



Professor Bruce Bonyhady AM and Ms Lisa Paul AO PSM
Co-chairs, Independent Review Panel
NDIS Review

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Dear Professor Bonyhady and Ms Paul

Submission to the NDIS Review

The Victorian Commission for Children and Young People (the Commission) welcomes the opportunity to provide the enclosed submission to the NDIS Review.

Our submission highlights issues and makes recommendations relevant to several terms of reference, including those relating to quality and safeguarding and improving the interaction between the NDIS and other significant systems, specifically Child Protection.

As discussed in our submission, recent inquiries by the Commission have identified significant gaps and issues relating to the NDIS for children and young people with disability, particularly those known to Child Protection and young people in or leaving out-of-home care.

These inquiries demonstrate the importance that the NDIS Review consider issues faced by children and young people, including those who are at increased risk of abuse and neglect.

We welcome the NDIS Review's focus on ensuring people with disability are 'back at the centre of the NDIS', and strongly encourage the Review to hear from children and young people directly, to ensure its work is informed by the lived experiences of NDIS participants of all ages.

We welcome further discussions with the Independent Review Panel on our submission and the opportunities to strengthen the NDIS service delivery model for children and young people. If this would assist the Independent Review Panel, please contact [REDACTED].

Yours sincerely

Liana Buchanan
Principal Commissioner

10 February 2023

Meena Singh
**Commissioner for Aboriginal
Children and Young People**

10 February 2023



Submission to the NDIS Review

About the Commission

The Commission is an independent statutory body that promotes improvement in policies and practices affecting the safety and wellbeing of Victorian children and young people.

Our statutory functions include:

- providing independent oversight of Victoria's child protection, out-of-home care and youth justice systems including monitoring reports of serious incidents
- conducting inquiries into services provided to children or young people who have died and were involved with child protection in the 12 months before their death
- conducting individual, group and systemic inquiries into services provided to children and young people, including those with disability
- regulating and supporting organisations that work with children and young people to prevent abuse, respond appropriately to allegations of child abuse and make sure organisations have child-safe practices, including by administering Victoria's Child Safe Standards and Reportable Conduct Scheme.

Overview of issues and recommendations

It is vital that the NDIS Review include a specific focus on children and young people's experiences, needs and the risks they face. About half of participants in the NDIS are aged less than 18 years,¹ and 42 per cent are less than 15 years old (as at 30 September 2022).² As the NDIS Quality and Safeguarding Framework recognises, children are among those at heightened risk of experiencing abuse and neglect.³

This submission focuses on the need for stronger requirements, policies and systems to better protect children and young people from these risks of harm. There are currently significant gaps in addressing risks to children and young people's safety and wellbeing, both from NDIS service providers and those making decisions on their behalf, including parents. Child participants known to Child Protection are at increased risk of experiencing abuse and neglect, including because of aspects of the operation of the NDIS, as we have found in recent inquiries.

Informed by these inquiries and our oversight and regulatory functions, this submission highlights the need for improvements including:

- child-specific safeguarding standards applicable to all providers of NDIS-funded services for children (registered and unregistered)
- improved interaction between the NDIS and state and territory child protection systems, to ensure the safety and wellbeing of children and young people are prioritised in the planning and delivery of disability supports
- measures to better protect child participants whose parents are unable to make decisions in their best interests
- improved guidance for NDIS service providers, Local Area Coordinators and NDIA Planners on the rights of children and young people to participate in decisions that affect them, to support child-centred decision-making
- ensuring the NDIS market offers a diverse and flexible range of specialist disability accommodation options for young people with disability leaving out-of-home care.

We also highlight the importance of the NDIS Review understanding the specific needs of Aboriginal children and young people with disability.

These matters, and other issues and recommendations raised in this submission, are relevant to several terms of reference for the NDIS Review, and important 'to ensure the full enjoyment by children with disabilities of all human rights',⁴ and a 'full and decent life'⁵ that is 'free from abuse, violence, neglect and exploitation'.⁶

The need for stronger child safeguarding requirements for all NDIS-funded service providers

Relevant to the Review's terms of reference relating to quality and safeguarding,⁷ the Commission believes there is a need for child-specific safeguarding standards applicable to all providers of NDIS-funded services for children (registered and unregistered), to better protect all child participants from the risk of abuse or harm from workers.

We are concerned that there currently appears to be limited guidance or requirements to specifically address risks for children and young people, and ensure that service providers are trained in or meet certain child safety standards. For example:

- All NDIS providers, both registered and non-registered, are regulated by the NDIS Quality and Safeguards Commission (NDIS Commission) and are required to comply with the NDIS Code of Conduct.⁸ This requires NDIS providers and all persons employed or otherwise engaged by a NDIS provider to take all reasonable steps to prevent and respond to violence, neglect, abuse and sexual misconduct.⁹ While workers are advised to work closely with their NDIS providers and the NDIS Commission in preventing violence, abuse, neglect and exploitation, no detailed guidance is provided on the policies and processes that should be put in place to achieve this.¹⁰
- The NDIS Code of Conduct, Guidance for Workers highlights the risk of violence and abuse for children and young people with disability. It states that workers 'play an important role in helping to prevent, intervene early and respond to violence, abuse, neglect and exploitation, and must not engage in these practices'.¹¹ However, training and guidance on how to prevent harm and abuse from happening, and how to report concerns to integrity agencies, is limited.
- While registered NDIS providers must meet the NDIS Quality and Safeguards Commission Practice Standards, only NDIS providers that are registered to provide early childhood services to children under 7 years old are required to undergo specific training on working with children. This module covers the rights of child participants, practices and procedures to manage risk and create a safe environment for children, and compliance with relevant state and territory legislation relating to the reporting of risk of harm to children. There does not appear to be corresponding training on working with children for NDIS providers providing services to children and young people with disability who are 7 years old or above.
- Detailed guidance for registered NDIS providers on how to manage allegations and incidents is set out in the Complaint Handling and Reportable Incidents Arrangements Operational Protocol, but this does not detail what a proper response from an NDIS provider to an allegation or incident looks like, and does not contain any information on using a child-focused or trauma-informed approach to investigating allegations that involve children.¹²

