



National Disability Services Submission NDIS Review – Participant Safeguarding

About National Disability Services

National Disability Services (NDS) is Australia's peak body for non-government disability service organisations, representing more than 1100 non-government service providers. Collectively, NDS members operate several thousand services for Australians with all types of disability. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Commonwealth governments. We have a diverse and vibrant membership, comprised of small, medium and larger service providers, supporting thousands of people with disability. Our members collectively provide a full range of disability services, from supported independent living and specialist disability accommodation, respite and therapy, to community access and employment. NDS is committed to improving the disability service system to ensure it better supports people with disability, their families and carers, and contributes to building a more inclusive community.

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1.0 Overview

NDS's Vision is for an inclusive Australia where all people with disability live safely and equitably. Participants, their families, carers and support networks, providers, regulators, government, and the community all have an important role in developing both formal and informal mechanisms that enhance safeguarding for those people with disability who are National Disability Insurance Scheme (NDIS) participants.

NDS welcomes the opportunity to provide input into proposals identified by the Independent Review of the NDIS (NDIS Review) to enhance participant safeguarding. The [Proposals Paper on Participant Safeguarding](#) (the Paper) sets out a range of issues that have been identified through consultation, previous inquiries and reviews. The Paper sets out three proposed ways forward to address these issues.

NDS agrees that participants are the experts in their own lives. They are best placed to identify the risks they want to take and the supports that they may need to take these risks as safely as possible. Access to well maintained networks made up of families, carers, friends and others also play a vital role for some people.

Risk is fundamental to the human experience.¹ An approach to safeguarding that is based on human rights, culturally responsive, trauma informed, addresses intersectionality and identifies opportunities to promote natural safeguards is required and providers have a role to play in enabling this approach.

NDS made a submission in response to the NDIS Review's issues paper on the [National Disability Insurance Scheme \(NDIS\) Quality and Safeguarding Framework](#) (the Framework).² We argued that for the goals and potential of the NDIS to be achieved and for people with disability to have access to high-quality disability services, there needs to be appropriate regulation and registration, sufficient numbers of options available for NDIS participants, service user capacity, and enough workers in the sector to meet the demand for services.

Building participant capacity and safeguards is critical.

In addition to the current focus on the Framework, we note that the NDIS Review will undertake further consultation to explore:

- The approach to regulating providers, workers, and intermediaries.

¹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2022), Supported decision-making and guardianship: Proposals for reform, accessed 13 June 2023, <https://disability.royalcommission.gov.au/system/files/2022-10/Roundtable%20-%20Supported%20decision-making%20and%20guardianship%20-%20Proposals%20for%20reform.pdf> pg. 22.

² National Disability Services, (2023), Victoria, National Disability Services Submission NDIS Review – Quality and Safeguarding Framework, accessed 2 June 2023, <https://www.nds.org.au/index.php/policy-library/nds-submission-to-ndis-review-of-quality-and-safeguarding-framework>

- Issues related to positive behaviour support and restrictive practices.

We believe that it will be important that the strategies to improve these and the other areas being considered through the NDIS Review such as pricing and payments, access and planning, Scheme governance, the role of intermediaries and effective data sharing are viewed through the lens of the role of natural safeguards. The priority that supports aimed at developing those elements that are critical to natural safeguards such as supported decision making and the capacity of the NDIS ecosystem to respond to individual risk appetite and circumstances of each participant will be critical.

This submission will summarise some of the issues with the current approach to participant safeguarding, many of which were detailed in our submission on the Framework and subsequently focus on the role of providers in supporting participants develop natural safeguards and in supporting the successful implementation of the proposed strategies. We will also draw on recommendations that NDS made in recent submissions to the [Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#) (the Royal Commission) regarding the [Supported decision-making and guardianship: proposals for reform, Roundtable documents](#) and related hearings³ and to the [Joint Standing Committee on the NDIS on the Culture and Capability of the NDIA](#).⁴

2.0 Issues with the current approach to participant safeguarding

The Paper provides a comprehensive overview of what the Review has heard to date around participant safeguarding along with those that have been identified in previous inquiries and reviews, including through the work of the Royal Commission.

