

# Safeguarding quality services for people with disability

**VCOSS submission on the *National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017***

July 2017



## **About VCOSS**

The Victorian Council of Social Service (VCOSS) is the peak body of the social and community sector in Victoria. VCOSS members reflect the diversity of the sector and include large charities, peak organisations, small community services, advocacy groups, and individuals interested in social policy. In addition to supporting the sector, VCOSS represents the interests of vulnerable and disadvantaged Victorians in policy debates and advocates for the development of a sustainable, fair and equitable society.

This submission was prepared for VCOSS by VCOSS Policy Advisor Carly Nowell with input from VCOSS members.

**Authorised by:**

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VCOSS acknowledges the traditional owners of country and pays its respects to Elders past and present.

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# Executive Summary

VCOSS welcomes the opportunity to respond to the Senate Community Affairs Legislation Committee's Inquiry into the *National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017* ('the Bill').

This Bill amends the *National Disability Insurance Scheme Act 2013* ('the Act'), and gives effect to the Commonwealth's regulatory responsibilities under the NDIS Quality and Safeguarding Framework ('the Framework'). It establishes the powers and functions of the NDIS Quality and Safeguards Commission ('the Commission').

This submission draws on evidence and VCOSS members' first hand experience assisting and working alongside people with disability, their families and carers. It builds on our recent submission to the *NDIS Code of Conduct*<sup>1</sup> and outlines VCOSS recommendations to strengthen Commission's role and the broader Framework.

A robust quality and safeguarding system provides strong protections to help prevent people with disability experiencing harm and promotes high quality service delivery. It should reflect the lived experience of people with disability by actively involving them in every element of the development and implementation of the Framework and Commission's role.

Numerous reviews and inquiries have highlighted the appalling levels of violence, abuse and neglect people with disability experience, and the failure to uphold the rights of people with disability. The NDIS may help address some of these issues by reducing an individual's reliance on a single service provider, giving participants more choice of providers and increasing their social and economic inclusion. However, the NDIS also brings new challenges for safety and service quality.

VCOSS members warn large workforce growth, combined with substantial injection of government funds and market driven nature of the NDIS, risks exposing the scheme to unscrupulous providers. We do not want the NDIS to make the same mistakes that have occurred in other sectors such as Vocational Education and Training (VET)<sup>2</sup> and Aged Care.<sup>3</sup>

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<sup>1</sup> VCOSS, Delivering high quality, safe services, VCOSS Submission on the NDIS Code of Conduct, June 2017.

<sup>2</sup> For example, Farrah Tomazin, Stop the rorts: \$30 million crackdown looms for vocational sector's dodgy training providers, *The Age*, 20 September 2015, <http://www.theage.com.au/victoria/stop-the-rorts-30-million-crackdown-looms-for-vocational-sectors-dodgy-training-providers-20150919-giqbuk.html>, accessed 24 July 2017.

<sup>3</sup> For example, Darragh O'Keefe, Poor quality aged care can still 'fly below the radar', *Australian Ageing Agenda*, 3 May 2017, <http://www.australianageingagenda.com.au/2017/05/03/poor-quality-aged-care-can-fly-below-the-radar/>, accessed 24 July 2017.

The Framework and Commission must help drive systemic cultural change in how services are delivered so they are genuinely person-centred, evidence-based and uphold the rights of people with disability. Merely avoiding poor practice is a low bar. The NDIS must go beyond basic regulatory compliance to assess and build the providers' capacity to deliver high quality services.

We recommend providers undergo thorough quality assessments to determine service quality and provider ratings. The Commission could help build capacity by having a broader research and education mandate to identify and promote best practice approaches.

To be effective, the Commission and Commissioner must instill trust and be well regarded by the disability community. Specifically, the Commissioner needs to be fully independent, have 'own motion' powers to investigate systemic issues or areas where there is cause for concern, and use their powers to enforce meaningful corrective action for registered and unregistered providers.

The Commission requires adequate resourcing to perform all of its functions, be visible and easily accessible, and have appropriately skilled staff able to communicate with all NDIS participants. The Commission also needs to be able to identify early warning signs of abuse and neglect and breaches of the Code of Conduct.

VCOSS members warn some disability providers may not be aware of their obligations and responsibilities under the Framework. We believe the Commission has a role in educating all providers, including unregistered providers, about their responsibilities. Everyone within an organisation, including management and board members, must be held accountable for their actions. Having an accurate and flexible NDIS pricing structure will help sustain a qualified, informed and experienced disability workforce to provide high quality service delivery.

Building the capacity of people with disability to better understand their rights and concepts of safety could help empower participants to raise concerns and assert their rights. This could be achieved by including a line item in participant's NDIS plans under 'capacity building supports', as well as educating them about the Framework. This should include specific information about the Code of Conduct and how to make a complaint, as well as whistleblower protections.

Independent disability advocacy is a crucial safeguard for people with disability, particularly those who are most marginalised or those with complex needs. Advocacy organisations can help identify circumstances of violence, abuse and neglect, build people's capacity to understand their rights and assist people to make a complaint. Advocacy organisations are also well placed to identify and report systemic issues or trends to the Commission, to inform investigations.

