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Submission to: Independent Review of the National Disability Insurance Scheme

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1. Introduction

The Public Advocate welcomes the opportunity to provide a submission to the Independent Review of the National Disability Insurance Scheme. At the 10th year of the scheme, it is important to recognise that the NDIS has provided new opportunities for people with disability. The previous State/Territory system was underfunded and only able to respond to those with the greatest need and highest risk. The establishment and roll out of the NDIS nationally in such a short time frame was highly ambitions. Comparisons have been made to the NDIS being like a plane that took off before it was fully built. At 10 years we have a well-funded scheme, so well-funded that the yearly cost increases are unsustainable. There are some issues which have arisen as the scheme has evolved which will be challenging to rectify and which are symptoms of the ambition to quickly roll out the scheme nationally. This Review is a welcome opportunity to fix some of the features of the scheme s that do not work well whilst refining and building on the features that are positive about the scheme.

2. The Public Advocate

The Public Advocate in South Australia promotes the rights and interests of people with impaired decision-making capacity. The Public Advocate is supported by the Office of the Public Advocate (OPA) to provide guardianship, investigation, advocacy, dispute resolution, and information to support people who need assistance with decision making.

The Public Advocate is a statutory officer who advocates for and on behalf of adults with impaired decision-making capacity and their families, carers, and supporters. In particular, the Public Advocate administers South Australian laws that relate to guardianship for adults who are unable to make decisions for themselves, who are at risk of abuse or neglect and may require assistance with decision making.

The Public Advocate can be appointed by the South Australian Civil and Administrative Tribunal (SACAT) as a guardian if a person has impaired decision-making capacity, there is a lifestyle, accommodation, and/or health decision to be made and there is no other appropriate person to be appointed.

What this means in practice is that the Public Advocate will only be appointed if there is no one else in a person's life able or willing to make necessary decisions, or if there is family conflict meaning that agreement on decisions is difficult or not possible. Consequently, the Public Advocate often must make decisions for people who have complex needs or experience complex situations and who are often without support networks.

The Public Advocate is the guardian for approximately 1850 South Australians with impaired decision-making capacity. Of these 1230 are participants of the NDIS. The Public Advocate advocates for the rights of these, and other South Australians who have impaired decision-making capacity and disability.

The Public Advocate undertakes systemic advocacy to protect and promote the rights and safety of South Australians with impaired decision-making capacity. The Public Advocate writes submissions for reviews of legislation and consultations on matters of public policy, which are presented to Ministers and senior government officials. All these papers are available on the OPA website at opa.sa.gov.au/publications. Most of these papers relate to various aspects of the NDIS.

The Disability Advocate was a position located within the OPA from January 2019 to December 2022. The purpose of the role was to ensure that South Australians with a disability and their families were getting a good deal from the NDIS during the transition from State-funded to NDIS-funded arrangements.

During this time the Disability Advocate met hundreds of people with disability, families, advocates, and carers to speak with them about their experiences with the NDIS, what was working well and areas for improvement. The reports that were prepared (usually with the Public Advocate as senior author) on a range of topics were presented to Ministers and senior State and National Disability Insurance Agency (NDIA) officers and are available on the OPA website.

3. Public Advocate clients and the NDIS

The Public Advocate assumes that all clients aged less than 65 years are eligible for the NDIS. Adults become clients of the Public Advocate because the SACAT grants an order giving guardianship to the Public Advocate as the person requires a substitute decision-maker and there is no other person able or willing to act in that capacity. A person requires a substitute decision maker because they have challenges with decision-making arising from an intellectual disability, a psychosocial disability, or a brain injury/disease.

In February 2021 the Disability Advocate undertook a project to examine the impact of the NDIS on both the clients, and staff of the OPA. The project explored how Public Advocate clients are benefiting from the NDIS, what challenges clients are experiencing, and what impact the NDIS is having on the operations of OPA.

In undertaking the research, the Disability Advocate conducted 35 individual interviews with managers and guardianship staff of the OPA.

The report findings were:

- Overall, Public Advocate clients are getting a better deal from the NDIS than under the previous State system. There is significantly more funding in the sector.
- The NDIS is so complex that people with a mild disability or their families are sometimes seeking Public Advocate guardianship to assist them to navigate the system. This is both disempowering to the individual and a significant stress on the workload of OPA.
- OPA has seen applications made to SACAT for guardianship orders purely to help the protected person and family to navigate the NDIS.
- In the absence of a case management role in the NDIS, there is no one person with overall responsibility for ensuring that the participant gets the services and supports they need. Support Coordination is the closest role in the NDIS to meet this need, but this is time-limited and quantity-limited, and funding for Support Coordination can run out just when a crisis occurs, and it is most needed.
- In the absence of a person with overall responsibility (or case manager), OPA guardianship staff often have to take on this role by default, despite it falling outside of their traditional remit.
- The advent of the NDIS has resulted in a significant increase in administrative tasks for OPA guardianship staff, such as reviewing service agreements, behaviour support plans, restrictive practices etc.
- An increase in NDIS funding has seen growth in the disability sector with new providers entering the market. The market is still immature, and the skills and quality of service providers and Support Coordinators vary considerably.
- OPA staff at times find themselves “directing” Support Coordinators. There is no minimum qualification for Support Coordination.
- Public Advocate clients have some of the most complex and challenging support requirements. In a market driven sector, service providers and Support Coordinators can

choose who they work with and, on occasion, they have opted to no longer work with an OPA client due to their complexity.

- The NDIS is not as flexible as participants' lives and, as a result, is not as responsive as it needs to be when there are changes in a person's life.
- There is no service provider of last resort. Often OPA clients find themselves in inappropriate settings such as social admissions to hospital to avoid homelessness.
- There are also challenges in finding appropriate housing. This, coupled with the inability of the NDIA to respond to a crisis in a timely manner, compounds the problem of avoiding homelessness.
- There is market thinness particularly in regional and remote areas. This means that there can be little or no choice of service provider in those places.
- As a safeguard, the Public Advocate endeavours to separate the provision of housing, support, and Support Coordination. In some instances, this is not possible, and the Public Advocate must consent to a non-preferred option to prevent the person from being homeless.
- OPA staff have always tried to see the bigger picture for their clients – where they want to go with their lives and how to pursue their goals. However, with the administrative requirements of the NDIS, the OPA staff can get bogged down with the minutiae of decision-making about day-to-day matters.

The report made 17 recommendations to improve and streamline processes to achieve efficiencies and better outcomes for clients under guardianship of the Public Advocate, some of which are also repeated in this submission.

The report findings provide a broad overview of some of the challenges for the OPA when supporting NDIS participants under guardianship. The following sections will discuss in further detail key issues for the OPA and for particular client groups.

4. Issues

4.1 Recognition of Public Guardians and Administrators under the NDIS Act

The *NDIS Act 2013* does not recognise public guardians and administrators who are appointed through the relevant jurisdiction's tribunal (such as SACAT). At the commencement of the scheme, jurisdictions agreed that public advocates and guardians would not become the *nominee* on the "protected person's" NDIS plan. Chapter 4 Part 5 of the *NDIS Act 2013*[1] deals with matters relating to nominees. An incompatibility between Commonwealth and State legislation exists when a nominee is in place as per the *NDIS Act* and a public guardian is appointed through the relevant State legislation.

The NDIA is seeking legal advice in relation to this matter which also impacts on the OPA sharing information under the NDIA Memorandum of Understanding (MOU) for Information Exchange with State Government agencies. The head MOU for this agreement was signed in January 2022 with State Government agencies to then negotiate a schedule of data requirements with the NDIA under the MOU for their agency. The OPA is leading work to develop the schedule for the South Australian Attorney General's Department (AGD) which includes the Public Trustee. The draft schedule was submitted to the NDIA in April 2022. Work on progressing the AGD schedule has stalled whilst legal advice is sought.

