



NDIS Quality and Safeguarding Framework

Issues Paper on the NDIS Quality
and Safeguarding Framework
Independent Review of the National
Disability Insurance Scheme

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Foreword

The NDIS Quality and Safeguarding Framework (the Framework) set an initial vision for a nationally consistent, proportionate and whole-of-scheme approach to ensuring effective safeguards and high quality supports in the NDIS. At the time, the NDIS was in a period of transition in many states and territories and the introduction of the Framework sought to bring together separate quality and safeguards systems under one national approach.

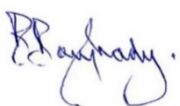
The Framework's release supported Australia's obligations under the United Nations Convention on the Rights of Persons with Disabilities and is underpinned by the *National Disability Insurance Scheme Act 2013*, the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector, and the former National Disability Strategy 2010-2020.

While many parts of the Framework have been operationalised, including the establishment of the NDIS Quality and Safeguards Commission, some parts have not been implemented as expected, or at all. After six years of operation, we are undertaking a review of the Framework, as part of our Independent Review of the NDIS, to ensure it remains fit for purpose and reflects the lived experiences of the disability sector.

This issues paper provides some background on the Framework and describes issues that the disability sector, and other interested parties, have raised in our engagement to date, as well as those identified in previous reviews and inquiries.

It is clear that the Framework requires a reset in order to drive more effective quality and safeguarding arrangements. We want to hear from you about how to achieve this. If you have limited time, we encourage you to focus on the summary and questions for consultation.

Yours sincerely



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Summary of key messages

The Framework was put in place in 2016. It talks about what needs to be done to make NDIS supports safe and good quality. While some parts of the Framework have been implemented, other parts have not been. Other reviews and inquiries have also talked about these differences in implementation, as well as other issues with quality and safeguards in the NDIS.

- The Framework is linked to the NDIS Act 2013 and the United Nations Convention on the Rights of Persons with Disabilities, using a human rights-based approach that puts participants at the centre, and promotes choice and control.

After six years, the Framework needs to be reset and this Issues Paper helps us talk to you about how this could be done. Key issues we have heard so far include:

- The Framework is outdated. It does not talk about what more needs to be done to make NDIS supports safe and good quality, and does not reflect how things have changed.
- The Framework only applies to NDIS supports, not other types of supports, and is not clearly linked to other systems that also keep people with disability safe.
- The Framework tries to provide clear roles but it is still confusing about who does what, and people who should be keeping participants safe do not always work well together.
- The Framework outlines developmental, preventative and corrective measures focused on NDIS participants, workers and providers. These measures were meant to be balanced and work together. This has not happened, with more focus on preventative and corrective measures, and not on developmental measures. Developmental measures help people with disability protect themselves.
- The Framework needs to balance individual choice and control with actions to provide protections for everyone. This requires choices and trade-offs.
- Participants have different levels of readiness to take control of their supports and manage risk, and should be supported to exercise choice and take reasonable risks. However, this has not happened enough under the Framework.
- Participants should have access to quality supports that are right for them. However, the Framework has not promoted good quality supports well.
- Progress has been made in implementing national regulation of NDIS providers and workers. However, concerns have been raised about these settings for providers and workers, and whether this is working well for everyone.

Have your say

[Have your say online form](#)

We want to hear from you about how to achieve a reset of the Framework in order to drive more effective quality and safeguarding arrangements in the NDIS. The questions below are posed to guide you in providing feedback. However, when providing a submission, you do not need to answer each question individually, or at all. You can respond to these questions and the issues identified in this paper in a way that best suits you.