The Framework will only apply to NDIS providers and participants, leaving a major gap in coverage for individuals accessing services outside of the NDIS. The majority of people with disability will be ineligible for individual NDIS packages and even those who qualify for NDIS supports will continue to access mainstream services, such as education and health. These people are still at risk of violence, abuse and neglect and require strong safeguards across all settings.

While we have not covered these points in detail in this submission, VCOSS members also raised some concerns about the effects or potential unintended consequences of some of the amendments to the Act, in Part 1 of the Bill. For example, how NDIS participants with co-morbidity will be supported organisationally, and whether they will be able to access coordinated support given the proposed changes to the wording of the Bill around ‘chronic illness’<sup>4</sup>.

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<sup>4</sup> VicServ, *Response to the National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017*, July 2017.

# Recommendations

## Independence and transparency

### Appoint an independent Commissioner

- Adopt a fair and transparent method of appointing the Commissioner.

### Public reporting

- Require the Commission to report directly to Parliament
- Publish data on the nature and frequency of complaints, serious incidents, restrictive practices and breaches of the Code of Conduct, including corrective action undertaken and outcomes achieved to identify trends and systemic issues.
- Publish information on provider performance, including registration status and whether providers are subject to any sanctions or corrective action.

### Power to conduct own motion investigations

- Include own motion powers to investigate systemic issues or cause for concern.

### Be able to receive and investigate complaints about the NDIA

- Enable the Commission to receive and investigate complaints about Local Area Coordinators and the National Disability Insurance Agency.

### Undertake broad consultation around NDIS rules

- Undertake broad consultation with the disability sector around NDIS rules.

## High quality services

### Legislate the role of Senior Practitioner

- Legislate the functions and powers of the Senior Practitioner.
- Legislate a broader research and education mandate to build the capacity of the sector to delivery high quality, evidence based services.

### Implement robust quality assessments and provider ratings

- Undertake thorough quality assessments to determine service quality and provider ratings to help inform participants.
- Combine a range of methods including observation, interviews with staff, NDIS participant and carers, using appropriately skilled auditors.

## **Enforcement and compliance**

### **Expand the coverage of worker screening**

- Expand worker screening to cover everyone involved in delivering NDIS services, including managers and board members.

### **Enforce corrective action**

- Take a zero tolerance approach to violence, abuse and neglect and enforce meaningful corrective action for registered and unregistered providers who cause harm.

### **Review and clarify oversight of unregistered providers**

- Review and clarify oversight and protections for unregistered providers, including the types of service they can provide.

### **Adequately resource the Commission**

- Adequately resource the Commission so it can effectively perform all of its functions.
- Ensure investigative staff have adequate skills and experience to effectively communicate with all NDIS participants, and are able to identify early warning signs of abuse, neglect and breaches of the Code.
- Ensure the Commission is highly visible and accessible for the disability community, to assist people to make a complaint.

## **Strengthen the quality and safeguarding framework**

### **Reflect the voices of people with disability**

- Engage people with disability in the development and implementation of the Framework.

### **Educate providers about their roles and responsibilities**

- Educate all providers and workers about their obligations and responsibilities under the Framework.

### **Empower participants**

- Educate participants, their families and carers about the Framework, the Code of Conduct, how to make a complaint and whistle-blower protections.
- Make capacity building support available in people's NDIS plans to build their skills and knowledge of their rights, concepts of safety and how to make a complaint.

### **Fund disability advocacy**

- Increase funding for independent disability advocacy to assist more people to understand their rights and make a complaint.

### **Ensure robust safeguards for all people with disability**

- Ensure robust quality and safeguards exist for all people with disability, regardless of their eligibility for the scheme and across all settings.

- Clarify alignment with existing state and territory mechanisms once the full rollout occurs.
- Learn from existing state and territory quality and safeguarding mechanisms and adopt best practice.

#### **Adjust pricing to support a skilled and qualified workforce**

- Amend the pricing model to ensure it supports a skilled and qualified workforce, and covers supervision, professional development and other overheads required to provide quality services.
- Transfer the NDIA's pricing powers to an independent price regulator.

# Independence and transparency

## Appoint an independent Commissioner

### Recommendation

- Adopt a fair and transparent method of appointing the Commissioner.

Confidence in the Commission's independence is essential for an effective quality and safeguarding system. VCOSS is concerned the appointment of the NDIS Quality and Safeguards Commissioner ('the Commissioner') by the Minister alone may lead to perceived or actual conflict of interest. We believe an alternative method, such as appointment by the Governor-General on advice of the Federal Executive Council that requires consultation with a relevant Parliamentary Committee and/or State and Territory Governments, would provide a fairer and more transparent approach.

It is also necessary for the Commissioner to be well-regarded by the disability community, and seen to have a strong record in advocating for the rights of people with disability. VCOSS members report inappropriate appointments to similar positions has reduced the effectiveness of these roles and a created reluctance among the community to seek assistance and raise complaints. Involving people with disability in the selection of the Commissioner and other office holders will greatly assist to establish and maintain the integrity of these positions. For example, appointing the Commissioner could be done in consultation with the NDIS Independent Advisory Council ('the Council').<sup>5</sup>

## Public reporting

### Recommendations

- Require the Commission to report directly to Parliament.
- Publish data on the nature and frequency of complaints, serious incidents, restrictive practices and breaches of the Code of Conduct, including corrective action undertaken and outcomes achieved to identify trends and systemic issues.
- Publish information on provider performance, including registration status and whether providers are subject to any sanctions or corrective action.