[1] National Disability Insurance Scheme Act 2013 (legislation.gov.au) (accessed 28/12/2022)

Data exchange between the State and Commonwealth governments is critical to ensure that all Public Advocate clients have their eligibility for the NDIS tested and that the NDIA is aware which of its participants are under State guardianship.

Recognition of public guardians and administrators was not addressed in the Review of the NDIS Act report[2] (Tune review) in 2019. This lack of recognition creates barriers for OPA staff when dealing with the NDIA about people under public guardianship. This inhibits timely information exchange which is discussed further in the following sections. In situations where a private guardian is appointed, they are also likely to be the Nominee and as such do not experience the same challenges the Public Advocate and OPA staff do.

Recommendation 1: That amendments are made to the *National Disability Insurance Scheme Act 2013* to recognise the role and functions of public guardians and administrators who are formally appointed through the relevant State tribunals.

4.2 Safeguarding and the role of the NDIS, NDIS Quality and Safeguards Commission and the State

Safeguarding vulnerable South Australians is a key component of the Public Advocate's role. The Public Advocate also advocates for appropriate safeguards for those adults with impaired decision-making capacity under guardianships and in the broader community and has recently made a submission to the review of the NDIS Quality and Safeguarding Framework.

The Public Advocate was a member of the Safeguarding Taskforce, which was established by South Australia's Minister for Human Services in May 2020 following the death of Ann Marie Smith who was a NDIS participant. The Taskforce consisted of people with lived experience of disability and their families and senior government officials. The Taskforce, co-chaired by Dr David Caudrey, Disability Advocate and Disability Rights Advocate, Kelly Vincent, examined and reported on the gaps in safeguarding of people with disability across the state. The final report[3] was submitted to the SA Minister for Human Services in September 2020 and identified 14 Safeguarding Gaps and made 7 recommendations to address these gaps.

The Safeguarding Taskforce identified six safeguarding gaps related to the NDIA and its Partners in The Community (PITC). Following the report, the State Government communicated these matters to the NDIA. They are as follow:

Safeguarding Gap 1: Potentially vulnerable participants are not routinely identified and assigned ongoing support coordination in their NDIS Plan.

Safeguarding Gap 2: The Support Coordinator can be from the same agency that provides other core services for the individual, creating a conflict of interest.

Safeguarding Gap 3: Participants are not routinely linked to community activities, so they are often isolated.

Safeguarding Gap 4: Participants are not identified as potentially vulnerable by the NDIA and prioritised by the Local Area Coordinator (LAC) when carrying out the community connection role.

Safeguarding Gap 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

[2] Review of the NDIS Act report | Department of Social Services, Australian Government (dss.gov.au) (accessed 28/12/2022)
[3] Safeguarding Task Force Supplementary Report - Sept 2020 (opa.sa.gov.au) (accessed 22/12/2023)

independence and safety, capacity building for asserting rights, and recognition of cultural matters.

Safeguarding Gap 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.

The NDIS Quality and Safeguards Commission (the Commission), has responsibility for:

- registering NDIS providers
- responding to complaints
- overseeing reportable incidents

The Safeguarding Taskforce identified five gaps relating to the Commission. Of these, the following four are yet to be addressed:

Safeguarding Gap 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.

Safeguarding Gap 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.

Safeguarding Gap 11: The Department for Human Services (DHS) Screening Unit (SA) 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.

Safeguarding Gap 12: The commencement of the NDIS Quality and Safeguards Commission on 1 July 2018 in South Australia created issues with the scope of the Community Visitor Scheme (CVS).

The Commission has addressed Safeguarding Gap 8, which requires that all providers of personal support have at least two support workers for that individual (not necessarily at the same time) and that workers in participants' homes have regular supervision. This is addressed by an additional requirement of a sole worker clause in the service agreement if the service provider is providing *service type 0107 – assistance with daily personal activities*. It is unclear as to how this is monitored and regulated. The OPA has a policy and suite of procedures to guide OPA staff to ensure that all possible safeguards and protections are in place for clients of the OPA when selecting a service provider.

The Public Advocate is concerned that there are still insufficient safeguards for other vulnerable South Australians who are NDIS participants. It appears that, in the eagerness to ensure that choice and control are offered to people with disability, (a) education and support around self-advocacy, and (b) ensuring one's rights, safety and wellbeing are upheld, has been overlooked leaving many people at risk of exploitation and abuse in its various forms.

There is room for improvement in the timely information sharing arrangements between State Government agencies, statutory authorities, the NDIA and the NDIS Quality and Safeguards Commission as sharing is currently ad hoc and not timely which places people with disability at risk of harm.

Recommendation 2: That the State, NDIA and NDIS Quality and Safeguards Commission work together to improve information exchange between entities to better safeguard people with disability.

The Public Advocate also appeared before the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability on Wednesday 8 June 2021 at Public Hearing 14. In her statement[4], she raised issues relating to clients under public guardianship, who are some of South Australia's most vulnerable people.

These include:

- the work of the Safeguarding Taskforce in identifying potential safeguards and the need for State and Commonwealth agencies to work together to ensure that these are implemented for the most vulnerable South Australians. These are discussed above, and;
- the challenges and complexity for Public Advocate clients in accessing timely supports, housing, and services - in particular when they experience a crisis. These challenges are discussed below.

4.3 Responsiveness of the NDIS

The NDIA cannot respond in a timely manner to crisis situations. Under current arrangements, there is no quick response or pathway to safeguard a NDIS participant if their support services or housing fail.

The NDIS Participant Service Guarantee (PSG) which is legislated in the *NDIS Act 2013* was introduced following a recommendation from the Review of the NDIS Act report[5]. The PSG specifies the reasonable timeframe for a Change of Situation (CoS) as up to 28 days for a small change and 50 for a larger change in the plan. OPA staff can ring the NDIS 1300 number, but it is unlikely they will have a same day outcome for a client in crisis. It is likely that whilst they wait for the CoS to be considered they will have to draw down on funding for other supports in the person's plan.

Marathon Health is the Exceptionally Complex Support Needs program in South Australia and can provide an after-hours response for NDIS participants who are in crisis. This response involves Specialist Support Coordinators (SSCs) who can access a participant's plan and connect the participant with service providers. This program is only available to approved referrers such as South Australia Police (SAPOL), South Australia Ambulance Services (SAAS) and SA Health (hospitals). The OPA was successful in negotiating to become an approved referrer to this service on the basis that OPA would only use this avenue in the event that the client is not engaged with one of the other listed referrers. Since this arrangement commenced in late 2020, OPA has had three interactions with Marathon Health, two of which were referrals. One of the two referrals was accepted, and, in this case, Marathon Health was not able to provide an alternative outcome and the client remained as a social admission in hospital.

Under the former State Government system there was a range of safeguards for clients in crisis. This included the *Disability SA After Hours Service*, and the *Central Resource Allocations Unit* where emergency funding and emergency respite could be sourced. Disability Services Accommodation Services was also a service provider of last resort. With the transition to the NDIS, OPA staff are reliant on systems that are not set up to be as dynamic as a person's life. Crisis situations may result in pressures in other State Government systems such as social admissions to hospital to avoid homelessness.

In July 2022, the Public Advocate attended a roundtable hosted by South Australia's Health and Human Services Ministers with more than 20 industry and government stakeholders. The roundtable formed part of the Social Development Committee (SDC) (SA) *Inquiry into the*

[4] statement_drc_28_may_2021.pdf (opa.sa.gov.au) (accessed 28/12/2022)
[5] Review of the NDIS Act report | Department of Social Services, Australian Government (dss.gov.au) (accessed 28/12/2022)

impact of the NDIS on South Australians living with disability who have complex needs and are, or are at risk of, residing for long periods in inappropriate accommodation (such as hospital or residential aged care). The Public Advocate made a submission to the SDC[6] making a number of recommendations relevant to the NDIA which are incorporated into this submission. The Disability Advocate also appeared before the committee on 28 November 2022 raising similar matters which are included in Hansard[7].