The NDIS Quality and Safeguarding Framework, which is under review,¹³ recognises that children 'may be at higher risk of abuse' and the importance of child safe organisations and worker screening to prevent abuse.¹⁴ However, to better achieve the Framework's objectives of ensuring NDIS supports 'uphold the rights of people with disability' and 'allow participants to live free from abuse, violence, neglect and exploitation',¹⁵ the Framework should give greater and

more explicit attention to the unique requirements needed to keep children and young people safe.

This should include (at a minimum) reference to the National Principles for Child Safe Organisations, as discussed below. We also note that the Framework's references to the *National Framework for Protecting Australia's Children* and *The National Plan to Reduce Violence against Women and their Children* need to be updated,¹⁶ to reflect the most recent versions.

Risks to children and young people are especially acute given the nature of the NDIS market, where any individual can operate as an unregistered provider and advertise their services (including via unregulated 'matching platforms'), and be hired by a parent of a self-managed participant to provide disability support services for their child without undergoing a NDIS Worker Screening Check or any other safety checks like a criminal history check unless requested by the parent to do so.

It is up to a self-managed participant to ensure that non-registered providers have the correct qualifications, training and safety checks. This is leaving some children and young people at significant risk. The gaps relating to non-registered providers need to be urgently addressed.

Relevant regulatory schemes for keeping children and young people safe

The Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) recommended that National Principles for Child Safe Organisations (National Principles) be developed to achieve a nationally consistent approach to promoting a culture of child safety and wellbeing within organisations.¹⁷ Both the Federal Government and the State and Territory Governments are responsible for implementing the National Principles.

We note that the 2016 NDIS Quality and Safeguarding Framework pre-dates COAG's endorsement of the National Principles in 2019, and should be updated to refer to the National Principles.¹⁸ The National Principles are set out below.

National Principles for Child Safe Organisations

1. Child safety and wellbeing is embedded in organisational leadership, governance and culture.
2. Children and young people are informed about their rights, participate in decisions affecting them and are taken seriously.
3. Families and communities are informed and involved in promoting child safety and wellbeing.
4. Equity is upheld and diverse needs respected in policy and practice.
5. People working with children and young people are suitable and supported to reflect child safety and wellbeing values in practice.
6. Processes to respond to complaints and concerns are child focused.
7. Staff and volunteers are equipped with the knowledge, skills and awareness to keep children and young people safe through ongoing education and training.
8. Physical and online environments promote safety and wellbeing while minimising the opportunity for children and young people to be harmed.
9. Implementation of the national child safe principles is regularly reviewed and improved.
10. Policies and procedures document how the organisation is safe for children and young people.

The Royal Commission also recommended that jurisdictions implement a Reportable Conduct Scheme (RC Scheme) to provide independent oversight of how organisations prevent and respond to allegations of abuse and sexual misconduct regarding a child, or sexual offending, by employees.

Victoria has legislated the National Principles through mandatory Child Safe Standards,¹⁹ and a legislated Reportable Conduct Scheme. It is relevant for the NDIS Review to be aware of these schemes, how they apply to the disability sector, and of our experience of the disability sector's engagement with the schemes – noting that the NDIS Quality and Safeguarding Framework states that '[p]roviders offering supports to children will be expected to comply with relevant child safety arrangements operating within their jurisdiction'.²⁰

The Victorian Child Safe Standards

Victoria's Child Safe Standards require NDIS providers who provide services to children and young people to have policies, procedures, and practices in place to prevent, respond to and report allegations of abuse. This includes empowering children about their rights and providing opportunities for children and young people to participate in decisions that affect them and express their views. They also require NDIS providers to ensure staff are equipped with the knowledge, skills and awareness to keep children and young people safe through ongoing education and training.

However, the Child Safe Standards do not apply to sole traders, and NDIS providers in other jurisdictions may not be subject to legislated Child Safe Standards.²¹ These gaps reinforce the need for child-specific safeguarding standards that apply to *all* NDIS service providers.

In Victoria, implementation of the Child Safe Standards across the disability sector has been variable, and the Commission believes that a high number of NDIS providers are not aware of their obligations under the Child Safe Standards and (as noted below) the RC Scheme.

The Victorian Reportable Conduct Scheme

In Victoria, organisations that provide disability services, including but not limited to registered disability service providers, are required to comply with the Victorian RC Scheme.²² This requires the head of a disability service organisation to have in place systems to prevent child abuse and, if child abuse is alleged, to ensure allegations can be brought to the attention of appropriate persons for investigation and response. They are also required to notify the Commission of any reportable allegations made against their workers and volunteers and provide updates on the organisation's response to an allegation.²³

Since the Victorian RC Scheme commenced in 2017, the disability sector has only accounted for 3 per cent of all notifications of reportable allegations received.²⁴ While some NDIS providers have demonstrated leading practice, the Commission believes there is likely widespread under-reporting occurring.