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<sup>5</sup> NDIS, *Independent Advisory Council*, <https://www.ndis.gov.au/about-us/governance/IAC>, accessed 26 July 2017.

Requiring the Commission to report directly to Parliament will increase the transparency and accountability of the Office. Tabling reports and documents in Parliament will ensure information is available to members of Parliament as well as the public, and provide a public record of the Commission's operations and activities, investigations and recommendations.

The Commission has a role to collect, analyse and disseminate information on reportable incidents, complaints about service delivery and the use of behaviour supports and restrictive practices by NDIS providers.<sup>6</sup> However, there is currently no proposed requirement to publicly report on systemic issues and trends. We recommend the Commission be required to report annually to the public on the nature and frequency of reportable incidents, complaints, use of restrictive practices, breaches of the Code of Conduct ('the Code') and the Act, as well as corrective action undertaken and outcomes achieved.

Regular public reporting will help inform and educate the sector and broader community about the systemic issues and trends and help increase transparency and confidence in the Commission and the NDIS Quality and Safeguarding Framework ('the Framework'). It may also help increase compliance with the Act among providers by increasing awareness of the types of breaches and disciplinary actions undertaken. The Commission must be seen to act on the information it gathers from all sources to help prevent poor practice and drive continuous improvement.

Under the Bill, the Commission must establish and maintain an NDIS Provider Register. This captures information on registered providers and may include information on unregistered providers such as the classes of supports or services the person provides, whether a banning order is in force, whether the provider is subject to a compliance notice or enforceable undertaking.<sup>7</sup> The NDIS rules may enable the Commission to publish the NDIS register in whole or in part, but there is no guarantee this information will be made publicly available.<sup>8</sup>

For NDIS participants to select suitable providers they need access to objective information about provider's registration status, the classes of supports they provide and are registered to deliver, breaches and any corrective actions. Publishing the NDIS Provider Register in full will help NDIS participants to make an informed choice. It may also sharpen incentives for providers to comply with requirements.

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<sup>6</sup> National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017, s. 181F(g), s. 181G(e) and s. 181H(i)

<sup>7</sup> National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017, s. 73ZS

<sup>8</sup> National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017, s. 73ZS(7)

## Power to conduct own motion investigations

### Recommendation

- Include own motion powers to investigate systemic issues or cause for concern.

The Bill provides limited investigative powers, stating the NDIS rules will determine “the matters in which the Commissioner may authorise an inquiry on his or her own initiative” in response to any reportable incident or a complaint received.<sup>9</sup> The Bill provides the Commission with investigative powers, but these can only be used to determine whether certain provisions in Part 3A of the Act have been contravened by providers and powers can be exercised only in relation to civil penalty provisions, or any offence against the Crimes Act 1914 or the Criminal Code that relates to this Part.

We believe the Commission should have own motion powers to conduct inquiries and investigate matters without having received a complaint or serious incident notification. Numerous inquiries have identified under-reporting of abuse from the workers, people with disability and their families and carers largely due to a fear of reprisal.<sup>10,11</sup> These powers should enable the Commission to investigate systemic issues and cases where there are allegations or concerns about people with disability experiencing violence, abuse or neglect. For example, primary health providers working with NDIS participants may report suspicions of poor quality services from providers.

## Be able to receive and investigate complaints about the NDIA

### Recommendation

- Enable the Commission to receive and investigate complaints about Local Area Coordinators and the National Disability Insurance Agency.

The Commission will be responsible for overseeing and managing complaints about NDIS services including Information, Linkages and Capacity (ILC) building supports. However, complaints about the NDIA, its staff, and NDIA-funded Local Area Coordinators (LACs) will be addressed through existing regulation, such as the Administrative Appeals Tribunal or the Commonwealth Ombudsman.<sup>12,13</sup>

Some complaints about NDIS services may be partly due to decisions made by the NDIA or LACs. Equally, resolving issues effectively may require NDIA or LAC involvement.

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<sup>9</sup> National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017, s. 73Z(d) and s. 73X(g).

<sup>10</sup> Parliament of Victoria, Family and Community Development Committee, *Inquiry into abuse in disability services*, Final Report, 26 May 2017.

<sup>11</sup> Victorian Ombudsman, *Reporting and investigation of allegations of abuse in the disability sector: Phase 2 – incident reporting*, December 2015, p.18.

<sup>12</sup> National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017, Explanatory Memorandum, paragraph 171.

<sup>13</sup> Department of Social Services, NDIS Quality and Safeguarding Framework, 9 December 2016, p. 16.

Enabling the Commission to receive and investigate complaints about the NDIA and NDIA-funded LACs would allow it to more effectively understand and resolve complaints. It would also make it easier for individuals and the disability sector to know where to make a complaint.

Overseeing all complaints would better allow the Commission to understand and address systemic analysis and trends. It would also better enable the Commission to deliver on one of its core functions “to provide advice or recommendations to the Agency or the Board in relation to the performance of the Agency’s functions”.<sup>14</sup>

## Undertake broad consultation around NDIS rules

### Recommendation

- Undertake broad consultation with the disability sector around NDIS rules.