The Paper also notes some of the strategies that have been implemented to address these issues. These include long standing initiatives such as those embraced by the individual developmental domain outlined in the Framework, those identified in [Australia's Disability Strategy](#), and more recent work including changes to the [National Disability Insurance Scheme Act 2013](#) (NDIS Act) to enable better information sharing between the [NDIS Quality and Safeguards Commission](#) (NDIS Commission) and the [NDIS Supported Decision Making Policy](#) and [Participant Safeguarding Policy and](#)

³ National Disability Services (2022), Victoria, Submission to the Disability Royal Commission on Supported decision making and guardianship: Proposals for reform and roundtable documents. Accessed 1 June 2023, <https://www.nds.org.au/policy/nds-disability-royal-commission-submission-supported-decision-making-and-guardianship>

⁴ National Disability Services (2022) Victoria Submission to the Joint Standing Committee on the NDIS Capability and Culture of the NDIA. Accessed 2 June 2023, <https://www.nds.org.au/index.php/policy-library/nds-submission-joint-standing-committee-on-the-national-disability-insurance-scheme-capability-and-c>

[Implementation Plan](#) both of which were recently released by the National Disability Insurance Agency (NDIA).

The Paper notes the range of formal and informal safeguards currently available in the NDIS. Our submission to the Review on the current Framework highlighted a range of issues with these mechanisms and how these could be improved.⁵ In summary we noted:

- NDIS pricing impacts quality and safeguarding. Pricing and payment mechanisms need to enable a skilled and well supported workforce and a provider market that can further invest in risk enablement approaches.
- Participant plans need to support individual participant risk taking through providing support for decision making and access to information. Plans that recognise and respond to the support needed to ensure sustainable high quality service provision can enhance participant safety.
- Registration, regulatory and oversight requirements for providers wishing to enter or remain in the NDIS market are no longer appropriate and require resetting. Information asymmetries exist that make it difficult for participants to make informed choices about the steps that providers are employing to support their safety.
- A well-resourced regulator and regulatory system are essential to ensure timely responses to issues and a proactive approach. This includes embedding developmental approaches across all stakeholders. Greater identification and sharing of good practice in participant safeguarding is required.
- Roles and responsibilities are not well understood, need to be clearly spelled out and a hierarchy of functions described. At times, ambiguity of responsibility can put the health and safety of people with disability at risk. Participants and providers are not clear about which formal mechanisms apply in certain circumstances.
- There is insufficient advocacy to improve people's self-advocacy both within and outside the NDIS.
- The complexity of the system can impact participant safety. In the recent NDS State of the Disability Sector Report, 75 per cent of providers agreed or strongly agreed that "helping people to understand and navigate the Scheme is taking us

⁵ National Disability Services, (2023), Victoria, National Disability Services Submission NDIS Review – Quality and Safeguarding Framework, accessed 2 June 2023, <https://www.nds.org.au/index.php/policy-library/nds-submission-to-ndis-review-of-quality-and-safeguarding-framework>

away from service provision”.⁶ This unpaid work is undertaken to achieve positive and necessary outcomes for people with disability.

- Greater consideration for the very real balance between dignity of risk and duty of care is needed. Providers supporting a person with a disability to make their own decisions need to respect that person’s right to take risks, even if there is the potential to make a mistake. The ongoing cultural shift to risk enablement and a human rights approach within disability service organisations is the role of providers. However, there has been little guidance to reconcile the relationship between this and existing regulation and external contexts.

3.0 The role of providers in participant safeguarding

Disability services should advance the human rights of people with disability, support their autonomy, independence and inclusion in society and ensure respect for their dignity.

The current Framework, [Australia’s Disability Strategy Safety Targeted Action Plan](#) and the recently released NDIS Participant Safeguarding and Supported Decision Making policies all identify a role for providers in supporting the development and maintenance of natural safeguards.

The NDIS Commission embeds participants’ rights in the Practice Standards required for registered NDIS providers. The [NDIS Practice Standards and Quality Indicators](#) outline the actions that registered NDIS providers need to take related to participant safeguarding. This includes supporting participant’s right to the dignity of risk in decision making and providing support needed to assist participants weigh up the benefits and risks of their options. Providers are also required to collaborate with each participant to undertake a risk assessment and plan and implement appropriate strategies to manage identified risks.

Still, there will be variation in the degree to which an individual provider has developed the organisational systems necessary to value, facilitate and promote:

- Service user decision making and self-advocacy
- Service user feedback and risk enablement
- The role of trusted informal supports
- The celebration of genuine successes and good performance
- Reflective practice.

