

**Office of the Public Advocate**

**South Australia**



**Royal Commission into Violence Abuse Neglect and Exploitation of People with Disability –  
Submission for Issues paper on Safeguards and Quality**

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## Issues paper – Safeguards and Quality

**Question 1: What are the best ways to safeguard people with disability who may be at risk of violence, abuse, neglect and exploitation both when they use services and in other areas of their lives?**

The South Australian Safeguarding Taskforce<sup>i</sup> was established in May 2020 following the tragic circumstances surrounding the passing of Ms Ann Marie Smith who was an NDIS participant in receipt of NDIS funded services and a South Australian citizen. The Taskforce was established to examine the roles of the National Disability Insurance Agency (NDIA), the National Disability Insurance Scheme Quality and Safeguards Commission (the Commission) and the State, and to identify and report on gaps and areas that need strengthening in safeguarding arrangements for people with disabilities living in the State.

The Taskforce was co-chaired by Kelly Vincent (Disability Rights Advocate) and David Caudrey (Disability Advocate in the Office of the Public Advocate). Membership comprised of people with disability, family members, service providers and government officials. The Taskforce reported its findings in an interim report on 15 June, in a final report on 31 July, and in a supplementary report at the end of September 2020. The Taskforce identified 14 safeguarding gaps and made 7 recommendations to address these gaps.

The gaps identified by the Taskforce were:

1. Potentially vulnerable participants are not routinely identified and assigned ongoing support coordination in their NDIS Plan.
2. The support coordinator can be from the same agency that provides other core services for the individual, creating a conflict of interest.
3. Participants are not routinely linked to community activities, so they are often isolated.
4. Participants are not identified as potentially vulnerable by the NDIA and prioritised by Local Area Coordination (LAC) when carrying out the community connection role.
5. NDIS plans do not routinely include strategies to minimise participant risk e.g. coordination of health care (including dental, sexual and mental health), technology to aid independence and safety, capacity building for asserting rights, and recognition of cultural matters.
6. Participants and their families are unclear about how to raise matters of concern with the Commission and the Commission does not routinely undertake proactive inspections to vet the performance of service providers.
7. The Commission does not adequately consider the risk factors associated with the use of unregistered providers of personal support, particularly for potentially vulnerable participants.
8. The Commission does not explicitly require of all providers of personal support that there be at least two support workers for that individual (not necessarily at the same time) and that workers in participants' homes have regular supervision.
9. Regular health checks are not routinely made available to all vulnerable NDIS participants and their NDIS plan does not routinely include coordination of their health care.
10. There is currently no State agency to report abuse and neglect of vulnerable adults under 65 years of age.
11. The Department of Human Service (DHS) Screening Unit is not quickly and fully provided with relevant information by the Commission, the NDIA and some State agencies, compromising the availability of information on an individual worker that might affect their suitability to work with people with disabilities.

12. The commencement of the NDIS Quality and Safeguards Commission on 1 July 2018 in South Australia has created issues with the scope of the Community Visitor Scheme.
13. State and local government agencies have not yet invested sufficiently in achieving the goals of the [\*Disability Inclusion Act 2018\*](#).
14. The State has not invested in individual advocacy to assist people with disabilities to navigate the service system and the community.

The recommendations to address the gaps were:

1. That the State Government communicate the matters raised in this report to the Commonwealth Government with special reference to Safeguarding Gaps 1 to 9, seeking a response on how these gaps must be addressed as soon as possible.
2. That the State Government address the need for vulnerable NDIS participants to have regular health checks including communicating to the Commonwealth Department of Health. (Safeguarding Gap 9).
3. That the State Government extend the scope of the Adult Safeguarding Unit to include younger adults at risk of abuse prior to 2022, commencing with people with disabilities. (Safeguarding Gap 10).
4. That DHS revisit the information sharing guidelines as they impact on screening of workers and, in particular, the availability of relevant information from the Commonwealth (Safeguarding Gap 11).
5. That the State Government reaffirm the value of a community visitor scheme as an additional safeguard for potentially vulnerable participants and work with the Commonwealth to establish a complementary scheme. (Safeguarding Gap 12).
6. That State and Local Government agencies provide for better access and inclusion so that people with disabilities can fully participate in society. (Safeguarding Gap 13).
7. That the State government invest in individual advocacy to assist individuals with accessing what they need from the NDIS and from the community. (Safeguarding Gap 14).