1. What is working well about the Framework? What is not working well to promote safeguards of people with disability and the quality of supports?
2. Is there still a need for a Framework? If so:
 - a. What role should the Framework play going forward?
 - b. What should a future Framework look like?
 - c. What monitoring of the implementation and ongoing effectiveness of the Framework is required?
3. What supports, services and actors should the Framework cover?
4. What changes are required to the roles and responsibilities of different actors in the Framework?
 - a. How could these actors work together better to deliver a coordinated approach to quality and safeguarding?
5. What changes are required to the types of strategies and measures implemented under the Framework? For example:
 - a. How should the Framework go about balancing different priorities, such as the balance between protecting people with disability from harm and promoting their choice and control; and the balance between ensuring regulatory approaches support market entry and quality service delivery while protecting participants who are at risk of harm?
 - b. What is required to drive improvements in the quality of supports and services?
 - c. What is required to ensure the regulation of providers and workers is proportionate and effective?

About the Framework

Key messages

The Framework set an initial vision for quality and safeguards in the NDIS. While there has been positive progress in implementing parts of the Framework, other aspects have not been implemented as envisioned, or at all – and a number of reviews and inquiries have identified ongoing challenges with quality and safeguarding arrangements.

After six years in operation, the Framework needs to be reset in order to better reflect the current context and to drive more effective quality and safeguarding arrangements in the NDIS.

This issues paper supports a discussion about how to achieve this.

History of the Framework

The [NDIS Quality and Safeguarding Framework](#) (the Framework) outlines an overarching architecture and specific initiatives to achieve effective safeguards and high quality supports in the NDIS, with a view to ensuring national consistency and replacing previous state and territory quality and safeguarding arrangements.

The Framework's purpose is underpinned by the objects and principles of the [National Disability Insurance Scheme Act 2013](#) (NDIS Act 2013), including to empower participants to have informed choice and control to manage risks; be able to participate in, and contribute to, social and economic life; and live free from violence, abuse, neglect and exploitation.

The Framework was endorsed by the then Council of Australian Governments and released in 2016 following extensive public consultation with the disability sector, and informed by learnings from a number of public inquiries at the time. In addition to the objects and principles set out in the NDIS Act 2013, the Framework is also underpinned by the United Nations Convention on the Rights of Persons with Disabilities, the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector, and the former National Disability Strategy 2010-2020.

At the time of the Framework's release, participants in states and territories were transitioning to the NDIS, following a trial period that commenced in 2013. Most states and territories have since transitioned to new national quality and safeguarding arrangements. Western Australia, as well as residential aged care providers delivering

supports funded under the NDIS, are planned to finalise transition arrangements in July 2023.

Many of the strategies identified in the Framework have been developed and operationalised, including the establishment of the [NDIS Quality and Safeguards Commission](#) (NDIS Commission), the development of the NDIS Code of Conduct, the implementation of a registration scheme for providers, and nationally consistent worker screening, with over 590,000 workers granted an NDIS Worker Screening Check since 1 February 2021 (NDIS Commission 2022).

While much has been achieved in these areas, some other strategies of the Framework have not been implemented as expected, or at all, for a range of reasons. This includes developmental safeguards such as capacity building initiatives, the development of natural safeguards, and the provision of comprehensive consumer information. 'Natural safeguards' are those protective features which are part of people's day-to-day lives, such as having people around you that you trust, being part of a community or having a job.

The need to review the Framework

When the Framework was released, it was anticipated that it would need to be reviewed as the market developed, to ensure it remained fit for purpose. We are undertaking this review of the Framework to identify what has worked well and what needs to be improved.

The market has grown and changed over this time. As at 31 December 2022, the National Disability Insurance Agency (NDIA) (2022) reported the NDIS has grown to over 570,000 participants and is expected to increase further.

Participants are supported by a large market of providers. This is made up of around 20,000 registered providers (NDIS Commission 2022), over 130,000 unregistered providers (NDIA 2022) who are used by participants with plan managers, and an unquantified segment of the market used by self-managed participants.

It is both timely and essential to review the Framework to identify what has worked well and what needs to be improved. By mid-2023, the NDIS will have completed the transition to full scheme arrangements nationally, and the NDIS Commission will have been in operation for five years.

The Framework needs to be fit for purpose for a more mature NDIS; and should evolve to reflect changes in the scheme, its participants and the market. It is clear that the Framework requires a reset in order to draw on the experience of its implementation to date, better reflect the current context, and drive more effective quality and safeguarding arrangements in the NDIS.