VCOSS members are also concerned much of the detail and decisions about the Commission and Framework will be prescribed by the NDIS rules. Depending what category the NDIS rules are classified as (i.e. Categories A to D) the NDIA may only be required to consult with the State and Territories (Category D), rather than obtaining agreement from the majority of jurisdictions (Category C), the particular host jurisdiction (Category B) or every host jurisdiction (Category A).<sup>15</sup> We believe NDIS rules should be open for consultation with the Disability sector, given the impact these rules will have on the operation on the scheme.

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<sup>14</sup> National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017, s. 181E (g)

<sup>15</sup> *National Disability Insurance Scheme Act 2013*, s. 209.

# High quality services

## Legislate the role of Senior Practitioner

### Recommendations

- Legislate the functions and powers of the Senior Practitioner.
- Legislate a broader research and education mandate to build the capacity of the sector to delivery high quality, evidence based services.

The Framework, released in February 2017, indicated it will include a legislative framework which would establish an “NDIS Senior Practitioner with statutory powers”.<sup>16</sup> The Senior Practitioner would have a number of roles including “the power to proactively examine current practice in behaviour support and the use of restrictive practices.”<sup>17</sup> The Framework also indicated it would establish an NDIS Complaints Commissioner and an NDIS Registrar.<sup>18</sup> However, the Bill as it is currently written does not create an Office of the Senior Practitioner, Complaints Commissioner or the NDIS Registrar. Instead, the Bill establishes a registration and reportable incidents function<sup>19</sup>, a complaints function<sup>20</sup> and a behaviour support function.<sup>21</sup> The explanatory memorandum states it is ‘envisaged’ an NDIS Registrar, a dedicated Complaints Commissioner and a national Senior Practitioner will be responsible for each function.<sup>22</sup>

VCOSS believes separate office holders should be established to independently manage each of the functions. In particular, we recommend legislating the functions and powers of the Senior Practitioner. Victoria, along with Queensland and Tasmania, have established senior practitioners with statutory functions. Under Victoria’s *Disability Act 2006*, the Senior Practitioner has powers to “investigate, audit and monitor the use of restrictive interventions and compulsory treatment” and may order a disability service provider to “to discontinue or alter a practice, procedure or treatment”, or “provide a practice, procedure or treatment” to a person with a disability who is specified in the order.<sup>23</sup> We believe the NDIS Senior Practitioner should be granted similar authority.

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<sup>16</sup> Department of Social Services, NDIS Quality and Safeguarding Framework, 9 December 2016, p.71.

<sup>17</sup> Department of Social Services, NDIS Quality and Safeguarding Framework, 9 December 2016, p.71.

<sup>18</sup> Department of Social Services, NDIS Quality and Safeguarding Framework, 9 December 2016, pp. 16 -18.

<sup>19</sup> National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017, s. 181F.

<sup>20</sup> National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017, s. 181G.

<sup>21</sup> National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017, s. 181H.

<sup>22</sup> National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017, Explanatory Memorandum, paragraph. 315, 316, 318.

<sup>23</sup> *Disability Act 2006*, s. 27.

VCOSS members report there are insufficient measures under the developmental element of the Framework to build the capacity of providers and the workforce to deliver high quality, evidence-based services. The legislation indicates the Commission's functions include providing education, training and advice on the use of behaviour supports and the reduction and elimination of the use of restrictive practices.<sup>24</sup> This function could be performed by the Senior Practitioner and be expanded to incorporate the authority and obligation to identify evidence-based practices and assist providers to adopt best practice approaches to service delivery. The role of Senior Practitioner could therefore include, but go beyond, the reduction and elimination of restrictive practice. The Senior Practitioner could help drive the implementation of high quality, person-centred practice approaches which promote social inclusion and other progressive outcomes and help phase out congregate models of service delivery.

Without legislating the functions and powers of Senior Practitioner there is a risk the role of building the capacity of providers and eliminating restrictive practice will be de-prioritised. This may lead to the Commission's role being consumed by compliance and enforcement activities.

## Implement robust quality assessments and provider ratings

### Recommendations

- Undertake thorough quality assessments to determine service quality and provider ratings to help inform participants.
- Combine a range of methods including observation, interviews with staff, NDIS participant and carers, using appropriately skilled auditors.

Much of the focus on the Framework and the Legislation is centred on mitigating harmful practices and process-based compliance (such as maintaining an incident and complaints management system). While these are necessary elements of the Framework, and should therefore be retained, adequate attention should also be given to promoting high quality, person-centred services and ascertaining participant outcomes. Merely avoiding poor performance or meeting basic registration requirements is a low bar. The introduction of the NDIS creates an opportunity to drive systemic improvements in how services are delivered.

VCOSS members warn against repeating the mistakes of the Vocational Education and Training (VET) sector which lead to high levels of roting and poor service quality. A Victorian review of the VET sector identified a key issue was quality assurance audits, which had a minimal focus on the quality of services provided and instead focused largely on registered training organisations' compliance with contractual requirements and paper-based performance measures such as financial sustainability, student eligibility and record-keeping.<sup>25</sup>

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<sup>24</sup> National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017, s. 181H.

<sup>25</sup> Deloitte Touche Tohmatsu, [Department of Education and Training Review of Quality Assurance in Victoria's VET System](#), May 2015, pp.6-7.

