

Standing Committee on Community Affairs
Legislation Committee
Parliament House
CANBERRA ACT 2600

Via email: community.affairs.sen@aph.gov.au

Dear Secretary,

The Northern Territory Office of the Public Guardian welcomes the opportunity to provide a submission to the Senate Standing Committee on Community Affairs Legislation Committee inquiry into the National Disability Insurance Scheme Amendment (Improving Supports for At Risk Participants) Bill 2021. The Office of the Public Guardian supports improvements to the NDIS to identify vulnerable and at risk NDIS participants and to strengthen supports and protections to reduce the risk of harm and neglect for these participants.

Established under the *Guardianship of Adults Act 2016* (NT) the Office of the Public Guardian is an independent office committed to safeguarding and promoting the human rights of people with impaired decision-making capacity by providing adult guardianship services, information and advocacy that is responsive to the needs of the Northern Territory community and reflects contemporary, best practice guardianship principles within a human rights framework.

There are currently 1,071 persons under a guardianship order in the Northern Territory. The Office of the Public Guardian is responsible for providing guardianship services to approximately 603 of these persons. Over 90 percent of persons involved with the Public Guardian and eligible for services and supports under the NDIS have a plan in place and members of the Office of the Public Guardian have attended at many, if not all initial and review planning meetings. This involvement by the Office of the Public Guardian has provided significant insight into the experiences of NDIS participants and NDIS service providers in the Northern Territory.

Although small, the Northern Territory population is comprised of many culturally and linguistically diverse groups. Approximately 78 percent of people involved with the Office of the Public



Guardian identify as Aboriginal¹. Many speak English as a second or third language with a significant number living in remote communities. The Office of the Public Guardian has observed a disconnect from country and culture, with a high level of represented persons that identify as Aboriginal experiencing significant difficulties in receiving appropriate support services, including health care, allied services and behaviour support in remote communities.

The Northern Territory's unique context of a transient workforce, language and communication barriers, the limited delivery of support services in remote and very remote communities and a disconnect from country for Aboriginal people with disability are all factors that may contribute to a person's vulnerability and risk of abuse and neglect. For represented persons involved with the Public Guardian their potential vulnerability is compounded by their impaired decision-making capacity and sometimes limited informal support network, indicated by the appointment of the Public Guardian as guardian of last resort.

National Disability Insurance Scheme Amendment (Improving Supports for At Risk Participants) Bill 2021

The protection of vulnerable NDIS participants at risk of harm and neglect demands a suite of improvements to the NDIS to minimize this risk of harm and neglect. The National Disability Insurance Scheme Amendment (Improving Supports for At Risk Participants) Bill 2021 (the Bill) is one part of the necessary suite of improvements. It strengthens supports and protections for NDIS participants by strengthening the Commission's compliance and enforcement powers, clarifying provider registration provisions and enabling more effective information sharing across government authorities or with a prescribed person or body. These protections are in response to five of the ten recommendations of the *Independent Review of the adequacy of the regulation of the supports and services provided to Ms Ann-Marie Smith, an NDIS Participant, who died on 6 April 2020* (the Robertson Review)².

The Bill and the exposure draft of the National Disability Insurance Scheme (Incident Management and Reportable Incidents) Amendment Rules 2021³ (the Rules) also respond to recommendation 6 of the Robertson Review. However, the Office of the Public Guardian notes the relevant provisions of the Bill and the Rules do not fully realise this recommendation to clearly define that a reportable incident includes a real or immediate threat of one of the listed types of harm or to define the word

¹ The term Aboriginal is used throughout this document to refer to all people of Aboriginal and Torres Strait Islander descent who are living in the Northern Territory. The use of this term reflects the wishes of Aboriginal people in the Northern Territory. Department of the Attorney-General and Justice (2019). *Draft Northern Territory Aboriginal Justice Agreement 2019-2025*.