Recommendation 3: That a NDIA crisis response pathway and intensive case management support be set up to respond to urgent situations which arise suddenly for individuals with complex needs, who would otherwise be thrust into inappropriate circumstances e.g. hospital.

4.4 Housing

The Public Advocate has concerns about clients with disability who face heightened risks of violence, abuse, neglect and exploitation because they cannot access appropriate accommodation in a timely way. This problem has resulted in some OPA clients with disability spending periods of time in hospitals or other inappropriate housing. The roundtable mentioned previously acknowledges that this is a broader issue for many NDIS participants. The problem is exacerbated by:

- Challenges locating appropriate housing. It is expected that only 6% of NDIS participants will be eligible for a Specialist Disability Accommodation (SDA) property. There are supply issues and a participant needs to have the right funding for SDA in their NDIS plan and then identify an SDA property in their preferred area that meets their needs i.e. robust or accessible.
- NDIS funding, assessment and approval processes for home and living requests being complex. Firstly, the NDIS plan must include a goal related to Home and Living Supports. Secondly, a *Request for Home and Living Supports* (RHLS) is made which may involve further assessments and subsequent approvals. Thirdly, if SDA applications are made, these are assessed by a different panel within the NDIA.
- NDIA approval processes are sequential rather than concurrent, resulting in lengthy wait times that can take months. Sourcing appropriate housing involves a range of NDIA processes.
- Once approval is granted, locating suitable accommodation then commences by a Specialist Support Coordinator (SSC). Interim housing or alternative placement may be required, sometimes with short-term accommodation assistance. Interim placements can be in a hospital, sometimes for months.
- The NDIA will not approve Short Term Accommodation (STA) and, until recently, Medium Term Accommodation (MTA) options unless a long-term accommodation option has also been identified. Recent amendments to the NDIA Operational Guideline relating to MTA[8] in January 2023 remove the requirement for a longer-term housing option for participants exiting hospital or correctional facilities. This amendment should be extended to other participants.

Attachment 3: Housing Pathway for NDIS Participants is a flow chart prepared by the OPA which illustrates the complexity of the NDIS housing process and the estimated associated timeframes.

[6] Office-of-the-Public-Advocate-submission-to-the-SDC.pdf (opa.sa.gov.au) (accessed 28/12/2022)

[7] Hansard 28 November OPA & Minda Inc.pdf

[8] Medium term accommodation | NDIS (accessed 20/3/2023)

There is also a specific group of clients that need individualised, tailored, and customised housing solutions and this is difficult to achieve. Many of the providers are still adjusting to a market-based, choice-oriented system.

The NDIA provides funding for SDA but it is expected that only 6% of adult participants with the NDIS will be eligible for this. There are other OPA clients not eligible for SDA but who have high and complex needs with challenging behaviours. Those who do not qualify for SDA must navigate the private rental market, seek public housing or (rarely) be able to purchase their own home.

The South Australian Housing Authority (SAHA) Single Housing Register is a welcome development in South Australia, enabling people to register in one place for social housing (SAHA and community housing). There is also a need to develop a supported accommodation register which can clearly identify properties with suitable adaptation and amenities to accommodate people with disability.

The Public Advocate convenes the *Housing for Exceptionally Complex Clients Working Group* monthly. The group aims to identify OPA clients at risk of eviction and pathways to avoid homelessness. The group comprises representatives from across State government and the NDIA and the NDIS Quality and Safeguards Commission.

The Public Advocate also convenes the bi-monthly *Public Advocate Clients and Domestic Family Violence Working Group*. This meeting brings together stakeholders from across government, the NDIA, NDIS Quality and Safeguards Commission and a representative non-government organisation to work collaboratively to address issues for a small group of Public Advocate clients who are socially mobile and find themselves in situations that place them at risk of abuse, violence and exploitation (including sexual exploitation). These clients are also at heightened risk of housing instability due to the circumstances they find themselves in.

Case Study

Rebecca (not her real name) is a woman who has an intellectual disability and is a NDIS participant. Her children have been removed by the Department for Child Protection (DCP).

Rebecca has been under guardianship of the Public Advocate for over 10 years and was a client of the former Disability SA.

Rebecca has a history of accommodation instability and experiencing Domestic, Family and Sexual Violence (DFSV). She continues to experience violence and abuse from her current partner. Currently she is in a relationship and living with a man who is also an OPA client. They have a child together, who has been removed from their care. Rebecca's partner has perpetrated abuse against her, including by threatening her with a weapon.

As both Rebecca and her partner require National Disability Insurance Scheme (NDIS) funded supports, their accommodation situation is complex. While Rebecca was eligible for Priority 1 Housing through the South Australian Housing Authority (SAHA) when she had children within her care, she is now no longer eligible due to their removal.

Rebecca's current accommodation is through her partner's service provider. Therefore, if this relationship ends, she will lose her accommodation and become homeless. Rebecca and her partner receive drop-in NDIS funded supports each day.

The OPA monitors Rebecca and her partner's situation closely and refers matters to family violence services, SAPOL and specialist sexual violence services as required.

In the former State Government system, there was a centralised approach to filling supported accommodation vacancies across both the government and non-government sectors. This was the Disability SA, *Accommodation Placement Panel* (APP) which focussed on placing people who had an urgent need for supported accommodation including homelessness or imminent risk of homelessness.

Under the current system, there is no one source of information about specialist housing providers. The Housing Hub and SDA Finder (for SDA properties) were developed as an information exchange for supply and demand for disability accommodation. However, it appears to be not well known to service providers or participants. Housing providers are listing accommodation on the Housing Hub, but it is not known if all housing providers are using this platform and it is not clear that Support Coordinators are making use of this information. In addition, many of the properties on those websites are shared accommodation with a bedroom vacancy, which is often not suitable for Public Advocate clients with complex support needs.

The OPA staff are reliant on Support Coordinators and Specialist Support Coordinators for:

- making a *Request for Home and Living Supports* (RHLS) assessment,
- finding suitable accommodation that meets the client's needs,
- advocating for Specialist Disability Accommodation (SDA) funding in the client's plan when required, and
- undertaking a raft of other associated tasks to source housing.

While it is critical that Specialist Support Coordinators are well educated about housing options, a dedicated role within the NDIA to assist with sourcing housing and educating the sector would benefit participants facing these challenges.

The current lack of housing supply is also a major contributing factor when it comes to people with complex needs residing in inappropriate accommodation. There is an acute need for more social and affordable housing, in particular for people with disability. The State Government has reduced its supply of social housing and does not have the resources to reverse the situation. There are currently approximately 32,000 SAHA properties, down from around 63,000 a generation ago. The community housing sector is stepping up e.g. Anglicare is spending $100m over 10 years on affordable housing but more support is needed for other not for profit organisations to expand. The State government's $177.5m public housing improvement program over four years will see 400 new houses built. But current commitments fall well short of the level of demand.

Recommendation 4: That the Commonwealth government commit to fund new and replacement social housing to assist the States to address the current demand.

4.5 Conflicts of interest

The Public Advocate is concerned about the heightened risks of abuse and neglect for NDIS participants whose supports are provided by a single service provider. It is common for OPA staff to receive proposals from Supported Independent Living (SIL) providers for accommodation and SIL to be provided for individual NDIS participants by the same agency. A further potential conflict of interest occurs when the same agency provides both Support Coordination (or Specialist Support Coordination) and SIL services.

There are several risks associated with this model of service, including a reduction in safeguarding. Having a range of different service providers involved in a person's life provides additional eyes to monitor the person's safety and wellbeing. A single service provider reduces the external oversight around the supports for the NDIS participant. The client is only interacting with staff engaged by the SIL provider and may have limited means to raise concerns about the SIL provider or fear that raising concerns will put their accommodation under threat.