The Explanatory Memorandum makes reference to the Commission “contributing to Agency provider benchmarking and to provider quality ratings”<sup>26</sup> but no further detail is provided.

VCOSS members highlight the value of the providing objective quality ratings so participants can make informed choices. Undertaking robust quality assessments could help determine service quality, such as delivering evidence-based approaches and personalised service which help participants achieve their goals. Publishing provider ratings would make this information easily accessible for NDIS participants, their families and carers.

VCOSS members also warn against an overreliance on desk-top auditing or simply checking providers have documented correct policies and procedures. This should only form one part of the assessment process and should be complemented by direct observation and interviews with staff and NDIS participants, measured against clearly defined quality indicators. Assessors must be appropriately skilled to communicate and elicit information from NDIS participants and staff, particular given the fear of making a complaint or reporting issues.

Lessons can be learnt from the early childhood sector, where providers are independently assessed against seven quality areas and receive an overall quality rating under the National Quality Standard for Early Childhood Education and Care.<sup>27</sup> Quality ratings of assessed services are published on the national register so people can make an informed decision about the services they wish to use.<sup>28</sup> Authorised officers use a combination of observation, discussions with staff and sighting documents to assess the service against the standards.<sup>29</sup>

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<sup>26</sup> National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017, Explanatory Memorandum, paragraph 309.

<sup>27</sup> Australian Children’s Education & Care Quality Authority, National Quality Standard, <http://www.acecqa.gov.au/national-quality-framework/the-national-quality-standard>, accessed 21 July 2017.

<sup>28</sup> Australian Children’s Education & Care Quality Authority, National Registers, <http://www.acecqa.gov.au/national-registers>, accessed 21 July 2017.

<sup>29</sup> Australian Children’s Education & Care Quality Authority, Guide to Assessment and Rating for Services, August 2014.

# Enforcement and compliance

## Expand the coverage of worker screening

### Recommendation

- Expand worker screening to cover everyone involved in delivering NDIS services, including managers and board members.

The Bill states the worker screening framework developed and overseen by the Commission will cover “workers involved in the direct provision of supports and services to people with disability”.<sup>30</sup> It does not appear to extend to people in management and executive roles. The Framework further confirms this is the intention stating “those engaged by NDIS providers or the NDIA who only have incidental contact with people with disability will not be required to undertake risk-based screening.”<sup>31</sup>

VCOSS members too often report management and senior executives have not acted on early warning signs of abuse, have ignored or dismissed concerns about suspected abuse or poor practices, or worse, have actively ‘covered up’ reports concerning people with disability.<sup>32,33,34</sup>

People at every level of an organisation from the staff delivering direct services to participants through to management, CEO and Board Members, can contribute to abuse, neglect and poor practice. If not included in screening and compliance processes, there is a risk only workers will be penalised, and managers and executives who were aware of the behaviour will continue to operate in the same organisation or move to a new organisation. Lessons can and must be learnt from the negative experiences in the VET sector.

VCOSS strongly supports the Victorian Parliamentary inquiry into abuse in disability services recommendation that “boards of management, CEOs, and service managers are to be held accountable for the services that they provide.”<sup>35</sup>

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<sup>30</sup> National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017, S. 181E(f)

<sup>31</sup> Department of Social Services, NDIS Quality and Safeguarding Framework, 9 December 2016, p.61

<sup>32</sup> Parliament of Victoria Family and Community Development Committee, *Inquiry into abuse in disability services Final Report*, May 2016.

<sup>33</sup> Community Affairs References Committee, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*, Commonwealth of Australia 2015, November 2015, p.xxvi

<sup>34</sup> For example, ABC News, [Abuse in the disability sector has been exposed](#), 26 November 2014.

<sup>35</sup> Parliament of Victoria Family and Community Development Committee, *Inquiry into abuse in disability services Final Report*, May 2016, p. 147

## Enforce corrective action

### Recommendation

- Take a zero tolerance approach to violence, abuse and neglect and enforce meaningful corrective action for registered and unregistered providers who cause harm.

VCOSS members report complaints against disability service providers are too often not dealt with in an effective, fair and prompt manner. There has traditionally been an emphasis on seeking conciliation rather than making a finding and taking action against the perpetrators, including in cases of serious violence or abuse.<sup>36,37</sup> Some people with disability continue to believe that allegations of abuse or neglect may not be taken seriously.<sup>38</sup> The Commission must take strong corrective action against cases of violence, abuse and neglect, so NDIS participants are safe and providers and workers are held accountable for their actions.

The Victorian Government recently introduced a Zero Tolerance Approach to the abuse of people with disability with a commitment to report, investigate and respond to any occurrence of violence, abuse or neglect.<sup>39</sup> We believe the Commission should adopt a similar approach to drive cultural change and send a strong message violence, abuse and neglect in any form will not be tolerated. Complaints and breaches should also be used to inform a systemic response for the provider or broader disability sector to help reduce the likelihood of reoccurrence in future.

## Review and clarify oversight of unregistered providers

### Recommendation

- Review and clarify oversight and protections for unregistered providers, including the types of service they can provide.

Self-managing NDIS participants can engage unregistered providers to deliver supports through their NDIS plan. While there are some benefits to giving participants greater choice in who can deliver some supports such as gardening and cleaning, some VCOSS members are concerned the lack of oversight for unregistered providers potentially exposes self-managing participants to greater risks of harm or poor quality services.