⁶ National Disability Services (2022) Victoria, State of the Disability Sector 2022, accessed 16 May 2023, <https://www.nds.org.au/about/state-of-the-disability-sector-report>

Resources such as those developed through [NDS's Zero Tolerance](#) initiatives aim to support providers develop organisational cultures that embed risk enablement approaches.

It is also important to note that while providers continue to further embed choice and control in their service delivery systems, only registered providers are monitored and required to be responsive to the expectations outlined in the Practice Standards. The Practice Standards provide other safeguards that intersect with choice and control, and decision-making.

The proposals as outlined in the Paper should consider how unregistered providers in the current system will be responsive to the expectations around their role in proactively promoting dignity of risk and natural safeguards.

Across the public hearings held by the Royal Commission the ways in which inclusive governance mechanisms can support and enhance safeguarding efforts and prevent violence, abuse, neglect and exploitation within and outside of the sector have been explored. The Royal Commission has heard how the governance, leadership and management arrangements within disability service providers affect not only how they function but also the culture which permeates all levels of their operation. They have a direct impact on the quality and safety of the services provided as well as on the individual experiences of the people with disability accessing those services. NDS agrees that disability service providers should have strong systems of governance and accountability, which involve people with disability in leadership structures and promote a rights-based culture. However, we would suggest that this is not always easily achieved. Providers will need support, guidance, resources, and time to make it a reality and do so with authenticity.

4.0 Proposals for Consultation

The Paper proposes three ideas to improve safeguarding, noting that these are complementary and are not the final views or recommendations of the Review. We will make some comments on considerations for successful implementation of each of the specific proposals but would also make the following observations.

4.1 Overarching considerations

[The need for an integrated approach](#)

NDS would strongly agree that the strategies proposed need to be considered in light of each other but also in the context of other work being undertaken by the Review, the Royal Commission and other areas of government including the implementation of Australia's Disability Strategy. Consistency (in language, definitions, and application), simplicity and a coordinated approach are required.

The sector is facing a wave of reform, and while much of it will be welcome it comes on the back of a period of constant change in the policy and regulatory environment. In our most recent State of the Disability Sector Report, 79 per cent of respondents agreed or strongly agreed that the NDIS policy environment is uncertain.⁷

Evidence from the report shows that Boards and leadership teams are finding it difficult to develop strategies and set direction in the current policy and operating environment. Nearly half of respondents (48 per cent) agreed or strongly agreed that this was the case. Most leadership teams were absorbed with dealing with NDIS changes, and respondents reported their staff were exhausted by ongoing changes in the NDIS.⁸

Disability providers are optimistic about change and wish to see plans turn into action. Reform that considers the operating environment and experience of providers allows services to better reach quality goals.

The role of advocacy

A key tenet of the NDIS is developing the capacity of people with disability. This may include their ability to discern high-quality services and to take actions to safeguard themselves from potential harm. Advocacy—individual, citizen and systemic—has a particularly important role to play but can only operate at full effectiveness if it is properly resourced. Self-advocacy is an important skill which can form a ‘natural’ safeguard.

In 2022, only 14 per cent of respondents in the State of the Disability Sector report identified that there was “sufficient advocacy for people we support”.⁹ It may be that this can be resolved through greater funding input. The proposals in the Paper note the role that advocacy and peer networks can play in driving a participant centric and participant led approach to risk and safeguarding. However, whilst speculative, it is possible that workforce gaps for advocacy, related expertise for developing and enhancing self-advocacy will remain a challenge. Workforce shortages and the potential for a thin market in capability development need to be realistically considered.

NDS supports recommendations that also expand the availability of advocacy (and self-advocacy development) for people with disability.

Regulation and risk enablement

Quite rightly the Paper notes that participant safeguarding must be participant led and centered. The focus should be on participants’ rights and capacity, view the NDIS and

⁷ National Disability Services (2022) Victoria, State of the Disability Sector 2022, accessed 16 May 2023, <https://www.nds.org.au/about/state-of-the-disability-sector-report>

⁸ Ibid

⁹ Ibid

the risks that people may face as NDIS participants from their perspective, support participants to proactively engage with risk and be trauma and healing informed.

NDS has noted previously that each individual participant will likely have a different understanding of and appetite to take risks. Taking informed risks can improve quality of life and promote engagement with the community. The disability sector is familiar with the concept of 'dignity of risk': people with disability have a right to make decisions, including 'bad' decisions and take risks even if there is the potential to make a mistake.