The State government has agreed to all seven recommendations. It has started to address these recommendations through a commitment of \$1.8M for advocacy over the next three years and has expanded the Adult Safeguarding Unit to include people with a disability 18-65 years of age as of 30 October 2020.

The Taskforce focused specifically on people who were NDIS participants. However, as is indicated by the NDIA, only approximately 10% of the 4.6 million Australians with a disability will access the NDIS in full rollout<sup>1</sup>.

All people with disability, whether an NDIS participant or not have a right to have their needs met and accommodated for through community and mainstream supports. The Australian Government has made a commitment to the rights of people with disability by ratifying the United Nations Convention on the Rights of Persons with Disabilities<sup>ii</sup> on 17 June 2008. State and Territory governments have committed to the National Disability Strategy 2010-2020 (NDS)<sup>iii</sup> to ensure it works towards advancing the rights of people with disability. Consultation is currently underway for the National Disability Strategy 2020 and beyond. The NDS position paper<sup>iv</sup> released in July 2020 indicates that the core components of the existing strategy will form the foundation of the new strategy. Outcome area three is Rights, Protection, Justice and Legislation, this would be the logical part of the strategy where work and initiative around safeguarding would sit.

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<sup>1</sup> <https://www.ndis.gov.au/understanding/what-ndis>

The Office of the Public Advocate (OPA) made a submission to the NDS Consultation which included recommendations around safeguarding people with disability.

The OPA recommended that the new strategy should have a strong focus on safeguarding people with disability from all forms of abuse and neglect including physical, emotional, sexual, chemical and financial abuse.

Further work around the minimisation, regulation and authorisation of the use of restrictive practices with people with disability needs to occur to educate and inform people with disability and those who support them.

Improving community attitude is essential to the successful inclusion of people with disability. Governments and councils can do several things to promote the inclusion of people with disability, but this only goes so far. The community needs to understand that people with disability have the same rights as everyone else and their interests and wellbeing are also a community responsibility. Community attitude, community inclusion and community connectedness are keys to safeguarding people with disability.

In South Australia when news broke of the tragic circumstances of the death of NDIS participant Ms Ann Marie Smith, the question was asked 'Where were her neighbours?' and 'Why were people not looking out for her?'

The Safeguarding Taskforce identified a prime risk factor for vulnerable people with disability is not having a connection to their community and therefore not having multiple sets of eyes looking out for the individual. By improving community attitudes there is the opportunity to improve these informal safeguards for people with disability.

## **Question 2: How can quality services help to prevent violence, abuse, neglect and exploitation of people with disability? What are the features of those quality services?**

The co-chairs of the Safeguarding Taskforce spoke to over 70 people during the short time it was formed. Some of the key themes people identified that could help prevent violence, abuse, neglect, and exploitation of people with disability included:

- Recruitment of staff based on values-based assessment
- Training for staff not only on the day to day support requirements but on human rights, recognising and reporting abuse
- Ensuring that all workers are appropriately screened and cleared to work with people with disability
- Psychometric assessment/ screening of workers
- Support worker registration
- That the organisation has a zero-tolerance approach to all forms of abuse and neglect
- Organisations support clients, families and carers to report and prosecute criminal acts against people with disability before the courts
- Ensuring information is available to clients about how and where to report and complain if they have a concern
- Education for people with disability about their rights, what is abuse and how to report it
- Safe and clear channels for staff, clients and families to report abuse or suspected abuse without fear of retribution.

- Organisations welcome external sets of eyes into its services such as the Community Visitor Scheme (CVS)

The features of a good quality service identified by people who spoke to the Safeguarding Taskforce chairs include an organisation:

- with a culture where the client is at the centre of all planning and service provision in their lives (person-centred focus)
- which respects and listens to the voice of the client and those who support them (i.e. family members, advocates, friends)
- where a client can exercise choice and control over the services, supports and staff who support them
- which is culturally competent and can meet the needs of all clients including those from Culturally and Linguistically Diverse (CALD) and Aboriginal and Torres Strait Islander (ATSI) backgrounds.
- that has people with disability, their families and advocates represented on the board and across all other aspects of the organisation
- that stays up to date with latest information and developments across the disability sector
- which has its foundations built on the United Nations Conventions<sup>v</sup> such as the Rights of Persons with Disabilities and the Rights of the Child where services are provided to children.
- where more than one support staff member supports a client
- where supervision and oversight of homes in the community exists
- that welcome visits from the CVS and external bodies
- that assist clients they support to respond to NDIS 'check-ins'