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<sup>36</sup> Parliament of Victoria, Family and Community Development Committee, *Inquiry into abuse in disability services*, Final Report, 26 May 2017, p.200.

<sup>37</sup> Community Affairs References Committee, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*, Commonwealth of Australia 2015, November 2015, p.269

<sup>38</sup> Parliament of Victoria, Family and Community Development Committee, *Inquiry into abuse in disability services*, Final Report, 26 May 2017.

<sup>39</sup> Victorian Government, Zero tolerance of abuse of people with a disability Response to the Inquiry into Abuse in Disability Services, Melbourne, November 2016.

Unlike registered providers, unregistered services are not subject to compliance with the NDIS practice standards, or required to meet complaint or record keeping requirements. They also not required to report serious incidents to the Commission.<sup>40</sup> While self-managing participants are “encouraged to ensure workers have screening clearances”<sup>41</sup> there is no requirement for unregistered providers to undergo worker screening. Unregistered providers are required to comply with the Code of Conduct, but there are not formal mechanisms for informing them about their rights and responsibilities under the Code. Unlike registered providers, the orientation module which includes education on the Code is optional for unregistered providers and relies on self-managing participants to inform them about the Code.<sup>42</sup> The only mechanism for alerting the Commission to any issues is via people making complaints or the unregistered provider making a voluntary incident report.

The Framework indicates supports deemed ‘high risk’ can only be delivered from a provider registered with the NDIS registrar.<sup>43</sup> This will provide some protection for self-managing participants, however, the list of high risk supports has not been finalised and it is unclear how certain services will be classified. The Framework states the list of high risk providers is expected to include services involving the implementation of behaviour support plans, early childhood intervention services, and allied health services not already covered by Australian Health Practitioner Regulation Agency registration.<sup>44</sup>

People with disability should be presumed to have the capacity to make decisions about their own lives, including selecting suitable NDIS providers. We also want to avoid constraining people’s choices about the services they receive. However, the different treatment of registered compared to non-registered providers may create an uneven playing field and expose self-managing participants to unscrupulous providers seeking to make easy money out of the NDIS. It may also place participants at risk of harm. We believe the processes for using unregistered providers require further consideration and consultation with the sector and disability community. For example, some VCOS members believe there should be stronger accountability mechanisms and oversight of unregistered providers to reduce the risk on individuals who choose to self-manage their plans. Developing a broad and clear list of services which cannot be delivered by unregistered providers could also help to reduce these risks.

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<sup>40</sup> Department of Social Services, *NDIS Quality and Safeguarding Framework*, 9 December 2016, p.25

<sup>41</sup> Department of Social Services, *NDIS Quality and Safeguarding Framework*, 9 December 2016, p.39

<sup>42</sup> Department of Social Services, *National Disability Insurance Scheme (NDIS) - Code of Conduct Discussion Paper*, P.10.

<sup>43</sup> p.40

<sup>44</sup> p.40

## Adequately resource the Commission

### Recommendations

- Adequately resource the Commission so it can effectively perform all of its functions.
- Ensure investigative staff have adequate skills and experience to effectively communicate with all NDIS participants, and are able to identify early warning signs of abuse, neglect and breaches of the Code.
- Ensure the Commission is highly visible and accessible for the disability community, to assist people to make a complaint.

To effectively perform its functions the Commission requires adequate staffing and resources. It is acknowledged that \$209 million over four years has been allocated to establish and operate the Commission.<sup>45</sup> However, it is unclear how this funding will be allocated and if it will be adequate to perform all its functions, including undertaking comprehensive quality assurance, conducting investigations, educating the sector to promote high quality services and enforcing corrective actions for registered and unregistered providers.

Staff undertaking investigations, monitoring and quality assurance require adequate skills and experience to effectively communicate with, and elicit information from, NDIS participants. They must also be skilled in identifying early warning signs of abuse and neglect and breaches of the Code of Conduct. This may require a combination of training and ongoing professional development, as well as access to specialists. For example specialists with expertise in augmentative and alternative communication to assist people with complex communication needs and interpreters for people from culturally and linguistically diverse backgrounds.

Establishing clear and accessible complaint processes will make it easier for people to report. The Commission needs to be highly visible and provide people with multiple avenues to make to a complaint, such as via online systems, calling the office and being able to make a complaint face-to-face. Having a geographical presence across Australia could help the Commission increase its visibility and accessibility to the community. Having local staff could also assist with other functions, such as undertaking local quality assurance and regulatory action.

We support the notion of the Commission having a 'no wrong door' policy, to receive and direct complaints to the relevant authority as it can be confusing for people with disability, their families or carers to know where to lodge complaint. Educating NDIA staff to help people take complaints about NDIS services to the Commission would assist more issues to reach the Commission in a timely manner.

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<sup>45</sup> Department of Social Services, [Guaranteeing the NDIS and providing stronger support for people with disability](#), Media Release, 9 May 2017.