This is the first step

This issues paper reflects what we have heard in our engagement to date and identified through analysis of other reviews and inquiries. Public consultation on the issues outlined in this paper will inform our advice and recommendations to governments.

We know that the Framework is a lengthy and complex document. We want to hear the breadth of experiences of the disability sector, particularly from participants, about what the Framework means to them.

This issues paper about the Framework is the first step in our conversations about quality and safeguards in the NDIS because the Framework sets out how quality and safeguards should work and who is responsible for the different parts. This issues paper is intended to broadly explore the Framework's role, approach, and settings for quality and safeguards in the NDIS.

How we will engage with you

We will consider specific aspects of quality and safeguards in more depth, focusing on the experiences of the disability sector, and will provide further opportunities for engagement. These further areas of focus will include:

- **Participant safeguarding.** We will consider how the NDIS can best promote participant safeguards. This will include considering a whole-of-scheme perspective on promoting participant safeguards; as well as how formal and natural safeguards can work together to support participant choice, control and wellbeing.
- **Regulatory approach.** We will consider opportunities to ensure the regulation of providers, workers and intermediaries is effective and proportionate to risk. This will include considering the regulatory approaches of the NDIS Commission and other Australian Government, as well as state and territory agencies that play roles in regulating for, or otherwise upholding, quality and safeguards.
- **Positive behaviour support and restrictive practices.** We will consider issues in relation to positive behaviour support and restrictive practices, including opportunities to make meaningful progress on reducing and eliminating the use of restrictive practices.

These opportunities for further engagement will inform our advice and recommendations to governments.

Other relevant reviews and inquiries

A number of public reviews and inquiries have been commenced or completed across the Australian Government, as well as state and territory governments, since the release of the Framework, providing further insights into challenges and opportunities to improve quality and safeguards in the NDIS. We are considering findings from previous reviews and inquiries, as well as submissions made to these reviews and inquiries, and will continue to monitor developments in active inquiries that may be relevant for consideration.

- The [Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#) was established in 2019, in response to community concerns and reports that identified historical and current experiences of people with disability. It has identified and considered a range of quality and safeguards issues including within the NDIS, which will be relevant for the work of our review.
- Government and parliamentary reviews and inquiries have also considered issues relating to NDIS quality and safeguards. In particular, the [Joint Standing Committee on the NDIS](#) has inquired into the operation of the NDIS Commission, in addition to undertaking other inquiries that considered quality and safeguards issues, such as progress reports on the implementation of the NDIS and workforce issues.
- The 2020 [Independent review into circumstances relating to the death of Ann-Marie Smith](#) looked into the issues surrounding the death of Ms Ann-Marie Smith and made a number of recommendations to improve quality and safeguards in the NDIS.
- The NDIS Commission completed an [Own Motion Inquiry into aspects of supported accommodation in the NDIS](#) in 2021, which aimed at identifying trends in issues in supported accommodation settings, the causes of these issues, and actions to address them.

Key issues

The role, objectives and principles of the Framework

Key messages

The Framework outlines strategies and measures for quality and safeguarding in the NDIS. Its objectives and principles are consistent with the NDIS Act 2013 and the United Nations Convention on the Rights of Persons with Disabilities, with a focus on a human rights based approach that is participant-centric and promotes choice and control.

The Framework outlines an overarching architecture and approach for quality and safeguarding in the NDIS, with a view to streamlining requirements for providers, ensuring national consistency and promoting greater choice and control for participants. The Framework also includes specific strategies to achieve these outcomes.

Given the range of actors and strategies involved in quality and safeguarding in the NDIS, the Framework was intended to set an overarching strategy and guidance, in particular for the Australian Government, as well as state and territory governments.

