

# Independent Review of the National Disability Insurance Scheme

## *NDIS Participant Safeguarding Proposals: Paper on Participant Safeguarding*

Occupational Therapy Australia submission

June 2023

## Introduction

Occupational Therapy Australia (OTA) welcomes the opportunity to provide a submission to the Independent Review of the National Disability Insurance Scheme (NDIS) in response to the Issues Paper on Participant Safeguarding.

OTA is the professional association and peak representative body for occupational therapists in Australia. There are over 27,666 registered occupational therapists working across the government, non-government, private and community sectors in Australia<sup>1</sup>. OTs are allied health professionals whose role is to enable their clients to engage in meaningful and productive activities.

## Occupational therapists and the NDIS

Occupational therapy is a person-centred health profession concerned with promoting health and wellbeing through participation in occupation. Occupational therapists achieve this by working with NDIS participants to enhance their ability to engage in the occupations (activities) they want, need, or are expected to do; or by modifying the occupation or the environment to better support their occupational engagement. Occupational therapists provide services across the lifespan and have a valuable role in supporting participants living with developmental disorders; physical, intellectual, chronic and/or progressive disability; and mental health issues.

OTs have a critical role in providing services within the NDIS, supporting people living with physical, intellectual, psychosocial and other disabilities. OTs work in a diverse range of settings to deliver NDIS services, or support NDIS participants, including small, medium and large private practice, rehabilitation settings, paediatric services, and community services.

Occupational therapists help to unlock the value of the NDIS by working with scheme participants to identify goals and engage them with appropriate supports and services that promote independence, social connection, economic participation and protect and sustain physical and mental health. They deliver services including:

- functional capacity assessment;
- prescription and implementation of assistive technology and/or environmental modifications;
- positive behaviour support;
- disability-related chronic disease management;
- driving assessments (when specifically trained to do so); and
- targeted, goal-focussed capacity building, for example, activities of daily living (ADL), or ADL training with participants with physical and/or psychosocial disability.

Occupational therapists are highly skilled in assessing the degree to which a person's disability affects their level of function in daily tasks. Based on these assessments, occupational therapists make recommendations for, and then deliver, interventions that enhance and maintain an individual's functional capacity, and prescribe supports, aides and assistive

---

<sup>1</sup> Occupational Therapy Board of Australia (Australian Health Practitioner Regulation Agency), 2022; <https://www.occupationaltherapyboard.gov.au/News/Annual-report.aspx>

technology that help everyday Australians live as engaged, valued and contributing members of society.

OTA has long recognised the value of NDIS and welcomes reforms to the scheme and the NDIS Quality and Safeguarding Framework that will improve the experience and outcomes of participants and enhance service quality and safety. OTA fundamentally supports NDIS objective of giving people choice and control over how their disability-related services and supports are delivered, and empowerment of participants to fully utilise their funded supports and make decisions about their care and support services.

OTA has already made a general submission to the NDIS Review in January 2023, and a submission on NDIS Quality and Safeguarding Framework in May 2023. This submission includes specific feedback to the policy proposal presented in the issues paper.

## **Feedback on Proposal 1: An NDIS-wide participant safeguarding strategy**

OTA supports the development of a national overarching Participant Safeguarding Strategy. It is important that this strategy is interlinked with all current policies and can operate across federal and state regimes and institutions to provide a single source of truth and provide certainty to agencies and participants on how participant safety can be achieved.

However, the current proposal appears to exclude workers and providers from the strategy, with the discussion paper noting that “these roles and expectations (are) articulated in the Framework and specific regulatory requirements.”

Providers and workers are a critical element in achieving safeguards for participants and it would be a significant omission if the proposal is trying to achieve the stated objective, to provide all scheme actors with “the same approach, objectives and understanding”.

OTA has identified that occupational therapists providing services to NDIS participants would welcome more direction and support on where they fit within the safeguarding elements of the scheme, and how they can effectively identify participant risk and escalate this to the appropriate authority (be it NDIA, NDIS Commission, or other state or federal regulatory bodies).

