death. A complaint was made to the Commission and it transpired that there was documentation for only 3 of the previous 4 days. It seemed highly likely the participant had been left alone.

The Commission could find no breach of the provider's obligations

Timeframes

Where timeframes are provided, they are not enforced. People have an expectation that service providers will be obliged to comply with requests from the Commission, but this does not appear to be the case. Complaints can take a very long time to progress, and there are no updates provided in the interim. It is up to the complainant to keep following up with the Commission, a task not all people with disability have the capacity to do.

³ While each scheme is different, we understand that the incentives to resolve the issue include providers being required to pay for use – so that the further a complaint escalates through the process, the higher the cost to the provider.

Perception of bias

Complainants state that the Commission takes the word of a service provider more seriously than they do the person with disability. A person makes a complaint, the Commission asks the service provider for their response, and then the Commission closes the complaint. Complainants do not consider this a fair process at all. If a service provider provides a response, there is an expectation that the Commission will provide this response to the complainant so they can comment on it.

Comments by Commission staff to the effect that “they are a very big provider, I’m sure they did the right thing” do not uphold the functions of the Commission to independently consider complaints, and are reported to us regularly.

Lack of transparency

While there may be some documents provided by serviced providers that cannot be shared with complainants, there appears to be a view by the Commission that this applies to all documents. This lack of transparency allows staff to give incorrect accounts of events and leave them unchallenged, because the complainant is unable to review the materials provided. Abuse will not be stopped if the Commission does not allow the complainant to challenge the account given.

No focus on outcome for complainant

This is the most significant source of dissatisfaction with the Commission. Even after all the above issues have been experienced, the Complainant is still waiting to have an actual outcome from the complaint. Frequently they do not. For many people it feels like the Commission is just using complaints to collect data, and serves no purpose for the Complainant at all.

When a person makes a complaint, they feel they have already been wronged. They do not consider that the service provider has acted appropriately, and they have not been able to resolve it with the service provider themselves. This leads to an expectation that the Commission will be able to achieve something the individual could not. While an expected outcome will differ in every case, some examples from our experience include:

- An apology. This does not appear to be something the Commission even contemplates, but is a baseline expectation of complainants.
- An honest and transparent account of why the problem occurred, and a credible explanation as to how it will be prevented from happening again.
- An explanation as to why the service provider did not take this issue seriously in the first place, and how future complaints will be handled more appropriately.
- Repercussions for service providers who have caused harm. This could be as simple as the Commission explaining that the service provider has been asked to take certain actions, and should a further complaint occur which demonstrates that they didn’t, the Commission would do something more substantive.

We note the expectation in the Framework that an eMarket would develop, and that participant feedback about services would be an important source of information about providers. This has not occurred.

Lee

We assisted Lee with making a complaint to the Commission about a series of assaults they had suffered at the hands of another resident in their group home that their SIL provider had failed to do anything about.

The contact from the Commission quickly became more infrequent after initial contact. Over the next 15 months, we frequently contacted the Commission seeking updates on the complaint but were continually met with poor communication and a lack of progress.

The only change Lee experienced across this time was the offending part being taken out of the home during the day and implementation of an Active Night Worker (who was replaced with an Inactive Night Worker within a year of their implementation). The Commission delivered their final report a whole 16 months after the initial complaint, which offered no permanent resolution to the problem.

Response to NDIS Quality and Safeguarding Framework Issues Paper

The only real source of information available from the Commission is the publication of banning orders and other negative outcomes. By the time a provider has reached this level of sanction it is far too late for this to be useful in ensuring participants are making informed choices about the provider they rely on.