



National Disability Services Submission NDIS Review – Quality and Safeguarding Framework

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.

Contents

About National Disability Services.....	1
Contents	2
1.0 Executive Summary	3
3.0 About this submission	5
3.0 Introduction	5
4.0 The current framework and opportunities for improvement.....	7
The intersection between pricing and quality	7
The Role of the Framework in supporting quality outcomes.....	9
The role of the Framework in promoting provider accountability	10
The Code of Conduct	11
Worker Screening.....	12
Practice Standards	13
Complaints, incident management and reporting including restrictive practices.....	14
The NDIS Commission	14
5.0 The interface between the Framework and other systems	16
Data and information sharing.....	17
The role of the NDIS Commission in worker screening and restrictive practices	17
6.0 The intersection between the Framework, the NDIS Commission and the NDIA.....	18
The connection between participant plans and quality and safeguarding.....	18
Clarity of roles and responsibilities	19
The Framework and the NDIA	20
7.0 Strategies and measures	20
Balancing the tension between choice and control and safeguarding	21
Measures to drive service quality.....	22
Ensuring worker and provider regulation is proportionate and effective	24
8.0 Conclusion: Do we need a Framework and what role should it play?	25

1.0 Executive Summary

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 creating safer, quality services for all people with disability.

The [National Disability Insurance Scheme \(NDIS\) Quality and Safeguarding Framework](#) (the Framework) played a critical role in establishing a national approach to replace the patchwork of quality and safeguarding systems around the country. The work to transition from multiple, state-based quality and safeguarding systems to a national system has been both immense and has presented challenges.

Not all elements envisioned in the Framework have been implemented or implemented effectively and some strategies are not fit for purpose for the NDIS we have today. There is still work to be done to ensure that the approach to quality and safeguarding is based on human rights, culturally responsive, trauma informed, addresses intersectionality and promotes natural safeguards.

Whole-of-scheme safeguards, support for participants to make informed decisions about the services they want to use, quality mechanisms, workforce development and system oversight appear to have strayed from their original design. NDS agrees that a review and reset of the Framework is timely and welcomes the opportunity to provide feedback to the NDIS Review.

NDS is committed to assisting disability service providers to understand, implement and improve practices which safeguard the rights of people they support and result in improved services. The sector needs regulatory approaches that balance compliance and auditing with educative and developmental approaches that support good practice and innovation. A skilled, capable, diverse and sustainable provider landscape is a desirable outcome for participants, supports quality and greater choice and control.

Our submission identifies a number of themes that should be considered in the review of the Framework and that point to what a new Framework could look like.

- NDIS pricing impacts quality and safeguarding. Pricing and payment mechanisms need to enable a skilled and well supported workforce and a provider market that is able to invest in innovation.
- Requirements for providers wishing to enter or remain in the NDIS market are no longer appropriate and require resetting. All workers providing support to NDIS participants should undergo Worker Screening and providers of higher risk supports should be subject to greater oversight via registration.

- Minimum standards as outlined in the Code of Conduct that apply to the whole sector are necessary. Awareness, understanding and implementation of these principles could be monitored more proactively.
- There are opportunities to review how the NDIS Practice Standards are driving improvements in quality.
- Better coordination, use of data and information sharing across the quality and safeguarding ecosystem could streamline reporting processes, increase effectiveness, reduce duplication and regulatory burden.
- A well-resourced regulator and regulatory system are essential to ensure timely responses to issues and a proactive approach.
- Providers want to improve their practice. They seek assistance to meet their obligations. There are opportunities for the Framework to enshrine a more collaborative, relational regulatory approach. This would enable providers to identify the barriers in providing safe and high-quality services, create opportunities for co-design, sharing and celebration of good practice.
- The Framework should enhance as opposed to duplicate universal quality and safeguarding systems. Roles and responsibilities need to be clearly spelled out and a hierarchy of functions described.
- The Framework has a role in driving quality across all systems. It should support [Australia's Disability Strategy](#), improve responses across government, reduce the use of restrictive practices and build individual capacity and effective natural safeguards for people with disability, including via well-resourced independent advocacy.
- Inconsistent processes across jurisdictions increase the burden of compliance and take up valuable resources. There are opportunities to consider a national approach to Worker Screening and Restrictive Practices.
- Participant plans can support individual participant risk taking through providing support for decision making and access to information. Plans that recognise the support needed to ensure sustainable high quality service provision can enhance participant safety.
- There are opportunities for the NDIS Commission and the NDIA to work better together. The Framework presents a chance to explore how it can drive improvements in the way the NDIA supports participant safety and access to quality services.

- The Framework could play an important role in working through the tensions between supporting individuals to exercise choice and control and the obligation of providers to keep everyone safe.

3.0 About this submission

NDS welcomes the opportunity to provide input into the review of the Framework being undertaken as part of the Independent Review of the NDIS (NDIS Review). The *Issues Paper on the NDIS Quality and Safeguarding Framework* (the Issues Paper)¹ sets out a range of issues that have been identified with the Framework and poses several questions to guide feedback.

Our submission considers areas where the Framework is working well and makes suggestions for improvements that could inform the development of a future Framework for the NDIS.

It draws on data collected to inform NDS's State of the Disability Sector report² and consultations undertaken with NDS members.

We note that the NDIS Review will undertake further consultation to explore:

- How the NDIS can promote participant safeguarding.
- The approach to regulating providers, workers and intermediaries.
- Issues related to positive behaviour support and restrictive practices.

While we have touched on these issues in our response, we intend to provide tailored input into the consultation on these areas.

3.0 Introduction

NDS supported the introduction and implementation of a national approach to replace the patchwork of quality and safeguarding systems around the country. These legacy systems were of varying sophistication and effectiveness and were onerous for providers operating in more than one state or territory. NDIS participants should enjoy the protection of the same quality and safeguarding system, regardless of where they live.