# Strengthen the quality and safeguarding framework

This Bill amends the *National Disability Insurance Scheme Act 2013* ('the Act') and gives effect to the Commonwealth's regulatory responsibilities under the NDIS Quality and Safeguarding Framework ('the Framework'). It establishes the powers and functions of the NDIS Quality and Safeguards Commission ('the Commission'). While the primary focus of the submission is on the Bill, there are other elements of the Framework or broader NDIS environment which directly affect the quality and safety of NDIS services.

## Reflect the voices of people with disability

### Recommendation

- Engage people with disability in the development and implementation of the Framework.

The Framework should be developed and delivered in a way that reflects the lived experiences of people with disability. People with disability, their families and carers, and disability advocates are well placed to advise on what works best, and potential pitfalls, given their direct experience with services and systems. Establishing a strong governance process with active engagement from a diverse range of people with disability, will help make the Framework most effective at promoting high-quality, safe services. This includes representation from people with different types of disability, cultural background, gender identity, age and location.

Wherever possible elements of the Framework should be open to public consultation and widely publicised with adequate time for the sector to respond. For example, the Department of Social Services recently sought feedback on the Code of Conduct. This would be complemented by engaging existing disability advisory bodies, such as the Independent Advisory Council, in decisions about the Framework and the Commission.<sup>46</sup>

## Educate providers about their roles and responsibilities

### Recommendation

- Educate all providers and workers about their obligations and responsibilities under the Framework.

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<sup>46</sup> NDIS, *Independent Advisory Council*, <https://www.ndis.gov.au/about-us/governance/IAC>, accessed 26 July 2017.

For the Framework to be effective at driving quality service provision, all workers and providers require a thorough understanding of their obligations and responsibilities. VCROSS members warn many providers, especially smaller organisations, sole traders and unregistered providers are unlikely to be aware of their compliance requirements, including their obligations under the Code of Conduct. As identified in our response to the Code of Conduct submission, we recommend the NDIA implements a communication strategy to educate providers and the disability sector about the new Framework, including the Code of Conduct and how it applies to them.<sup>47</sup> This could be accompanied by developing and promoting easy-to-follow guides and tools, tailored to different classes of support and provider types.

## Empower participants

### Recommendations

- Educate participants, their families and carers about the Framework, the Code of Conduct, how to make a complaint and whistle-blower protections.
- Make capacity building support available in people's NDIS plans to build their skills and knowledge of their rights, concepts of safety and how to make a complaint.

People with disability and their carers need to be understand what they can expect from service providers and feel safe to make a complaint. We believe the NDIA has a role to promote broad knowledge and understanding of the Framework, including the Code of Conduct and people's rights. This would also require educating people in a way they understand, about how to make a complaint and understanding whistleblower protections. A culture of fear remains a major barrier to making a complaint, but this is also hindered by people not knowing how to make a report.<sup>48</sup>

This educative role could be performed by Local Area Coordinators (LACs) with assistance from the Commission, provided they had adequate resources and skills to perform this function. In theory, LACs are meant to spend approximately 20 per cent of their time building community capacity.<sup>49</sup> However, VCROSS members report planning is the predominant feature of LACs' roles due to the large workload, leaving limited capacity to perform other aspects of their role.

In addition, VCROSS members report the planning processes with NDIS participants are often rushed conversations over the phone, with limited follow-up. There is, therefore, limited opportunity for LACs to educate participants. However, implementing the Productivity Commission's recommendations around the planning process may help support this function.<sup>50</sup>

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<sup>47</sup> VCROSS, Deliver high quality, safe services, VCROSS Submission on the NDIS Code of Conduct, June 2017.

<sup>48</sup> Parliament of Victoria, Family and Community Development Committee, *Inquiry into abuse in disability services*, Final Report, 26 May 2017.

<sup>49</sup> *National Disability Insurance Scheme, COAG Disability Reform Council Quarterly Report, December 2016*, Version 1, National Disability Insurance Scheme Launch Transition Agency, January 2017, p.84.

<sup>50</sup> VCROSS, VCROSS submission to the Productivity Commission's Position Paper on NDIS Costs, 12 July 2017.

Having adequately skilled LACs in place six months before the NDIS rollout to assist participants to transition to the NDIS could enable the LACs to undertake this education component. LACs could also provide further follow-up with participants during in-depth face-to-face planning sessions.

Building the capacity of people with disability to better understand their rights and concepts of safety could help empower participants to raise concerns and assert their rights. This could be achieved by including a line item in participant's NDIS plans under capacity building supports. This support could build participants' knowledge and confidence in a range of areas including:

- understanding their rights
- what it means to feel safe
- what types of behaviours are acceptable and unacceptable
- what constitutes violence, abuse and neglect
- principles around privacy and consent for information sharing, including circumstances which compel people to share information
- what to do if they people receive poor quality services or feel unsafe
- how to seek support to make a complaint.

Capacity building support is potentially useful for all participants when transitioning to the NDIS, but particularly for participants who choose to self-manage, young people, people with intellectual disability or cognitive impairment, people with complex needs and those who are marginalised.

## Fund disability advocacy

### Recommendation

- Increase funding for independent disability advocacy to assist more people to understand their rights and make a complaint.