It is an offence to fail to notify and update the Commission about reportable allegations, but if NDIS providers entering the market are not aware of their obligations to report then this will not influence their behaviour.

The Commission believes that for the NDIS to operate effectively,²⁵ the NDIS Commission, and the NDIS Quality and Safeguarding Framework,²⁶ have important roles to play in ensuring NDIS providers, particularly new market entrants and small providers, are aware of their obligations to keep children safe and respond and report abuse.

Recommendation 1

That the NDIS Review make recommendations to Disability Reform Ministers to ensure there are child-specific safeguarding standards applicable to all providers of NDIS-funded services for children (registered and unregistered), to better protect all child participants from the risk of abuse or harm from NDIS providers.

Recommendation 2

That the NDIS Quality and Safeguarding Framework include clear information about the unique requirements needed to protect children and young people from the risk of abuse or harm from NDIS providers, including (at a minimum) reference to the National Principles for Child Safe Organisations. The Framework should also explicitly note the need to comply with state and territory Child Safe Standards and Reportable Conduct Schemes.

Issues impacting children and young people known to Child Protection or other children and young people whose parents are unable to meet their care needs

Children and young people with disability involved with the child protection system may have multiple risk factors that increase the risk of them experiencing abuse and neglect.²⁷

The Commission's inquiries into services provided to Victorian children and young people with disability known to Child Protection, including children who have died, demonstrate the risk of abuse and harm they can face at home. Issues identified in our inquiries, particularly an inquiry completed in 2022, are relevant to several terms of reference for the NDIS Review, including 'improving the interaction between the NDIS and other significant systems'²⁸ – specifically, child protection systems.

Child death inquiries involving children and young people with disability

The Commission's governing legislation (the *Commission for Children and Young People Act 2012* (Vic)) requires an inquiry to be completed into the services provided to every child who died and was known to Victoria's child protection service in the 12 months before their deaths. These child death inquiries aim to identify aspects of the service system that need to be improved and regularly involve children with disability.²⁹

In 2018, the Commission completed an analysis of our previously completed child death inquiries involving 72 children with complex medical needs and/or disability.³⁰ This inquiry found that almost all the children had experienced multiple risk factors that placed them at significant risk of harm, including family violence and parental substance misuse. For most of the children, the interplay between the unaddressed risk factors within the family and the children's disability-related needs, meant that they experienced considerable suffering and poor quality of life, sometimes over many years prior to their death. The majority of children and young people with disability died in violent and extremely traumatic circumstances.³¹

The inquiry considered the service system before the introduction of the NDIS and identified a range of implications for the operation of the NDIS to ensure it could best uphold the rights and needs of vulnerable children and young people.³²

A key issue was a lack of communication, information-sharing and co-ordination between child protection and disability services (in some cases resulting in neither system having a complete understanding of the risk of harm to the child).³³ The Commission identified that the introduction of the NDIS could further complicate information-sharing between Child Protection and disability services, and recommended that the Victorian State Government work with the NDIA to ensure that robust information sharing mechanisms exist between Child Protection, NDIS-approved providers and NDIS planners to ensure:

- NDIS planners are made aware of protective concerns about a child or young person in the planning processes to ensure plans are responsive to those vulnerabilities

- NDIS-approved providers are aware of child protection involvement or protective concerns about the child or young person so they can take appropriate action should further concerns arise during their involvement.

The inquiry also highlighted significant implications for providing NDIS services to families experiencing vulnerability, and how they would access and navigate the NDIS, and encouraged the Victorian Government to work with the NDIA to:

- ensure the NDIS market includes services tailored for children and young people living in hard-to-reach families, and parenting capacity supports for parents with disabilities
- ensure that NDIS-approved service providers are capable of identifying and reporting on risks of harm to children and young people, as well as empowering them (and the people who support them) to speak out about abuse
- support vulnerable children and young people to participate in planning and decision-making, including through the provision of independent advocates in the NDIS pre-planning and planning processes to children and young people known to Child Protection.³⁴

The inquiry found that the voices of children and young people were consistently absent in decision-making and planning about them, raising concerns that there was a significant risk that children and young people's voices would not be heard in NDIS planning processes and plans.

Since this inquiry, while we acknowledge the work undertaken by the Victorian Government to address the Commission's recommendations, we have seen the above issues relating to the NDIS in more recent child death inquiries and other inquiries, as discussed below.

In child death inquiries involving children and young people with disability, we have continued to see fragmentation between services and systems, a lack of information-sharing and coordination, and a lack of children and young people's voice and opportunities for them to participate in decisions and issues that impact them.

Children and young people with disability whose parents struggle to meet their needs

Recent child death inquiries have demonstrated the difficulties that families experiencing vulnerability can face in trying to navigate the NDIS, and their need for support to participate effectively in the NDIS. We see the challenges and risks for children and young people with disability when their parents cannot (or do not) navigate the NDIS system in a way that ensures the child's care needs are met.

Case Study – 'Bella'

Bella died when she was 12, she had very complex medical needs and a limited life expectancy. Bella had three older siblings. Her father was frequently away and her mother struggled with caring for her in addition to her other children. Bella's parents' English was limited and they struggled to navigate the NDIS system. They required but did not receive assistance to navigate the system. One of the consequences of this was that Bella did not receive the mobility aid she needed to be able to attend the specialist school she went to. This was equipment that would likely have been accessed and provided had Bella's parents been given much needed assistance to understand and navigate the NDIS system.