The Framework developed in 2016 (released in 2017), provided a vehicle to uphold the rights of people with disability, achieve the goals of the NDIS including maximising choice and control, and design a national approach to quality and safeguarding. It also

¹ NDIS Review (2023), Issues paper on the NDIS Quality and Safeguarding Framework <https://www.ndisreview.gov.au/sites/default/files/resource/download/quality-framework-issues.pdf>

² 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>

established a national regulatory body, the NDIS Quality and Safeguards Commission (the NDIS Commission).

However, it was developed in the context of a very different participant and provider landscape than the one we are in today. Some elements of the Framework have not been implemented as envisioned and may no longer meet the needs of the current sector. NDS agrees that a review and reset is required.

The NDIS is currently supporting and will support more participants than originally anticipated. Larger numbers of children and young people under the age of 18 are accessing than the NDIS.

More than 160,000 providers supported NDIS participants in the third quarter of 2023 and there has been a significant shift in how participants are managing their plan budgets.³ Over the past 2 years the number of participants using a plan manager has increased from 45 per cent to 59 per cent. While the number of participants self-managing their plan budgets has remained consistent since 2020, approximately 30 per cent of participants self-manage some or all of their plan budget.

As a result, the proportion of unregistered providers has also increased. The latest NDIS quarterly report notes that over 145,000 unregistered providers received a payment from a plan manager.⁴

There have also been shifts in the types of support that unregistered providers are able to provide. It was initially anticipated that unregistered providers would deliver more general supports and services, for example taxi and transport services or gardening services. These supports were generally characterised by incidental contact with participants and deemed lower risk.

However, unregistered providers are now providing supported independent living (SIL), (albeit in small amounts) and increasing amounts of daily activities and social and community participation. In the January to March 2023, 25 per cent of plan managed payments for daily activities (for participants receiving SIL), 51 per cent (for participants not receiving SIL supports) and 39 per cent of payments for community and social participation supports were paid to unregistered providers.⁵

There is no publicly available data that provides an indication of the size or structure of unregistered providers or where they are operating. Anecdotally, NDS is hearing reports that a significant number of unregistered providers delivering personal care, community

³ National Disability Insurance Agency (2023), NDIS Quarterly report to disability ministers 31 March 2023 © National Disability Insurance Agency, accessed 19 May 2023, <https://www.ndis.gov.au/media/5991/download?attachment>

⁴ National Disability Insurance Agency (2023), NDIS Quarterly report to disability ministers 31 March 2023 © National Disability Insurance Agency, accessed 19 May 2023, <https://www.ndis.gov.au/media/5991/download?attachment>

⁵ Ibid

participation type supports and, in some cases, short term accommodation, are entering the market as sole traders.

The Framework was also developed prior to the [Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#) (the Disability Royal Commission) commencing. Over the last 5 years, the Disability Royal Commission has examined the effectiveness of current systems, including those enacted through the Framework, in preventing and responding to violence, abuse, neglect and exploitation. The Disability Royal Commission's final report is due in September 2023. As seen with the Aged Care Royal Commission, whose recommendations are currently informing the development of a new model for regulating aged care, the findings from the Disability Royal Commission will no doubt reshape the disability sector.

4.0 The current framework and opportunities for improvement

The Issues Paper outlines a number of areas where the Framework is working well and where it has either not been fully implemented or improvements could be made. At the time of design and implementation, the Framework provided a well-structured guide to transitioning to a national system of quality and safeguarding and the work undertaken to move towards a national system has been immense.

Importantly the Framework established a human rights approach to quality and safeguarding and was underpinned by the [National Disability Insurance Scheme Act 2013](#) (NDIS Act). At the time of development however, it was clear that there would need to be significant investment in:

- 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.

To date some investment has occurred in these areas but not all and not to the extent required.

[The intersection between pricing and quality](#)

Providers report increasing costs of compliance that are not adequately reflected in current NDIS pricing. This is leading to providers questioning whether they should become or remain a registered provider.

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 in 2022.⁶ 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'.⁷

Allowances in the current cost model for staff training, support and supervision are not sufficient to cover the cost of developing and implementing these systems. A stable, well-trained, capable and supported workforce is essential to delivering safe and quality services to people with disability.

Respondents to NDS's latest Workforce Census reported that:

- Disability workers and employers consistently report that training and development opportunities in the sector are limited. Providers note difficulties managing the cost of training – even where the training may be 'free' – as backfilling or paying for staff time to attend training comes at a cost that is currently not recoverable.
- Workers also report a lack of support and supervision in their workplaces. The cost modelling that underpins NDIS pricing allows for little or no training and supervision costs. Providers (and research)⁸ recognise the importance of supervision for service quality, coaching, worker wellbeing and retention but struggle to provide it within current NDIS pricing.
- Pay and conditions represent a barrier to people both entering and remaining in the sector. Providers want to offer workers a living wage and career pathways (including training and development) but are constrained by the cost and pricing approached in the NDIS disability support worker cost model.

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>

⁷ Ibid

⁸ McKenzie, Karen, Metcalfe, Dale, Whelan, Kathryn and Mcnall, Anne (2021) *Improving recruitment and retention in learning disability services*. Nursing Times, 117 (4). pp. 26-29

Challenges in attracting, supporting and retaining the disability workforce have been canvassed in the NDIS Review's early findings paper, [Building a more responsive and supportive workforce](#),⁹ along with a range of strategies to address these.

Compliance activities are also seen as taking time away from direct support. Forty one percent of workers in a recent survey conducted by the Australian government's behavioural economics team (BETA) indicated that concerns both about the quality of service provision under the Scheme, along with NDIS procedures were potential reasons why they would leave the sector.¹⁰ It is crucial that the regulatory burden associated with compliance take as little time away from direct support as possible, especially given the chronic workforce issues throughout the sector.

The way forward needs a serious consideration of the cost model in relation to regulatory obligations, and ongoing support to ensure all providers have the resources to provide safe and high-quality services.

While the NDIS Review will be examining pricing and payments as part of its upcoming work, care needs to be taken to ensure a siloed exploration of the issues does not overlook the intersection between pricing and quality. A skilled, capable, diverse, resourced and sustainable provider landscape is a desirable outcome for participants and is necessary to support quality and safeguarding.