OTA has heard that occupational therapists working across the NDIS have encountered difficulty in escalating risks posed to participants, where they sit outside of the provider’s direct area of service delivery, whilst ensuring adherence to the Code of Conduct, Service Standards, and other guiding frameworks including the NDIS Quality and Safeguarding Framework, and OTA Code of Conduct. Examples include risk of significant mental health deterioration, risk of homelessness, and other risks, as identified by the NDIS Participant Safeguarding Policy, that sit outside the NDIS Commission’s reportable incident notification system.

OT is pleased that the NDIA's participant safeguarding policy has identified this (non - exhaustive) list of intersecting risk factors, as outlined below, and that it will be pursuing proactive pathways to address these:

- housing instability
- history of, or susceptibility to financial abuse
- extent of informal and family and community support networks – for example, independent trusted people to consult with including those who may advocate on their behalf
- at risk of family and domestic violence or abuse, including any evidence of prior experience of violence, abuse, neglect, or exploitation
- at risk of non-domestic violence or abuse (e.g., carer abuse)
- living alone
- having a sole provider
- low plan utilisation or an inability to effectively use their NDIS plan (including thin market issues).

Any overarching strategy needs to clearly identify how these abovementioned risk factors that fall outside of those in the reportable incident category are to be identified, managed (where appropriate) or escalated. OTA is aware that at present there are insufficient escalation pathways within the NDIA to find a point of contact to discuss and respond to these sorts of risks, and OTs experience significant stress when encountering a situation of potential harm to participant, without adequate ways in which to escalate and address this.

This is especially difficult and stressful where a participant does not have a strong natural safeguarding systems, for example friends or family, or other supporting services and providers, who can also be relied upon to support and manage risk. OTA is aware this situation may be replicated in the experience of other service providers, advocacy bodies and carer and family support networks.

Any new overarching strategy must also identify the interactive pathways that exist for participants within the scheme (e.g. relationships and touch points with government agencies, providers, family/friends) where risks may arise, and link clearly to the reporting, management and escalation pathways that are appropriate.

OTA recommends that in addition to consultation with government, participants and their families, that Department of Social Services also engages with industry peak bodies, providers and other stakeholders to ensure the strategy is comprehensive, responds to the varied contexts and needs across the scheme, can be implemented effectively, and that any tools and processes that sit underneath the strategy can be best operationalised.

## **Feedback on proposal 2: An improved and individualised approach to work with participants to understand risk and build safeguards**

OTA welcomes proposed reforms as set out in the discussion paper that have the objective to “improve proactive, individualised and participant-led conversations about risk and safeguards”. OTA especially supports signalled movements to introduce trauma informed

approaches as this is an area of identified need, across the NDIS, not just in participant safeguarding. OTA would also welcome the introduction of trauma informed approaches to other areas within this NDIS, including access and planning stages. This is especially important for participants with psychosocial disability, who are at risk of re-traumatisation when needing to retell their story or encounter bureaucratic and impersonal assessments and planning processes.

OTA also welcomes any enhancements to the NDIS system that introduce participant-centred approaches, as these can empower individuals, promote better understanding of their entitlements and supports, and enable them to articulate needs and goals, and receive personalised and responsive services and supports. OTA supports the issues paper's proposal to enhance risk safeguarding through participant centred discussion, planning and plan reviews to identify and managed possible risks for participants.

However, OTA recommends that this process could be enhanced further through the introduction of a broader participant led care-planning process, to achieve even stronger safeguarding outcomes. A care plan would sit alongside a participant's formal NDIS plan and include elements of risk identification, appropriate safeguards, and proposed approach to access the participant's planned supports and services, and also contain information about the participant and their preferences, goals, and any other information they give permission to share.

This would provide clear information for the participant on what they expect to receive during the delivery of their planned supports and would enable providers to access a full picture of the participant's overall care supports, services, preferences and care team.

This would have the advantage of ensuring all providers understand exactly what the participant needs and wants; enable greater collaboration between the participant's provider team; integrate capacity building with day-to-day supports; inform individual provider planning; build capacity of the support-worker workforce; manage any interfaces with other systems (e.g. health, education); and ensure greater transparency and provider accountability while reducing the risk of 'sharp-practices'. This would also reduce some of the current challenges participants experience in organising supports across multiple providers.