Safeguards (formal and natural) should support a person to make genuine decisions, even when that may pose harm to themselves, and assist them understand and manage any risks. This needs to be balanced with the obligations of government designed and implemented programs to provide adequate protections that meet their broad duty of care obligations. As acknowledged in the NDIS Review [Issues Paper on the NDIS Quality and Safeguarding Framework](#) getting this balance right, however, is not easy.

Providers navigate the balance between supporting participants to exercise dignity of risk with their duty of care to other participants, staff, and the community on a daily basis. Supporting participant choice can involve providers handing over an element of control, and result in substantial reporting obligations to the NDIS Commission. This may be for example related to health or lifestyle choices. As noted in our previous submission on the Framework, providers may be reluctant to take a risk enablement approach in cases where they retain the risk, should the choice result in harm to the service user. Anecdotal reports from providers suggest legal advice sought on these issues has pointed to caution and risk reduction.

The connection between regulation and risk enablement is nuanced. It will be important to consider how regulation can respond to the risk appetite of an individual. The ideas proposed provide some suggestions as to how individuals can be supported to exercise their choices as safely as possible. Reforms must not compromise staff safety or increase risk to staff or others. For all of us, our choices and decisions must respect the rights and safety of others.

Questions related to what presents an unacceptable risk, who makes these decisions and where liability lies if something goes wrong require consideration.

Workforce

NDS outlined that a sufficient, stable, well-trained, capable, and supported workforce is essential to delivering safe and quality services to people with disability in our submission to the Review on the Framework. We also noted that we are a long way from achieving this.

Workforce shortages are widespread and allowances in the current cost model for staff training, support and supervision are not sufficient to cover the cost of developing and implementing the systems required to attract, retain and appropriately skill workers in the sector.

Where workers have a role in supporting participants to develop their capacity to identify and manage risks it is crucial that they have access to the professional development, support, and supervision to develop the skills required to do this. For example, workers may need to be trained to think self-reflectively about their own wishes, beliefs, and attitudes toward risk and how these may influence the decisions of the person they are supporting. They will need to take time to communicate and listen properly. They may need to learn specific techniques to help someone to weigh up various choices. Constant reinforcement is necessary, including via good organisational supervision and mentoring, and embedding support for decision making into processes and into everyday discussions about service provision.

Funding models, risk enablement and supported decision-making

NDIS service providers have been encouraged to think of service provision in blocks of 'billable' hours. Where individualised funding is tight and without recognition of the time and resources risk enablers such as supported decision-making support takes, everyday opportunities for decision-making may be missed, or 'getting the job done' may take precedence.

Providers are currently operating within a very tight pricing environment. The sector continues to be concerned that NDIS prices do not support quality service provision. The overall proportion of respondents to NDS's 2022 State of the Sector Report who agree with the statement, 'We are worried we won't be able to provide NDIS services at current prices' has remained remarkably stable over the last five years. Some 59 per cent of respondents agreed with this in 2022.¹⁰ This is despite economic stimulus reforms implemented throughout the COVID-19 pandemic such as JobKeeper, COVID-19 support measures and recent increases in NDIS prices for some supports.

Over and above the costs of compliance with regulation, current NDIS pricing does not support the sector to further invest in quality, safeguarding and innovation. Only 11 per cent of respondents to the survey either agreed or strongly agreed that 'taken together, NDIS Pricing and Regulation are conducive to providing innovative services that respond to Participant needs'.¹¹

Funding capability development for people with disability and ensuring equitable access to support need to be considered. For example, providers have tried equipping

¹⁰ National Disability Services (2022) Victoria, State of the Disability Sector 2022, accessed 16 May 2023, <https://www.nds.org.au/about/state-of-the-disability-sector-report>

¹¹ Ibid

participants with quotes/cost estimates to use in NDIS planning processes that include time for participants to develop their decision-making skills. Currently it does not appear that this has been well supported.

Co-design

Along with ensuring that safeguarding measures are participant led and participant centred, the proposals identify the critical role of co-design with people with disability and their networks. We agree that this is essential in getting all aspects of NDIS reform right.

Across recent submissions NDS has argued that providers are well placed to contribute to system improvements and collaborate with stakeholders to identify and work through any unintended consequences of change.¹² Too often, provider implications are not considered in decisions and policies to the detriment of both participant choice and the efficient and effective operation of the NDIS. Including providers and utilising their experience (accrued over many years) in co-design activities will deliver better outcomes for participants, families, and carers, government, as well as providers.

