

**Submission on Proposed**  
**NATIONAL DISABILITY INSURANCE SCHEME (NDIS)**  
**NATIONAL QUALITY AND SAFEGUARDING FRAMEWORK**  
**“Safety with Strength”**

## **About Possability**

Possability is Tasmania's leading disability services provider offering a comprehensive range of services across the State. We have operated in Tasmania for 25 years and currently employ 176 (EFT) staff who provide services to more than 400 clients.

Our mission is to empower people with additional needs to achieve their vision of a good life by delivering excellence in support. Our services include Supported Accommodation, Respite, Community Access and Support, Leisure and Recreation, Specialist Support Services, Skill Development, Case Management and Out of Home Care.

## **Our approach**

Possability has an unwavering commitment to uphold the fundamental human and civil rights of people with a disability, which includes the right to live safely in their home, and the community.

We are acutely aware that our clients, most of whom have intellectual disabilities, are significantly more vulnerable to abuse than the general community and often find it difficult to report abuse. As a result we are extra vigilant in taking every possible action we can to uphold their rights and keep them safe.

We recognise the need for strong policies and procedures to protect the rights of clients, but most importantly we need a staff culture that treats clients with respect and empowers them to reach their potential.

We also recognise clients might need support to speak out about issues and determine how they want to live their lives. We encourage the development of self-advocacy, access to independent advocates and operate a strong client voice program.

Possability has a zero tolerance approach to client abuse and neglect. We firmly believe that the new national quality and safeguarding framework established under the National Disability Scheme must further strengthen the current safeguards and promote quality services.

## **Summary: Possability's position**

### **1. Universal accreditation**

Accreditation signals a service provider's quality and safety standards and helps consumers make an informed choice.

The growth of the sector under the NDIS is such that the disability sector should have its own specifically designed national standards and accreditation process that focusses on the internal processes and controls within an organisation to ensure that:

- clients are adequately safeguarded; and
- the organisation proactively engages with clients to develop their individual capacity to self-advocate and raise issues freely.

The new standard should be built on the current National Disability Standard and have specific focus on the inherent safeguarding requirements particular to the disability support industry. There should be universal accreditation for NDIA registered providers to help ensure there is a quality base line.

While providers working solely in the disability sector would be expected to be accredited against the new Disability Standard, we recognise that there are providers that already have accreditation under relevant standards and professional bodies. Cross recognition of nationally regulated health and allied health practitioners – for example, Australian Health Practitioner Regulation Agency (AHPRA) registered professionals and organisations already compliant with other relevant federally regulated industries (e.g. Aged Care) – would avoid the imposition of onerous compliance costs on sole traders and smaller operators.

We suggest a transition process to allow existing NDIA registered providers two years to gain accreditation, while all future new registrants would be required to gain accreditation prior to registration.

The Disability Standard should be tiered (e.g. 1-4 stars) to drive continuous improvement by service providers and to provide transparency to consumers on the variation of quality assurance systems between registered providers. The NDIA could offer sector development support to assist smaller providers meet the standard in a similar manner to other capacity building processes.

## **2. Independent Standards and Accreditation Agency**

It is vital that the general community has confidence in the regulation of the disability services sector, particularly with the rolling out of the NDIS and market development. Possability believes an independent regulator is more likely to achieve this required level of public confidence.

This independent national regulatory body should establish a rigorous Disability Standards Framework that builds on and strengthens the current National Disability Standards (as outlined above). It would also be charged with accrediting services providers under the Disability Standard or other recognised standards, conducting annual audits and random spot checks to ensure compliance.

The agency would be empowered to make recommendations to the NDIA to sanction service providers that do not meet the Disability Standard (or other recognised professional standards) or where a particularly serious complaint has been upheld. Sanction options would include deregistration.

## **3. Consumer Rights Complaints Body**

Similar to the Aged Care sector, there should be an independent Disability Commissioner and Office of the Commissioner, to whom complaints can be referred when they cannot be resolved by a service provider. The body should have a national scope to receive, assess and resolve complaints specifically concerning the Disability Services sector.

