



Women
With
Disabilities
Australia
(WWDA)

Winner, National Human Rights Award 2001
Winner, National Violence Prevention Award 1999
Winner, Tasmanian Women's Safety Award 2008
Certificate of Merit, Australian Crime & Violence Prevention Awards 2008
Nominee, UNESCO Prize for Digital Empowerment of Persons with Disabilities 2020
Nominee, National Disability Awards 2017
Nominee, French Republic's Human Rights Prize 2003
Nominee, UN Millennium Peace Prize for Women 2000

NDIS Review Secretariat
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NB: Also uploaded to NDIS Review at:
<https://www.ndisreview.gov.au/have-your-say/have-your-say-online>

02 June 2023

Dear NDIS Review Secretariat

Response to Issues Paper – NDIS Quality and Safeguarding Framework

I write to you from Women With Disabilities Australia (**WWDA**),¹ the National Disabled People's Organisation (**DPO**) and National Women's Alliance (**NWA**) for women, girls, feminine identifying, and non-binary people with disability in Australia. WWDA welcomes the opportunity to respond to the *Quality and Safeguarding Framework Issues Paper (the Issues Paper)* below. In doing so, we refer to and rely on our submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, in response to the Safeguards & Quality Issues Paper (**DRC Submission**) which sets out our concerns and recommendations in greater detail.²

In addition to responding to the questions specified in the Issues Paper, WWDA makes the following general recommendations to the Australian Government as further articulated in our DRC Submission (attached):

1. Reframe and rename 'safeguarding' within the NDIS (and more broadly) in terms of international human rights, violence prevention and response, and access to justice. This requires wide-ranging structural and systemic reform to provide the same non-paternalistic and non-violent approach to ensuring the safety of people with disability as applies to the general population.³

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2. Introduce independent, harmonised frameworks to promote, protect and advance the human rights of people with disability. This includes an over-arching mechanism to drive implementation of the Australian Disability Strategy, an independent statutory mechanism to receive and investigate reports and enforce findings in relation to all forms of violence against all people with disability and ensuring that frameworks developed are co-designed with people with disability.⁴
3. Urgently review 'safeguarding' frameworks that perpetuate and legitimise harm against people with disability and are underpinned by an ableist culture.⁵ This includes ending segregation,⁶ the denial of legal capacity,⁷ and the *regulation* of restrictive practices, with a focus on a systems-wide elimination and prohibition, consistent with the recommendations of the United Nations Committee Against Torture.⁸

What is working well about the Framework? What is not working well to promote safeguards of people with disability and the quality of supports?

The objectives of the Framework are underpinned by human rights principles and seek to give effect to provisions of the Convention on the Rights of Persons with Disabilities (**CRPD**).⁹ WWDA strongly supports a human-rights based approach to ensuring the safety, wellbeing, and agency of people with disability. However, despite the objectives of the Framework, it fails to give effect to human rights principles or the CRPD in practice. The Framework also fails to specifically address the safety of women and girls, notwithstanding the CRPD's recognition that women and girls with disabilities "are subject to multiple discrimination" at the intersections of their gender and disability.¹⁰ While the Framework makes mention of gender-based violence, it provides limited meaningful action, proposing only the identification of risks via formal risk assessment.¹¹ Of the several NDIS regulatory mechanisms, it is also the only framework to acknowledge gender-based violence.¹² Disappointingly, while the Issues Paper recognises the unique experiences of NDIS Participants of various demographics, it does not explicitly mention women and girls.

Is there still a need for a Framework? What role should it play and what should it look like?

There is an urgent need to address the epidemic of violence against people with disability in Australia,¹³ and ensure that services promote safety, wellbeing, and agency. This need cannot be met in the absence of a consistent and over-arching approach that advances the human rights of all people with disability.

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The Framework must play a preventative and proactive role in ensuring there is zero tolerance for all forms of violence against all people with disability, including violence which is legally or socially authorised (such as the use of restrictive practices, institutionalisation, and forced sterilisation, forced contraception, and forced menstrual suppression).¹⁴ It must also provide for independent mechanisms with broad educative, compliance, enforcement, and redress functions, to facilitate accountability and access to justice, and to ensure quality of services. This educative role must include building the capacity of people with disability and their supporters to access advocacy and support services and enforce legal rights;¹⁵ it should not be limited to educating providers on their obligations.

What monitoring of the implementation and ongoing effectiveness of the Framework is required?

The implementation and efficacy of the Framework must be independently monitored to ensure impartiality and transparency.¹⁶ Monitoring and oversight should also include greater data collection on violence against people with disability, including gender disaggregated data,¹⁷ and public reporting on data, outcomes, and audits.

What supports, services and actors should the Framework cover?

The Framework (or its successor) must be made available to all people with disability irrespective of the relevant service system, rather than the small percentage of people who directly access NDIS services. At present, the Framework cannot provide protection across all service systems. This narrow scope also disproportionately affects women and girls with disability who are at heightened risk of violence, but are under-represented as NDIS Participants, and may be more likely to access alternative service systems.

How could these actors work together better to deliver a coordinated approach to quality and safeguarding? What changes are required to the roles and responsibilities of different actors in the Framework?

Monitoring, complaints-handling, investigative and enforcement functions should be conducted by an independent statutory body with a broad remit, to ensure that systemic and cultural (rather merely compliance) issues are addressed, and that all people with disability are protected from all forms of violence. An independent complaints-handling mechanism across service systems is consistent with a “no

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wrong door" approach, which DPOs continue to call for.¹⁸ Our recommendations and concerns regarding the current process for lodging complaints are set out in our DRC Submission.¹⁹ Australia also requires an individual and collective redress system, including a National Redress Scheme,²⁰ to address the barriers people with disability face in making a complaint.