The overall objectives of the Framework are to ensure supports and services:

- uphold the rights of people with disability, including their rights as consumers
- facilitate informed decision-making by people with disability
- are effective in achieving person-centred outcomes for people with disability in ways that support and reflect their preferences and expectations
- are safe and fit for purpose
- allow participants to live free from abuse, violence, neglect and exploitation
- enable effective monitoring and responses to emerging issues as the NDIS develops.

The principles underpinning the Framework include:

- **A human rights approach.** Upholding and respecting the rights of people with disability, including the right to dignity and respect; to live free from violence, abuse, neglect and exploitation; and to participate fully in the community.
- **Choice and control.** Starting from a presumption that all people with disability have the capacity to make decisions and exercise choice and control, with appropriate support where needed. This is intended to allow for the dignity of risk, with support for participants to take informed and reasonable risks.

- **National consistency.** Regardless of where participants live in Australia, they can expect the same level of protection.
- **Proportionality and risk responsiveness.** Risk management and regulatory requirements must be tailored to differing levels and types of risk. This includes risks at the individual level (including the personal characteristics of a participant and the supports around them); and risks based on the types of support received (including the effect, level of personal contact and the environment of those supports).
- **Efficiency and effectiveness.** Protections should not unreasonably restrict entry into the market, should avoid or limit regulatory duplication wherever possible, and should develop participant capacity to manage their own safety and disability supports.

While we have not heard specific feedback on the objectives and principles of the Framework, many of the views expressed by the disability sector relate to specific issues regarding the implementation of the Framework.

Changing context for the Framework

Key messages

The Framework has not evolved to respond to changes in the NDIS, its participants and the market supporting them. As a result, the Framework is outdated and no longer meaningfully drives or guides quality and safeguarding arrangements.

The NDIS has continued to grow and change since the release of the Framework, and it is now operating in a different context. These changes include:

- The NDIS Commission has been established, and after a staged transition of states and territories, is now operating nationally.
- There has been an increased number of participants who are self-managed or plan-managed than originally envisioned (around 88% of participants as at 31 December 2022) (NDIA 2022). In response, there has been significant and unexpected growth in the unregistered provider market, with over 130,000 active unregistered providers (NDIA 2022). The Framework envisioned there would be a high proportion of agency-managed participants, and that providers of higher risk supports would generally be registered.
- New services have entered the market, including intermediary services that connect participants with the market and the emergence of platform providers, which connect participants with workers.
- As the market has grown, unique experiences of participants have become apparent including the experiences of First Nations people, culturally and linguistically diverse people, and people of diverse genders and sexuality, all of which intersect and interact

together, and may mean that some participants are at greater risk of violence, abuse, neglect and exploitation.

We have heard and identified:

- The Framework does not appear to be directly used to guide the work of the NDIS Commission and other actors. This means there is a lack of long-term, whole-of-scheme approaches to NDIS quality and safeguarding arrangements.
- The Framework has not evolved or been updated to reflect changes in the NDIS and its market. As a result, parts of it are outdated and need to be reassessed.
- Current strategies have not adequately addressed the unique experience of diverse participants. Supports are often not culturally appropriate and the need to recognise this diversity as part of promoting quality and safeguards has not been adequately addressed in the Framework or measures implemented under it.

The scope and audience of the Framework

Key messages

The Framework is focused on NDIS funded supports, and therefore covers only part of the broader population of people with disability. It is also not clear that the Framework is sufficiently connected with other quality and safeguarding arrangements that affect people with disability more broadly.

The Framework covers NDIS supports and services delivered to participants. However, the NDIS covers only part of a broader disability sector, with around 4.4 million people in Australia (in 2019) estimated to have a disability (AIHW 2022). Additionally, over 2 million people with disability (in 2016) are estimated to have experienced forms of violence and abuse, as well as experiencing this violence at a much higher rate than people without disability (ABS 2021).

At the time of its development, some criticised the Framework for only applying to participants and NDIS funded supports, and not addressing issues of quality and safeguards in disability services more widely.