This should be acknowledged in a future Framework.

[The Role of the Framework in supporting quality outcomes](#)

NDS's State of the Sector Report surveys disability service providers on the effectiveness of the Framework in supporting quality and safety and asks respondents to provide feedback on a range of individual elements.¹¹

In 2022, only 39 per cent of providers were confident that the Framework supports the quality of services and outcomes (significantly lower than the 45 per cent of respondents who agreed in 2021). Forty-one per cent disagreed or strongly disagreed that the Framework was supporting positive participant outcomes, a worse result than in previous surveys. Support or lack thereof for the Framework and its components was consistent finding across key organisational features, including state, size (by income) and whether organisations were for-profit or not-for-profit.

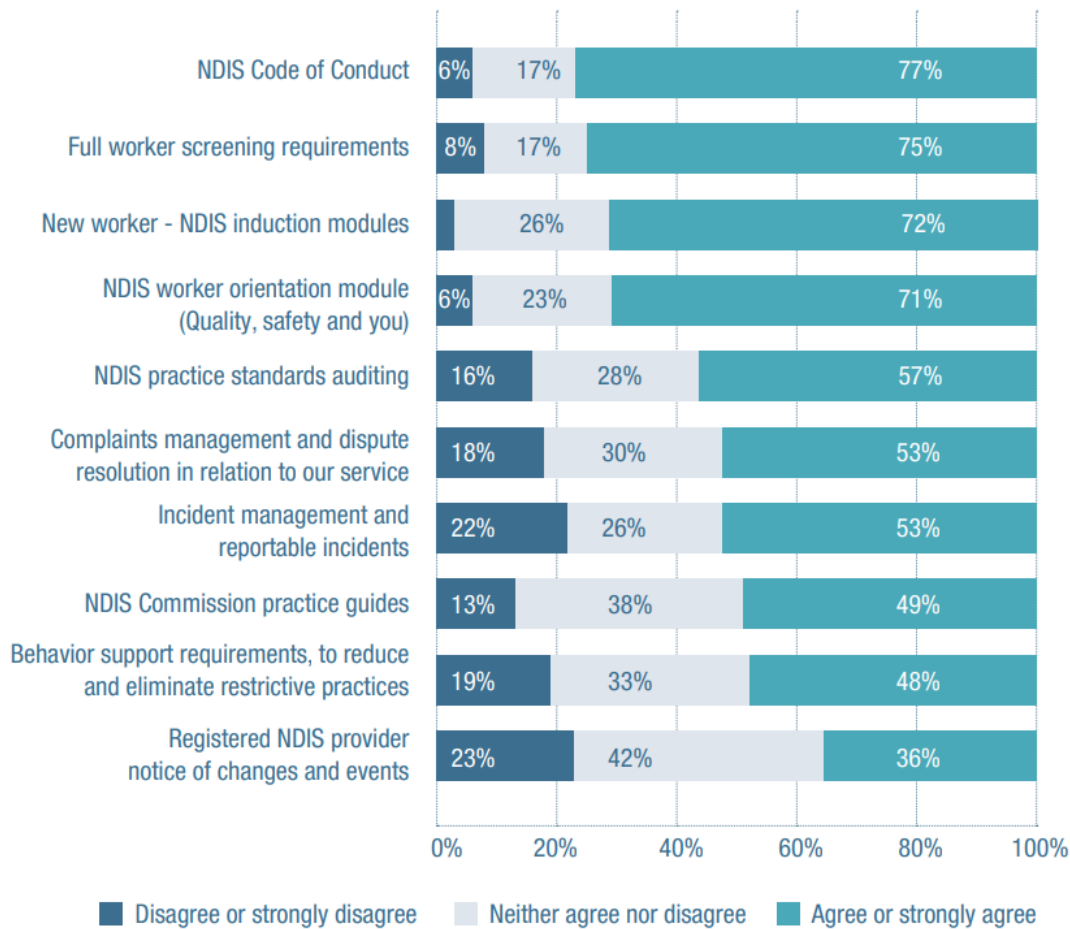
⁹ NDIS Review (2023) Building a more responsive and supportive workforce, accessed 19 May 2023, <https://www.ndisreview.gov.au/sites/default/files/resource/download/building-a-more-responsive-and-supportive-workforce.pdf>

¹⁰ Behavioural Economics Team of the Australian Government (2023), NDIS Workforce Retention: Findings from the NDIS workforce survey, accessed 24 May 2023, <https://behaviouraleconomics.pmc.gov.au/sites/default/files/projects/ndis-workforce-retention-survey.pdf>

¹¹ 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>

These results reflect general concerns about the regulatory environment across the entire service ecosystem. This is shown by 60 per cent of all respondents agreeing or strongly agreeing that ‘there are too many unnecessary rules and regulations (that) my organisation has to follow’. While the Framework had the objective of reducing red tape and duplication across systems, this goal has not been achieved.

Figure 1: Quality and Safeguarding Framework is leading to good outcomes for participants



The role of the Framework in promoting provider accountability

A major theme in respondents’ comments to the State of the Sector report was the call for greater accountability for unregistered providers and greater consistency and fairness in the application of regulatory instruments between registered and unregistered providers.¹² In some sense this ‘uneven’ playing field creates distrust and

¹² 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>

devalues support of the Framework and is seen as undermining the purpose of the entire regulatory system.

This theme has been echoed across many consultations undertaken by NDS, including through a pulse survey conducted in November 2022 to inform our submission to the NDIS Review.¹³ In a further consultation with over 100 disability service providers, to inform the Framework review, concern about the level of oversight of what is a growing unregistered provider segment, was the single most issue raised.

The Framework proposed a tiered approach to regulation and oversight based on a number of factors.

Factors include the types of supports being provided and whether these are considered high or low risk, the size of the providers and therefore number of participants being supported and whether other regulation applies (for example, where a provider may be required to be registered with AHPRA).