The Office of the Commissioner would have the capacity to take complaints from consumers, advocates, family members and employees. It should also have the scope to take complaints from service providers about administrative actions of public authorities and to undertake specific examination of issues as required by the relevant Federal Minister.

Issues for people with disability are broad ranging and quite different to Aged Care. The level of vulnerability of participants in the scheme (most of whom have a life-long disability) and the substantial growth in the sector warrants the creation of a complaints body with a specific focus. It is not appropriate to attach this responsibility to those of the current Aged Care Commissioner.

#### 4. Authorisation of restrictive practices

A strong culture of quality support reduces the need for individuals to communicate through behaviours of concern. Where a person has more complex needs that require individualised support, functional assessment and positive behaviour support, strategies including non-aversive reactive strategies are effective in reducing and eliminating restrictive practices.

In the limited situations where restrictive practices are required to ensure the safety of the person or others then, to uphold the fundamental human right to liberty, they should be kept to an absolute minimum. Currently in Tasmania use of all restrictive practices must be reported to the Senior Practitioner. This has been effective in raising awareness of, challenging and reducing the use of restrictive practices and we would not support any weakening of this approach.

#### 5. Mandatory staff safety checks

All employers of disability support workers and other staff who come into contact with participants, whether or not they are registered with the NDIA, should be screened prior to commencing employment. This screening should include a Police check and others as relevant, such as Working with Vulnerable People and Working with Children checks. The checking process should be repeated on a regular basis during an individual's employment (every 2 or 3 years).

Possability supports the creation of a national 'barred persons' list.

#### 6. Service provider feedback and complaints processes

All providers must have an effective and responsive complaints and feedback system in place. This should be a key element of the new Disability Standard, with providers demonstrating compliance through the accreditation process.

In addition to these minimum requirements, providers must also have meaningful and demonstrable strategies in place to actively seek feedback and complaints from clients and families. Such efforts should also look to build the capacity of individuals to advocate on their own behalf and encourage a culture of open feedback concerning support delivery (Refer To: Item 7 – Client Voice).

#### 7. Client Voice

Service providers should provide channels and empower participants with skills to speak out about issues important to them, including abuse. We encourage clients to speak out through self-advocacy or to seek support from an independent advocate when in need.

We have the following processes and programs to ensure clients are aware of their rights and have a range of opportunities to express them:

- **Client policy manual:** Clients and carers are provided with a book outlining policies and grievance processes that can be followed. This is presented in an easy English version to assist those with low literacy levels.
- **Resident meetings:** Our specialist Practice Development staff hold bi-monthly resident meetings where residents can raise concerns and issues they would like addressed. Staff have actively encouraged clients over successive years to be comfortable about raising a complaint.

- **Consumer Forums:** Each house has an elected consumer representative who takes issues and complaints to a quarterly Consumer Representative meeting. These meetings are independently facilitated by the advocacy group, Speak Out Advocacy, to help clients feel more comfortable in raising matters about services. The feedback from these forums is presented in-person by consumer representatives at all Board meetings.
- **Road to Success program:** Possability has partnered with Speak Out Advocacy to deliver a self-advocacy program, Road to Success, designed to increase confidence and self-determination of clients. The program includes a number of workshops run by an advocate and a peer (self-advocate) and covers topics including self-expression, self-confidence, self-determination, self-reliance, self-development and self-esteem. This program, piloted in 2013-14, is being expanded across services this year (2015).

These kinds of programs and activities should be recognised in the NDIS Quality and Safeguarding framework as they deliver under each pillar - developmental, preventative and corrective. It is critical that funding models provide resources for these activities to be undertaken by service providers who work with vulnerable participants.