The Framework also noted that people who are not eligible for the NDIS should have access to community-based supports, which were envisioned to be available through the [Information, Linkages and Capacity Building program](#). The purpose of the program included strengthening mainstream services, fostering improvement in disability support, minimising the escalation of issues and building individual capacity.

In Australia, there are numerous, sometimes overlapping, standards and frameworks for quality and safeguarding that affect people with disability more broadly than the NDIS, including for mental health, other disability services outside the NDIS and mainstream services. The Joint Standing Committee on the NDIS (2021) inquiry into the NDIS Quality and Safeguards Commission also noted that people with disability are confused by who does what, and where to go to complain about a service.

A range of priorities and actions to promote the safeguards and rights of people with disability are also set out in [Australia's Disability Strategy 2021-2031](#) and the supporting [Safety Targeted Action Plan](#). These provide relevant considerations, including the interactions between the NDIS and other service systems.

We have heard and identified:

- Having different approaches to quality and safeguards for NDIS supports versus those provided through other systems leads to inconsistent standards of quality and safeguards for people with disability, as well as confusion. All services should be delivered in a consistent, safe and high quality manner, across all service systems.
- Limited investment has been made in improving the experience of participants accessing mainstream services, as part of the Information, Linkages and Capacity Building program, which creates gaps and inconsistencies when participants are accessing multiple different services.
- The aims and initiatives of the Framework are intended to support participants, as well as providers and workers. However, the Framework is a lengthy document that is inaccessible to participants, and potentially lacks impact with actors in the NDIS quality and safeguarding system.

Roles and responsibilities in the Framework

Key messages

Many actors have formal and informal roles in quality and safeguarding. While the Framework sought to provide clarity about some of these roles, there is a degree of confusion about roles and expectations, and a lack of coordination amongst different actors in promoting quality and safeguards.

A broad range of governments and other actors have formal and informal roles in quality and safeguarding in the NDIS, which are articulated to varying degrees in the Framework.

Quality and safeguarding is a shared responsibility, requiring proactive efforts by providers, workers, regulators, the community, participants themselves and their supporters. As such,

there are a wide range of roles, responsibilities and expectations in current quality and safeguarding arrangements.

We have identified a range of key roles and responsibilities in current quality and safeguarding arrangements:

- **Individuals** (NDIS participants) self-advocate about how supports are delivered and raise concerns about supports and services.
- **Providers, intermediaries and workers** deliver safe and quality supports to NDIS participants, both direct supports and intermediary services. This includes engaging with participants about how supports are delivered, and identifying and responding to concerns about quality and safeguards.
- **Natural supports** such as families, carers and community who support participants to engage with NDIS supports, advocate for change and for quality and safeguards for participants when required.
- **Commonwealth Department of Social Services** designs policy and legislative frameworks for the NDIS (including markets and quality and safeguarding policy), and funds advocacy services and other programs.
- **NDIA** assesses risk of participants during the access and planning stages, ensures the quality of plans and appropriate funding for supports and services to mitigate risk, and supports informed decision-making and capability development of participants. The NDIA also plays a role in regulating for, or otherwise upholding, quality and safeguards through the NDIA Pricing Arrangements and Price Limits (which apply to agency-managed and plan-managed participants) and sets requirements for the delivery of some supports.
- **NDIS Commission** regulates the provider and worker market to reduce risk to participants, drives quality in the delivery of supports and exercises market oversight; responds to and investigates complaints and incidents; regulates the use of restrictive practices; and promotes positive behaviour support strategies to reduce and eliminate restrictive practices. In order to deliver its regulatory functions, the NDIS Commission also has a role in directly supporting participants to uphold their rights to safe and quality supports.
- **State and territory governments** implement worker screening arrangements, authorise restrictive practices, manage guardianship arrangements, manage community visitors schemes (where available), ensure quality and safeguards in the delivery and regulation of mainstream services (such as hospitals and schools), and operate protective and corrective arrangements (such as emergency services, police, and family services). States and territories also have a role to play in the regulation of state or territory funded disability supports outside of the NDIS.