However, some of these settings and the way in which they are being applied, no longer ensure that providers of higher risk supports such as personal care or 24/7 accommodation supports are captured within this approach. When the scheme began, all SIL funding was managed by the NDIA and thus only delivered by registered providers. SIL funding can now be managed by plan managers, meaning unregistered providers can and are being used.¹⁴ Similarly, there is the potential for providers supporting large numbers of participants to operate with limited oversight.

Resetting the Framework provides an opportunity to ensure that the delivery of high-risk supports is restricted to providers that are subject to increased oversight and regulation by the NDIS Commission.

The Code of Conduct

At base line all NDIS workers and providers, registered and unregistered, must adhere to the Code of Conduct. The NDIS [Code of Conduct](#) is a clear and sound document that guides staff and organisations on expectations about how they will work with and support NDIS participants. It has a strong education and expectation role in driving the delivery of high quality and safe supports to people with disability.

As demonstrated in Figure One above, the Code of Conduct and the provision of support to workers to understand and apply it are viewed positively as contributing to good outcomes for participants. This was echoed across consultations where providers

¹³ National Disability Services (2022) Victoria, National Disability Services Submission- Have your say: NDIS Independent Review Panel, accessed 2 May 2023, https://www.nds.org.au/images/Policy/NDS_Pulse_Survey_IRP_submission_FNL

¹⁴ National Disability Insurance Agency (2023), NDIS Quarterly report to disability ministers 31 March 2023 © National Disability Insurance Agency, accessed 19 May 2023, page 92. <https://www.ndis.gov.au/media/5991/download?attachment>

were clear that having a minimum set of standards that apply to all workers and providers regardless of size, support or registration status provides is required.

However, NDS continues to have concerns around its adequacy as an enforcement tool. The Framework does not provide for use and application of the Code of Conduct to be monitored in proactive ways. For unregistered providers there is currently no assessment of whether they are aware of the Code of Conduct, no requirements to detail the steps that they will take to implement it or monitoring of the effectiveness of these measures. This lack of monitoring or absence of line of sight also inhibits the capacity of the NDIS Commission to target capacity building initiatives to this section of the market. Monitoring the application of the Code of Conduct through regular reporting based on self-assessment (with relevant documentary evidence) by all providers should be included as part of a future Framework.

Worker Screening

The concept of a national system of worker screening was also seen as positive by respondents to our State of the Sector report.¹⁵ This is notwithstanding issues experienced with the various systems being used across states and territories to undertake screening, including costs and manual application systems. As noted in the recently released NDIS Review early findings paper, *Building a more responsive and supportive workforce*, current arrangements are creating delays for workers and employers and may be creating barriers for workers joining the sector.¹⁶

It appears that the intent of the Framework (page 61) was “to ensure that workers, including employees, agents, volunteers, contractors, and sub-contractors engaged by NDIS providers and the NDIA that have significant contact with people with disability” underwent risk-based screening. However, the inconsistent application of NDIS Worker Screening is an issue with worker screening being optional for unregistered providers. While participants may request that their worker undergo worker screening, the understanding among participants and their families about the role of screening varies.

Since before the NDIS began, NDS has advocated for the need to strengthen several safeguarding measures to protect participants. The current system gives room for unscreened workers and allows those who have not met requirements to continue working in the sector. This introduces clear risks for participants. There is no justifiable reason not to require this safeguarding measure for all workers with more than

¹⁵ 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>

¹⁶ NDIS Review (2023) Building a more responsive and supportive workforce, accessed 19 May 2023, <https://www.ndisreview.gov.au/sites/default/files/resource/download/building-a-more-responsive-and-supportive-workforce.pdf>

incidental contact with NDIS participants, and not only those engaged by registered providers. This should be rectified in a future Framework.

NDS recommends that all workers involved the delivery of NDIS supports should require a NDIS Worker Screening; that the government is accountable for educating consumers on the requirements for NDIS Worker Screening; and changes are made to the NDIS Worker Screening process to ensure it is accessible and timely.

Practice Standards

Overall, the sector is supportive of an agreed set of quality standards to guide and assess practice. However, providers have raised concerns about the cost and questioned the value of the audit process in driving continuous quality improvement.

The report from the Joint Standing Committee inquiry on the operations of the NDIS Commission¹⁷ notes a range of concerns related to the quality of audits, the skills and qualifications of auditing staff and the lack of representation of consumer technical experts.¹⁸

The cost of obtaining an audit remains an issue for providers, auditing prices vary considerably and there is no guidance for providers on what cost they should expect. NDS is currently participating in a review of the approved quality auditors' scheme and is hopeful that this will identify and address a range of issues with the current audit process.

A revisited Framework also enables an assessment of whether efforts to date to educate workers, providers, participants and the community about the Practice Standards have been effective. The [Workforce Capability Framework](#) aims to translate the Code of Conduct and Practice Standards into an observable set of worker and organisational behaviours. Continuing to seek feedback from participants, workers and providers on how they engaging with the Capability Framework would be useful.

The *NDIS Commission Activity Report 1 January to 31 March* indicates that over 13,000 audits (including certification and verification audits) have been conducted.¹⁹ At this stage in the NDIS there is an opportunity for a summary of audit findings, including a focus on what types of non-compliances were being identified to be shared with the sector, including in a format that is accessible to people with disability. Knowledge will

¹⁷ Joint Standing Committee on the NDIS Final Report on the NDIS Quality and Safeguarding Commission (2021) © Commonwealth of Australia 2021, accessed on 1 May 2023, https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024506/toc_pdf/NDISQualityandSafeguardsCommission.pdf;fileType=application%2Fpdf

¹⁸ Ibid

¹⁹ NDIS Quality and Safeguards Commission Activity Report 1 January – 31 March 2023 (2023), © National Disability Insurance Scheme Quality and Safeguards Commission, accessed 10 May 2023, <https://www.ndiscommission.gov.au/sites/default/files/2023-05/NDIS%20-%20Activity%20Report%20Jan%20-%20Mar%202023%203.1.pdf>

help improve practice and could help participants better understand the role that Practice Standards can play in driving improvements in quality.