We note that the Victorian Department of Families, Fairness and Housing (DFFH) has in recent years funded specialist disability practitioner roles to assist vulnerable children and parents with disabilities to access disability supports and participate effectively in the NDIS. A key focus of the role is to address the challenges many vulnerable families face in accessing disability support needs, particularly those supports available through the NDIS.³⁵

For children and young people who have parents with disability, inadequate disability supports for the parent can pose a risk to the safety and wellbeing of their child.

Case Study – ‘Stephanie’

Stephanie died at the age of 8 months from SIDS. Stephanie’s mother had an intellectual disability and mental health issues. Stephanie and her mother received support from a Maternal and Child Health Service. While the service was aware of the support needs and had clear guidance regarding the need to connect parents to the NDIS, no such assistance was provided. This meant that Stephanie’s mother did not get much needed assistance to develop her parenting capacity so that she could care for Stephanie and keep her safe.

As noted above, the Commission’s 2018 inquiry encouraged the Victorian Government to work with the NDIA to ensure the NDIS market attracts services to build the capacity of parents with a cognitive impairment or intellectual disability to care for their children, including where those children have heightened care requirements due to disability. DFFH has made efforts to advocate for appropriate measures to ensure the NDIS attracts these services (as we have acknowledged in a recent child death inquiry), and we consider it important that the NDIS Review examine the current market availability and accessibility of such services.

Adequate NDIS supports can play a critical role in keeping children and young people with their families. Children and young people with disability and complex medical needs, who are also clients of Child Protection, are uniquely vulnerable. These children and young people depend on their parents for their health and wellbeing more than their peers; yet their parents often encounter significant challenges fulfilling this role and services essential to their development and wellbeing sometimes struggle to reach them.³⁶ This increases the risk that children and young people with disability will be placed in out-of-home care as their parents or carers cannot provide the level of care they need (an issue we have also raised with the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability).³⁷

Recommendation 3

That the NDIS Review examine the market availability and accessibility of NDIS services to build the capacity of parents with a cognitive impairment or intellectual disability to care for their children, including children with disability – and, if required, make recommendations to Disability Reform Ministers to ensure the NDIS market attracts these services.

Inquiry into services provided to two vulnerable young people with disability – ‘Sarah’ and ‘Ben’

In 2022, the Commission conducted an inquiry into the experiences of ‘Sarah’ and ‘Ben’, two young people with disability who had contact with Child Protection.³⁸ The inquiry demonstrated risks relating to the operation of the NDIS that were foreshadowed in the Commission’s 2018 inquiry are resulting in some children and young people experiencing an unacceptable risk of harm. In particular, the inquiry highlighted the significant safeguarding risks for child participants who are in contact with Child Protection and whose parents are their representatives exercising choice and control over the child’s NDIS supports.

The inquiry was established as a result of concerns raised by Victoria’s Public Advocate about situations of Sarah and Ben who were both aged 17 and were not receiving assistance from Child Protection due to their age.³⁹

Both young people received disability support through the then Department of Health and Human Services and later the NDIS.

Sarah and Ben had been subject of multiple reports to Child Protection over 10 and 15 years respectively, raising significant concerns about their treatment and basic rights. The reports

raised a range of concerns including overuse of restraint by parents (physical and chemical restraint), the mischaracterisation of each young person's medical or disability-related needs, and isolation from professionals, education, and the wider community.⁴⁰

The inquiry shed light on the ongoing systemic failure of both Child Protection and the NDIS to keep children and young people with disability safe. The inquiry found that the operation of the NDIS in Sarah and Ben's cases did not take into account the particular vulnerabilities of children and young people with disability who are in contact with Child Protection.

In particular, the inquiry found that:

1. Aspects of the operation of the NDIS placed both young people at increased risk of abuse and neglect, due to the principle of 'individual choice and control' being exercised by Sarah's and Ben's parents without adequate safeguards to ensure that decisions were being made in Sarah's and Ben's best interests.⁴¹

The NDIS was set up to 'support the independence, and social and economic participation, of people with disability and enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports'.⁴² For child participants, parents generally manage their child's NDIS funding, meaning they and not the child participant have the choice and control over the NDIS plan. As Sarah and Ben's experiences demonstrated, this raises a clear potential risk in the case of vulnerable children and young people known to Child Protection.

Unfortunately, in Sarah and Ben's cases, the parents who held the choice and control over their child's NDIS plans were unable to make decisions in their child's best interests. The inquiry found that both parents had prevented NDIS assessments (including face-to-face assessments) which impacted the level of support their child received, had terminated NDIS providers without adequate reasoning or for speaking up about safety concerns and had a pattern of revoking consent for NDIS providers to communicate with one another. One of the child participants had over 100 different non-registered NDIS disability service providers over a two-year period. The other child participant did not access any NDIS supports for over 18 months, despite having a sizeable plan reflecting the significant support needs of the child.

While the NDIA can make a decision to change the child representative, the default position is that unless there is a Court order or a guardian in place, the parent or parents are responsible for learning the wishes of the child and acting and making decisions on their behalf.⁴³ It is clear from this inquiry that where parents are unable to make decisions in their child's best interests, providing choice and control to the parents of NDIS child participants, without adequate safeguards, places these children at increased risk of abuse and neglect.⁴⁴

It is critical that the NDIA have processes for assessing the appropriateness of parents to make decisions concerning children and for monitoring whether a child is receiving appropriate supports. The inquiry found a lack of effective monitoring and timely action by the NDIA in one young person's case, including because there is no mechanism in place to monitor a child participant's low plan utilisation or whether the child participant is accessing their NDIS plan – even where a child is identified as high needs and it is known that the family has a history of Child Protection involvement.