For some participants, organising supports is extremely challenging, and self-directing care can be impacted by the functional impact of their disability, particularly psychosocial disability. There is also a need to establish a system for coordinated care-team plans. Care-plans provide the scaffolding for providers to collaborate and to provide wrap-around support where needed. Care-plans can also ensure provider accountability and reduce the risk of sharp-practice through greater transparency, and ensure capacity-building strategies are integrated across care-team.

Currently, the lack of a centralised care planning resource means that the inputs from allied health specialists like occupational therapists are under-utilised. For example, occupational therapist functional capacity assessment reports are used at the point of plan-review to acquire additional funding, but documented strategies and advice contained within those reports that are designed to support the person are not understood, or disregarded, leading to oversights and gaps in the participant's care. Occupational therapists who also work providing behaviour

support describe a similar pattern, where positive behaviour support plans, which contain strategies to positively support the participant, are not implemented which in turn can lead to an increase in restrictive practice for the participant.

OTA notes that self-managed participants are a growing within the scheme and these enhanced processes would also empower these participants to understand and navigate the scheme and would be advantageous for a cohort who have less touch points with the NDIA.

Discussions around risk and safeguarding should occur at both the access and planning stages, and ongoing as plans are reviewed, or issues are identified. There should be flexibility in who is able to work with a participant to develop a care plan, with the priority being that it is someone that the participant knows and trusts or can be nominated as an advocate. This should be supported by an independent person (i.e. non-NDIA staff member or delegate) who hold appropriate skills and qualifications in understanding and working with persons with disability.

In addition to additional participant centred risk assessment and safeguarding, further adaptation of the existing access and planning processes can also build in further formal safeguarding mechanisms into core elements of the scheme. It is vital that access processes (and any reassessment of eligibility) are enhanced to ensure they are trauma informed, less bureaucratic, and captures the multifactorial nature of participant disability. Initial inadequate assessment leads to plans that are unsuited to participant needs, which has implications for the safe and effective allocation of support and delivery of care.

The planning process also has some key areas where safeguarding risks can occur. The allocation of supports based on primary disability limits access to broader disability needs for many participants. Ensuring cognitive, sensory and physical disability are recognized through the planning process, and supports funded in a timely manner, is imperative to ensure safer and better outcomes for participants. OTA understands that NDIA's plan assessment process often relies on internal data to assign an averaged 'Typical Support Packages' (TSP) based on a participant's primary disability and an assessed 'functional level'. This often disregards detailed evidence and nuance about the participant provided by occupational therapists about specific risks and needs of the participant, and may fail to identify and allocate safe, reasonable, and necessary supports. Greater transparency of these mechanisms is required, alongside the opportunity to co-design alternatives.

OTA is pleased that the 2023 Federal Budget announced additional funding to upskill NDIA staff in their understanding of disability. This upskilling needs to occur in non-NDIA workforce too, including NDIA delegates and intermediaries, to ensure they are aware of the range of preventative strategies that exist, including sensory modulation strategies, to reduce reliance on restrictive practices.

### **Feedback on proposal 3: Improved safeguards deployed on an individual basis**

OTA supports proposed initiatives that will build participant's natural safeguards. Clearer, accessible information for participants and their families will help participants to navigate the

scheme, understand their rights, access quality services, and highlight pathways to escalate risks. The suggestion of increased funding in participant plans to participate in mainstream activities and peer support networks are also positive ways to help build a participant's social capital.

Additional block funding for disability advocacy organisations is also another strategy to build the capacity of the advocacy sector to pursue initiatives and innovations to help participants to build natural safeguards and navigate formal scheme safeguards.

OTA also supports the proposal for a "rapid approval pathway for requests relating to supports needed to aid a participant's safeguarding in a temporary time of personal crisis such as the incapacitation of a primary carer or a situation involving family or domestic violence."

This would support the OTA's recommendation in response to proposal 1 above, to enable providers to escalate issues that are outside their area of clinical expertise, to enable the NDIS to consider and follow up, and address immediate need. The examples of immediate need stated in the discussion paper (the incapacitation of a primary carer or a situation involving family or domestic violence) are not the only situations where immediate need may arise, and homelessness and financial hardship must also be considered areas of crisis/need as part of this.