**Question 3: How could safeguarding laws, practices, or policy frameworks (including the NDIS *Quality and Safeguarding Framework*) be improved to better prevent, reduce and respond to violence, abuse, neglect and exploitation of people with disability? We are particularly interested in Australian and international examples of good practice.**

The reporting to the NDIS Commission of matters of concern about individuals with a disability should be made simple and transparent. Often people say that the Commission is only interested if a complaint about a service provider is made. In addition, South Australia has expanded the legislated role of the Adult Safeguarding Unit to include the reporting of possible abuse and neglect of adults with a disability.

In 2017, the Community Affairs Legislation Committee on the National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017 [Provisions] received several submissions raising concerns with aspects of the Bill.

Submitters to the inquiry suggested that the own motion investigation powers of the Commission are 'unclear' in the Bill and appear to be restricted to being based on actual complaints received.' The Victorian Council of Social Services (VCOSS) recommend

*"[w]e believe the Commission should have own motion powers to conduct inquiries and investigate matters without having received a complaint or serious incident*

*notification... These powers should enable the Commission to investigate systemic issues and cases where there are allegations or concerns about people with disability experiencing violence, abuse or neglect<sup>vi</sup>*

Other submitters to the inquiry supported, or recommended, the Commissioner being empowered to undertake own motion investigations.

In his report to the NDIS Commissioner the Hon. Alan Robertson SC made a number of recommendations in relation to the adequacy of supports and services provided to Ann-Marie Smith including that the Commission should conduct occasional visits to assess the safety and wellbeing of selected individual NDIS participant, whether or not a complaint has been made or a reportable incident notified.

During the 29 October 2020 Senate Community Affairs Legislation Committee Estimates<sup>vii</sup> questions were raised in relation to Commission investigations and the numbers of investigators who were employed and in particular the lack of additional investigators in South Australia.

*“Not one additional investigator will be based in South Australia. That seems a cataclysmic oversight in the context of one of the largest trust-based issues you have on your plate at the moment which is your failure in relation to the Ann Marie Smith case”.*

Safeguarding practices could be improved if the Commission used the powers that were available within the legislation to visit providers, conduct own motion investigations, and ensure an adequate number of investigators were employed within each state.

The Safeguarding Taskforce<sup>viii</sup> explored the role of the Community Visitor Scheme (CVS) and recommended that the State Government reaffirm the value of a community visitor scheme as an additional safeguard for potentially vulnerable participants and work with the Commonwealth to establish a complementary scheme. (Safeguarding Gap 12).

There is merit in having a community visitor scheme that empowers visitors to visit potentially vulnerable people within their service environment whether state-run or NGO-run. There is also value in a visitor going into a person’s own home by invitation. The cleanest and best way to achieve this would be for the Commission to add a national CVS to its suite of functions. However, in view of the current expressed intention of the Commonwealth not to fund a national CVS, but to accommodate State/Territory CVS programs, any conflict between State and Commonwealth legislation on this issue needs to be addressed. A formal agreement between the Commonwealth and/or the NDIS Commission and the State about the operation of the State CVS within the NDIS context could be developed if there is commitment by both parties. This could include an amendment to Commonwealth law; a delegation from the Commission; a rule made by the Commission for state-run CV Schemes; or a national CVS under the Commission.

#### **Question 4: What can be done to uphold independence, choice and control for people with disability when implementing safeguards against violence, abuse, neglect and exploitation?**

When implementing safeguards, people with disability and their supporters need to be included and consulted in all aspects of design, implementation and review of any safeguarding system or process. This can be supported by ensuring that people with disability are well represented at consultations, on boards / committees and working groups about safeguarding.

The input and involvement of people with disability in all steps of the process is critical as they are best positioned to understand the issues and advocate for their needs and the needs of others with disability.

Supported decision making to support people with disability to make informed and supported decisions about matters relating to a range of areas of their lives.

Other key elements include ensuring that people with disability have access to advocacy and support services and respecting the voice of people with disability.