It is also paramount that the NDIA and Child Protection work collaboratively where the safety of children and young people with disability is concerned. This requires robust information sharing mechanisms between Child Protection, the NDIA and NDIS service providers. We understand that the NDIA and Victorian Government are progressing work in this area to enable improved information sharing in relation to Child Protection; this work must be progressed with urgency.

2. Local Area Coordinators and NDIA Planners had limited direct engagement with Sarah and Ben.⁴⁵

Throughout their childhoods, neither Ben nor Sarah had direct engagement with the Local Area Coordinators (LACs) or NDIA Planners who are a participant's point of contact for the NDIS. This meant they were not afforded with opportunities to take part in decisions surrounding their NDIS plans and that engagement about their NDIS supports was limited. It also meant that NDIS professionals did not identify the harms to which the children were subjected.

The LACs and NDIA Planners communicated mainly with Sarah and Ben's parents, and relied on them for decision-making around NDIS specific matters concerning the children. The inquiry heard that LACs and NDIA Planners commonly only speak with parents or guardians, rather than child participants, when assessing NDIS support needs.⁴⁶ No guidance is provided to LACs and NDIA Planners on how to maintain the rights of children and young people to take part in decisions that affect them and have their voices are heard.

All children and young people have the right to take part in decisions that affect them and every attempt should be made to ensure a child or young person is afforded with opportunities for their views to be heard.⁴⁷ In Sarah and Ben's cases, LACs and NDIA Planners dealing directly with the young people's parents, placed Sarah and Ben at risk of abuse and neglect.

3. The disability sector was less likely to speak up about concerns for the wellbeing or safety of either young person.⁴⁸

The inquiry found, for the most part, a lack of decisive action by the NDIA and NDIS service providers in reporting safety and wellbeing concerns.

There was concerning evidence that NDIS providers were reluctant to speak up regarding parenting concerns, including because of fear of retribution from Sarah and Ben's parents who controlled their funding. The Commission is very concerned that the NDIS funding model creates a barrier or disincentive to reporting wellbeing and safety concerns to Child Protection.

The inquiry highlighted the need for clearer guidance for NDIS service providers on the importance of reporting suspected or observed abuse or neglect by parents or carers.

The Commission made three recommendations to the NDIA, that the NDIA:

- consider reviewing the threshold for undertaking a NDIA-initiated review where there is unreasonable risk to a child being represented by a parent or carer
- ensure there are mechanisms in place to monitor the NDIS supports being delivered to a child participant, including:
 - the completion of face-to-face NDIS assessments
 - that the NDIA is alerted when an NDIS plan is not being accessed by a child participant, or the participant's access to an NDIS plan has significantly declined
 - that the decisions made by a 'child representative' in relation to a child participant's self-managed or plan-managed NDIS plan are appropriate and in the best interests of the child
- review guidelines concerning the mandatory reporting of suspected child abuse.⁴⁹

It is the Commission's view that these actions remain necessary.

The Commission also made a recommendation to the Victorian Government to drive improvements to the interface between the NDIS and Child Protection that ensure children and young people's safety and wellbeing is prioritised in the planning and delivery of disability

supports, and that there are mechanisms for intervention when there are concerns that a child representative may not be playing a protective role.⁵⁰

The findings and recommendations of this inquiry are important matters for the NDIS Review to consider, relevant to:

- quality and safeguards, and governance⁵¹
- improving the interaction between the NDIS and other significant systems – namely state and territory child protection systems⁵²
- participant experience, including review processes.⁵³

We strongly encourage the Review to consider the above issues, to ensure there is greater recognition within the NDIS of the potential vulnerability of child participants, particularly those in contact with Child Protection, and better systems in place to protect these children and young people.

Victoria's state disability plan, *Inclusive Victoria*, highlights the work DFFH is doing to improve partnerships with the NDIS to provide earlier and better planning and better case coordination for children who have been the subject of reports to Child Protection or whose families are otherwise struggling to meet their needs, to ensure they receive optimal support through the NDIS.⁵⁴ There is also a need for the sector as a whole to work together to strengthen the NDIS market's ability to provide care for children with complex disability support needs.

Recommendation 4

That the NDIS Review prioritise the need to ensure the safety of child participants in contact with Child Protection, including by making recommendations to Disability Reform Ministers for reforms that will achieve:

- greater recognition of the potential vulnerability of child participants within the NDIS, particularly those in contact with Child Protection
- improved interaction between the NDIS and state and territory child protection systems to ensure the safety and wellbeing of children and young people are prioritised in the planning and delivery of disability supports
- measures to better protect child participants whose parents are unable to make decisions in their best interests, such as mechanisms to monitor the NDIS supports being delivered to a child participant, including by conducting a review when a child participant with high needs is not accessing their NDIS plan, or their access has significantly declined
- improved guidance for Local Area Coordinators and NDIA Planners on the rights of children and young people to participate in decisions that affect them and giving children and young people opportunities to have their say and inform decision-making
- improved guidance for NDIS service providers on the importance of reporting suspected or observed child abuse or neglect by parents or carers, including guidance that addresses the inherent conflict of interest where providers want continued funding.

Issues impacting children and young people with disability in the out-of-home care system

Recent systemic inquiries by the Commission into the experiences of Victorian children and young people living in out-of-home care, and transitioning from care to independent living, have highlighted issues faced by children and young people with disability. These include issues relating to the NDIS.