We have heard and identified:

- There are a lot of actors involved in NDIS quality and safeguards and it can be confusing, particularly for participants, to understand who is responsible for what and how to raise issues.
- The Framework is not clear on the roles of non-government actors such as NDIS participants, families, carers, advocates and community support networks.
- The Framework does not clearly address, or promote coordination in, interactions between NDIS regulation and state and territory regulation. Additionally, there continue to be differences in quality and safeguarding arrangements between states and territories.
 - There are varying arrangements in relation to restrictive practice authorisation in states and territories, and in the implementation of NDIS worker screening arrangements.
 - There is overlap and duplication in provider regulatory and reporting requirements. For example, some providers have raised concerns about overlaps in requirements to report to the NDIS Commission as well as state and territory authorities on the use of restrictive practices.
 - Information sharing arrangements are not always in place to support closer collaboration between the NDIS Commission and state and territory authorities.
- The expectations of intermediaries such as plan managers, support coordinators and local area coordinators in quality and safeguarding are not always clear, despite significant interactions with participants.
- Awareness of the NDIS Commission and its role is low for some involved with the NDIS, particularly participants, and the split of responsibilities between the NDIS Commission and the NDIA is not well understood.

The Framework's approach to quality and safeguards

Key messages

The Framework outlines developmental, preventative and corrective measures focused on NDIS participants, workers and providers, with measures intended to be mutually supporting and reinforcing. Implementation of the Framework has focused more heavily on preventative and corrective measures, with less focus on developmental strategies.

The Framework consists of 'domains' of measures, and 'sites' (which we refer to as 'focus groups') to which these measures are applied.

The domains of the Framework are:

- **Developmental** measures to strengthen the capability of people with disability, workers and providers to reduce the risk of harm and promote quality.
- **Preventative** measures to proactively regulate providers and workers to reduce the risk of harm and promote quality.
- **Corrective** measures to resolve problems, enable improvements to be identified, and avoid the same problems recurring.

Across these domains, measures are targeted at three focus groups – individuals (NDIS participants), workers and providers.

Measures can be described as regulatory (where rules are applied and enforced) or non-regulatory (where knowledge and capability is built and behaviour is encouraged through education and training, information provision, incentives and other programs). Measures are intended to interact to create a system that is mutually supporting and reinforcing. For example, investment in the developmental and preventative domains is intended to limit the risk of harm, so that less corrective action is required.

We have heard and identified:

- Strategies implemented under the Framework have focused on the preventative and corrective domains, particularly for providers and workers; with limited focus on the developmental domain, particularly for individuals (NDIS participants).
- There may be other focus groups that were not considered in the development of the Framework but that could improve the operation of the Framework. For example, a separate focus group for
 - families and carers or a participant's community networks (separate from the existing focus group for individuals), as these groups are distinct in the lives of participants and play a role in safeguarding participants
 - intermediary services such as support coordinators (separate from the existing concept of providers), as intermediary services vary significantly from direct support delivery and could be expected to play a different role in quality and safeguarding
 - mainstream services such as health, education and child protection services to better embed effective interfaces in relation to quality and safeguards.

Quality and safeguarding measures under the Framework

In addition to setting out an overarching architecture for quality and safeguards in the NDIS, the Framework identifies a range of strategies and measures under each of the domains, which have been implemented to varying degrees since its release.

We will further consider and seek feedback on these specific strategies and measures in our ongoing work on quality and safeguards in the NDIS. However, in undertaking a review of the Framework, we have heard and identified several key themes relating to quality and safeguarding strategies and measures.

The balance of quality and safeguarding measures

Key messages

The Framework envisioned a combination of developmental, preventative and corrective measures. A key element of this approach is the balance between developmental measures to support individual choice in the management of risk and preventative measures to reduce risk across the system at the expense of individual choice. This balance has not necessarily materialised in the formal regulatory arrangements, with implementation weighted towards preventative and corrective measures, and more limited focus on developmental safeguards.

On the other hand, the growth of the unregistered provider market has moved the balance away from preventative measures without a corresponding increase in emphasis on developmental measures.