The Public Advocate wrote to the former CEO of the NDIA, Martin Hoffman on 15 April 2021, to express concerns in relation to the potential for conflict of interest that arises when the support provider and the accommodation provider are the same entity. Mr Hoffman indicated a willingness to work together on the issues but there is no evidence of work to date to address these issues, noting that the NDIA has a new CEO.

Where supports are linked to accommodation, people with disability are at increased risk of abuse and neglect. If the provider can no longer support the client and withdraws their services, the provider will generally also terminate the accommodation arrangement. It is the OPA's experience that, many service providers will not allow another service provider to support the client in the home and the client loses both their support service and their home. The client must then either source alternative accommodation or face homelessness.

Case Study

Emma (not her real name) is in her 50's with complex physical and mental health needs including Bi-Polar Disorder (BPD), Post-traumatic stress disorder (PTSD) and Autism. She is also under guardianship and a NDIS participant and supported by a registered service provider who provides both the housing and the SIL supports within the home. The service provider contacted the OPA to advise that they could no longer support the client due to her behaviours of concern placing herself and others at risk of harm. The client has a history of trauma and abuse and makes allegations against support staff on a regular basis. Other behaviours of concern include property damage, physical aggression against staff (including attempted strangulation), and verbal aggression. The service provider had exhausted its pool of staff to work with the client as a number were reportedly on Workcover due to injuries sustained by the client's behaviours of concern. The service provider does not use agency staff (and with the complexity of the client this may not have been appropriate anyway) so could not source additional staffing resources. The staffing ratio required for this client is 2:1 active overnight 24/7. The client remains as a social admission in hospital as an SDA robust property that is also accessible is required. The guardian is currently working with the SSC, SA Health and DHS to determine a solution for this client.

A rental provider is responsible for suitable and safe housing and must respond to maintenance requests in a timely manner. Disputes can arise between rental provider and tenant; for example, the landlord may pursue the tenant for compensation for damage to the property. A SIL provider that is independent from the rental provider may support the tenant to pursue maintenance issues or refer the tenant for advice in relation to any tenancy dispute. However, where the provider of the accommodation is also the SIL provider, this is unlikely to occur.

Linking services and housing also heightens risks of financial exploitation of people with disability. South Australian Housing Authority (SAHA) and Community Housing Providers (CHP) charge rent at 25% of the tenant's disability support pension (plus Commonwealth Rent Assistance). The OPA has experience of SIL providers offering combined SIL and accommodation services ("closed SIL") with a rent higher than SAHA or CHP rates, and comparable to market rates. When the OPA has challenged the affordability of the proposed arrangement, SIL providers have agreed to supplement the rent. This raises issues including:

- Where the funds are drawn from (e.g. the client's NDIS plan);
- Whether the funds are being appropriately expended and who may authorise the expenditure.

However, in some cases, the OPA has consented to these arrangements as non-preferred decisions. Consenting to the arrangement may be the only option available in some circumstances such as to accommodate a person who may be facing homelessness. The Public Advocate has concerns about the monitoring and oversight of these 'closed SIL' arrangements and situations where the client is expected to pay for other items in these 'bundled' arrangements. The NDIS Commission should have a role in ensuring that participants are not put under financial pressure by virtue of rents charged by SIL providers who provide accommodation under closed SIL arrangements. This is not regulated by the state under the *Residential Tenancies Act 1993* and should be regulated in the same way as charges by SDA providers is regulated.

The OPA has reviewed documents called 'service agreements' that relate to the SIL services and also include reference to the housing arrangements. These documents vary greatly, often do not align with State tenancy legislation and as such provide limited or no legal protection for the client. It is preferable that OPA clients have a clear and enforceable housing arrangement such as a tenancy agreement or rooming house agreement under the *Residential Tenancy Act 1995* (SA) or an agreement under the *Supported Residential Facilities Act 1992* (SA). The Public Advocate has made recent submission to review of the *Residential Tenancies Act 1995* (SA) and has contributed to the review of undertaken by KPMG for DHS on the *Supported Residential Facilities Act 1992*, advocating that protection for clients of the OPA, and NDIS participants more broadly' is addressed in any amendments.

Matters relating to these conflicts of interest remain an issue due to a limited supply of social and affordable housing along with a lack of policy leadership on this matter from the NDIA and the NDIS Quality and Safeguards Commission.

Recommendation 5: That the NDIA and the NDIS Quality and Safeguards Commission better address conflicts of interest e.g. Support Coordinators being independent of any services they assist a participant to access, and ensuring tenancy and support agreements are kept separate.

4.6 Cast of players/ loss of case management

The NDIA promotes the concepts of "choice" and "control" as a panacea. For people who had choices made for them and had control taken over by other people or institutions, that is indeed true. However, for people who struggle to make choices and for people who have never exercised control over their lives, the NDIS, by giving power to the individual, can be depriving that person of much-needed services.

People who have decision-making difficulties, who are socially isolated and hard to engage will not embrace the NDIS even though its offerings would make a huge difference in their lives. This has been particularly evident in the psychosocial sphere where the uptake of the NDIS has been much less than anticipated. It is also an area where there are huge debates about what constitutes a "psychosocial disability" as opposed to a "mental illness".

For people who struggle with choice and control, case management may be required to help the person navigate the service system and that help may have to be somewhat assertive. It is not good enough that a person residing alone with a psychosocial disability who lives in squalor with multiple risks to their wellbeing should be abandoned because they have not made an application through the right process to be in the NDIS and they have not turned up to the planning session because they cannot organise themselves to do such a task.

The NDIA has avoided the concept of "case management", due to concerns that it leads to disempowerment and condescension. Instead, it has created numerous players with different roles that make perfect sense to the framers in the NDIA but make precious little sense to participants or their families. So, the NDIA has the following cast of players:

- The Local Area Coordinator (LAC) (who works with the participant to get their plan together and assists in navigating access to the wider community) - the role of supporting people to access the wider community and mainstream services has been impacted by the rate of the roll-out of the NDIS, placing a focus on getting people on to the scheme rather than connecting them with their community,
- The NDIA Planner who signs off on the participant's plan and may not have sufficient information about the participant to make an assessment of risks and vulnerabilities – for participants in the Complex Support Needs Pathway the NDIA Planner is the closest role to that of the traditional case manager,

- The Plan Manager who pays the participant's bills from service providers, if the participant so-chooses who may not have met the participant or be involved in aspects of their life, and
- The Support Coordinator who will only be included in the plan if the participant meets strict complexity guidelines and is usually only funded temporarily while the participant needs help to engage service providers. There is frequently no opportunity for a long-term relationship to develop, as funding may not continue year to year. Support is time-limited and considered capacity building and inappropriate for ongoing lifelong support. Currently 45%[9] of NDIS plans include funding for Support Coordination and this is flagged by the NDIS as expecting to drop as time goes on.

As well as this cast of players there is an array of functions they perform - from local area coordination, support connection, support coordination, specialist support coordination, plan management and planning. If that sounds confusing and unnecessarily complex it is because it is. Many a participant or their nominee (usually a family member) is totally overwhelmed by this abundance of players and functions, and they end up doing all the advocacy, lobbying, chasing-up and coordination themselves (i.e. case management hasn't been done away with – it has lobbed back with the participant and/or their families, to their detriment). An unintended consequence of so many players is that they are all disempowered and no one player has responsibility for oversight and coordination of services and leading the supports for the client.

There is not one clearly identifiable person to go to in the system to help a participant or their family navigate the NDIS. There is no friend in the system. Parents spend many hours undertaking the role which would previously have been performed by a case manager. This often can come at great personal cost.

For some people, assertive case management is required to assist them to access the NDIS to receive the disability-related supports that they need.

Recommendation 6: That case management is recognised and employed by the NDIA as an important role/function to support people with complex needs to access the NDIS and utilise their funding. Case management should be a service funded outside of the participant's plan i.e. is not time- or funding-limited.