In our own words

In 2019, the *In our own words: Systemic inquiry into the lived experience of children and young people in the Victorian out-of-home care system* was tabled in the Victorian Parliament. The inquiry invited 204 young people who were living in, or had recently left, out-of-home care to tell their stories.

The inquiry found a lack of tailored supports for children with complex trauma, behavioural issues and/or intellectual disability to enable carers to maintain placements.⁵⁵ Many residential care staff are not trained in providing complex care to children and young people with disability, this combined with a shortage of suitable home-based placements and insufficient support under the NDIS, has led to children and young people with disability being more likely to go into short-term contingency placements.⁵⁶

The inquiry also raised the concerning increase in children under 12 years old entering residential care. Children in this cohort were often found to have a developmental disability with behavioural challenges.⁵⁷

Keep caring

In 2020, the Commission's *Keep caring* inquiry was tabled in the Victorian Parliament. This inquiry looked into what happens to young people when they leave out-of-home care and whether young people in care get the support they need to set themselves up to live independently.

A high proportion of care leavers have a disability. A review of 166 files (young people aged 16 to 18 years) found that 36 per cent had disability according to file notes, usually an intellectual or cognitive impairment.⁵⁸ Around 30 per cent of these young people were Aboriginal.⁵⁹ Young people with a disability face additional challenges leaving care and often need additional supports to make that transition.⁶⁰

Relevant to the NDIS Review's term of reference relating to the availability of accommodation, including specialist disability accommodation (SDA),⁶¹ the inquiry found there was a lack of SDA options for care leavers with disability. The capacity of care leavers who were NDIS participants to secure stable supported accommodation prior to leave care was hampered by:

- complex NDIS assessment processes
- late planning for supported post-care disability accommodation
- poor collaboration between Child Protection, funded agencies and the NDIA
- Child Protection and funded agencies lacking the knowledge and training to engage with NDIS processes and secure the appropriate outcomes for the young people they are supporting
- delay in identifying young people with a disability.⁶²

The Commission recommended that the Victorian Government advocate to the Commonwealth:

- to take measures to ensure that the NDIS market offers a diverse and flexible range of SDA options for all care leavers with a disability who require them, and
- that the NDIA adopt processes to ensure a seamless continuity of supports to young people with a disability and their carers, so these young people can remain with their carers where appropriate, following their exit from care.⁶³

The Victorian Government accepted this recommendation in principle and has advised the Commission that Victoria:

- supports the need to increase the supply and availability of SDA to better meet the accommodation needs of NDIS participants, including care leavers with disability

- will continue to raise these SDA thin market issues nationally through the Disability Reform Ministers' meetings in collaboration with Housing and Health Minister groups
- will escalate SDA thin market issues to the NDIA through the Victorian Executive Steering Committee whose membership includes Victorian government departments, the NDIA and Commonwealth Department of Social Services.⁶⁴

The Commission welcomes these plans for the Victorian Government to continue to advocate for solutions to address the SDA thin market in relevant national forums. However, ongoing systemic effort is required.

Recommendation 5

That the NDIS Review make recommendations to Disability Reform Ministers for reforms that will ensure that:

- the NDIS market offers a diverse and flexible range of specialist disability accommodation options for all young people with disability leaving out-of-home care who require them
- the NDIA has processes to ensure a seamless continuity of supports to young people with a disability and their carers so these young people can remain with their carers where appropriate, following their exit from care.

The service system issues noted above also highlight the need to ensure that children and young people in care receive coordinated case management across the different service providers and ongoing monitoring and assessments.

The specific needs of Aboriginal children and young people with disability

Many of the issues raised in this submission disproportionately impact Aboriginal children and young people, who experience multiple forms of discrimination and are significantly overrepresented in the child protection and out-of-home care systems. In 2021, Aboriginal children and young people accounted for 16 per cent⁶⁵ of the population of children receiving child protection services and 28 per cent of children in out-of-home care in Victoria.⁶⁶

Victoria continues to admit Aboriginal children into care at a higher rate than any other State or Territory by far. In 2020-21, Aboriginal children were 18 times more likely to be in out-of-home care than non-Aboriginal children and young people.⁶⁷

Although the exact proportion of Aboriginal children and young people with disability in the child protection and out-of-home care systems is unknown due to incomplete data collection, estimates are high. Data suggests that nearly half of Aboriginal people aged 15 and over have a disability or restrictive long-term health condition.⁶⁸ An annual youth justice survey in 2019 showed that 49 per cent of Aboriginal young people in Victoria's youth justice system presented with cognitive difficulties or disability impacting on daily functioning.⁶⁹

Anecdotal evidence from the Commission's oversight functions suggests that Aboriginal children and young people also face further barriers when it comes to accessing healthcare services and barriers to diagnoses and support.

Aboriginal children and young people with disability can face unique challenges. These challenges can be magnified by systemic oversights and the cumulative impacts of marginalisation and discrimination on the basis of race and disability.⁷⁰ Responding to the specific needs of Aboriginal children and young people with disability must be undertaken in a culturally-appropriate and holistic way that recognises and incorporates Aboriginal perspectives of health and disability, cultural practices, and familial and communal roles of caring.

Recommendation 6

That the NDIS Review ensure that it is aware of the specific needs of Aboriginal children and young people who are NDIS participants, and considers the extent to which the NDIS supports Aboriginal children and young people in a culturally-appropriate way.