Complaints, incident management and reporting including restrictive practices

Providers agree that it is important for complaints and incidents to be reported and managed. There is a need, however, for greater clarity on what incidents need to be reported to the NDIS Commission. This reporting mechanism is important for ensuring safeguards, to identify harms and trends, and to address issues. However, the current system of reporting can be burdensome and repetitive.

A clear example is the process to authorise and report on the use restrictive practices. Within the current Framework the use of restrictive practices with NDIS funded participants must be authorised through a process determined by each jurisdiction. While all governments have committed to the *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Services Sector*²⁰ and efforts to align legislation and processes against a set of nationally agreed principles for authorising restrictive practices, this is yet to be fully achieved. Additionally,, providers in some jurisdictions are required to report the use of authorised and unauthorised restrictive practices twice: to the NDIS Commission and the relevant state-based authority.

NDS understands that the NDIS Review will be considering issues related to positive behaviour support and restrictive practices in the future and welcomes the opportunity to contribute to this.

However, the review and resetting of the Framework presents an opportunity to further streamline these systems, enhance data sharing and adopt a 'report once, use often' approach.

The NDIS Commission

Responses to the State of the Sector survey indicate that only 22 per cent agreed that the NDIS Commission was working well with providers, while 47 per cent either disagreed or strongly disagreed.²¹

Providers express concerns about the responsiveness of the NDIS Commission. Issues and delays across its various functions such as registering or re-registering providers

²⁰ Department of Social Services (2023) National Framework for Reducing and Eliminating the Use of Restrictive Practices in Disability Services Sector, Australian Government, <https://www.dss.gov.au/our-responsibilities/disability-and-carers/publications/articles/policy-research/national-framework-for-reducing-and-eliminating-the-use-of-restrictive-practices-in-the-disability-service-sector>

²¹ 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>

continue to cause frustrations. Providers report waiting many months after the results of their audit have been submitted for confirmation of their status.

Other concerns were raised in relation to communication from the NDIS Commission, particularly relating to notice given regarding changes to obligations and requirements. A recent example includes the release of the new High Intensity Support Skills Descriptors. Providers note that additional time and guidance on how to implement these was necessary.

Providers also expressed that the relationship with the NDIS Commission to date is more 'stick than carrot'. While the Framework outlines three key domains, developmental, preventative and corrective, the Issues Paper identifies sector concerns that strategies have been more focussed in the preventative and corrective domains, with less attention being given to those that build the capability and support systems necessary for safeguarding and quality.

The new regulatory approach released by the NDIS Commission in January 2023 includes a focus on education as one of the levers to promote quality and participant safety.²² This is welcome, the sector needs regulatory approaches that balance compliance and auditing with educative and developmental approaches that support good practice and innovation.

While activities in the corrective and preventative domains provide opportunities for the NDIS Commission to work with participants and providers to develop their capacity, this may be limited to the individual participant or provider involved. Sharing more information such as key themes emerging from incident investigations and complaints resolution activities would enable the sector to learn and improve practice.

Across our consultations, providers consistently expressed a desire for more support, clarity of information and resources to build their capacity to improve the quality of their services and strive toward good practice. They would like to see the NDIS Commission play a larger role in this. Providers are asking for less emphasis on what they need to do or their obligations and more guidance on how they can meet these. As one provider in our consultations said "We should have standards that we have to reach. But don't make us guess what it is we have to do to reach [them]."

More specific suggestions around how the Framework could improve service and support quality are included later in this submission.

An adequately resourced regulatory body is required, supported by a Framework that enshrines 'relationship-based regulation' underpinned by more meaningful engagement

²² NDIS Quality and Safeguards Commission Regulatory Approach (2023), © Commonwealth of Australia (National Disability Insurance Scheme Quality and Safeguards Commission) 2022, accessed 10 May 2023 https://www.ndiscommission.gov.au/sites/default/files/2023-05/Regulatory%20Approach%202023_0.pdf

and a collaborative approach from the regulator. This would allow for greater opportunities for the regulator to hear from providers about the barriers they face in providing safe and high-quality services, and opportunities for co-design, sharing and celebration of good practice. The recent budget announcement that saw additional funding be allocated to the NDIS Commission was timely.

5.0 The interface between the Framework and other systems

The Issues Paper notes the way in which the Framework supports and is supported by other quality and safeguarding systems is not clear.

To promote quality and safeguarding, the Framework needs to recognise and work in conjunction with the range of non-disability specific systems that have a role in safeguarding all people with disability in the community.

The Framework should enhance, as opposed to duplicate universal quality and safeguarding systems built on human rights-based approach. The Police, Courts, Human Rights Commission, Consumer Affairs, Safe Work Authorities, Public Advocates, Ombudsman and the Fair Work Commission, should be responsive to people with disability. However, these systems are complex, sometimes overlap and the roles and responsibilities of various core institutions are not clear.

A future Framework should better articulate the roles, responsibilities and intersections of disability-specific and universal quality and safeguarding systems and provide a clear hierarchy of functions. This would help providers balance the tensions that can occur between their obligations under different regulators such as Safe Work Authorities which rightly focus on worker safety.

Further clarity on the role of the Framework and NDIS Commission in monitoring and improving the quality and safety of mainstream services and those generally available in the community is needed. NDIS participants represent only a small number of people with disability in our community and as evidenced in the Disability Royal Commission there are a range of factors that result in people with disability experiencing greater levels of violence, abuse, neglect and exploitation.

Mapping the various points at which people with disability interact with these services, the quality and safeguarding mechanisms that apply and the way in which the Framework intersects with these systems could be useful. Ensuring that participants and people making a complaint experience a 'no wrong door' response that includes a warm handover is critical. While this is the intent of the current Framework participants and providers have provided examples where they feel bounced between the NDIS Commission and other complaints bodies.

Further the Framework should explicitly link to Australia's Disability Strategy and support its efforts to improve responses across government, reduce the use of restrictive practices and build individual capacity and effective natural safeguards for people with disability including via well-resourced independent advocacy.