People generally come under public guardianship as they have impaired decision-making capacity and there is no one else suitable in their lives to assist them with decision-making.

These people require assistance navigating other areas of their lives (not just decision-making). In the absence of ongoing case management, the automatic inclusion of Specialist Support Coordination (SSC) in the NDIS plans of all people under public guardianship is essential to ensure that they:

1) are supported by an SSC who has qualifications and skills to work with people with more complex needs,
2) are supported by a registered provider, as SSCs are required to be a registered with the NDIS Quality and Safeguards Commission. This gives an additional assurance of safeguarding for the participant.
3) have their complex support needs acknowledged and the gap created by the absence of case management addressed.

[9] Explore data | NDIS accessed 31/5/2023

The NDIS makes internal decisions to stream certain participants to the Complex Support Needs Pathway which provides specialised support for participants living with a disability who have many different challenges impacting on their lives such as mental health issues, incarceration or homelessness, and need a higher level of specialised supports in their plan.[10] Complex Support Needs Pathway planners are generally more experienced planners who have worked across multiple service systems and multi-disciplinary teams. In OPA's experience, once a participant is allocated a planner that remains their planner and support received seems to be of a higher standard. Although an internal decision, OPA staff are encouraged to advocate for this pathway for people under the guardianship of the Public Advocate.

Note: This recommendation is in the event that case management is not revisited by the NDIA (recommendation 6).

Recommendation 7: That funding for Specialist Support Coordination is automatically included in the NDIS plan for any complex and/ or vulnerable person i.e. people under guardianship of the Public Advocate, people with significant and profound intellectual disability, Aboriginal people, those from Culturally and Linguistically Diverse (CALD) communities and those exiting prison.

4.7 Supported Decision Making

The previous section focussed on the need for case management for people who have decision making difficulties. There is also the need to build the capacity of the individual to make their own decisions wherever possible and with appropriate support.

Supported decision-making as an important way to promote the right of people with disability to make their own decisions and enjoy equal recognition before the law. The roll-out of supported decision-making is required as a best practice standard. In recent years, the OPA has invested in six projects with the aim of developing our practice in supported decision-making and embedding the principles in the way we work with our clients where possible and practicable.

The two projects currently underway include trialling existing and newly developed tools to ascertain the will and preference of people under Public Advocate guardianship, and to explore the application of such tools for supported decision-making practice within the OPA.

The most recent of these project focusses on culturally safe supported decision making. The project aims to assist Aboriginal people under guardianship to make decisions about their life preferences, future health care wishes and access to mainstream services using culturally appropriate supported decision-making tools and practices. It is expected that the project will enhance overall practice within the OPA in relation to working with Aboriginal clients.

Supported decision-making is not currently recognised in the Guardianship and Administration Act 1993 (SA) and nor is it resourced in practice. We do acknowledge, however, that unless another mechanism for substitute decision-making is developed, with appropriate safeguards, there is a role for substitute decision-making to prevent serious harm to a person and the community. However, this should follow the principles of least restrictive impact on a person's rights.

In May/ June 2022 the Public Advocate represented South Australia at the Royal Commission's roundtables which focussed on guardianship and substituted and supported decision making.

[10] Improved NDIS planning for people with complex support needs | NDIS

The Public Advocate also prepared a submission titled *Supported Decision-making and guardianship: Proposal for Reform*[11] in June 2022 for the Royal Commission.

Only a small number of NDIS participants are under the guardianship of the Public Advocate so many will not see the benefits of the work of the OPA in relation to supported decision-making. Until recently, there has been little focus on building the capacity of the individuals in relation to supported decision-making. The NDIA released its *NDIS Supported Decision Making Policy*[12] in April this year. As the NDIS intends to build the capacity of people with disability, funding for supported decision-making should be included, when required in participants plans.

Recommendation 8: That the need for supported decision-making support is assessed for all NDIS participants and, when required, supported decision-making is funded in the participants plan.

5. The impact of the NDIS on specific groups

The Public Advocate is the guardian for people who have a range of experiences, disability, and backgrounds. This section explores some of the challenges for these groups when dealing with the NDIS. Of the 1850 people under the guardianship of the Public Advocate, approximately 1230 are NDIS participants. There are some common themes across all groups including accessibility of information, ease of processes and additional time required for planning.

5.1 People with cognitive impairment/ intellectual disability

603 (or 32%) of people under the guardianship of the Public Advocate have cognitive impairment/ intellectual disability as their primary diagnosed disability[13]. 548 (or 91%) of these people are NDIS participants. Representatives from the OPA have previously met with *Our Voice SA* and parents of people with intellectual disability to hear about concerns about the NDIS. More recently OPA representatives met with the *South Australian Council for Intellectual Disability* (SACID) Reference Group to hear concerns they have about their dealings with government services including the NDIS.

Key comments made:

- The NDIS is hard to navigate
- The NDIS plan is hard to understand
- I have concerns about agency and staff qualifications
- I do not have a computer/ cannot use a computer
- I am not able to read
- The NDIS is hard to understand
- Not enough support
- Easy read is not available from some government services
- Review process not accessible
- Hard to be involved
- Dealing with the NDIS is stressful

[11] submission-DRC-policy-roundtables.pdf (opa.sa.gov.au) accessed 16/6/2023
[12] Supported decision making policy | NDIS accessed 16/6/2023
[13] This excludes the 297 people (16%) under the guardianship of the Public Advocate who have multiple primary diagnoses. *Data as at 29 May 2023

- Want to make our own decisions

The proposed solutions included:

- More accessible information (easy read)
- Advocacy services
- Accessible processes
- Listen to us
- Help us to make safe decisions.

5.2 People with Mental health/ psychosocial disability

398 (or 21% of) people under the guardianship of the Public Advocate have a psychosocial disability as their primary diagnosed disability[14]. 314 (or 79%) of these people are NDIS participants. The uptake of the NDIS for people with psychosocial disability nationally has been slower than other cohorts. This was recognised in the *'Review of the National Disability Insurance Scheme Act 2013*[15]' and resulted in recommendation 10 being adopted to see the introduction of the Community Connectors program in 2020[16]. The Community Connectors program targets hard to reach cohorts such as Mental Health, CALD, ATSI and ageing carers to assist people on to the scheme. Interestingly, a Mental Health Community Connector was never established in South Australia.

Prior to the introduction of the NDIS, psychosocial disability was considered separate from other disability types and was managed through the State Mental Health system. This factor may have contributed to the slower uptake of the NDIS for these people. There is also the challenge that the mental health philosophy is focussed on a recovery-oriented model. This is incongruous with the NDIS which considers permanent and significant disability and functional impairment. The NDIS also struggles to accommodate fluctuating disability which psychosocial disability can often be. NDIS plans are not set up with funds 'just in case' and when there is an increase in support needs a change of situation (CoS) is required. The timeframe for a CoS is 28 days which is not timely and responsive to rapidly changing support needs

5.3 Aboriginal and Torres Strait Islander people

200 (or 11% of) people under the guardianship of the Public Advocate identify as being Aboriginal. 181 (or 91%) of these people are NDIS participants. There is an overrepresentation of Aboriginal people under public guardianship nationally.

In February 2021, the Public Advocate and Disability Advocate prepared a report titled *Aboriginal and Torres Strait Islanders and the NDIS*[17]. Meetings with key stakeholders including people with disability living in the Anangu Pitjantjatjara Yankunytjatjara (APY) lands informed the report.