**Question 5: What challenges are presented by the different safeguarding approaches used across Australian jurisdictions and across different types of services?**

There has not been a nationally consistent approach to disability worker screening to prevent a worker who has been assessed as not suitable to work with people with disability, or who has been charged with related offences, from working in another state or territory.

Under the Bilateral agreement between the Commonwealth of Australia and the state of South Australia on the National Disability Insurance Scheme<sup>ix</sup> and consistent with the NDIS Quality and Safeguarding Framework, South Australia is responsible for the authorisation and consent arrangements for regulated restrictive practices in South Australia required by South Australian legislation and for the operational aspects of worker screening.

The Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme<sup>x</sup> aims to address this matter through national policy for NDIS worker screening. It notes that the primary responsibility for recruiting and providing a safe environment for people with disability rests with employers. The agreement states that a National Clearance Database will be established to check all workers cleared under the NDIS Worker Screening Check against their state criminal history records for ongoing monitoring. The Department of Human Services Screening Unit<sup>xi</sup> website indicates that commenced on 1 February 2021.

It should also be noted that this safeguard relates only to NDIS participants and, as previously mentioned, there is a large cohort of people with disability who do not access the NDIS. The South Australian Government undertakes other types of screening such as Disability Services employment screening, aged care sector employment, working with children check, vulnerable persons-related employment and general employment probity checks along with South Australia Police who undertake police record checks. However, not all people who a person with a disability comes into contact with as part of service delivery will have a screening.

There are challenges to sharing information between the state, the NDIS and the NDIS Quality and Safeguards Commission and non-government agencies, due to intersecting requirements of State and National legislation and privacy principles or policy that may not seamlessly across the different levels of government and private industry.. While some South Australian state government departments have signed information sharing agreements with the NDIS Commission, the Memorandum of Understanding for Information Exchange between the National Disability Insurance Agency and South Australian Government Agencies is yet to be agreed and signed. The Department of Human Services is currently negotiating this agreement on behalf of all State government agencies.

Community Visitor Scheme's (CVS) are currently administered and regulated under relevant state legislation. In South Australia the CVS is established under the [Mental Health Act \(2009\)](#). It was expanded to include disability services through the Disability Services (Community Visitor Scheme) Regulations 2013 under the [Disability Services Act 1993](#). South Australia fully transitioned to the National Disability Insurance Scheme (NDIS) in June 2018. Disability services are now funded by the NDIS under Commonwealth legislation

([National Disability Insurance Scheme Act 2013](#)). As the [Disability Services Act 1993](#) relates to services funded by the State Government, the disability CVS ceased visits to non-government disability services in May 2019, as there is no longer a funding relationship. The CVS in South Australia continues under the [Mental Health Act 2009](#). However, it is limited to visiting DHS Disability Services accommodation services which remain “in-kind” until 2023, and NDIS participants where the Public Advocate is appointed their guardian under [Guardianship and Administration Act 1993](#).

Although the CVS would not have visited Ms. Ann-Marie Smith, the Independent review of the adequacy of the regulation of the supports and services provided to Ms Ann-Marie Smith by Alan Robertson SC on 31 August 2020<sup>xii</sup> makes a recommendation relating to amendments to the [NDIS Act 2013](#) for an explicit function of the CVS. Until that happens, the NDIS Commission should continue to support the State and Territory CVS with the state and territory schemes continuing to apply in relation to those with disability who are not NDIS participants.

A National review of the CVS was undertaken in December 2018 by Westwood Spice titled The Community Visitor Schemes Review Department of Social Services for the Disability Reform Council, Council of Australian Governments. The report made a number of recommendations including:

*1. That CVS for disability, while having a broader scope than the NDIS, have a contribution to make to the NDIS Quality and Safeguarding Framework and that the contribution of CVS should be formally recognised within the NDIS Framework.*

*2. That the role of Community Visitors be provided by state and territory-based schemes where they exist. To support CVS’s interface with the NDIS Commission, the following matters should be agreed between the NDIS Commission and states and territories:*

*a. Authority of Community Visitors to enter the premises of NDIS providers.*

*b. Data and information sharing.*

*c. Compulsory reporting to the NDIS Commission on alleged reportable incidents*

*and failure to adhere to incident management processes.*

*d. Reporting on patterns of concern to the NDIS Commission and state/territory*

*agencies.*

*e. Role of CVS in relation to restrictive practices monitoring and reporting.*

*5. In the medium term, Commonwealth and states and territories should work towards national consistency around key aspects of CVS including:*

