**April 2015**

**Response to the proposal for a National Disability Insurance Scheme (NDIS) quality and safeguarding framework**

Disability Advocacy Victoria Inc. (DAV) is the state peak agency for independent disability advocacy in the state of Victoria with membership of fourteen disability advocacy agencies funded through both state and national programs. These funding streams are independent of disability service delivery, providing independent disability advocacy.

Any quality and safeguarding framework needs to ensure independent advocacy is available to people with disability. This includes all of the established models of advocacy: individual advocacy, systemic advocacy, self advocacy, legal advocacy and citizen advocacy. Advocacy is involved in issues relating to human rights which are broader than the internal review and external merits review process established in the NDIA.

Currently, it is unclear how Advocacy will be funded post NDIS roll out. It is also unclear what the role of government will be, both state and federal within the framework. Consideration is needed to be given to government’s duty of care towards participants of the NDIS and the use of public monies.

While human rights underpin the NDIS, there is a call for human rights to be strongly articulated in the framework, influencing both the practice and the complaints mechanisms.

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

DAV member agencies have made submission directly, while **the purpose of this submission is to strengthen and highlight distinctive elements considered essential in the Quality and Safeguarding 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
* An established natural safeguard that is ready to assist when necessary.

There is a need to fund independent information services to support individuals in their capacity building. These independent information services need to be accessible both in format and in provision, including an outreach component in order to engage people in isolated and vulnerable communities.

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

**Recommendation 3:** Information provision needs to be accessible, available and meet all individual needs. It is imperative that services that do not rely only on access to technology are available.

**Recommendation 4:** Community outreach is provided to engage isolated and vulnerable individuals.

**Recommendation 5:** Ensure capacity building services are not time-limited in order to ensure that people with complex disabilities are provided with equal access to this service.

**Recommendation 6:** Provision should be made and planned for, to support individuals who require high levels of support and staff with a higher level of skill and scrutiny.

**Recommendation 7:** The NDIA make communication assessments and the provision of a communication method a priority for individuals who have no communication

**NDIA provider registration**

There is a clear need for the highest scrutiny of providers to the most vulnerable and marginalised groups within the disability community.

**Ensuring staff are safe to work with participants**

Maintenance of National Registration is needed for direct care workers to ensure a consistent check is done across jurisdictions. A *working with vulnerable clients* *check* may be best managed by requiring the person employed to maintain their check and thus their employability rather than the employing agency. Consideration also needs to be given to include international criminal record checks and the establishment of a national exclusion list for those people not to be employed.

**We endorse option 4**

**Recommendation 8:** The highest level of scrutiny is required for staff working with people who are vulnerable and marginalised. A ‘vulnerable person’s check’ (see above) needs to be developed nationally, and mandatory.

**Recommendation 9:** A national registration program needs to be established to audit services.

**Recommendation 10:** An independent external evaluation monitoring body is required.

**Systems for handling complaints**

A nationally consistent complaint mechanism is needed with the power to investigate, act and monitor complaints. A national complaint handling body needs to be independent of government, NDIA and the service system.

Necessary considerations:

* People are often not aware of complaints processes or their rights as a consumer.
* Have little experience or confidence to make a complaint
* Even if a complaint has been made, there may be little response which then requires the need to pursue the complaint.
* Access to an independent advocate strengthens any complaints process.

In Victoria, there is criticism of the conciliatory approach taken by the Victorian Disability Services Commissioner for the following reasons:

* Complex complaints registration process
* No street face
* When an advocate is involved they take a back seat
* Little understanding of complex cases and they normally fail to act
* It is unclear what complaint the commissioner’s office will consider investigating
* There have been no investigations for a number of years

**Recommendation 11:** Establish an ‘Independent Communication Support’ system that gives people with communication/speech difficulties the same rights as those who are Deaf and can currently access Auslan interpreters.

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

**Recommendation 13:** Access to independent advocacy services to be made available for people with complex communication needs/disabilities to ensure access to complaints processes.

**Recommendation 14:** The complaints handling body is required to have the powers to investigate and direct.

Safeguards for participants who manage their own plans

* Registration requirements of agencies with the NDIS
* national exclusion list of workers deemed unsafe
* Access to independent advocacy

**Recommendation 15:** Self-managed participants require a risk management strategy.

**Reducing and eliminating restrictive practices in NDIS-funded supports**

If participants display challenging behaviour the least restrictive practice must be the response. Challenging behaviours must be addressed through evidence-based psychological interventions. A national regulator needs to be established that works subject to the National Framework For Reducing the Use of Restrictive Practices in the Disability Sector. All restrictive practices should be mandatorily reported to this body.

* DAV supports the reduction and elimination of restrictive practices.
* High figures of the collated advocacy work in Victoria indicate the issue of education with the use of restrictive practices on children with disabilities significant and unmonitored.
* All such practice needs to be highly regulated by an external body, covering all jurisdictions and informed by the National Framework for Reducing the Use of Restrictive Practices in the Disability Services Sector.

**We endorse Option 4**

**Recommendation 16:** All service providers who use restrictive practices against people with disabilities must comply with the National Framework for Reducing the Use of Restrictive Practices in the Disability Service Sector, and be audited for doing so.

**Recommendation 17:** A completely independent body led by senior staff who have the highest level of recognised expertise in behaviour analysis/restrictive practices regulate restrictive practices and register all Positive Behaviour Plans after careful scrutiny.

**Recommendation 18:** Each service provider needs to develop policies and practices that are compliant with the National Framework to Reduce the Use of Restrictive Practices.

**Recommendation 19:** There should be no loading incentive to use restrictive practices.