The findings were that there is a slower uptake of the NDIS within Aboriginal communities generally and an inability to implement NDIS plans that may be attributed to the following:

[14] This excludes the 297 people (16%) under the guardianship of the Public Advocate who have multiple primary diagnoses. *Data as at 29 May 2023

[15] NDIS Act Review - final - with accessibility and prepared for publishing1 (dss.gov.au) (accessed 22/12/2022)
[16] Delivering the NDIS: $20 million expansion of the National Community Connector program | NDIS (accessed 22/12/2023)
[17] report-atsi-ndis-feb2021.pdf (opa.sa.gov.au) (accessed 22/12/2022)

- The NDIS is not a priority when basic needs such as food, shelter, health, and safety have not been met.
- Information about the NDIS is not provided in appropriate formats.
- Training in cultural awareness and trauma is essential for all levels of NDIA and NDIS partner staff. Insufficient time is given to building relationships with the participant and their family
- The NDIS does not recognise foster and kinship parents.
- The markets in rural and remote areas are not sufficiently developed. The only alternative is to leave family and country to seek support in Adelaide.
- More support is required to assist the individual to implement their NDIS plan.
- Equipment is not always fit for purpose e.g. all-terrain wheelchairs.
- Aboriginal workers are in short supply.
- NDIS rules and processes to become a registered service provider are costly and challenging to navigate.

Potential solutions identified by stakeholders:

- Yarning as a more effective way to gather information.
- Formal acknowledgement of family kinship arrangements is required.
- Provide cultural safety training to all NDIA and NDIS partner staff.
- Support Coordination should be available in all ATSI participants' plans.
- Designated ATSI planners in the NDIA with the appropriate knowledge and skills.
- Rural and remote services should be located within the ATSI community.
- Additional support for the development of the ATSI workforce.

There is further work to do to ensure that Aboriginal people with disability access the NDIS. Noting the money and effort has already been invested with the establishment of the Aboriginal Community Connectors through the Community Connector Program in 2020[18], and the Aboriginal and Torres Strait Islander Strategy. The strategy is now being revisited as the First Nations Strategy which will be co-designed and is due for release in 2023[19].

There is an assumption that Aboriginal people and communities will identify disability and will engage with the NDIS. There is more work for many communities around the stigma related to disability, building trust and a safe place. It also needs to be acknowledged that the concept of "disability" does not resonate in Aboriginal communities, especially when programs try to define functional impairment as a result of trauma and illness as the responsibility of the State health system and only functional impairment that is significant and ongoing as the responsibility of the NDIS.

Engaging with the Aboriginal Community Controlled Health Organisations (ACCHO's) is a positive step forward to support Aboriginal people and communities with the NDIS.

Respecting and supporting the role of elders within communities needs to be fostered and further developed. Acknowledging the role of extended families in the access and planning processes is necessary to ensure that Aboriginal participants' stories are told.

[18] Delivering the NDIS: $20 million expansion of the National Community Connector program | NDIS (accessed 22/12/2023)
[19] First Nations Strategy | NDIS (accessed 22/12/2022)

5.4 People from Culturally and Linguistically Diverse (CALD) communities

The Public Advocate is also the guardian for people from CALD backgrounds.

In January 2021 the Public Advocate and Disability Advocate prepared a report '*Culturally and Linguistically Diverse people and the NDIS*'[20].

The NDIA has recognised that there are additional challenges faced by certain groups of people with disability in accessing the scheme. These challenges are acknowledged for people with disability from CALD background in the National Disability Insurance Agency – Cultural and Linguistic Diversity Strategy 2018 (the Strategy)[21] . At the time, the Strategy expected that around 20 percent of full scheme participants across all regions would be from a CALD background. It is interesting to note that in the Q3 2022/23 NDIS Report that there has only been a CALD uptake of the scheme of 9% nationally and 7% in South Australia. This supports the view that there are significant and multiple barriers for people with disability from CALD communities even entering the scheme.

As with other reports, this report was informed through meetings with key stakeholders and community representatives.

Some of the issues identified are as follow:

- Similar to the Aboriginal communities, the stigma around disability in CALD communities needs to be addressed before the NDIS is even considered.
- The NDIS is not the first priority for new migrants (who are looking for jobs, schooling and accommodation).
- Information about the NDIS needs to be provided in a range of accessible formats. Better education and information about the NDIS is required for CALD communities and mainstream services.
- NDIA staff and LAC partners need to be culturally aware.
- There is a need for someone to bring the person along the journey or have wraparound services.
- Interpreters need to be engaged at all stages of the NDIS process including appointments with a GP.
- The NDIS process is not always culturally appropriate e.g. the information not being in own language, NDIA staff not having cultural competence and questionnaires asking inappropriate questions.
- The NDIA should work with national peak bodies such as National Ethnic Disability Alliance (NEDA) and Federation of Ethnic Communities' Council of Australia (FECCA) to assist in engaging people from CALD communities.

Recommendation 9: Information is provided in a range of formats to ensure accessibility including languages, easy-read easy English, audio and YouTube videos.

[20] report-cald-ndis-report-jan2021.pdf (opa.sa.gov.au) (accessed 22/12/2022)
[21] Cultural and Linguistic Diversity Strategy | NDIS (accessed 22/12/2022)

5.5 Children

Whilst the Public Advocate is only appointed as the guardian for adults it is worth commenting on the challenges for children and young people with disability and the NDIS. The OPA has a close interface with the Department for Child Protection (DCP) as there are young people under the guardianship of the Chief Executive of DCP who require adult guardianship from the age of 18. The Disability Advocate prepared a paper '*Children and Young People and the NDIS*'[22] in August 2021 which explores this topic. The Disability Advocate also met with many parents of young people who were NDIS participants and heard the unique experiences and challenges of these families.

The paper noted that:

- A higher proportion of young people in DCP than in the general population have a disability or disability-related need. These young people are also more likely to become involved in the Youth Justice system.
- There is room for improvement around planning for future needs, including supported accommodation for young people as they approach adulthood.
- Market thinness impacts on finding suitably qualified therapists to undertake assessments.
- A lack of appropriate services, particularly in regional South Australia, can result in children who would not normally come to the attention of DCP doing so.
- There are concerns about the pointless demarcations of trauma vs substance induced brain injury, developmental delay and intellectual disability, mental health and psychosocial disability. The NDIS wants to compartmentalise the young person and not see them as a whole.
- Foetal Alcohol Syndrome Disorder (FASD) alone as a diagnosis does not meet NDIS criteria unless there is documented evidence of maternal alcohol use during pregnancy. Even if evidence for this diagnosis is met, the young person may still not meet NDIS eligibility unless they have an intellectual impairment.
- There are many stakeholders across different services and the system is now reliant on families being able to articulate the needs of their child. This does not work well for many young people under the supervision of Youth Justice Services.
- The NDIS is not equipped to engage appropriately with Aboriginal children and their families. There is no capacity to develop a relationship and take time to get to know the young person, their family and community, which are all essential to the support of the young person.
- Kinship carers are not able/ allowed to speak to the NDIS.
- There are very few services that provide culturally appropriate services. There is a lack of services in regional and remote areas.
- Where parents are involved with young people in Voluntary Out of Home Care (VOOHC) arrangements there is no compulsion/ obligation for service providers to work with the parent.
- Parents who advocate strongly for the rights of their child are often seen as the problem by the service provider rather than service reflecting on the quality of the service/ safeguarding they provide to the child.
- There is a lack of support groups for parents/ families with children who experience complex and multiple disability. These parents can feel extremely isolated and alone.
- There is a general lack of compassion for parents who may be experiencing distress/ expressing a normal response to an abnormal situation for their child.

[22] disability-advocate-report-children-ndis.pdf (opa.sa.gov.au) (accessed 22/12/2022)

- Business models of non-government providers are about profit margins rather than the best interest and wellbeing of the child.
- For children with complex support needs there is no choice and control over the services they can access. Support staff are not respected and trained to work with complexity.
- There is no forward planning with the NDIA as a young person approaches puberty. We know that at this time young people and their families may require a different level of support to maintain them at home.
- The mainstream system currently does not have a safe place to support young people with complexity when they require treatment in acute settings.
- Educational opportunities are lost for young people with complexity due to a lack of skilled support in educational settings to sustain them in school. These young people often drop out of school and become socially isolated.