Endnotes

- ¹ NDIS, *NDIS Quarterly report to disability ministers: Q1 2022-23*, 2022, p. 30.
- ² NDIS, *NDIS Quarterly report to disability ministers: Q1 2022-23*, 2022, p. 115.
- ³ NDIS Quality and Safeguarding Framework, December 2016, p. 12. Also see Maclean, M.J. et al. (2017). Maltreatment risk among children with disabilities. *Pediatrics* 139 (4) Baidawi, S., & Piquero, A.R., (2017) Neurodisability among children at the nexus of child welfare and youth justice system. *Journal of Youth and Adolescence*, 50, pp. 803-819.
- ⁴ UN Convention on the Rights of Persons with Disabilities, Article 7 (Children with disabilities).
- ⁵ UN Convention on the Rights of the Child, Article 23.
- ⁶ NDIS Quality and Safeguarding Framework, December 2016, p. 11.
- ⁷ Terms of reference, Part 1, paragraph d: 'scheme governance arrangements and the extent they support effective operation of the scheme, including the roles and interaction between the NDIA and NDIS Quality and Safeguards Commission and DSS, and the NDIA's and the NDIS Quality and Safeguards Commission operational models and costs'; Part 2, paragraph g: 'ensure the adequacy and effectiveness of the operation of the Quality and Safeguards Framework in ensuring quality, addressing conflicts of interest, and providing appropriate protection for participants'.
- ⁸ <https://www.ndiscommission.gov.au/about/ndis-code-conduct>.
- ⁹ *National Disability Insurance Scheme (Code of Conduct) Rules 2018*, s 6(f).
- ¹⁰ NDIS Quality and Safeguards Commission, *The NDIS Code of Conduct, Guidance for Workers*, March 2019, p. 24.
- ¹¹ NDIS Quality and Safeguards Commission, *The NDIS Code of Conduct, Guidance for Workers*, March 2019, p. 23.
- ¹² NDIS Quality and Safeguards Commission, *Complaint Handling and Reportable Incidents Arrangements Operational Protocol*, June 2019.
- ¹³ Terms of Reference, Part 2, paragraph g.
- ¹⁴ NDIS Quality and Safeguarding Framework, December 2016, pp. 12, 59-62.
- ¹⁵ NDIS Quality and Safeguarding Framework, December 2016, p. 11.
- ¹⁶ NDIS Quality and Safeguarding Framework, December 2016, p. 16.
- ¹⁷ See <https://www.childsafety.gov.au/system/files/2022-09/english-national-principles-feb-2019.pdf>.
- ¹⁸ The NDIS Quality and Safeguarding Framework currently refers, at p. 59, to the 'National Guidelines for Building the Capacity of Child-Safe Organisations' and '2005 National Framework: Creating Safe Environments for Children – Organisations, Employees and Volunteers'.
- ¹⁹ *Child Wellbeing and Safety Act 2005* (Vic), Part 6. Victoria's Child Safe Standards differ from the National Principles in some respects. Victoria has 11 Child Safe Standards, including a standard that requires organisations to establish a culturally safe environment safe environment in which the diverse and unique identities and experiences of Aboriginal children and young people are respected and valued: see <https://ccyp.vic.gov.au/child-safe-standards/the-11-child-safe-standards/>.
- ²⁰ NDIS Quality and Safeguarding Framework, December 2016, p. 59.
- ²¹ Currently, only Victoria (*Child Wellbeing and Safety Act 2005* (Vic)), New South Wales (*The Children's Guardian Amendment (Child Safe Scheme) Act 2021* (NSW)) and South Australia (*The Child and Young People (Safety) Act 2017* (SA)) have legislation providing for Child Safe Standards.
- ²² *Child Wellbeing and Safety Act 2005* (Vic), Schedule 4.
- ²³ Reportable Conduct Schemes also operate in the ACT, NSW and WA. A Bill is currently before the Tasmanian Parliament to introduce a RC Scheme from 1 January 2024.
- ²⁴ Commission for Children and Young People, [Annual Report 2021-22](#), 2022 p. 84.
- ²⁵ Terms of reference, Part 1, paragraph d.
- ²⁶ Terms of reference, Part 2, paragraph g.
- ²⁷ Stalker, K & McArthur K 2012, 'Child abuse, child protection and disabled children: A review of recent research', *Child Abuse Review* 21.1: 24-40.
- ²⁸ Terms of reference, Part 1, paragraph e.
- ²⁹ *Commission for Children and Young People Act 2012* (Vic), section 34.
- ³⁰ Commission for Children and Young People, *Inquiry into services provided to vulnerable children and young people with complex medical needs and/or disability*, 2018. This inquiry report was not tabled in the Victorian Parliament and is not publicly available, and we are not permitted under the Commission's governing legislation to share the full report with the NDIS Review. A summary is provided in the Commission's [Annual Report 2017-18](#), pp. 28-29.