Data and information sharing

There are significant opportunities for better information and data sharing across the NDIS and other quality and safeguarding systems. An effective joined up system relies on these processes being efficient and effective. Improving ways to share data could also reduce duplicative reporting and reduce red tape. The lack of sufficient protocols to guide information sharing between the NDIS Commission, states and territories was noted in the report from *Joint Standing Commission on the NDIS Inquiry into the NDIS Commission* and in the Disability Royal Commission. The Joint Standing Commission called for enhanced information sharing protocols with states and territories and that these be publicly available. The Framework provides an opportunity to further detail these expectations and any legislative changes necessary to enact these.

The role of the NDIS Commission in worker screening and restrictive practices

As noted above, within the current Framework state-based authorities are responsible for worker screening and authorising restrictive practices.

In relation to worker screening the processes employed and the requirements across states and territories differ. The NDIS Review [*Building a more responsive and supportive workforce early findings paper*](#) makes recommendations to streamline the process for workers to get an NDIS Worker Screening Check. Different processes and requirements across state and territory processes can create issues for workers, providers and the participants that they support.

The Disability Royal Commission has explored the role of a Disability Worker Registration Scheme with the option of this being provided by the NDIS Commission. While this scheme would go beyond worker screening, NDS would support the exploration of the worker screening system being brought under the NDIS Commission with the Commission being responsible for conducting worker screening nationally.

NDS has also suggested that there could be merit in further streamlining worker screening requirements across the support and care sector, creating the equivalent of a national 'vulnerable person's check' that would enable workers to work across sectors without needing multiple checks.

Efforts are being made to better align processes in relation to restrictive practices. However, there is still significant work to do. At the time of developing the Framework there were significant differences in the various legislative instruments governing restrictive practices across jurisdictions, however as the work to align definitions and

processes continues it would timely in to consider a national approach to authorising restrictive practices and make this the role of the NDIS Commission.

6.0 The intersection between the Framework, the NDIS Commission and the NDIA

The Framework recognises that the National Disability Insurance Agency (NDIA) and NDIS planning process play an important role in safeguarding and that a coordinated approach between the NDIS Commission and NDIA would be required.

The connection between participant plans and quality and safeguarding

Providers have identified that there can often be a mismatch between the Framework and decisions related to the reasonable and necessary support being provided to the participant.²³ 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, consistent with quality standards.

All providers have obligations under the Code of Conduct and registered providers have additional obligations under the Practice Standards. Examples abound where providers have had to manage the tension between what has been deemed reasonable and necessary support and their duty of care and obligations. As noted in the *NDIS Commission Own Motion Inquiry on Aspects of Supported Accommodation report*²⁴ plan funding can have an impact on quality and safeguarding and facilitating choice and control for NDIS participants in supported accommodation arrangements.

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. NDIS planning must identify what safeguards are available to a NDIS participant (formal and informal), and where there are gaps, seek to address them, through measures such as providing adequate support coordination and/or ensuring an advocacy service is in regular contact. NDS urges further work be undertaken by the NDIS Commission and the NDIA on how the planning for participants with complex needs and for those with little informal support is undertaken and funding decisions made. Where a participant lives in quite isolated circumstances, a formal, independent advocacy arrangement should be in place.

²³ Ability Roundtable (2023), Supported Independent Living Ability Roundtable White Paper: Insights into NDIS supported accommodation, accessed 24 May 2023,

<https://www.abilityroundtable.org/post/supported-independent-living-sil-insights-white-paper>

²⁴ NDIS Quality and Safeguards Commission (2023), Inquiry Report: Own Motion Inquiry into Aspects of Supported Accommodation, accessed 30 April 2023,

<https://www.ndiscommission.gov.au/sites/default/files/2023-04/Own%20Motion%20Inquiry%20into%20aspects%20of%20supported%20accommodation%20Final.pdf>

The recently released NDIA [Participant Safeguarding](#) and [Supported Decision Making](#) policies are good first steps in articulating the role that the NDIS should play in ensuring participant safety and identifying the supports that the NDIS can provide to strengthen natural safeguarding options available to participants.

Clarity of roles and responsibilities

A future Framework could also provide more clarity on responsibility of information provision to providers between the NDIA and NDIS Commission. This was borne out during the Covid-19 pandemic where information provided to service providers was sometimes slow, haphazard, insufficient or conflicting.

Improved processes to enable greater information sharing between the NDIA and NDIS Commission was identified in the Robertson Report into the circumstances surrounding the death of Ann Marie Smith²⁵ and across subsequent Disability Royal Commission hearings. Identifying how the NDIS Commission and the NDIA can better share data related to individual participant risks as well as the risks that market failure and thin markets present, would also strengthen participant safeguarding. The NDIA holds significant data related to plan utilisation. While it is likely that this is used by the NDIS Commission as an indicator of potential market failure, there is little visibility of how this might inform NDIS Commission or NDIA responses or interventions, or impact on planning or commissioning decisions.

The Framework provides some guidance on the different roles and responsibilities between the NDIS Commission and the NDIA; however, it is not clear how the work of one agency influences or guides the work of the other and how this is coordinated beyond responding to individual circumstances. For example, decisions made by the NDIS Commission to introduce new Practice Standards are likely to require adjustments in the way that participant plans are developed or structured, in addition to the cost to providers of implementing these standards.

NDS has previously noted issues with the delivery of supports to those participants with psychosocial disability who require support from workers with greater skills, experience and qualifications.

Providers supporting these participants who are NDIA managed must be registered to deliver High Intensity Activities of Daily Living to provide this support to participants. However, [Supplementary Module 1, High Intensity Daily Personal Activities](#) has largely

²⁵ See Recommendation 1: Robertson, Alan 2020, Independent review of the adequacy of the regulation of the supports and services provided to Ms Ann-Marie Smith, an NDIS participant, who died on 6 April 2020: [Report to the Commissioner of the NDIS Quality and Safeguards Commission \[PDF\]](#) (p. 7).

been designed for providers of supports for participants with complex medical conditions and is not an appropriate standard for these providers to be audited against.