Consultation is one important element of ensuring that a broad range of voices including those of providers are heard in efforts to improve existing systems of participant safeguarding. However, providers often play a critical role in implementing these improvements. Providers are unique in the experience that they bring to the table to design service systems effectively and efficiently. Specifically involving providers in co-design processes presents an opportunity to harness the practical expertise in the delivery and design of services, which is essential to delivering a system that works.

Disability service providers (and the frontline workers and managers they employ) have a key role to play in supporting the effective implementation of the proposals outlined in the Paper. Their role ranges from weaving risk enablement into everyday services to providing dedicated capability and capacity building supports.

By design disability service providers are integral to the successful implementation of the human rights-based model expressed in the principles underpinning participant safeguarding. To deliver a successful model NDS notes that the following will be necessary:

- Talk with providers – providers need to be included in designing the implementation of risk enablement education and regulatory approaches.

¹² See: National Disability Services (2022) Victoria Submission to the Joint Standing Committee on the NDIS Capability and Culture of the NDIA. Accessed 2 June 2023, <https://www.nds.org.au/index.php/policy-library/nds-submission-joint-standing-committee-on-the-national-disability-insurance-scheme-capability-and-c>

- Listen to providers – good practice from disability service providers should be highlighted to provide direction and foster commitment.
- Ensure the cost model can meet goals – a funding approach to develop the capacity of people with disabilities, supporters, families, and disability support staff should be sufficient and well considered.
- Reforms need to reflect both the everyday building of skills and frequent everyday decisions that disability service providers will be championed to deliver and be aligned with broad sector capacity building.

4.2 Specific Proposals

Proposal One: A NDIS-wide participant safeguarding strategy

NDS agrees that a more strategic coordinated approach to safeguarding for NDIS participants is needed. Participants will face risks and make decisions about these risks across a range of environments - about their NDIS supports (which service provider to use, for example), within their NDIS supports (how do I want my support delivered) or outside of the NDIS altogether (a decision about how to vote or whether to smoke tobacco).

NDS supports the proposal outlined in the Paper to introduce a participant safeguarding strategy as an opportunity to establish a shared understanding of concepts and principles of participant safeguarding across all relevant contexts. This is essential to uphold the rights of people with disability within and across their interactions with various systems and may contribute to shifts in community attitudes. The strategy should align with the [United Nations Convention on the Rights of Persons with Disability](#).

An integrated, agreed and monitored strategy enables participants to know what to expect from the various agencies they engage with. It also supports disability service providers to engage with other sectors and the community from a shared point of understanding, towards a greater realisation of rights and autonomy for the people they support.

It will be critical for the strategy to clearly articulate the role of the Scheme the NDIA and NDIS Commission in supporting safeguarding and developing natural safeguards. This must include funding responsibilities.

In addition to the recommendations that we made in our submission on the Framework¹³ to better articulate the responsibilities of key stakeholders and establish

¹³ National Disability Services, (2023), Victoria, National Disability Services Submission NDIS Review – Quality and Safeguarding Framework, accessed 2 June 2023, <https://www.nds.org.au/index.php/policy-library/nds-submission-to-ndis-review-of-quality-and-safeguarding-framework> pp 16-17

effective data sharing protocols, we would suggest that the following be considered in the development of this strategy:

- The strategy is simple and accessible. Language and definitions of key concepts must be consistent with that used in the Framework and concepts should be illustrated by realistic examples. This agreed language should be used across all governments and services.
- Clear links between relevant legislation, rules, obligations, and frameworks that guide the work of government are established. Where one of these has priority over others, this is identified.
- The role and responsibility of each stakeholder is clearly established. The paper proposes that the Framework would articulate the role of workers and providers with the proposed safeguarding strategy coordinating the work of governments. The proposed strategy would guide the policies and practices of government agencies. As such it is crucial that the strategy is consistent with the expectations set by the Framework for workers and providers. Often these expectations are not well understood by government agencies which can result in misperceptions about the role of providers and workers within the NDIS.
- A planned approach and accountability for disseminating information about the strategy to all stakeholders is designed to prevent this from defaulting to participants to explain the strategy or for it to become an additional unpaid role for disability service providers.
- Strategies to reach NDIS self-managing participants and their families are developed.
- Education and implementation across all contexts are the key to successful cultural change. Providers working to embed risk enablement and supported decision-making will have greater success, and changes will be faster where other contexts (health, justice, families and so on) are involved in and accountable for creating environments where the rights of people with a disability are actively and consistently upheld.
- The Paper notes that it will be important to establish targets and measures to assess the effectiveness of the proposed strategy over time. Achieving better outcomes under any strategy will require commitment from all governments and transparency about what they have done and how effective it has been. The strategy will need well-designed outcomes with an agreed set of reporting measures that capture both quantitative and qualitative data. Measures will also need to demonstrate where progress has been made and where further work and investment is required.