Recommendation 10: That case management which recognises and responds to the family need for holistic support is provided for children, especially those with complex needs.

5.6 Corrections/ justice

Of the 1,879 people under the guardianship of the Public Advocate, approximately 14 are currently in prison, all of whom are NDIS participants. Many Public Advocate clients have encounters with the Justice System either as victims of crimes or perpetrators.

In December 2022 the Public Advocate and Disability Advocate presented the report '*People in Corrections and the NDIS*'[23] to the Minister for the NDIA, South Australia's Attorney-General, the Minister for Corrections and the Minister for Human Services and their Chief Executive Officers.

The key findings of the report were:

- There is limited data about the number of prisoners who have a disability. This was reported to be an issue nationally but anecdotally it is estimated that approximately 50% of prisoners have a disability-related need.
- Correctional service staff are not trained to identify and support people with disability
- Accessing NDIS supports in prison is challenging
- The physical environment of the prison makes it difficult to accurately assess functional capacity and have external service providers enter the prison.
- There is no consideration for prisoners detained indefinitely under section 57 of the *Sentencing Act 2017* (SA). (These are prisoners who are deemed unwilling or unable to control their sexual impulses.).
- There is confusion between roles and responsibilities in the attempt to differentiate the supports a person might need because of their disability, from the supports they may need to manage their risk of offending or reoffending (criminogenic need).
- There are significant challenges when planning for release of a prisoner with disability. The NDIA will undertake planning with a participant in prison for up to 6 weeks prior to release.
- People involved with Corrections generally have a range of service systems in their lives and may be subject to court orders and bail/ license conditions that they need to meet. Even the most experienced SSC or Support Coordinator (SC) encounters difficulties with the complexity of the multiple service systems.

[23] People in Corrections and the NDIS (opa.sa.gov.au) (accessed 22/12/2022)

The report made a number of recommendations which included recommendations for the State which they are addressing. such as:

- The Department for Correctional Services (DCS) expand their disability screening program to all prisoners on admission.
- That the DCS develop their schedule under the Memorandum of Understanding between the National Disability Insurance Agency and South Australian State Government Agencies to allow for information exchange between the NDIA and DCS.
- That the DCS provide disability specific training to prison staff, covering topics like disability types, human rights, positive behaviour support, etc.
- That the DCS utilises the APTOS to ensure that prisoners eligible for the NDIS have in their plan all of the services to which they are entitled and that those services are provided.

The report also made a number of recommendations for the NDIA. Representatives from the OPA attended the Justice Transition Project SA Adult and Forensic Focus Group meetings in March 2023 and noted that a number of recommendations for the NDIA were being considered. It is also noted that the NDIA Operational Guidelines for Medium Term Accommodation[24] were updated in January 2023. Changes to this guideline indicate that participants planning for release do not need to have a longer-term accommodation option identified before they access MTA. It is hoped that the work of the Justice Transition Project will address issues for NDIS participants in Corrections.

6. APTOS and interface with other service systems

The Applied Principles Tables of Support (APTOS) was agreed by the Commonwealth and State jurisdictions in 2015. The APTOS determines the responsibilities of the NDIS and other State service systems such as health, mental health, education, early childhood, child protection, education, employment, housing transport, and justice.

Public Guardianship is not reflected in the APTOS, however the OPA does provide services that interface directly with the NDIS and the role of the guardian has not been considered in the design of the NDIS. A significant number of people under the guardianship of the Public Advocate are NDIS participants. These people receive services across most of the sectors that the APTOS addresses, and as such, the OPA has an interest in all the interfaces.

Some key issues relating to the APTOS are as follow.

- The APTOS has not been reviewed since its original formulation in 2015, so a review of all areas of the APTOS is long overdue. Implementation of the APTOS has presented challenges and the consistency of its application depends on service systems, on how familiar with the APTOS the parties are, and on the support the NDIS participant has around them. The OPA is aware that those with strong family support and access to advocates generally get a better deal out of the NDIS and other mainstream supports then those who do not.
- There are also very complex areas that are overly simplified in the APTOS. The superficial delineation, which appears clear on paper, permits many grey areas in practice which result in time-consuming and resource-intensive disputes between the Commonwealth and State government agencies. At times, it can be very difficult to distinguish between a need based on functional impairment (NDIS responsibility) or another factor (e.g. mental illness, criminogenic issues, trauma).
- The APTOS needs to be prefaced with a commitment from both levels of government to work together, for example through joint funding, when this distinction is not clear-cut.

[24] https://ourguidelines.ndis.gov.au/supports-you-can-access-menu/home-and-living-supports/medium-term-accommodation (accessed 22/5/2023)

There is no dispute resolution procedure when there are disagreements between Commonwealth and State agencies about responsibility for a particular matter. The OPA would welcomes an across jurisdictional review of all 11 tables with the relevant parties to provide further clarity.

- The APTOS is written as if all matters can be delineated as either a Commonwealth or a State responsibility. In practice it may be better to describe clearly what the Commonwealth will and will not do under its legislation, and all other matters are a State responsibility. This may not be attractive to the State, but it would alleviate the blame-game and the tendency of the State to spend a lot of energy trying to get the Commonwealth to pay for more services than they are willing to fund.
- To balance this, there is further opportunity for South Australians to benefit from NDIS funding to which they are entitled by ensuring that all people with disability under 65 have their eligibility for the scheme tested. The OPA is aware that there are certain sectors where the testing of eligibility and assisting people onto the scheme could be expedited. This will result in people with disability receiving more disability-related support from the NDIS in sectors such as Corrections and Mental Health which can result in a reduction in the cost burden for the State.

Recommendation 11: That the NDIA review the Applied Principles and Tables of Support (APTOS) to review the Commonwealth and the States/Territories responsibilities.

7. Other matters

This section explores the broader systemic issues which are impacting on the performance and function of the NDIS.

7.1 The loss of State/ Territory involvement

In the early days of the NDIS there was promulgated a sense that “disability” as a government issue was transferring to the Commonwealth from the eight States and Territories, who had grossly underfunded the needs of people with disabilities. This belief, that permeated Treasuries, senior State government executives and State Ministers, led to the situation where States counted every dollar they could conceivably have been spending on disability and offered it all (or nearly all) to the Commonwealth as the State’s contribution to the NDIS. That would have been a good idea if the NDIS undertook *all* the tasks the States did for people with disabilities (classroom support, disability health, access to therapy, case management).

States and Territories have people with disabilities as about 20% of their citizens and have reduced their efforts in mainstream settings either because they have transferred the funding to the Commonwealth, or they see an opportunity for the Commonwealth to fund those services and be responsible if funding does not occur.

The Commonwealth government should have negotiated a more detailed agreement for the role of the Commonwealth through the National Disability Insurance Agency (NDIA) and the Department of Social Services (DSS) and the role of the States/Territories. This should have been a Commonwealth States and Territories Disability Agreement with teeth, not a document written in 2015 which has never been updated or reviewed.

7.2 The loss of Tier 2

A key concept in the original Productivity Commission Report (2011) was that there would be three tiers of the NDIS.

Tier 1 is for the whole eligible population of Australia (i.e. people under 65 with citizenship or residency). At any time disability may affect you or your family and you are covered.

Tier 2 is for the 4 million Australians with a disability who need advice and mainstream service inclusion, but do not need a package of support.

Tier 3 is for the 440,000 Australians with severe activity limitations requiring a package of support.

People now equate the NDIS only with Tier 3 i.e. you don't believe you are on the scheme unless you have a package of support. The NDIA effectively is the agency for Tier 3 supports. It is very difficult to keep people from trying to get into Tier 3 when Tier 2 offers so little. This is linked to the issue of the States/Territories resiling from spending on enhancing mainstream services (and even reducing them when the NDIS is potentially there to take over the funding). Tier 2 then becomes more barren than it might otherwise be.