*a. Reporting*

*b. Standards for review (and alignment with practice standards)*

*c. Scope*

*d. Interface with NDIS Commission to define minimum consistency necessary*

*e. Any role within the OPCAT NPM.*

*6. CVS are working in an evolving context and will benefit from being included in the broader Quality and Safeguarding Framework review due in 2021-22.<sup>xiii</sup>*



The Safeguarding Taskforce heard concerns relevant to the interoperability between State and Commonwealth legislation, specifically that the expansion of the scheme visiting non-government disability accommodation services was generally supported, but concerns were raised over proposed legislation which could potentially allow for entry into a person's private home.

**Question 6: What role does, or should, independent monitoring and oversight play in safeguarding the right of people with disability to live free from violence, abuse, neglect and exploitation? Should the NDIS Quality and Safeguards Commission be taking a more active role in ensuring service providers are adhering to the appropriate standards, particularly during the pandemic crisis?**

Independent monitoring is an essential part of safeguarding vulnerable populations with disability in South Australia. We are aware that people with disability interact with a range of other State-based government services such as Health, Corrections, Education, Mental Health, Youth Justice and Child Protection.

There are a number of schemes and statutory positions established under South Australian legislation that provide some form of safeguarding for a range of groups who have disability. These include, but are not limited to:

- The Community Visitor Scheme (established under the [Mental Health Act 2009](#) and [Disability Services Act 1993](#))
- The Training Centre Visitor (established under the [Youth Justice Administration Act 2016](#))
- The Guardian for Children and Young People (established under the [Children and Young People \(Oversight and Advocacy Bodies\) Act 2016](#))

The latter two identified positions are responsible for supervision and oversight of young people which includes children within those systems, not just those with disability.

There is a need for safeguarding of people with disability particularly in areas such as Corrections, Child Protection and Education. There is currently no statutory oversight in these areas and people with disability interact with these systems.

Further work needs to be undertaken to better understand the interface between the NDIS Commission and the state-based CVS and to ensure that visits are not intrusive but balance the rights and privacy of the individual with their safety.

**Question 7: What safeguards are required for people who may need additional support, such as people who do not have informal supports like families or other advocates, people who face communication barriers, and people with high support needs?**

This cohort is particularly vulnerable to abuse and neglect so a multi-pronged approach to safeguarding is required.

The appointment of a formal guardian through the [Guardianship and Administration Act 1993](#) (South Australia) ensures there is a formal decision-maker that is separate from the service provider. Where the Public Advocate is appointed guardian because no other person is deemed suitable, this also provides another level of safeguard with oversight by a formal and independent agency of a person's life.

The taskforce were provided with information relevant to a previously existing guardianship approach called the Community Guardian. A community guardian was described as a person not related to the client of concern, who can be appointed through an administrative process (such as the South Australian Civil and Administrative Tribunal) to assist with decision making. The community guardian forms a relationship and gets to know and

understand the person with disability to assist with making decisions that are led by the clients wishes. The community guardian is separate from service provision and provides a separate independent set of eyes.

It is also important to understand that many residents residing in supported accommodation may be unable or unwilling to pick up the phone and request a visit. It is therefore important that any staff of a visitor scheme have good knowledge and understanding of people with disability and their support requirements, and where possible visits are conducted by people with lived experience.

It is well recognised that having a range of people in your life can also serve as a safeguard against abuse and neglect. Programs similar to Circles of Support<sup>xiv</sup>, where workers partner with clients and their family to work on strengthening opportunities for inclusion, can assist in building a network around the person with disability. In addition, advocacy services and self-advocacy groups can provide opportunities for an individual to understand their rights and learn about self-advocacy.

The Commission should have a closer role in the regulation and monitoring of service providers to ensure that there is not one single carer or organisation providing support to the individual. They could also include a training package for workers and service providers about how to safeguard and reduce the risks of abuse and neglect for vulnerable people with disability.