- Quantitative measures should be balanced with more descriptive, qualitative measures which give contextual and person-centred insights. Participant experience measures should be included.
- Some stakeholders encompassed by the strategy may need to develop their capacity to take a rights based approach to safeguarding. As argued in recent research commissioned by the Royal Commission on developing a best practice framework for supported decision making,¹⁴ significant resources may also be required for the proposed strategy to deliver its desired outcomes.

Proposal Two: An improved and individualised approach to work with participants to understand risk and build safeguards.

NDS agrees that a more individual approach to risk management through individual plans can support participants to take reasonable risks and make choices on the same basis as the rest of the population. The proposal for a comprehensive and individualised approach to understand risks and build safeguards underpinned by transparent, respectful, trauma informed and culturally responsive conversations with participants and their support networks is welcomed.

Building risk management into participants' plans recognises that risk profiles vary markedly according to a person's disability, their preferences, the nature of the support and the circumstances in which the service is provided. It requires skilled planners with access to reliable information, including information from providers and information about the individual's history with support services and their family circumstances.

We would make the following comments:

- A key question proposed in the Paper is who should have conversations with participants about risks and safeguarding? This will be different for every participant and is likely to involve a range of informal and formal networks. Families, friends and peers, neighbours, members of the community, planners, partners in the community, intermediaries and other providers will all have a role in supporting participants to plan and develop strategies that support their personal safety. As noted above advocacy and access to peer networks and organisations will also play a crucial role.
- Providers are often turned to as they represent a familiar and trusted connection for participants and their families. Disability support providers may often be the only tangible connection a participant has with the NDIS. Workers will have

¹⁴ Bigby, C., Carney, T., Then, S-N., Wiesel, I., Sinclair, C., Douglas, J., & Duffy, J., (2023). Diversity, dignity, equity and best practice: a framework for supported decision-making. Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, accessed 10 June 2023, <https://disability.royalcommission.gov.au/publications/diversity-dignity-equity-and-best-practice-framework-supported-decision-making>

regular contact with participants and their support networks and will often be engaged in discussions about risk and safeguarding as part of their support. The [NDIS Commission Workforce Capability Framework](#) notes that workers have a role in both supporting participants take risks while supporting them to be healthy and safe.

- While workers and providers may be well placed to have conversations with participants around their risks it is important to acknowledge some of the factors that can impact on these interactions. As noted above there can be tensions between enabling participants to take risks and actual and perceived provider and worker obligations. The NDIS Independent Advisory Council (IAC) notes that “service response to risk is often driven by fear of being blamed by families, being sued for negligence, attracting unwelcome media attention and suffering reputational damage.”¹⁵ It is also true that these barriers can manifest in regulatory responses and an increased focus on compliance.
- Participants, families, and their networks may need support to have conversations about risk. As such those engaged within the planning process to undertake these conversations will need appropriate skills and experience. The IAC suggests that appropriate caseloads, understanding of and commitment to the principles of citizenship (outlined in the Paper), training, support and resources will be necessary. Resources should be co-designed with participants and other stakeholders. Where necessary additional support outside of NDIA staff will need to be available to enhance planning and supported decision making. As noted in the Paper some participants will require time to build a trusted relationship with a person to support them to have meaningful conversations about risk.
- The Paper also raises questions about when and how participants should be engaged in discussions about risks and safeguarding. The IAC suggests that at a broad level, discussions about choice and control should also include a safety mentality.¹⁶ There will also be other formal and informal opportunities as participants engage with the NDIS but also with other systems. As acknowledged in the Paper risk appetite, and risk assessment is not static. Relying on an ‘assessment or conversation on entry’ will not be sufficient for some participants.

¹⁵ Independent Advisory Council to the NDIS (2021), Choice and Control to safely live a good life of belonging and citizenship, accessed 12 June 2023, <https://supporteddecisionmaking.com.au/wp-content/uploads/sites/4/2021/10/Advice-Choiceandcontroltosafelyliveagoodlifeofbelongingandcitizenship-Final-2021-06-13.pdf> pg. 9.

