



Action for More Independence & Dignity in Accommodation

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Advocacy, Self Advocacy, Rights, Accessibility, & Community Living for People with a Disability

AMIDA

Submission on Quality & Safeguarding System for the NDIS

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AMIDA is part of the Australian Government's National Disability Advocacy Program that funds agencies across Australia to provide people with disability access to effective, independent disability advocacy that promotes, protects and ensures their full and equal enjoyment of all human rights enabling full community participation.

This funding means that people of all ages with disability can receive advocacy support from one of these agencies free of charge.

Everyone deserves to have their voice heard, their rights upheld and the power to make their own choices and decisions over matters that affect their lives.

While many people can successfully advocate for themselves, some find it hard or are unable to speak up.

An advocate is someone who speaks, writes or acts on behalf of another person or group of people with no conflict of interest and in the best interests of their client, to promote, protect and defend their welfare, interests and rights.

AMIDA considers that no Quality and Safeguarding framework can exist without the support of independent Advocates, self advocates or self advocacy groups to support people with disabilities.

As it stands there is no provision within the NDIS for this independent advocacy, self advocacy or self advocacy groups. If NDIS sees advocacy to stand outside its' responsibility, it must argue that the government retain advocacy, self advocacy and self advocacy groups as part of the Quality & Safeguarding System. Presently advocacy, self advocacy and self advocacy groups are funded by both the federal government and the state governments. This is an acknowledgement by the state and federal governments of the need

for people with disabilities to have advocacy, self advocacy and self advocacy groups. State and Federal governments have yet to come to an agreement about the future of Advocacy. The NDIS system and people with a disability will be disadvantaged if it is not maintained.

If advocacy, self advocacy and self advocacy groups are to exist outside NDIS, then NDIS should be working towards ensuring that they are properly funded. Existing advocacy, self advocacy and self advocacy organisations funded by state and the federal governments need to continue their important work, which will not suddenly cease to be needed with the implementation of the NDIS. Discrimination, neglect and abuse, overly restrictive practices and other forms of lack of respect for rights will continue to occur despite the best education and quality improvement processes. Local Area Co-ordinators will play an important role but they will not replicate independent advocacy, self advocacy or self advocacy groups. NDIS must work with the federal government to see that independent advocacy, self advocacy and self advocacy groups continue to be available as a key ingredient in quality and safeguards system.

The following is the AMIDA response to the specific questions in the Consultation paper:

NDIA provider registration

AMIDA supports Option 4 with mandated participation in an external quality assurance system for certain providers of supports. Presently, the NDAP Audit against the National Standards for Disability Services is a thorough, independent way to assess our service. Within the audit there are reportable actions. AMIDA has grave concern that if thorough, independent audit is not carried out and continued, then poor/bad practices will not be discovered and corrected. Systematic audits must be incorporated into the NDIS to ensure regular checks of service provision to people with disability. The present audits have ensured our service has improved its practices, and continues to do so.

Option 4 provides the best insurance for people with disabilities that their service provider is vigorously checked, but it also enables the service providers to continually improve their service. Current practice is that Auditors refer instances of non-compliance or reportable incidents to DHHS in Victoria and the funding body works with services to bring them up to acceptable levels. The Auditor is somewhat limited in this area. NDIS should take on this role so people with disability have consistent services.

The right balance between providing assurances and allowing people to confidently raise issues of concern can be achieved with the support of independent advocacy services which can provide information and support to people with disabilities wanting to complain and participate in audits.

Complaints Handling

Option 3B – Disability complaints office is the option that would provide the safeguards that people with disability require. An independent body to oversee complaints is vital. Advocacy organisations can support people with disabilities to make complaints and follow them up.

A major emphasis within AMIDA's advocacy work is the idea that people have a right to make a complaint. The complaints body must have the power to not only investigate complaints, but to require changes and adjustments to disability services which are found to be in contravention of human rights, legislation and regulation.

As the NDIS rolls out around Australia it must be acknowledged that Victoria has traditionally had a strong set of standards, with accompanying opportunities for complaint, ie, the creation of the Office of the Disability Services Commissioner and the Ombudsman. Both these offices presently accept complaints about disability services, and investigate, and recommend liaison with service providers by users. They also provide advice and suggestions for improving relations between users of services and service providers. If this is not the case in other states, then it must be ensured that other states are required to set up similar bodies to bring them into line with Victoria. Victorian standards must not be lowered to bring them into line with systems with lesser safeguards in place. Victoria's good developments and progress should be used as a benchmark to aspire towards. We recommend that reporting of complaints made directly to service providers should occur as it does in Victoria, with the independent body to compile and report on these to parliament.