The NDIS Planner and the Local Area Coordinator (LAC), at the point of plan implementation should discuss the risks of a single service provider with the participant and their relevant support people. The plan review should also be a point where a review of the current service providers is undertaken to ensure the participant has more than one service provider. The Safeguarding Taskforce also had considerable discussion about an individual risk assessment. This would occur at the planning meeting to assess vulnerabilities and risks to the individual and document strategies to safeguard against these risks.

A nationally consistent worker screening program that ensures all workers who support people with disability are appropriately screened is an important aspect of adequate safeguarding for clients with disability. Clients should be educated on how to report individual workers and what the appropriate 'door' is to lodge a complaint relevant to a worker. Appropriate processes need to be in place to progress complaints about workers that is responsive, informative and supported by information sharing arrangements to ensure timely communication between the State and Commonwealth agencies where a risk is identified.

It is equally as important that the safeguarding systems include training for support staff on the rights of people with disability, augmentative and alternative communication modalities and how to communicate in different situations, and identification and notification processes for suspected abuse and neglect. By ensuring support staff understand what constitutes abuse, how to communicate better with clients and how to notify, they can be more vigilant in identifying and following up abuse.

**Question 8: How can informal safeguards be strengthened to prevent or reduce violence, abuse, neglect and exploitation of people with disability? What are the ways in which people with disability develop personal capacity to safeguard at different stages of their lives and as circumstances change? Are there systems in place to support this capacity development?**

Informal safeguards can be strengthened in a range of ways including community education about the rights of people with a disability and understanding what abuse is and where to report it. There also needs to be a "no wrong door" approach to reporting. When a person

rings to report abuse, if they have contacted the wrong place the report needs to be progressed to the place that can address the issue.

The Disability Advocacy Service of SA (DACSSA) has developed a resource and flyer called 'Steps for Responding to Disability Abuse'<sup>xv</sup>. This resource is only one of 11 resources included in their syllabus proposal for Responding to Disability Abuse Training. With funding, this resource could be rolled out to the general community as education.

Both children and adults with disability can develop capacity through tailored education and information about their rights, what is abuse and where to report it. Starting at a young age is critical to ensure the child is informed and aware and can advocate for themselves at an early age. Education for families, carers and support staff will also assist in safeguarding those people who may not have the ability to advocate for themselves.

The recent National Disability Strategy consultation<sup>xvi</sup> highlighted the need for community awareness raising around the rights of people with disability and their safety. It is expected that this will be addressed in the NDS 2020 and beyond Strategy.

It is also noted that the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability has highlighted a range of issues relating to the violation of the rights of persons with disability and abuse and neglect<sup>xvii</sup>. The interim report identifies particular groups such as First Nations People with Disability and people from CALD backgrounds in particular for further work and investigation.

**Question 9: What barriers do people with disability face when making a complaint and what will help address these barriers? We are interested in hearing about complaints processes across a range of services and areas of life.**

The Safeguarding Taskforce chairs heard a range of barriers from the different people they spoke to. Some key points and findings were as follow.

People with a profound and significant intellectual disability may not understand what abuse and exploitation is and may lack the capacity to make a complaint or raise a concern due to their cognitive impairment. This makes this cohort extremely vulnerable as they are reliant on those people close to them or who support them to ensure that they are safeguarded from abuse and neglect and report when there is a concern. By ensuring that all people who support these people are educated in the rights of people with disability, how to identify and report suspected abuse and that workers are appropriately screened will go some way to protecting these people. The other important component is ensuring that they do not have a single support staff member and that all staff who are provided with appropriate supervision.

Many people the chairs spoke to had never heard of the NDIS Quality and Safeguards Commission and did not understand its role. For those people who contacted the Commission it was often confusing as the Commission only receive reports and complaints about registered service providers. When the report does not fall into these categories, they reportedly do not assist the person to triage the complaint or direct them where to go to have their concern resolved.

When a complaint was raised with the Commission, many said that they never heard back about the outcome of the complaint. While the Commission publishes the names of workers and organisations subject to sanctions, this is not easily accessible.

It was also reported that there is no one stop shop to assist people in making complaints. There is no-one to triage complaints. This was identified as Safeguarding Gap 10 and resulted in Recommendation 3 that the State Government extend the scope of the Adult Safeguarding Unit to include younger adults at risk of abuse prior to 2022, commencing with people with disabilities. (Safeguarding Gap 10). The State government has adopted this

recommendation and the ASU was extended to accept calls relating to vulnerable adults with disability from 1 October 2020 and will be open to all vulnerable adults as of October 2022 as originally scheduled.

