



Submission to NDIS Joint Standing Committee inquiry into the NDIS Quality and Safeguards Commission

31 July 2020

About the Submitter

JFA Purple Orange is an independent, social-profit organisation that undertakes systemic policy analysis and advocacy across a range of issues affecting people living with disability and their families.

Our work is characterised by co-design and co-production, and includes hosting a number of user-led initiatives.

Much of our work involves connecting people living with disability to good information and to each other. We also work extensively in multi-stakeholder consultation and collaboration, especially around policy and practice that helps ensure people living with disability are welcomed as valued members of the mainstream community.

Our work is informed by a model called *Citizenhood*.

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1. Summary and recommendations

It is well documented that people living with a disability are particularly vulnerable to experiencing abuse. JFA Purple Orange understands that the work of the NDIS Quality and Safeguards Commission is centrally focussed on regulating NDIS providers, providing national consistency, promoting safety and quality services, and identifying areas for improvement in keeping people living with disability safe. Quality and safeguards ensure people with disability have access to high quality supports and services. Safeguarding people living with disability from abuse, harm and neglect is every disability service provider's responsibility and must be an important part of everyday practice.

However, JFA Purple Orange emphasises that safeguards include natural safeguards like personal relationships and community connections, and that it is these safeguards that need to be built in the lives of every person living with disability in order to truly make inroads into preventing abuse and harm.

We recommend:

Recommendation 1

That the NDIA lead a national conversation around the importance of natural safeguards, including that a conversation around an individual's social capital be included in every NDIS plan discussion.

Recommendation 2

That local community safeguarding schemes such as the South Australian Community Visitors Scheme be re-designed through consultation with people living with disability to include an extension of mandate pertaining to visitable places, unplanned checks and audits and private dwellings.

Recommendation 3

That people living with disability are continued to be well-supported to connect with advocacy groups and peer networks in order to build the number of natural safeguards in their lives.

2. Introduction

As an organisation, we have advocated for adequate safeguarding of vulnerable people for many years. Rather than comment on the mechanics and operations of the NDIS Quality and Safeguards Commission (QSC), this submission will instead focus more broadly on the larger issues of safeguarding people living with disability. We argue that while formal safeguard operations are an essential mechanism in the system, they are unlikely to alone result in adequate safeguarding of people living with disability. We believe that a greater emphasis needs to be given towards building informal safeguards in people's lives.

JFA Purple Orange suggests that there is a fundamental disconnect between the safeguarding oversight within disability systems in Australia and the abuse experiences of people living with disability. System responses such as those carried out by the QSC are primarily geared to discrete instances of abuse or harm, which can be addressed and resolved on an individual basis. People living with disability talk frequently about abuse caused primarily by the interaction of poorly trained and supported workers. Added to this are systemic factors within the disability sector such as managerial culture, resource shortages, policy priorities which downgrade the importance of individual support and institutional practices. The causes of violence, abuse, neglect and exploitation are complex, with the current Royal Commission inquiry into this very topic testimony to this complexity. It would seem that the practice of safeguarding vulnerable people requires a different set of strategies to resolve than have been delivered to date.

3. Key issues relating to safeguarding people living with disability

3.1. Formal safeguards

It is our view that the formal safeguarding operations undertaken by systems such as the QSC will never be enough in and of themselves to provide adequate safeguarding for people living with disability. Formal safeguarding systems are comprised of regulatory compliance

processes such as personnel clearances, audits, and investigative complaints procedures. These processes are ineffective at providing adequate safeguarding in light of recent cases where people living with disability tragically fall through the cracks of these systems despite the formal safeguarding processes being in place.

For example, in cases such as that of Anne Marie Smith in South Australia the formal safeguarding processes of complaints procedures are irrelevant because she had no one in her life to complain/assist with making a complaint. It is reasonable to assume that a spot auditing arrangement of the provider delivering services to Anne Marie Smith would not have prevented the extensive abuse and negligence to which she was subjected.

Furthermore, the self-selected process currently in place whereby providers arrange their own auditing lends itself to situations whereby providers may be able to source auditors who will engage a ‘tick and flick’ strategy and not dive deeply into an organisation’s operations.

JFA Purple Orange suggests that a focus on responding to individual instances of harm may be occurring at the expense of a ‘big picture’. At the same time there is evidence (such as through the tragic cases of Anne Marie Smith, Willow Dunn and David Harris in the recent months) that a lack of focus on prevention of abuse and neglect and instead a strong focus on systems and resources allocated to compliance and managerial service approaches, has led to the reliance on complaints to activate responses to abuse¹. Underpinning all of these issues is a noticeable absence of people living with disability in research, policy development and practice which alters the culture and practice of disability services and assists in making them safer for people to exist within².

¹ Deeper data needed to understand scale of abuse faced by people with disability, Dr Georgina Sutherland, Dr Sean Byars, Mellissa Kavenagh, Professor Anne Kavanagh, Professor Gwynnyth Llewellyn, <https://pursuit.unimelb.edu.au/articles/deeper-data-needed-to-understand-scale-of-abuse-faced-by-people-with-disability>

² Robinson, S., Graham, A., Fisher, K.R., Meltzer, A., Blaxland, M. & Johnson, K. (2017) Preventing abuse and promoting personal safety in young people with disability. Lismore, Southern Cross University

The importance of a robust systemic and structural prevention focus is highlighted by the current reliance on complaints by individuals to activate protection against abuse and neglect. Complaints-based systems rely on articulate, assertive and empowered complainants. In the case of abuse and neglect, there are some very real risks that compliance and risk management approaches will fail to educate workers about the ethical components of their work, and their role in standing alongside, and sometimes for, people who are being subjected to maltreatment.