AMIDA further believes that the complaints body should have power to require service providers to improve or make changes to their service delivery. If it only mediates, this is not strong enough power, as the system will not improve, and service providers will continue with their unsatisfactory practices.

Support to Complain

Nevertheless just having a place to complain is not enough. People with disability must be continually encouraged to complain where necessary and be supported to do so. Only then will the extent of injustice and inequality be exposed and quality and safeguards in disability services be maintained. Once again, advocacy can provide this support to complain. Advocacy can provide education and also follow up complaints directly with service providers and/or formally to an independent body like the Office for the Disability Services Commissioner or the Ombudsman.

An additional obstacle to people with disability making complaints is that people are often reluctant to complain for fear there will be repercussions, or they have been unsuccessful in previous complaints and are worn down by previous endeavours. Advocacy has supported this in the past, and advocacy will be necessary into the future for this reason.

People do not make complaints for no reason. Each complaint must be taken seriously and investigated thoroughly, and independently. Currently advocacy provides support for people with disability to make complaints, often after previously providing them with information on their rights.

Further, we must also ask why service providers don't invite advocacy. AMIDA's experience is that it is difficult to gain entry to group homes, work places or day services to

deliver information that people with disability need. Approaches are made to all these services, and instead of welcoming the opportunity for information to be made available for the people they work with, services are defensive of any criticism of their service or proposals for improvements that will benefit people with disabilities.

The community visitor scheme provides a good monitoring system in Victoria, though their annual reports have been known to contain the same issues year after year. Any community visitor scheme should come with the power to make recommendations that are acted upon to make system improvements for people with disability. However, Community Visitors do not provide people with disability with information on their rights or advocate on their behalf. Their role is to check and report on services. So additionally services should be required to allow advocacy services to come in and provide people with information about their rights, if they wish it. Services cite privacy concerns when they refuse to give addresses of residential services. Services must give right of entry to advocacy services who can directly ask clients if they want information, and they must allow a mailing house intermediary to have the addresses in order to supply people with disability with independent rights information and information about advocacy services, self advocacy and self advocacy groups.

Complaint as opportunity for improvement

In our service we see complaints, self assessments and audits as a way to improve the service we provide for people with disabilities. It must be written into the NDIS Safeguards & Framework System as a matter of course, that complaints and suggestions should be seen as opportunity. In this way services may change the way they see advocacy, advocates, self advocates and self advocacy groups. This will be a benefit to all in the disability field, ie people with disabilities, families, service providers and workers.

The NDIS complaints system should cover all supports funded by NDIS and provided to people with disability, regardless of whether the services are registered with NDIS or not. In this way, it can be assured that supports to people with disability are monitored, safe and accountable. This should definitely be part of the brief of NDIS. It will be in the interests of unregistered support providers to comply with this complaints process or the person may choose another provider. Given the experience and understanding of disability support, this Independent Complaints Office will be superior to Consumer Complaints processes.

Ensuring Staff are safe to work with participants

NDIS must incorporate Working with Children Check (if relevant to the role), a check against the Disability Worker Exclusion List, a Disqualified Carer Check, Employment History Check (including disciplinary action disclosure and checks of qualification and training). This is vital to ensure the safety of people with disability. This has been incorporated under Preventative in the consultation paper, and this is vital. The service provider has responsibility to ensure that these checks are carried out.

Incident Reporting, Investigation and Taking Action

DHHS has a thorough process of incident reporting and handling. Improvement can and should be made and the Victorian Ombudsman is currently reviewing this system. It is different from complaints handling but equally as vital and has been neglected in this consultation paper. Further consultation may be required as this is so important.

AMIDA believes the Victorian system of incident reporting could be adopted if improved in a couple of key ways. Sequential numbering of incident reports does not currently happen at the service level. So, for example, if a report is missing from the sequenced pages this absence can be noted. Presently Community Visitors cannot detect if incident reports have been destroyed. Also incidents are categorised according to seriousness but only the highest categories have to be reported to the funding body. All incidents of harm need to be acknowledged and acted on so all incidents should be reportable to either the funding body or an Independent Complaints Body. Incident Reporting is vital because people with a disability usually don't or can't complain.