The Safeguarding taskforce also received feedback that the NDIS Quality and Safeguards Commission and its role are not clearly articulated to people with disability or the wider community. The NDIS Commission does not immediately spring to mind as a place where you would raise a complaint and concern. Whilst safety is in its extended name it is not usually verbalised, leading to uncertainty and confusion.

People with a disability may be fearful of retribution if they raise a concern. Robust responses when people with disability do complain are required. People need to feel that when they raise a complaint or concern that it is addressed appropriately and in a timely way.

People with disability are not always aware of or informed of their rights. Ensuring that all people with disability are informed and educated on their rights is essential. Supporting groups who support people with disability such as Our Voice, Disability Elders of All Ages, the Co-design Council (Julia Farr Purple Orange) and the DHS Influencers Group all support and build the capacity of the individual to advocate for themselves.

Safeguarding Gap 14 identified that the State has not invested in individual advocacy to assist people with disabilities to navigate the service system and the community. Recommendation 7 suggested that the State government invest in individual advocacy to assist individuals with accessing what they need from the NDIS and from the community. (Safeguarding Gap 14). The State Government has committed \$1.8M over three years for advocacy - \$200,000 per annum towards the role of the Disability Advocate in the Office of the Public Advocate and \$400,000 per annum for individual advocacy.

The [Disability Inclusion Act 2018](#) requires that all State Government Departments, Statutory Authorities and Local Government produce a Disability Access and Inclusion Plan which details how they and the services they provide will be more inclusive of people with disability taking into consideration the unique needs of groups such as women, children, ATSI and CALD people with disability. This includes making services accessible and processes for raising complaints about a service.

**Question 10: How can safeguards and complaints processes be improved to better meet the needs of First Nations people, women, culturally and linguistically diverse people, LGBTIQ+ people, and/or children and young people with disability?**

The Disability Advocate is a position located within the Office of the Public Advocate and was established in November 2018. The purpose of the role of the Disability Advocate was to “ensure” that South Australians with a disability and their families, were getting a good deal from the National Disability Insurance Scheme (NDIS)”.

Throughout 2019 the Disability Advocate attended 150 meetings of people with disability, families advocates and carers and talked to people about their experiences with the NDIS, what was working well and areas for improvement. Monthly reports were presented to Ministers, senior State and NDIS officers.

The role has since been extended with additional funding for the next 3 years. COVID-19 and other work (such as the Safeguarding Taskforce) has made it difficult to undertake face to face meetings but this has now recommenced with the monthly reports for the first six months of 2021 focusing on CALD, ATSI, rural and remote, LGBTIQ, sensory and children.

So far meetings have been held with a number of CALD and ATSI groups and representatives along with people who represent children.

Feedback is as follow:

### **First Nations People:**

- Recognise that the system is a “*white system*”<sup>2</sup> and that this does not work for Aboriginal people
- The concept of disability is not recognised in Aboriginal culture
- Spend more time building relationships to establish and develop trust
- Spend time yarning and really listening to Aboriginal people and their families and communities
- Providing information in a range of formats and languages
- Being aware that English is not a first language and may not even be a second language
- Spend time yarning to share information about different service systems and to hear complaints and concerns
- Cultural awareness training for all people in the system is essential
- Culturally appropriate training and support for Aboriginal people about the NDIS and complaints processes
- Have a trauma informed approach
- Engage people who know and are from the community to assist in conveying information
- Speak to peak bodies such as First Peoples Disability Network
- Employ more Aboriginal workers who understand the culture
- Establish an Aboriginal committee that knows about NDIS that people can approach

### **Culturally and Linguistically Diverse (CALD)**

- The concept of disability and responsibilities around it may differ for different cultural groups
- The systems in Australia are complex and difficult to navigate for people with English as a second language
- The system in Australia is often different to what people are used to at home and they may need support to navigate the system
- Providing information in a range of formats and languages
- There is a need for better education for new arrivals in relation to services, understanding the systems and especially about de-stigmatisation of disability.
- There are insufficient systems to be able to raise concerns.
- Interpreters should always be made available.
- Staff need training in cultural competence and cultural knowledge to work effectively with CALD communities.