3.2. Informal Safeguards

Informal safeguards are examples of the concept that people living with disability are more likely to be safe when they are actively involved with their family and the community. The things that make people safe can be seen as the same things that are needed to have ‘a good life’. For example, caring relationships and enhanced opportunities for participation in daily life are examples of this. JFA Purple Orange therefore believes that freely given relationships are the greatest protections or safeguards for people living with disability.

As we believe that that natural safeguards are likely to occur in an individual’s life via relationships and social connections, we therefore see that paid care providers play a key role in being able to facilitate these safeguards. We continue to advocate for relevant training to upskill key staff in the area of how best to facilitate more natural safeguards into the lives of vulnerable people. We believe a focus towards this might see careful risk assessments of individual options translate into greater opportunities for social inclusion and new points of social connection. We have previously recommended that paid support workers be trained to effectively facilitate new relationships for the people they support, rather than be in a position where there is an expectation that they will ‘provide’ the relationship or act as a key point of social contact for the person to whom they are providing paid services.

3.3. Safeguards in the NDIS context

In any conversation relating to safeguarding vulnerable people it is important to understand the expected outcomes of schemes such as the NDIS. This scheme is responsible for ensuring people living with disability access the core supports they need. We therefore believe that an expected outcome of participation in the NDIS is progression of life chances. Core supports relate to the material assistance such as help with personal care, household support, transportation and the like. These benefits might be termed transactional benefits - services that bring an immediate benefit. Other outcomes involve assisting people living with disability to take up valued membership in mainstream community life, as students, workers, neighbours, teammates and so on. These benefits might be termed transformational benefits because they address the issues at the heart of the struggles reported by many Australians living with disability. Put simply, we believe that transformational benefits from NDIS participation increase the natural safeguards a person has within their life. We therefore firmly believe that transformational benefits should be hoped for outcomes of the NDIS and any funded support scheme that aims to advance people living with increased vulnerability.

4. Practical solutions: what can be done?

Considering the recent tragedies that have come to light following people living with disability not being adequately safeguarded, it seems timely to suggest that there needs to be a national conversation initiated around 'natural safeguards'. JFA Purple Orange believes that the challenge to find solutions involves a focus on changing the environment and the conditions that surround a person rather than focussing solely on the individual. In this way the pressure for change is shifted from the individual and re-focused on the environment. We continue to advocate that the best tool we can use to safeguard a person living with disability is to support them to take up their rightful place at the heart of their community. In doing this we make it more likely that there will be natural safeguards present in that

person's life such as family, neighbours, acquaintances, friends, co-workers, just like there is for other citizens.

We therefore suggest that the following three strategies as a practical way forward to attend to the issues of safeguarding Australians living with disability.

4.1. National conversation around informal safeguards

We believe that a national conversation around informal ('natural') safeguards is required and should come in the form of a significant public consultation program. This would be best led by the NDIA with the voices of people living with disability as a key driver and could be witnessed by all NDIS participants being assessed at the time of plan development as to how much social capital they have in their lives. Furthermore, NDIA planners and LACs could be utilising known strategies that increase opportunities for community and social inclusion and including these strategies within a participant's budget. For instance, Circles of Support are a key strategy to make social inclusion work for people living with disabilities, people with mental illnesses and vulnerable people who are struggling with social isolation. By building an intentional circle of support around a person, comprising of friends, employees, neighbours, family, shopkeepers, drivers and support workers, real connections and communities can be built. We have previously advocated that the NDIA reviews the NDIS options to include circles of support and related methods as default options available to all participants. We continue to suggest that these options include the ability for participants to readily 'buy' access to social support mechanisms such as circles of support. This is especially necessary for people living with higher vulnerability and lower personal and social capital, for whom local area support networks are a critical mechanism for building genuine relational supports in their life.

We fear that if people living with disability do not receive support to build their connections and social capital, we will have a Scheme where people living with disability are well supported in their loneliness and at great risk of violence, abuse, neglect and other forms of maltreatment.

Recommendation 1

That the NDIA lead a national conversation around the importance of natural safeguards, including that a conversation around an individual's social capital be included in every NDIS plan discussion

4.2. Local strategies

We suggest that it is necessary to consider ways to strengthen the formal mandates of local, community safeguards in South Australia such as the Community Visitors Scheme. For instance, if more local, unplanned auditing could occur it is likely that this would provide a higher level of protection and safeguarding.

Similarly, we advocate that this mandate needs to be extended to include private dwellings. The case of Anne Marie Smith sadly highlights how necessary it is to ensure that there are initiatives in place to provide advocacy and support to people living with disability who are isolated and have seldom opportunities for connection in their lives.

Recommendation 2

That local community safeguarding schemes such as the South Australian Community Visitors Scheme be re-designed through consultation with people living with disability to include an extension of mandate pertaining to visitable places, unplanned checks and audits and private dwellings.

4.3. Supporting people living with disability to have a voice

Lastly, it is necessary to include community advocacy groups and peer network groups as key actors in any strategy towards building the capacity of people living with disability to speak up for their own rights. A supportive network can be a key safeguard and networks can be found through community groups, demographic peak bodies, peer networks and advocacy networks. For some, accessing these kinds of groups may lead to greater skills in relation to building decision-making and self-advocacy skills as well as the ability to negotiate and be assertive. Network connection may also lead to accessing reliable, key

information to help people with critical choices such as choosing their providers, negotiating the delivery of their supports, assessing quality support, and raising issues.

Recommendation 3

That people living with disability are continued to be well-supported to connect with advocacy groups and peer networks in order to build the number of natural safeguards in their lives.

5. Conclusion

We thank the NDIS Joint Standing Committee for the opportunity to provide a submission on this important issue. We would like to request a meeting with the Committee to discuss our ideas further and in more detail.