- ³¹ In 2016, Victoria's Royal Commission into Family Violence reported that 'children with disabilities are more likely to be victims of family violence – particularly sexual abuse': *Royal Commission into Family Violence: Report and recommendations*, Volume II, p. 115.
- ³² Commission for Children and Young People, [Annual Report 2017-18](#), p. 29.
- ³³ Commission for Children and Young People, [Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Violence and abuse of people with disability at home](#), 2021, p. 6.
- ³⁴ Commission for Children and Young People, [Annual Report 2017-18](#), p. 29.
- ³⁵ Department of Families, Fairness and Housing, *Inclusive Victoria: state disability plan (2022–2026)*, 2022, pp. 35-36.
- ³⁶ *Inquiry into services provided to vulnerable children and young people with complex medical needs and/or disability* (June 2018) (not publicly available).
- ³⁷ Commission for Children and Young People [submission](#) to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, March 2020, p. 7. Also see <https://www.berrystreet.org.au/news/ndis-forcing-children-with-a-disability-into-child-protection-system>.
- ³⁸ The Commission established the inquiry in accordance with section 37 of the *Commission for Children and Young People Act 2012* (Vic). The inquiry report has not been tabled in the Victorian Parliament and is not publicly available, and we are not permitted to share the full report with the NDIS Review under the Commission's governing legislation. If the NDIS Review would like more information about the inquiry, please contact us. Also note that 'Sarah' and 'Ben' are not the young people's real names; different names have been used to protect the young people's identities.
- ³⁹ Commission for Children and Young People, [Annual Report 2021-22](#), 2022, p. 23.
- ⁴⁰ Commission for Children and Young People, [Annual Report 2021-22](#), 2022, p. 23.
- ⁴¹ Commission for Children and Young People, [Annual Report 2021-22](#), 2022, pp. 23 – 24.
- ⁴² *National Disability Insurance Scheme Act 2013*, s 118.
- ⁴³ NDIS, Operational Guidelines for child representatives, June 2022, p. 2.
- ⁴⁴ Commission for Children and Young People, [Annual Report 2021-22](#), 2022, p. 24.
- ⁴⁵ Commission for Children and Young People, [Annual Report 2021-22](#), 2022, pp. 23 – 24.
- ⁴⁶ The *National Disability Insurance Scheme Act 2013* (Cth) requires or permits something to be done by or in relation to a child, subsection 74(1) notes that this thing can be done by 'the person who has, or persons who jointly have, parental responsibility for the child'.
- ⁴⁷ UN Convention on the Rights of Persons with Disabilities, Article 7; UN Convention on the Rights of the Child, Article 12.
- ⁴⁸ Commission for Children and Young People, [Annual Report 2021-22](#), 2022, pp. 23 – 24.
- ⁴⁹ Commission for Children and Young People, [Annual Report 2021-22](#), 2022, p. 24.
- ⁵⁰ Commission for Children and Young People, [Annual Report 2021-22](#), 2022, p. 24.
- ⁵¹ Terms of reference, Part 2, paragraph g: 'ensure the adequacy and effectiveness of the operation of the Quality and Safeguards Framework in ensuring quality, addressing conflicts of interest, and providing appropriate protection for participants'; Part 1, paragraph d: 'scheme governance arrangements and the extent they support effective operation of the scheme, including the roles and interaction between the NDIA and NDIS Quality and Safeguards Commission...'
- ⁵² Terms of reference, Part 1, paragraph e: 'improving the interaction between the NDIS and other significant related policies and systems, including mainstream services delivered by... the states and territories'.
- ⁵³ Terms of reference, Part 1, paragraph a: 'the participant experience... and opportunities to improve key scheme design and administration, including by examining... assessment, planning [and] review processes' (emphasis added).
- ⁵⁴ Department of Families, Fairness and Housing, *Inclusive Victoria: state disability plan (2022–2026)*, 2022, pp. 35-36.
- ⁵⁵ Commission for Children and Young People, [In our own words: Systemic inquiry into the lived experience of children and young people in the Victorian out-of-home care system](#), 2019, p. 25.
- ⁵⁶ Commission for Children and Young People, [In our own words: Systemic inquiry into the lived experience of children and young people in the Victorian out-of-home care system](#), 2019, p. 145.
- ⁵⁷ Commission for Children and Young People, [In our own words: Systemic inquiry into the lived experience of children and young people in the Victorian out-of-home care system](#), 2019, p.155.
- ⁵⁸ Commission for Children and Young People, [Keep caring: Systemic inquiry into services for young people transitioning from out-of-home care](#), 2020, p. 46.
- ⁵⁹ Commission for Children and Young People, [Keep caring: Systemic inquiry into services for young people transitioning from out-of-home care](#), 2020, p. 46.
- ⁶⁰ Commission for Children and Young People, [Keep caring: Systemic inquiry into services for young people transitioning from out-of-home care](#), 2020, pp. 121-123.
- ⁶¹ Terms of reference, Part 2, paragraph e: 'ensure adequate supply of appropriate and cost-effective accommodation and supports, including specialist disability accommodation, medium-term accommodation and supported independent living and individualised living options'.
- ⁶² Commission for Children and Young People, [Keep caring: Systemic inquiry into services for young people transitioning from out-of-home care](#), 2020, p 15, Finding 15, pp. 27, 122-125.
- ⁶³ Commission for Children and Young People, [Keep caring: Systemic inquiry into services for young people transitioning from out-of-home care](#), 2020, Recommendation 13, pp. 32, 140-141. Recommendation 13 also included

that the Victorian Government increase the number and range of supported accommodation options with appropriate levels of support (including those funded by the NDIS) for care leavers with a disability.

⁶⁴ Commission for Children and Young People, [Annual report 2021-22](#), p. 178.

⁶⁵ AIHW Child Protection Data Tables 2022 Table 2.2.

⁶⁶ AIHW Child Protection Data Tables 2022 Table S5.5.

⁶⁷ AIHW Child Protection Data Tables 2022. Table S5.1.

⁶⁸ AIHW and ABS analysis of National Aboriginal and Torres Strait Islander Health Survey 2018–19. Table D1.14.4.

⁶⁹ Commission for Children and Young People, [Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system](#), 2021, pp. 186, 228-229.

⁷⁰ Commission for Children and Young People, [Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system](#), 2021, p. 228.