### **Question 11: What else should we know?**

Improving community attitude is essential to the successful inclusion of people with disability. Governments and councils can do a number of things to promote the inclusion of people with disability, but this only goes so far. The community needs to understand that people with disability have the same rights as everyone else and their best interest and wellbeing is also a community responsibility. Community attitude, community inclusion and community connectedness are keys to safeguarding people with disability.

Specifically, the OPA and the Disability Advocate submit the following:-

1. Safeguarding and quality services must be guided by,

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<sup>2</sup> “White system” was terminology used by a participant involved in the safeguarding taskforce consultation.

- a) high-level internal benchmarks for providers that are guided by minimum standards,
  - b) clear identification of roles such as support coordinators and other services involved in client care,
  - c) consistent minimum qualifications of workers, ongoing education and training across the sector, and
  - d) comprehensive and consistent monitoring of providers.
2. A range of support models must be available that suit client need, including for CALD, ATSI and other minority groups.
  3. Safeguards exist at multiple levels including oversight by state and federal agencies, investment in advocacy, and consistent mechanisms such as worker screening and own motion investigations.
  4. Sector wide training and education is available including providing information on complaints mechanisms and how to support clients through these processes.
  5. Co-design and community consultation are key to the development of all policy, process or systemic change.
  6. No 'wrong-door' approach to information / advice / complaints / reporting.

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- <sup>i</sup> Safeguarding Taskforce <https://dhs.sa.gov.au/latest-news/safeguarding-taskforce> accessed 7/12/2020
- <sup>ii</sup> United Nations Convention on the rights of Persons with Disabilities <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html> accessed 8/12/2020.
- <sup>iii</sup> The National Disability Strategy <https://www.dss.gov.au/our-responsibilities/disability-and-carers/publications-articles/policy-research/national-disability-strategy-2010-2020> accessed 7/12/2020.
- <sup>iv</sup> The National Disability Strategy Position Paper <https://engage.dss.gov.au/nds-stage2-consultation/national-disability-strategy-position-paper/> accessed 8/12/2020
- <sup>vi</sup> National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017 [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/NDISQualitySafeguards/Report/c02](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/NDISQualitySafeguards/Report/c02) accessed 28/01/2021.
- <sup>vii</sup> Official Committee Hansard – Senate – Community Affairs Legislation Committee Estimates Thursday, 29 October 2020 [https://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/1bad3d3e-80f8-498e-a93b-585809f8dd26/toc\\_pdf/Community%20Affairs%20Legislation%20Committee\\_2020\\_10\\_29\\_8267\\_Official.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/1bad3d3e-80f8-498e-a93b-585809f8dd26/toc_pdf/Community%20Affairs%20Legislation%20Committee_2020_10_29_8267_Official.pdf;fileType=application%2Fpdf) accessed.
- <sup>viii</sup> Safeguarding Taskforce <https://dhs.sa.gov.au/latest-news/safeguarding-taskforce> accessed 7/12/2020
- <sup>ix</sup> Bilateral agreement between the Commonwealth of Australia and the state of South Australia on the National Disability Insurance Scheme <https://www.coag.gov.au/about-coag/agreements/bilateral-agreement-between-commonwealth-australia-and-state-south-australia> accessed 8/12/2020.
- <sup>x</sup> Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme <https://www.coag.gov.au/about-coag/agreements/intergovernmental-agreement-nationally-consistent-worker-screening> accessed 8/12/2020.
- <sup>xi</sup> The Department of Human Services Screening Unit <https://screening.sa.gov.au/types-of-check> accessed 8/12/2020.
- <sup>xii</sup> 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 Alan Robertson SC 31 August 2020 <https://www.ndiscommission.gov.au/sites/default/files/documents/2020-09/independent-review-report-commissioner-public-310820.pdf> accessed 20/12/2020
- <sup>xiii</sup> Ibid
- <sup>xiv</sup> Circles of Support Community Living Project <https://communitylivingproject.org.au/circles-of-support/> accessed 8/12/2020
- <sup>xv</sup> DACSSA Steps for Responding to Disability Abuse <https://www.dacssa.org.au/your-rights/dacssas-response-to-abuse/> accessed 8/12/2020
- <sup>xvi</sup> Ibid
- <sup>xvii</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability <https://disability.royalcommission.gov.au/publications/interim-report> accessed 8/12/2020