This lack of coordination can mean that some opportunities to drive quality and improve safeguarding may be missed. Further discussion and collaboration between the NDIA, NDIS Commission and service providers could design strategies to ensure disability support workers receive the professional development they may need to incorporate good practice such as improving access to high quality supported decision making for participants.

The Framework and the NDIA

The current Framework, while referencing the NDIA and the work that it does, does not apply to the NDIA. Complaints about the NDIA are made through the Commonwealth Ombudsman. Issues with access and planning decisions are also managed via the NDIA's review processes and through the Administrative Appeals Tribunal.

Participants and providers have reported concerns about their engagement with and responses from the NDIA. In their *Interim Report on the Culture and Capability of the NDIA*,²⁶ the Joint Standing Committee on the NDIS identified a range of issues that stakeholders experience in their dealings with the NDIA. The Interim Reports makes recommendations relating to training for NDIA staff and partners in the community, ensuring that a participant centred and user lead approach is embedded in the NDIA's culture and for improvements in the transparency and quality of decisions. The Disability Royal Commission has also explored the role of the NDIA in preventing and responding to violence, abuse, neglect and exploitation and ensuring that participants' human rights are enacted.

The final reports of the Joint Standing Committee and the Disability Royal Commission and their recommendations presents opportunities that could be explored in the Framework. These include the role it can play in ensuring a more effective working relationship between the NDIS Commission and the NDIA and how it can drive improvements in the ways in which the NDIA supports participant safety and access to quality supports.

7.0 Strategies and measures

We have provided suggestions throughout this submission on how the various strategies and measures outlined in the Framework could be enhanced. Some additional comments are made below.

²⁶ Joint Standing Committee on the National Disability Insurance Scheme Capability and Culture of the NDIA: Interim Report (2023), © Commonwealth of Australia 2023, accessed 2 May 2023 https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/025031/toc_pdf/CapabilityandCultureoftheNDIAInterimReport.pdf;fileType=application%2Fpdf

Balancing the tension between choice and control and safeguarding

Disability service provision involves the interaction of multiple parties, the interests of whom sometimes conflict. At an organisational level, there is a duty of care to all service users, and this may be in tension with concepts of dignity of risk and choice and control for individual service users. Additionally, a service user's family may have wishes that conflict with that of the provider or service user, and/or which are not able to be carried out by the service provider. Each worker also has the right to a safe working environment, and the community has a right to expect to be safe when in public.

This balance between dignity of risk for the individual and duty of care to a range of stakeholders is one which providers navigate daily. Providers may be reluctant to take a risk approach in cases where they retain the risk, if it could result in harm to the participant. Anecdotal reports suggest legal advice sought on these issues has pointed to caution and risk reduction. Greater clarity and support for providers to navigate this balance is required, along with formally reconciling the relationship to existing regulation and external contexts.

In our original submission to the development of the Framework, NDS proposed that choice is a necessary but not a sufficient driver of quality. Market forces alone will not produce high quality, safe services. We suggested that increased consumer choice will help to assure quality, if there is investment that promotes informed choice and enhances the quality and range of services from which participants can choose.

However, choice alone cannot replace standards and monitoring. We used the example of a different consumer-oriented market –restaurants. Consumer choice helps drive quality and diversity among restaurants, but the public rightly expects some standards to be monitored and enforced to protect them from harm. They do not believe that choice should expose them to the risk of food poisoning.

The bar for entering the disability 'market' should also not be so high that the choices available to participants are restricted or mean that a participant can't access the support that they require but should not be so low that it puts participants at greater risk of harm.

Mechanisms that support participants to enact choice and control are necessary. These include:

- Implementing best practice approaches to safeguarding, including building natural safeguards and quality that are culturally responsive and trauma informed.
- Strategies that ensure that participants have accessible and accurate information about the availability and quality of supports and services. These need to include the role of supported decision making and independent advocacy in facilitating

choice and control and enhancing the positive influence of participant choice on the market. Providers understand the role of independent advocacy in supporting participants navigate the 'market', however are deeply concerned that there is a lack of sufficient advocacy for the people that they support.²⁷

- A description of standards of quality that NDIS participants, their informal supports and the community should expect. This could include a definition of high quality supports as recommended by the Aged Care Royal Commission or a better articulation of what good and bad looks like.
- Supplementing natural safeguards provided by family and friends with a well-resourced national Community Visitors scheme. While the Framework identifies the establishment of a community visitors scheme overseen by the NDIS Commission this is yet to be established, however is listed as a targeted action in [Australia's Disability Strategy Safety Targeted Action Plan](#).

The Framework acknowledges that supporting participants to take risks and exercise choice and control while balancing safeguarding obligations is a complex issue. Practical guidance could support participants and providers navigate this tension. Clear definitions of the concepts, examples of questions or a framework that could assist providers explore these issues with participants and make decisions where 'dignity of risk and duty of care' intersect and illustrations of good practice could be included in the Framework.

Measures to drive service quality

In our recent consultation with over 100 providers, we asked attendees to identify how the Framework could improve service quality. Enhancing guidance available on good practice and providing examples of this was the most popular choice.

Increasing the focus in the Framework on directing resources to measures in the developmental domain is required for participants, and providers. The NDIS Commission has collected a rich source of data that holds potential for it to engage in greater education and information provision across the entire sector.