Safeguards for participants who manage their own plans

Ideally everyone wanting to provide services can register with NDIS. People with disability are vulnerable, and therefore, even if managing their own plans, people with disability must be protected. NDIS must incorporate Working with Children Check (if relevant to the role), a check against the Disability Worker Exclusion List, a Disqualified Carer Check, Employment History Check (including disciplinary action disclosure and checks of qualification and training). This is vital to ensure the safety of people with disability. This has been incorporated under Preventative in the consultation paper, and this is vital. The NDIS has responsibility to ensure that these checks are carried out.

We do agree to providing people with support to build capacity to manage staff selection. Resources, eg on risks, checklists to ask about and the pros and cons of choosing a registered provider must be available.

If people are managing their own support, they may require advocacy at some stage. This independent, free service must be available to them.

Reducing and eliminating restrictive practices in NDIS funded supports

Many of the issues and complaints that come to AMIDA are about restrictive practices in group homes. Instead of group homes being an improvement on large scale institutions, we see the same problems and issues that were once present in institutions before deinstitutionalisation. Examples of restrictive practices and their impact on people with disabilities are:

- Restrictive practices on one person are impacting on other people in the house, eg dietary requirements for a couple of clients are imposed on all.

- Staff convenience takes precedence - to the detriment of people living there. This is acknowledged in your consultation paper (page 77) and supports this point as an important one to note and to work on.
- What is often seen as normal is in fact restrictive, eg locked doors, cupboards, early meal and bed times, grouped activities at the expense of individual activities.
- Services are set up and ‘unconsciously’ restrict others living in the house.

Restrictive practices are acknowledged as a risk factor in the consultation paper, but if restrictive practices are recommended/practised, then there must be strict supervision/reporting of these practises, and of course restrictive practices must only be used as a last resort. This is highlighted in Option 4: Restrictive practices could only be authorised by an independent decision maker. As noted this could cause some problems with existing Guardianship legislation within states, and needs to be clarified.

Application for Restrictive Practices must not simply be rubber stamped. Review and alternatives should be shown to have been explored first.

There needs to be a mechanism to appeal decisions.

Reporting of Restrictive Practices

The RIDS system which has been developed in Victoria seems to cover all angles but AMIDA is aware of practices which are not reported, as they are subtly restrictive, such as one resident being restricted with food, as others in the household are on special diets, and ‘it is difficult to give people something different’. This is having a huge impact on this particular person’s health and wellbeing, and he is in fact being restricted, without it being authorised or considered as a restrictive practice.

AMIDA supports mandatory reporting on the use of restrictive practices to safeguard people’s human rights, and would support a combination of Option 2 and Option 3, as the levels that would best protect vulnerable people

The Senior Practitioner’s Office in Victoria has been proactively providing services with alternatives to restrictive practices and we believe this model should be national as part of the Framework.

Quality and Safeguarding Framework structure

The structure of the proposed quality and safeguarding framework, Developmental, Corrective and Preventative, seems a good base, but the only way that people with disability will have access to these safeguards is if there is a system of independent advocacy and self advocacy organisations to work with them and support them.

Advocacy has a role in each of the 3 areas by:

Developmental:

Advocacy has always balanced ‘speaking for and with’ and ‘information/education/knowledge imparting’ to people with disability, and the consultation paper acknowledges that having knowledge developed will always strengthen the safety of people with disability, even more than relying on outside support. Advocacy can support the development of knowledge for people with disability.

Corrective:

Advocates can respond to issues after they have occurred by providing advocacy support and by education as we do now. Complaints sit under the corrective heading in the consultation paper, and as stated before complaints mechanisms must be independent, accessible, supported and thorough. Advocates can support complaint making.

Preventative:

Training around respectful service delivery is paramount. This is included in the consultation paper with the description of training for service providers and staff. Client and staff training are included in AMIDA’s advocacy work, and we see this is another important role for advocates.

Although the roles of Advocacy, self advocacy and self advocacy organisations were not canvassed in this consultation we strongly assert they are vital ingredients in a quality & safeguard system and advocacy’s important place must be acknowledged by this review and its maintenance is recommended.

Finally, it is not easy to put a \$ value on advocacy, but “having an advocate always makes a difference” as we have often been told by people with disabilities, families and others working with people with disabilities.