¹⁶ Independent Advisory Council to the NDIS (2021), Choice and Control to safely live a good life of belonging and citizenship, accessed 12 June 2023, <https://supporteddecisionmaking.com.au/wp-content/uploads/sites/4/2021/10/Advice-Choiceandcontroltosafelyliveagoodlifeofbelongingandcitizenship-Final-2021-06-13.pdf>

- Leveraging existing information such as that collected through NDIS processes, engagement with the NDIS Commission, provider reports and other government data will support an individualised approach to risk. Developing a shared understanding of participant safeguarding and establishing information sharing provisions will help ensure that the opportunities that exist as participants engage with these processes are utilised.

Proposal Three: Improved safeguards employed on an individual basis

Ensuring that there is sufficient support for participants to identify and implement a range of safeguards that work for their individual circumstances and that can respond quickly when these circumstances change is critical. NDS has previously identified the intersection between planning, safeguarding and quality supports. Participant plans do not always respond to participant individual risks, or individual risk appetite with appropriate support included to provide supported decision making, access to information or that recognises the intensity of support needed to ensure sustainable provision.¹⁷

Broadly NDS agrees that an approach that includes both general and targeted safeguarding strategies is necessary. Focusing on building the capacity of participants and building and maintaining natural safeguarding systems will support participants as they engage in their day to day lives. Targeted safeguarding mechanisms that respond to each participant's context are also required. The Paper outlines a range of measures that should be considered in responding to individual risks.

Providers have long called for a mechanism that enables funded and other supports to be deployed when a participant experiences a crisis. NDS would strongly support explicit and documented arrangements that enable a coordinated and rapid funding pathway where there may be critical risks to safety. Providers must be able to refer participants into this pathway as they are often the first to identify any breakdown of existing supports or circumstances that may place participants at risk. For example, recent reports by bodies such as the Ageing and Disability Commission in NSW note that paid workers continue to be the main source of reports of abuse and neglect of people with disabilities in their homes and the community.¹⁸

¹⁷ National Disability Services, (2023), Victoria, National Disability Services Submission NDIS Review – Quality and Safeguarding Framework, accessed 2 June 2023, <https://www.nds.org.au/index.php/policy-library/nds-submission-to-ndis-review-of-quality-and-safeguarding-framework> pp 18-19

¹⁸ NSW Ageing and Disability Commissioner (May 2023) Trends relating to reports of abuse and neglect of adults with disability in NSW, accessed 7 June 2023, https://www.ageingdisabilitycommission.nsw.gov.au/content/dam/dcj/ageing-disability-commission/tools-and-resources/NSW_Ageing_and_Disability_Commission_Report_Card_Adults_with_Disability_2020_to_2022.pdf

We would suggest that for these strategies to be implemented effectively and achieve the desired outcome of creating a more risk and safety responsive system attention needs to be given to the following:

- Like any group of people or organisations there is a continuum of knowledge that participants and providers have around the NDIS and the safeguarding mechanisms that are available to them. Information and resources alone may not be sufficient to build this knowledge. Strategies to engage participant and family cohorts with information will be required.
- Participants and their networks will need time and funded supports to develop natural safeguards. As noted, some participants have well established natural safeguards in place, however the effectiveness of these is likely to change over time. Others have very limited connections to informal safeguarding mechanisms. Currently it is not clear where supports for identifying risks or developing natural safeguards sit within the definition of reasonable and necessary. Both the *NDIS Participant Safeguarding* and *Supported Decision Making Policies* require access to NDIS funded supports in these areas to be in line with reasonable and necessary criteria, however they do not indicate that they will be given priority. We would suggest that the definition (and subsequent application) of reasonable and necessary include criteria related to risk identification, supported decision making and natural safeguarding to support the outcomes of this proposal.
- Where it is anticipated that intermediaries have a role, plan budgets must include adequate funding for these roles. As noted in the Paper developing the relationships required to support participants make informed decisions around the types of risks they want to take and negotiating the safeguarding mechanisms that enable these risks can take time. Too often we hear of participants receiving very limited funding for support coordination and that funding does not appear to consider participant support needs or the levels of complexity in a participant's environment.
- Planning and strategies should always begin with the assumption that participants and their networks have the capacity to make informed decisions and engage in individual safeguarding. The reality that many NDIS participants are likely to have limited personal and social capital and therefore face higher risks and more difficulty in building good natural safeguards needs to be addressed through targeted strategies. Data included in the Paper (pg. 21) notes that around 60 percent of NDIS participants have conditions that may impact their capacity to make decisions. Similarly, many participants have limited material capital and many will be part of those cohorts more likely to experience violence, abuse, neglect, and exploitation (for example participants who are children,

women, transgendered or First Nations participants). We note that the Paper identifies a role for more complex support coordination or case management, and we would suggest that where participants face more complex circumstances that there is an identified role that has primary responsibility to assist the participant, their family, and carers to review the participant's life, assess the challenges related to safety and plan, implement, review, and renew their personal strategies to feel and be safe.