The Framework envisaged that measures would interact and work together to promote quality and safeguards, with a balance between developmental, preventative and corrective initiatives. It also assumed a balance between the management of risk on an individual basis (supported by developmental strategies to build the capability of participants) and systemic risk (supported by preventative and corrective measures to identify and respond to risk).

This balance of strategies is important in enacting many of the objects and principles outlined in the NDIS Act 2013 – including enabling people with disability to exercise choice and control and participate fully in their social and economic life; as well as protecting and preventing people with disability from experiencing harm.

However, these principles are sometimes in tension – measures to reduce the risk of harm for some participants may reduce choice for others; and lack of effort in one domain may lead to an overreliance on other domains. There are clearly different views about whether

the implementation of the Framework to date has found the most appropriate balance in quality and safeguarding strategies.

We have heard and identified:

- The focus of quality and safeguarding strategies to date has been heavily weighted towards preventative and corrective measures focused on providers and workers. Preventative measures include the NDIS Code of Conduct, the NDIS Practice Standards, provider registration requirements, regulation of restrictive practices, and worker screening requirements. Corrective measures include the NDIS Commission's complaints and reportable incidents function, compliance and infringement notices, enforceable undertakings, civil penalties, and the suspension and revocation of provider registration.
- At the same time, the unanticipated growth of the unregistered provider market has reduced the impact of preventative strategies and shifted responsibility for management of quality and safeguards back to participants without a corresponding investment in developmental strategies that support participants to make informed decisions about risk.
- There has been insufficient focus on developmental safeguards to support individuals in the NDIS, including participant capacity building, the provision of information, the development of natural safeguards (such as family, supporters and community), and initiatives focused on supported decision-making and advocacy.
- Similarly, there has been insufficient focus on developmental strategies to improve the quality and performance of providers and workers.

The approach to participant safeguards, choice and control

Key messages

Participants have varying degrees of readiness to take control of their supports and manage risk, and should be supported to exercise choice and take reasonable risks. However, implementation of the Framework has not sufficiently focused on providing participants with this support.

The Framework starts from a presumption that participants have the capacity to make decisions and exercise choice and control, consistent with the objects and principles in the NDIS Act 2013 – including that “people with disability should be supported to exercise choice, including in relation to taking reasonable risks, in the pursuit of their goals, and the planning and delivery of their supports”.

The Framework recognises that participants will have varying degrees of readiness to take control of their supports, and that participants may need support to build their knowledge, skills and confidence to practically exercise choice and control.

However, it is not clear that implementation of the Framework has sufficiently focused on supporting participants to exercise choice and control and engage in the dignity of risk – which requires people to be supported to take informed risks to improve the quality of their lives.

We have heard and identified:

- Participants take on differing degrees of risk and responsibility for their own safeguarding, depending on how their plans are managed and whether they use registered or unregistered providers.
 - For many participants, the right to take on varying degrees of risk and to choose to be responsible for their own safeguarding is a personal choice.
 - Many participants also seek a balance between risk and the value that they place in being able to manage their own plans, accessing a broad range of providers, many of which are unregistered.
 - However, it is not clear that these risks and responsibilities are always well understood by all participants who take on these risks.
- Around 60% of adult participants have conditions that could affect their decision-making capacity, such as acquired brain injury, intellectual disability or cognitive impairment, psychosocial disability or other episodic or degenerative disabilities. In addition, 42% of participants are aged less than 15 years and will likely need support to be heard in decision-making (NDIA 2022). This means that many participants may need support to adequately self-advocate and manage risk. However, there has been insufficient focus on developmental measures targeted to individuals, which means it is not clear that participants are receiving sufficient support to build their capacity and capability to exercise choice and engage with and manage risks.
- The unregistered segment of the market is subject to less regulatory oversight than many other human services sectors, and many participants using unregistered providers believe that there are more safeguards in place than actually apply. However, the use of registered providers does not guarantee effective safeguards and quality supports, and participants still need capacity building and support to ensure their safety.
- There are opportunities for intermediaries to play a greater and more clearly defined role in identifying risk, monitoring safeguards, building the capability of participants and supporting participants to manage risk.