## 8. Independent Advocates

Independent advocacy organisations play an important role in advocating for people with disability, particularly when there are not strong natural supports. We believe it is vital that there is a range of advocacy groups for clients to choose from and that these groups are adequately resourced by government to effectively deliver advocacy support. Funding provision to advocacy groups could sit with the independent complaints body as one of its capacity building programs.

## 9. Organisational culture

Within a disability services organisation, robust processes and procedures are necessary but not sufficient to keep NDIS participants safe. The most effective protectors against abuse are staff and work culture. Possability has a number of formal and informal processes to develop a culture that protects our clients and does not tolerate abuse. We are investing considerable efforts into building a culture based on our core values including that "Human rights and dignity underpin all our decisions and actions."

Strong and effective leadership is vital to prevent abuse and respond effectively. We have invested in a development program for our frontline leaders and key influencers (30 staff) in 2015. We also have mandatory annual training for all staff (frontline and office based) on our Zero Tolerance to abuse of clients. This educates staff on their legal and moral obligations, policies and procedures, as well as providing them with the skills to advocate for clients on a daily basis.

Once again, these approaches require a significant investment of resources from service providers, which needs to be acknowledged and funded by the NDIA.

## RESPONSE TO QUESTIONS IN THE CONSULTATION PAPER

### Building participants capacity

#### **How can the NDIS better support people with disability who are isolated or have few, or no, people in their lives – to help ensure they are safe and their rights are protected?**

The NDIS can ensure participants with few people in their lives have funded supports to pursue more connections and increase their capacity for self-advocacy (see Road to Success above).

It is also important that advocacy organisations are sufficiently funded so that they have the resources to support these individuals in the future.

#### **What initiatives would help providers of supports to ensure they offer safe and high quality services?**

Strong organisations with sound governance, quality systems, good leadership and a protective culture are more likely to deliver high quality services that are safe and assist participants meet their life goals. It is therefore critical that the NDIS invest in organisational and professional capacity development in the sector including sharing best practices and lessons learnt. This can be achieved through government funding of training, pilot programs, research, conferences and forums, professional networks and other initiatives.

### Ensuring staff are safe to work with participants

#### **Who should make the decision about whether employees are safe to work with people with disability?**

The decision about who is safe to work with people with disability should be made by those who hold the risk of that decision. After conducting comprehensive checks, the screening agency can determine that a person is safe to work with people with a disability. However, ultimately it is the employer that carries the risk, so they should be able to make the final assessment on whether they believe the person is safe to be employed. Employers should have the right to choose to uphold higher standards for their employees than the screening agency or to have a lower threshold for risk.

#### **Of the options described, which option or combination of options do you prefer?**

Possability supports Option 3 and 4. A centralised Working with Vulnerable People clearance check that draws on broader information than a standard Police check would be appropriate. The employer should have access to the information gathered in the clearance check as well as the screening agency to allow them to make a fully informed recruitment decision.

We support the creation of a 'barred persons' list and the requirement for mandatory reporting of events where an employee or volunteer endangered the safety of a participant.

### Monitoring and oversight

#### **Should reporting of serious incidents be mandatory under the NDIS? If so, what kinds of incidents should be reported? To whom should they be reported?**

Reporting and responding to incidents is vital to demonstrate a culture of good practice and responsiveness to issues. Reporting should be encouraged, with reporting of serious incidents mandatory.

Currently all allegations of abuse in Tasmania are reported to the Department of Health and Human Services; the service provider then investigates and reports on the outcome. If the incident is deemed to be serious, the Department has the right to instigate an external or independent investigation.

At a minimum, incidents where a person requires hospitalisation should be reported. If a regulatory body is established (as we believe it should) the report would be made to this body.

**Should there be an independent oversight body for the NDIS?**

Yes.

**What powers and responsibilities do you think an oversight body should have?**

An independent national regulatory body should have the responsibility for NDIA registration based on applicants meeting an appropriate external quality assurance system.