The Framework could support this in several ways:

- Emphasising the need for a stronger developmental role with providers. This could be undertaken by providing free training on zero-tolerance cultures, and resources relating to registration compliance requirements regarding preventing violence, abuse, neglect and exploitation. These could include understanding the

²⁷ The State of the Disability Sector 2022 report notes that only 14 per cent of respondents agreed that there was sufficient advocacy for the people that they support. National Disability Services (2022) Victoria, accessed 16 May 2023, <https://www.nds.org.au/about/state-of-the-disability-sector-report>

risk factors and prevention techniques involving violence, exploitation, abuse, neglect.²⁸

- Greater use, interrogation and interpretation of data (including more publicly available information regarding aggregated audit findings). A national Framework and regulator mean that we have a national view of the disability sector which no authority has ever had before. This, combined with the amount of data available and emerging technologies, could allow for deep and authoritative insights into the state of quality and safeguarding across the country. This ability could be used to determine where the sector can improve, and where services may require more education to improve the quality of service and address gaps.²⁹
- Highlighting key themes the NDIS Commission is observing with respect to quality and safeguarding across the country. Whereas regulator reports often highlight areas where sectors require particular improvement the NDIS Commission's activity reports primarily focus on activity it has undertaken and statistics regarding complaints and reportable incidents, further interpretation would help paint the picture of what is happening nationwide. A proactive approach such as that taken in the Own Motion Inquiries into SIL and Platform Providers can draw out themes and identify areas requiring a targeted response. NDS members seek benchmarks to understand their level of competency in respect to other organisations.
- Promoting evidence-based practice on preventing and responding to all forms of violence, exploitation, neglect, and abuse by disability providers. This may involve promotion of good-practice examples and sharing of quality approaches via information such as the ongoing publication of providers' approaches.
- Centralising a clearing house of resources that enables access by providers, similar to those by the Aged Care Quality and Safety Commission and the Australian Commission on Safety and Quality in Health Care.

The approach as outlined in the *NDIS Commission's Regulatory Approach* is likely to support some of these initiatives.³⁰

²⁸ Both the Aged Care Quality and Safety Commission and the Australian Commission on Safety and Quality in Health Care house publications, resources and information on topical, poor performing areas of practice in a way that is easy to navigate and is accessible for a wide range of providers.

²⁹ 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>

³⁰ NDIS Quality and Safeguards Commission Regulatory Approach (2023), © Commonwealth of Australia (National Disability Insurance Scheme Quality and Safeguards Commission) 2022, accessed 10 May 2023 https://www.ndiscommission.gov.au/sites/default/files/2023-05/Regulatory%20Approach%202023_0.pdf

Ensuring worker and provider regulation is proportionate and effective

While the role of provider and worker regulation will be explored further by the NDIS Review, there are several areas where the Framework could improve regulation.

- To help providers to deliver high-quality support, there needs to be market regulation that protects minimum standards. This requires consistent and fair application of compliance with quality standards, including self-managed plans to ensure that market competition is not at the expense of essential safeguards (such as appropriate staff screening).
- Reset the way in which risk profiles are used to determine the level of regulation. Data collected should be used to regularly review the state of the disability market and participant risk profiles. However, supports such as personal care and all forms of accommodation supports should be provided by providers who are required to meet more than minimum standards. The current review of the [Regulatory Framework in Aged Care](#) provides a useful way that these requirements can be applied.
- Greater level of detail regarding compliance and enforcement breaches, and penalties applied. The level of detail provided is currently limited. There are examples (including Australian health and safety and aged care regulators, and the disability services regulator in New Zealand) which show how a level of detail can be provided whilst maintaining appropriate privacy considerations.³¹ NDS suggests information be released pertaining to: the nature of the breach as proven; how long it occurred; any actions taken by the NDIS Commission; and any penalties issued. This has potential to provide not only a general deterrent to other service providers but may be educative in assisting them to understand how the regulator expects disability services should be delivered and support providers' practical and proactive approaches.
- Consider the requirements for providers who are required to undergo other registration processes which require formal independent assessment against comparable quality and safeguarding mechanisms. Cross-recognition of quality systems across human services and enabling providers to choose the quality monitoring arrangements that suit them best would reduce compliance burden. Work is underway to better align regulation across the care and support sectors. This holds the promise of reducing duplication and red tape. The first reforms saw changes to aged care legislation to recognise NDIS Worker Screening clearances. Other proposals on the table include the development of common

³¹ See information available on [New Zealand's Health and Disability Commission website](#)

core and sector specific supplementary service standards and single point monitoring (report once, use often). Such proposals have merit in a sector that has been required to adjust to ongoing changes in policies, procedures and processes. Alignment activities need to be minimal and fast-tracked, follow a codesign model, and take every opportunity to streamline compliance requirements without compromising quality or safety.

8.0 Conclusion: Do we need a Framework and what role should it play?

Overwhelmingly providers have indicated that a Framework that provides a coordinated approach to quality and safeguarding across government and the disability sector is required. Polling across our consultation sessions indicated strong support with 98 per cent of people attending answering yes to the question “Do we need a Quality and Safeguarding Framework?”.

The review of the Framework represents an opportunity to utilise the experiences across the sector over the last seven years to design a more contemporary approach to quality and safeguarding based on good practice and lessons learned through the Disability Royal Commission and other inquiries.

A future Framework has an important role in supporting Australia’s vision for an inclusive Australian society that ensures people with disability can fulfil their potential as equal members of the community. It can do this through establishing an agreed set of objectives and measurable outcomes that promote access to safe and high-quality supports underpinned by principles that uphold the rights of people with disability, build capacity for participants to engage their natural safeguards and that are culturally responsive and trauma informed.

A future Framework can also embed an approach where key stakeholders such as participants, providers, the NDIS Commission, the NDIA and come together as partners to promote inclusive design, collaboration and shared decision making in the design, development, implementation and evaluation of related policies, strategies, programs and initiatives.

There are opportunities to learn from reforms taking place in other sectors such as aged care and take advantage of efforts to better align regulation and quality and safeguarding initiatives across the care and support sectors. A Framework that includes initiatives that broaden the focus from registration, compliance and reporting and prioritises measures and actions that are proactive, educative and developmental will support good practice and innovation. Regulation alone will not drive quality or guarantee safety.

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.

An effective and robust Quality and Safeguarding Framework is essential to ensuring that the NDIS achieves its enormous potential to improve the lives of people with disability.

Contact: Laurie Leigh
CEO
National Disability Services
laurie.leigh@nds.org.au
May 2023