- A greater focus on natural safeguards is required, as part of a greater focus on the developmental domain. This could include considering the role natural safeguards play in supporting participant choice and control; and implementing measures to build these safeguards.

The approach to quality

Key messages

Participants should have access to quality supports that are fit for their needs. However, there has been limited attention given to promoting quality in supports and services in the implementation of the Framework.

The Framework is clear that it seeks to promote quality, as well as ensuring effective safeguards. Building quality and best practice is identified as an objective to be supported by both developmental and preventative measures.

However, it is not clear that implementation of the Framework has focused on promoting quality to the extent originally envisaged. Instead, the implementation of the Framework has tended to focus on establishing and enforcing minimum safety standards through preventative and corrective measures focused on providers and workers.

We have heard and identified:

- There has been limited focus given by the NDIS Commission to supporting and encouraging providers and workers to engage in continuous quality improvement, including the promotion of quality through measures in the preventative domain. Similarly, many providers have given limited attention to listening and responding to participants and reflecting on complaints and serious incidents to improve quality and safeguards.
- Participants lack access to information required to understand the quality of supports available, and therefore to choose quality supports that are fit for their needs.
- There are mixed views on the extent to which policy and regulation should seek to drive improvements in quality, as opposed to setting and ensuring compliance with minimum safety standards.
- Consideration should also be given to how the NDIS Commission as a regulator should lead strategies to promote a positive culture of quality, or whether these roles should be performed by different organisations.

The approach to provider and worker regulation

Key messages

Progress has been made in implementing nationally consistent regulation of providers and workers under the Framework. However, concerns are raised about the proportionality and effectiveness of current provider and worker regulation, as well as whether it is fit for purpose for the nature of the market.

The Framework established an overarching strategy for the regulation of providers and workers, aimed at ensuring national consistency in regulation. Progress has been made in this regard, with the establishment of the NDIS Commission, the NDIS Code of Conduct, and arrangements for provider registration and worker screening.

A key feature of NDIS provider and worker regulation is that while all providers and workers are bound by the NDIS Code of Conduct and subject to the NDIS Commission's complaints process, not all providers are registered and subject to the NDIS Practice Standards, and not all workers are required to undergo an NDIS Worker Screening Check. The growth of the unregistered provider market, relative to what was envisaged when the Framework was developed, raises questions about how risk is being managed for participants in this market.

We have heard and identified:

- There are mixed views on provider and worker regulation:
 - Some argue that more providers should be registered (and more workers should undergo worker screening) due to the risk profile of the services they provide. Others argue that the unregistered provider market plays a highly valued role in enabling participant choice and control and offering flexibility for participants in how, and where, they access the services they want.
 - Some providers argue that current regulatory requirements lack proportionality and effectiveness, in some cases are duplicative and costly, and may act as a disincentive to providers entering or remaining in the market.
 - Regulatory and other similar requirements can sometimes pose a barrier to providers delivering better services. For example, unregistered providers argue that not being subject to the service definitions in the NDIS Pricing Arrangements and Price Limits gives them freedom to be more innovative and to invest in quality improvements.
 - In some instances, there are shortages in service provision. There should be a balance between ensuring regulatory approaches support market entry and quality service delivery, while protecting participants who are at risk in thin markets.

- Registered providers raise concerns about the lack of a 'level playing field' between registered and unregistered providers, with registered providers feeling that they are more highly scrutinised than unregistered providers and that incentives to operate as an unregistered provider undermine quality and safeguards for participants.
- Some argue that the regulatory approach of the NDIS Commission should be more proactive in identifying and addressing potential concerns about risks to participants, rather than waiting for complaints and reportable incidents.
 - However, it is also noted that the NDIS Commission's lack of visibility of unregistered providers, amongst other factors, is a barrier to more proactive identification of issues.

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