The oversight body should establish a new, rigorous Disability Standards Framework that builds on and strengthens the current National Disability Standards. It would be charged with accrediting service providers under the Disability Standard or other recognised standards, conducting annual audits and random spot checks. It should provide clear guidance to providers when they are not meeting some aspects of the Standard and timelines for corrective actions.

The oversight body must have investigative powers to probe organisations for potential systemic issues that have been referred to them by the independent complaints body or other authorities.

The agency should have the power to deregister providers that fail to address corrective actions of a serious nature within a reasonable period and/or have been found in serious breach of the Disability Standard.

**Should there be community visitor schemes in the NDIS and, if so, what should their role be?**

A Community Visitor Scheme could perform an important role in advocacy support, particularly for people who might not have supportive family and community connections. Currently where people in a participant's support network appear to be acting against a person's best interests, the only option is application for guardianship. We see a role for a community visitor in:

- raising issues with organisations on the persons behalf;
- reporting unresolved issues to the regulator;
- providing advice to planners on who should/should not support the person in decision making.
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**NDIA provider registration**

**Which NDIA provider registration option would provide the best assurance for providers? Which option would provide the best assurance for participants?**

NDIA funding should only go to registered providers. This would ensure there is a level playing field and consistent payment rates for all providers.

As outlined earlier, there should be mandatory participation in an external quality assurance system (option 4). There would also be value from Option 3, mandated quality evaluation, if this is not already encompassed in the quality assurance system. Accreditation under an independent quality assurance standard that covers participants' experiences as well as risk management and processes within an organisation provides the strongest assurance for both participants and providers.

It provides a signal to consumers that the provider meets a benchmark in terms of quality management systems that underpins the provision of consistent quality services. The accreditation audit process offers organisations valuable feedback and guidance on improvement opportunities.

### **Should the approach to registration depend on the type of support?**

Registration conditions should be varied depending on the risk associated with the type of support. For example, people with profound disability receiving one-on-one personal care support in their home could expect to be at greater risk than group community-based activities, such as Leisure and Recreation. Registration conditions should also take into account the track record of an organisation.

Possability recommends quality audits for registered services undertaken by the regulator, in addition to independent accreditation, as a means to provide assurance that registration requirements are being met.

### **Reducing and eliminating restrictive practices in NDIS-funded supports**

#### **Who should decide when restrictive practices can be used, and what safeguards will be needed?**

Restrictive practices should be eliminated or reduced as much as possible as they are an infringement of fundamental human rights. As such, Option 1 and 2 are completely inadequate as they are open to abuse.

Possability supports Option 4 where planned restrictive practices can only be authorised by an independent decision maker with appropriate skills and knowledge, such as a Senior Practitioner.

#### **What processes or systems might be needed to ensure decisions to use restrictive practices in a behaviour support plan are right for the person concerned?**

Whenever restrictive practices are considered, the person should have access to a high quality Positive Behaviour Support plan as defined below.

Positive Behaviour Support (PBS) is an approach and commitment to providing a range of supports that is proactive, respectful, strengths-based, meaningful and non-coercive. It is a move away from traditional behaviour support approaches that were often focussed on reactive strategies that were commonly based on punitive approaches.

PBS is an applied science that uses the Functional Behaviour Analysis method as the basis for understanding why a person behaves the way he or she does. Based on a sound understanding of the person and their needs, a PBS framework aims to implement positive approaches to solving behavioural challenges, including educational methods, environmental design, direct treatment strategies such as reward schedules, non-aversive reactive strategies for safe rapid control of behavioural emergencies and overall review of systems that encourage positive change, prevent behavioural problems (antecedent controls) and result in enhancement of individual quality of life.

PBS are based on a comprehensive assessment of the person's whole-of-life areas, history, environments, learning and needs, and should be incorporated into or be drawn from a holistic individualised support plan. All interventions within a PBS framework aim to assist the person to build and develop a positive adaptive skills repertoire (including meaningful engagement and participation in the life of the community), and wherever possible, to regulate and manage their own behavioural and emotional responses through their internal resources.