- Supported decision-making is the best practice approach to uphold the rights and individual autonomy of people with disability and to enhance the ability of people with a disability to make their own decisions. NDS advocates for the need to move towards supported decision-making and away from substitute decision-making, with some caveats around potential gaps, the complexity of multiple systems and ensuring clarity of roles and responsibilities. However, for this to be embedded in practice throughout the sector and through government departments, it will need to be appropriately funded for all those who require it.
- Given that some participants may have formal substitute decision making mechanisms in place for some aspects of their lives, consideration as to how these arrangements support participants develop natural safeguards is needed. The Royal Commission has proposed a range of reforms for supported decision making and guardianship that build on work from various law reform commissions across Australia. These include how supported decision making can be better incorporated within the guardianship and administrative system including decisions being based on a person's will and preference as opposed to best interests.¹⁹
- Intersectionality and its relationship to risk and safeguarding needs to be explicitly acknowledged. This may require alternative commissioning approaches.
- The full range of risks that an individual participant may experience needs to be considered. This may be external to support provision such as family violence or within service provision such as where risks may be posed by another participant. Formal and informal safeguarding strategies will need to consider these circumstances.
- The role of community visitors needs to be further explored. NDS acknowledges that there are some benefits in retaining and building on the current state and territory based systems including enabling visits to and support of non-NDIS

¹⁹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2022), Supported decision-making and guardianship: Proposals for reform, accessed 13 June 2023, <https://disability.royalcommission.gov.au/system/files/2022-10/Roundtable%20-%20Supported%20decision-making%20and%20guardianship%20-%20Proposals%20for%20reform.pdf>

participants. However, this has also resulted in a fragmented system and lack of role clarity. Generally, NDS would support a nationally consistent and overseen community visitor system in which data and trends are easily reported and shared.

- As noted in the Paper identifying the best range of protections available for people who are receiving supports in their own homes is complex. NDS has consistently argued for a greater level of oversight via regulatory settings of these supports, where they involve personal care or significant contact with NDIS participants. At the very minimum workers delivering these supports must undergo worker screening.

5.0 Conclusion

The NDIS is founded on the notion of informed service users having choice and control of their supports and lives. Risk taking and new experiences enhance our quality of life. Developing natural safeguards can promote positive relationships with family and friends and support community engagement and inclusion.

In our recent submission to the Independent Review of the NDIS (the NDIS Review; the Review) [Issues Paper on the NDIS Quality and Safeguarding Framework](#) we highlighted a range of issues and made some suggestions as to how the [National Disability Insurance Scheme \(NDIS\) Quality and Safeguarding Framework](#) (the Framework) could better support participants to develop and leverage natural safeguarding mechanisms. An important role for any future Framework and for the formal regulatory processes that it introduces is to ensure that it enhances opportunities for individuals to exercise their rights to take risks in their lives.

Providers should and currently do support participants in ways that develop their capacity to make decisions about their lives, build their support networks, participate, and be included in their communities. Other systems should also do this. Risk taking is part of many everyday activities. Safeguards need to be sufficiently flexible and responsive to support NDS participants engage in and manage risk taking across all aspects of their lives.

The Paper is a positive step towards the NDIS and governments taking a more individualised approach to risk management that supports participants to take reasonable risks and make choices on the same basis as the rest of the population. However, we would argue that investment is still required to build:

- The knowledge, capacity, social networks and personal resources of participants and their families including through supported decision making and individual advocacy.

- Disability provider and workforce knowledge and skills for creating high-quality service cultures with robust complaints and feedback systems.
- Broader community knowledge and awareness of disability rights to enable inclusion, personal advocacy, and bystander interventions.

The Paper contains a number of well-placed underlying principles and flags some important preliminary concepts to inform future development and implementation of a range of targeted proposals. This submission has provided some suggestions which may aid future thinking and successful implementation. NDS and our members look forward to being involved in future iterations.

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