The NDIS Quality and Safeguards Commission (**Commission**) must play a more active role in ensuring service providers adhere to the appropriate standards, including by taking more serious action in response to reportable incidents. To promote impartiality, the 'reportable incident' mechanism should also be made available to people with disability, workers, and supporters, rather than limited to NDIS providers and their key personnel.²¹ Moreover, the reportable incident mechanism should allow for the reporting of incidents in relation to workers or key personnel even where the incidents occur outside the course of employment, consistent with reporting schemes in other jurisdictions.²² Requiring providers to lodge reportable incidents only when they occur in connection with the provision of services by that provider,²³ is a critical gap in ensuring safety and quality across services, given the transitory nature of the workforce. The responsibilities of workers and providers should also be clarified and strengthened, with greater interface between mechanisms to ensure that standards and compliance indicators are consistently applied and enforced across service systems. This includes further particularising the NDIS Code of Conduct to equip workers to understand what is expected of them in practice, what constitutes a breach, and when they should report a breach. Finally, if the Commission and NDIS Senior Practitioner are tasked with the elimination of restrictive practices, these actors must be empowered to carry out those functions, including with respect to the use of chemical restraints. Our concerns in this regard are further articulated in our DRC Submission.²⁴

What changes are required to the types of strategies and measures implemented under the Framework?

- a) How should the Framework go about balancing different priorities, such as the balance between protecting people with disability from harm and promoting their choice and control; and the balance between ensuring regulatory approaches support market entry and quality service delivery while protecting participants who are at risk of harm?***
- b) What is required to drive improvements in the quality of supports and services?***
- c) What is required to ensure the regulation of providers and workers is proportionate and effective?***

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Our recommendations are set out in greater detail in our DRC Submission.

However, as outlined above, the Framework must provide for consistent standards and developmental strategies to ensure the safety of people with disability and to equip providers to quality assure their services. In relation to workers, this includes a harmonised approach to screening that extends beyond registered NDIS providers and to the disability sector at large, as well as changes to incident reporting and complaints-handling. The Framework must also provide for greater accountability measures, including regular and proactive inspections of services. A balance of priorities can be achieved with appropriate resource allocation, workforce development, and a tiered approach to regulation that does not compromise the human rights of people with disability.

WWDA thanks you for the opportunity to provide this Submission in response to the Issues Paper.

Yours sincerely,

Carolyn Frohmader
Chief Executive Officer (CEO)
Women With Disabilities Australia

Finalist, 100 Women of Influence Awards 2015
Australian Human Rights Award (Individual) 2013
State Finalist Australian of the Year 2010
Inductee, Tasmanian Women's Honour Roll 2009
Australian Capital Territory Woman of the Year Award 2001

¹ See: <https://wwda.org.au/>

² Women With Disabilities Australia (December 2022) Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: WWDA Response to Safeguards & Quality Issues Paper.

³ Ibid, para 3.5-3.13.

⁴ Ibid, para 4.76-4.81.

⁵ Ibid, para 4.1-4.8.

⁶ Ibid, para 4.9-4.18; see also, Women with Disabilities Australia (WWDA), First Peoples Disability Network (FPDN), Children and Young People with Disability Australia (CYDA), Inclusion Australia, Disability Advocacy Network Australia (DANA), Australian Federation of Disability Organisations (AFDO), People with Disability Australia (PWDA), National Ethnic Disability Alliance (NEDA) (September 2020) Position Statement: Segregation of people with disability is discrimination and must end.

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⁷ Women With Disabilities Australia (December 2022) Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: WWDA Response to Safeguards & Quality Issues Paper, para 4.24-4.39.

⁸ Committee Against Torture, Concluding observations on the sixth periodic report of Australia, advanced unedited version, 12-13.

⁹ United Nations General Assembly, Convention on the Rights of Persons with Disabilities, 24 January 2007, Article 6.

¹⁰ Ibid.

¹¹ Department of Social Services, NDIS Quality and Safeguards Framework, 9 December 2016.

¹² Sutherland G, Krnjacki L, Hargrave J, Vaughan C, Llewellyn G & Kavanagh A. *No More Excuses: Final report - primary prevention of violence against women with disability*. Melbourne: The University of Melbourne, 2021.

¹³ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (March 2021) [Research Report: Nature and extent of violence, abuse, neglect and exploitation against people with disability in Australia](#).

¹⁴ Women With Disabilities Australia (December 2022) Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: WWDA Response to Safeguards & Quality Issues Paper, para 5.4.

¹⁵ Ibid, para 4.50-4.54.

¹⁶ Ibid, para 5.24-5.26.

¹⁷ Women With Disabilities Australia (December 2022) Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Submission on Sexual and Reproductive Rights of Women and Girls with Disability.

¹⁸ Women With Disabilities Australia (December 2022) Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: WWDA Response to Safeguards & Quality Issues Paper, para 5.17.

¹⁹ Ibid, para 4.76-4.81.

²⁰ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2022) [Research Report: Complaint mechanisms: Reporting pathways for violence, abuse, neglect and exploitation](#), p. 4.

²¹ *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018* (Cth), s18.

²² *Child Wellbeing and Safety Act 2005* (Vic), s 3, 'reportable allegation'.

²³ Ibid.

²⁴ Women With Disabilities Australia (December 2022) Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: WWDA Response to Safeguards & Quality Issues Paper, para 4.59-4.69.

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