

## **Submission to the Australian Guardianship and Administration Council on the Draft Best Practice Guidelines on Participation of the Proposed Represented Person**

### **Who we are**

National Disability Services is the peak industry body for non-government disability service providers. It represents service providers across Australia in their work to deliver high-quality supports and life opportunities for people with disability. Its Australia-wide membership includes over 1100 non-government organisations which support people with all forms of disability. NDS members collectively provide the full range of disability services – from accommodation support, respite and therapy to community access and employment.

### **Fundamental position**

NDS welcomes the work of the Australian Guardianship and Administrative Council to develop nationally consistent guidelines for the participation of persons with disability in guardianship proceedings and for the promotion of Tribunal practices that are more closely aligned with the principles of the UN Convention on the Rights of Persons with Disability (CRPD).

In-principle, while NDS endorses the intent of the Draft Best Practice Guidelines, it is also broadly supportive of the concerns expressed by the NSW Council for Intellectual Disability in their submission to the AGAC's consultation. These amount to a call to strengthen the commitment to best practice in facilitating participation of represented persons in guardianship proceedings.

### **Implementation concerns**

While the guidelines, in themselves, do not impose significant additional requirements on disability support providers, their implementation has implications for providers which are likely to impact the capacity of the revised guidelines to deliver on their objective of more inclusive, respectful and effective guardianship arrangements.

In NDS's view, this impact is likely to manifest at a market level as a shortage of services to represented persons in situations where the Guidelines stipulate resource-intensive forms of support for people in the absence of the actual resources to deliver them. In these situations – and in the absence of other, formal arrangements – existing practice defaults to an expectation that the represented person's service provider will supply the support required to make participation possible. This was sustainable under former block-funding arrangements which facilitated such flexibility but is not under NDIS individualised funding arrangements.

The difficulty for providers arises in association with the high proportion of people under orders who do not have informal supports or access to paid independent advocacy and who rely on their providers to contribute to the pre-hearing process and attend hearings with them. (Draft Guideline 4 steps out some of what this support involves.)

This workload is typically not provided for or funded in the represented person's NDIS plan budget. This means that NDIS providers are unable to recover the costs associated with making applications, transporting people to and from hearings, giving evidence to the tribunal, briefing an independent advocate or legal representative, and/or supporting a person with disability through the process.

Providers are already struggling with the resource implications of assumptions by the National Disability Insurance Agency about unfunded provider involvement in NDIS pre-planning and plan meetings. The introduction of the new quality and safeguarding arrangements in NSW are having a similar effect in relation to changes in the definition of restrictive practices and the need for orders for people with behaviour support plans requiring chemical restraint.

To its credit, the AGAC acknowledges the impact of resource constraints on the integrity of Tribunal processes – and, by implication, on the capacity of other parties to proceedings (e.g. at 3.1, 7.10 of the Issues Paper).

NSW CID also frames its own submission with an acknowledgment of the need for 'substantial investments [being] required ... to give effect to good practice'.

These acknowledgements go to the heart of the workability of the guidelines from a support provider perspective. NDS also believes it will concern the AGAC and its members that many NDIS participants have limited support to participate in hearings – and tribunals may have reduced access to relevant evidence to inform their decision-making – as a by-product of weaknesses in the design of the system.

The further risk to the intent of the Draft Guidelines is that the cumulative effect of these unfunded mandates imposed on providers will force many to cease service delivery to or adversely select customers (NDIS participants) who cost them more to support than they are paid by the NDIS. There is already evidence that thin markets are developing in some forms of support and among some cohorts of NDIS participant whose support needs are complex. The NDIA is responding – but not quickly enough.

NDS accepts that any solution to the concerns raised is beyond the control of the AGAC or its individual members. However, the Council may want to consider recommendations to all levels of government that resourcing questions are fully resolved in advance by the relevant agencies where the capacity of people to access effective guardianship arrangements is a function of supports requiring funding. In NDS's view, a failure to address and resolve this issue places achievement of the Draft Guidelines' higher-level objectives at risk.

Thank you for your consideration of these comments and for the opportunity to make this contribution. If the Council requires further information or has additional questions, please feel free to contact either myself at [john.carrigan@nds.org.au](mailto:john.carrigan@nds.org.au) or 0448-325-356 or Gordon Duff, General Manager, Sector Development and Research at [gordon.duff@nds.org.au](mailto:gordon.duff@nds.org.au) or 02-9256-3117.

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