Where restrictive practices are being used or recommended this quality of assessment should always be available and practices reviewed regularly with a view to reduction and elimination. To ensure a network of practitioners skilled to undertake this work may require investment in training and sector development. We recommend the Institute of Applied Behaviour Analysis's longitudinal training course as the gold standard in this style of plan development.

**What kinds of support are you receiving now from state departments that you think would be helpful if it was available under the NDIS?**

The behavioural assessment and support currently available from the Tasmanian Government can be delivered by the not-for-profit/private sector. There may be some need to invest in the sector initially and to set standards in terms of quality of behavioural assessment and support plans. This could be a specialist role that sits with the regulator. It is suggested that providers be required to demonstrate that they meet these standards to qualify for the higher rate of remuneration for complex plans.

Possability has invested in developing capacity in behaviour assessment and complex support plans as the timeliness and standard of response provided has often not met organisational requirements to manage high risk situations. As well as employing clinical staff, Possability has invested heavily in developing skills at a support worker, leadership and administrative staff level to ensure staff understand the concept of Positive Behaviour Support including non-aversive crisis management.

The Gateway Services in Tasmania have been a valuable single entry point, information and referral service to families. It has also made the transition to the NDIS in Tasmania smoother. Possability would like to see this type of service continue and be funded by the NDIS.

**Would you support mandatory reporting on the use of restrictive practices? Why or why not?**

Possability supports mandatory reporting of the use of restrictive practices because it allows providers and authorities to monitor their use and fully understand the extent of use and potentially abuse. This information allows the independent office holder (Senior Practitioner) to monitor use of restrictive practices and assess whether there are systemic issues at an organisational level or across the sector.

**If you support mandatory reporting on the use of restrictive practices, what level of reporting do you believe should occur to provide adequate accountability?**

We support Option 3, mandatory reporting of each occasion where a restrictive practice is used. This would include reporting on the use of restrictive practices in Positive Behaviour Plans, as well as emergency use during serious incidents.

**Safeguards for participants who manage their own plans**

**Should people who manage their own plans be able to choose unregistered providers of supports on an 'at your own risk' basis, or down the NDIS have a duty of care to ensure that all providers are safe and competent?**

The NDIS has a duty of care to ensure that all providers are safe and competent. All providers of disability-related services that are funded under the NDIS should be required to be registered and meet minimum standards.

## Systems for handling complaints

### **How important is it to have an NDIS complaints system that is independent from providers of supports?**

It is critical that the general community has confidence in the NDIS complaints system and that there is an avenue for airing grievances that cannot be resolved by service providers. An independent complaints body is more likely to achieve public confidence and achieve the desired outcomes of a fair hearing for complainants and providers. Also there may be complaints about NDIS that would need to be investigated externally.

The complaints body should be independent of industry and also the NDIA, and be empowered to take complaints from providers about treatment by the NDIA. That said, the body should employ personnel with relevant expertise in the delivery of disability services.

### **Should an NDIS complaints system apply only to disability-related supports funded by the NDIS, to all funded supports, or to all disability supports regardless of whether they are funded by the NDIS?**

The complaints system should apply only to disability-related supports funded by the NDIS. There will be other universal complaints systems that will cover non-disability areas of support. The NDIS cannot be expected to be responsible for services that they do not fund.

### **What powers should a complaints body have?**

The complaints body should have a national scope, to receive, assess and resolve complaints specifically concerning the Disability Services sector.

The agency should have the capacity to take complaints from consumers, advocates, family members and employees. It should also have the scope to take complaints from service providers about administrative actions of public authorities.

The body should encourage complaints to be resolved using existing organisational mechanisms at the lowest level possible and maintain a monitoring role unless the complaint cannot be resolved through these mechanisms. This would avoid unnecessary escalation.

Where complaints reflect systemic issues of abuse or neglect the body should be able to conduct a thorough investigation of an organisation.