Independent disability advocacy is a crucial safeguard for people with disability, particularly those who are most marginalised or those with complex needs. Advocacy organisations can help identify circumstances of violence, abuse and neglect, build people's capacity to understand their rights and assist people to make a complaint. Advocates can help address the power imbalance between individuals and service providers. The Victorian Ombudsman found "there is a critical role for advocates to assist people with disability" to make a complaint particularly "where people were afraid to complain or faced difficulties in doing so".<sup>51</sup>

Advocacy organisations are also well placed to identify and report systemic issues or trends to the Commission, to inform investigations. For example, some VCROSS members report they have already received negative feedback from several NDIS participants about particular providers.

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<sup>51</sup> Victorian Ombudsman, [Reporting and investigation of allegations of abuse in the disability sector: Phase 2 – incident reporting](#), December 2015, p.18.

By receiving and acting on this information, the Commission could help identify and address issues early.

Investing in a strong and diverse disability advocacy sector can enable advocacy organisations to perform this work and reach more people. There are not enough disability advocacy services and VCOSS members advise there is large unmet demand which is likely to grow as the NDIS rolls out. The Federal parliamentary inquiry into violence, abuse and neglect against people with disability in institutional and residential settings, identified “significant investment” in funded advocates is required “to deliver equitable access and representation of issues and to match the increased demand for advocacy anticipated under the NDIS”.<sup>52</sup>

## Ensure robust safeguards for all people with disability

### Recommendations

- Ensure robust quality and safeguards exist for all people with disability, regardless of their eligibility for the scheme and across all settings.
- Clarify alignment with existing state and territory mechanisms once the full rollout occurs.
- Learn from existing state and territory quality and safeguarding mechanisms and adopt best practice.

The Commission and Framework will only apply to NDIS providers and participants, leaving a major gap in coverage for individuals accessing services outside of the NDIS. The majority of people with disability will be ineligible for individual NDIS packages and even those who qualify for NDIS supports will continue to access mainstream services, such as education and health. These people are still at risk of violence, abuse and neglect and require strong safeguards across all settings. For example, VCOSS members and the media reports continue to raise concerns about the use of restraint and seclusion of children with disability in schools.<sup>53</sup>

The 2015 Senate Standing Committee on Community Affairs report into violence, abuse and neglect, recommended a national system for reporting, investigating and eliminating violence, abuse and neglect of people with a disability, which covered “all disability workers, organisations and people with disability, without being restricted to NDIS participants.”<sup>54</sup>

There is also a lack of clarity about whether existing state and territory quality and safeguarding mechanisms will continue beyond the full rollout of the NDIS, and if so how they will align with the Framework. For example in Victoria there are a range of existing mechanisms including a Senior

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<sup>52</sup> Community Affairs References Committee, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*, Commonwealth of Australia 2015, November 2015, p.xx

<sup>53</sup> For example: Timna Jacks and Henrietta Cook, *Secret data on school restraint and seclusion to be exposed*, the Age, 9 June 2017, <http://www.theage.com.au/victoria/secret-data-on-school-restraint-and-seclusion-to-be-exposed-20170609-gwo8t1.html>, accessed 24 July 2017.

<sup>54</sup> Community Affairs References Committee, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*, Commonwealth of Australia 2015, November 2015, p.xv

Practitioner and Community Visitors scheme. Work has also commenced on a Code of Conduct for disability workers. Clarification is required about whether existing state and territory mechanisms will continue to operate either at a state level or nationally, and how they will interact collaboratively with the Framework.

The Framework and Commission should adopt the lessons from the existing state and territory mechanisms, and build on these to deliver a high quality and robust safeguarding system. VCOSS members are concerned good practice which has taken years to develop in Victoria will be lost and mistakes repeated. They also warn against watering down Victoria's strong protections to achieve national consistency.

## Adjust pricing to support a skilled and qualified workforce

### Recommendation

- Amend the pricing model to ensure it supports a skilled and qualified workforce, and covers supervision, professional development and other overheads required to provide quality services.
- Transfer the NDIA's pricing powers to an independent price regulator.

NDIS price limits and pricing policies directly affect service quality. Having an accurate and flexible NDIS pricing structure helps sustain a qualified and experienced disability workforce. If pricing structures do not reflect the true costs of service delivery, such as supervision, professional development, administration, and travel, service quality and outcomes are likely to be compromised.

VCOSS members report NDIA pricing structures make it challenging to retain and recruit qualified workers who can deliver effective support and therapeutic services, particularly for people with complex needs and people with psychosocial disability.<sup>55</sup> VCOSS members also report the NDIS pricing model does not adequately cover the costs associated with ongoing professional development for staff, adequate supervision, rent, and administration required to deliver services under the NDIS.<sup>56</sup>

Amending NDIS pricing so it is commensurate with the skills and expertise required to deliver effective support and cover the costs of service delivery can help provide a high quality, safe service system.

In principle, VCOSS support the Productivity Commission's recommendation to transfer the NDIA's pricing powers to an independent price regulator. We believe this will provide a more fair and transparent process for price setting.<sup>57</sup> It will help address the potential conflict of interest for the NDIA in both delivering the scheme and setting the prices of services.

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<sup>55</sup> VCOSS, [VCOSS submission to the NDIS 2017 Price Controls Review](#), April 2017.

<sup>56</sup> VCOSS, [VCOSS submission to the NDIS 2017 Price Controls Review](#), April 2017.

<sup>57</sup> VCOSS, VCOSS submission to the Productivity Commission's Position Paper on NDIS Costs, 12 July 2017.

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