² Alan Robertson, *Independent review of the adequacy of the regulation of the supports and services provided to Ms Ann-Marie Smith, an NDIS participant, who died on 6 April 2020, Report to the Commissioner of the NDIS Quality and Safeguards Commission* (31 August 2020).

³ Tabled in the House of Representatives on 3 June 2021.

'complaints' to remove any doubt that it includes concerns and observations in relation to the provision of supports or services by NDIS providers.

The NDIS requires further legislative and policy reform to provide comprehensive protection for vulnerable participants at risk of harm and neglect and to complete the suite of improvements identified in both the Robertson Review and the Final Report of the South Australian Safeguarding Task Force⁴. Without the implementation of these improvements there is still significant scope for vulnerable NDIS participants to be at risk of harm or neglect.

Specifically further legislative and policy reform is needed to:-

- Amend the definition of 'reportable incident' to include a real or immediate threat of one of the listed types of harm and to define the word 'complaints' to remove any doubt that it includes concerns and observations in relation to the provision of supports or services by NDIS providers.⁵
- Embed the concept of 'vulnerability' and 'at risk' participants within the NDIS. To this end the NDIA should develop a clear, transparent concept of 'vulnerability' for NDIS participants⁶. A participant's level of vulnerability should be determined during the planning phase and reviewed at plan reviews or at significant life events of the participant and should inform strategies and funded plan supports and services necessary to reduce the participant's risk of abuse and neglect.
- Ensure every vulnerable participant has a specific person with overall responsibility for that participant's safety and wellbeing.⁷ A NDIS support coordinator is an appropriate person for this role. When a participant is considered vulnerable funded support coordination should be automatically included in their plan and should continue to be funded until such time that the participant's vulnerability status changes. Funded support coordination in a participant's plan ensures the participant has a single point of contact to assist them to implement their plan, to navigate the NDIS and to identify and access safeguarding frameworks and processes.
- Establish a community visitor scheme for NDIS participants⁸ either through a new scheme within the NDIS Commission or utilizing existing State and Territory community visitor schemes. The independent monitoring and oversight of NDIS providers and the advocacy

⁴ Safeguarding Taskforce (Government of South Australia), *Final Report* (31 July 202), page 9.

⁵ Alan Robertson, *Independent review of the adequacy of the regulation of the supports and services provided to Ms Ann-Marie Smith, an NDIS participant, who died on 6 April 2020, Report to the Commissioner of the NDIS Quality and Safeguards Commission* (31 August 2020) page 8.

⁶ Safeguarding Taskforce (Government of South Australia), *Final Report* (31 July 202), page 9.

⁷ Alan Robertson, *Independent review of the adequacy of the regulation of the supports and services provided to Ms Ann-Marie Smith, an NDIS participant, who died on 6 April 2020, Report to the Commissioner of the NDIS Quality and Safeguards Commission* (31 August 2020) page 7.

⁸ Alan Robertson, *Independent review of the adequacy of the regulation of the supports and services provided to Ms Ann-Marie Smith, an NDIS participant, who died on 6 April 2020, Report to the Commissioner of the NDIS Quality and Safeguards Commission* (31 August 2020) page 7.

and complaints mechanism achieved with a community visitor scheme is a significant gap in the NDIS Quality and Safeguards Framework.

- Ensure vulnerable participants do not have a sole carer providing services in the participant's own home.⁹

Concluding submissions

The Office of the Public Guardian supports the progress of the Bill and acknowledges the strengthened supports and protections for NDIS participants that will be achieved by it. However, these strengthened supports and protections are just one part of the suite of improvements needed to afford real protection to vulnerable NDIS participants. Further legislative and policy reform is needed in relation to definitions of reportable incidents and complaints, the identification and clarification of a participant's vulnerability, funded support coordination and community visitor services for NDIS participants.

The Office of the Public Guardian welcomes the opportunity to contribute to further reforms for the protection of vulnerable participants.

Yours sincerely



Beth Walker
Public Guardian

12 July 2021

⁹ Ibid, page 7.