The rhetoric of the NDIA should have accentuated that people with mild disabilities or who do not require Tier 3 supports could still avail themselves of Tier 2 (Local Area Coordination and mainstream) services.

Recommendation 12: That the Commonwealth and States/Territories promote the importance of Tier 2 and the extent to which it can assist people with disabilities (with or without a Tier 3 package of support).

7.3 The adulteration of Local Area Coordination

The success of Local Area Coordination (LAC) in WA (and picked up by other jurisdictions before the NDIS came along), was that it assisted people with disabilities to access mainstream services and local community resources. Only as a final resort did it have access to small sums of money to assist people to overcome barriers. In the NDIS the same thing was due to happen with Local Area Coordination. However, when the salary cap was placed on the NDIA in the early days of the roll-out of the scheme, the NDIA in its wisdom gave the LAC agencies the task of helping people to prepare their eligibility assessments and to prepare for their NDIS plans. Consequently, the true LAC role of assisting people to access mainstream services was buried in the hectic demands of plan preparation and getting people into the scheme helter-skelter. This, more than anything else, contributed to the loss of focus on Tier 2. Instead of going to an LAC for assistance with community and mainstream services that already exist, you went to the LAC to get into the scheme and get a package and a funding allocation. It is small wonder the scheme became all about money and the first question asked by a participant is "how big is my package?"

The LAC agencies should have been allowed to do their job properly and build skills and knowledge of their communities – hence providing many people with all they need via Tier 2. In the process they could have been a great source of pressure on State and Territory mainstream services to maintain effort and not treat "disability" as though it had nothing to do with them and it was all over to the Commonwealth and the NDIA.

Recommendation 13: That the NDIA direct LACs to have little to do with developing people's NDIS support plans but LACs concentrate on assisting people with access to mainstream services and community connection.

7.4 Ignoring the National Disability Strategy

The National Disability Strategy 2010-2020 had 6 strands viz. access to health, education, justice, employment, community, and services. Only the last is what the NDIA offers (excellent quality specialist support services). The other five strands are all about access to mainstream services offered by governments at all levels. Over $22 billion was allocated to be spent on the NDIA and next to nothing on improving the other five mainstream strands. There has been a naïve assumption that disability is all about having top-notch specialist support services and nothing else. Getting a good deal from schools, colleges, hospitals, courts, prisons, local councils etc. was completely lost as a topic. Each State or Territory endeavoured to address access and inclusion issues through legislation, but the practical initiatives and recognition of the mainstream has been sadly lacking.

The National Disability Strategy should have had pre-eminence (sitting under Australia's commitment to the UN Convention on the Rights of People with Disabilities). The NDIS should have been seen as the strategy to deal with one strand (specialist support services) not the whole strategy.

7.5 Poor use of Information Linkages and Capacity Building Grants

From the outset, the NDIA (and the DSS) have had the laudable goal of developing new and innovative ways of addressing disability issues. Each year some $122M was slated to be spent on Information, Linkage and Capacity Building (ILC) grants. This is all about building up the mainstream and the community as well as the capacity of individuals and groups. This should ring bells as having something to do with Tier 2 and something to do with the National Disability Strategy. Instead, it has been run as a stand-alone grants program whereby hundreds of time-limited initiatives have been funded. The problem is that there has been precious little thought given to evaluation of program efficacy or to sustainment strategies for successful programs. Consequently, there is a sense of scattering funding on the hope that a "thousand flowers will bloom".

The Connection with the National Disability Strategy and the need to invigorate Tier 2 should have meant that ILC grants were used strategically to further the objects of the NDS and to improve the capacity of Tier 2.

Recommendation 14: The Commonwealth needs to take Australia's Disability Strategy 2021-2031 seriously. This means negotiating measures with the States and Territories to identify initiatives that will further the Strategy and fund them through grants programs such as the ILC and other DSS grants. This will bolster supports for tier 2 participants.

7.6 Diagnosis versus functionality

Any system that spends all its energy deciding who can get into the system has lost its focus. Participants must acquire diagnostic information from health professionals (often accessed at their own cost) and are then subjected to horrendous bureaucratic processes to decide whether they are "in". The original idea was that everyone who thought they could benefit from some assistance was eligible for Tier 2 and the services of a Local Area Coordinator. If functional support was also required, then a referral would be made to the NDIA where a planner would work with you about what functional supports might be required. It was not meant to open a health professional's banquet by requiring endless assessments. State systems spent

generations moving “disability” from the health systems where disability was seen as a chronic illness needing treatment to functional and social disadvantage needing supports to level the playing field. The NDIA has inadvertently turned the clock back to the “deficiency model” of disability.

People with disabilities should first approach the LAC who helps them to access mainstream and community services and only refer to the NDIA planner if specialist supports are needed.

7.7 Disability Vs human variety

The NDIS in SA was expected to have 32,000 participants at full scheme. It is now over 50,000 and growing. Even now, psychosocial disability is under-represented, but autism has a much higher incidence than expected. There is always a tendency for health professionals doing diagnosis to be over-inclusive of any diagnosis that triggers access to much greater resources. If in doubt that a child has ADHD (not eligible) or ASD (eligible) your doubts have no doubt where they should go. Disability should not be about labelling and should be about supports needed to live the best life you can. We are in danger of labelling every child who has any kind of obsessive interests, poor social skills, and behavioural challenges as “on the spectrum”. When does a particular set of personality characteristics become a syndrome requiring treatment?

The NDIS should have focussed on autistic people with severe functional impairments for inclusion on the NDIS. Other mainstream supports and services should have been able to accommodate for the range of other human variety through referral via Tier 2.

Recommendation 15: That an expert group established to examine the high percentage of NDIS participants with ASD and whether there are other and perhaps better ways of managing autism e.g. through schools.

7.8 The Therapy epidemic

Therapists have had quite a field day with the NDIS – under previous State systems the amount of therapy had to be rationed because there was not enough funding to do anything else. The decision about “how much therapy is efficacious” is left to the therapists themselves. The planners and LACs are usually not themselves therapists so they can (as can parents and people with disabilities themselves) be swayed by the professional arguments of the therapist about what therapy is needed. Many therapists also charge a much higher rate when the NDIS is paying. The NDIS has been a therapists’ banquet, providing huge employment opportunities and the questions around efficacy are left to professional knowledge.

Not everything should have been individualised in the NDIA – in home support, recreation and skills training lend themselves more easily to individualisation, but therapy is often best in groups or decided as you go, not a designated number of therapy sessions in a plan decided in advance.

Recommendation 16: The NDIA needs to establish an expert working group on therapy, asking how decisions about quantity and duration of therapy are made and how efficacy and stopping rules are established.

7.9 Ignoring the needs of the family

The most important source of support for people with disability is their family. The family is a unit that not only assists their family member with day-to-day tasks and decision-making but plays a safeguarding role in making sure the person with a disability is "OK". Under the previous State system, a core service was "respite", i.e. giving families a break from the 24 x 7 caring role that they take on as part of their familial responsibilities. The NDIS has targeted all services to the individual participant and told families that the NDIS is not about them. If they need help, go to the Carer Gateway. The subtleties of family life are such that respite for family members is one side of a coin and community participation for the person with a disability (through education, training, life skills development or recreation/leisure) is the other side of the same coin. In NDIS circles "respite" is a dirty word. It makes participants feel like they are a burden and loses the focus of the scheme. The absence of quality respite for families hastens family breakdown and hastens the need for the participant to transfer to much more expensive supported accommodation.

Respite should have been a key part of the scheme which would have produced much more satisfaction to families and participants and the pressure on families would have been reduced and families would have better maintained their caring role (thus reducing cost pressure on the scheme).

Recommendation 17: Respite should be allowed to be included in NDIS plans to support informal caring arrangements such as family.

7.10 Making a virtue of the NDIS being an Insurance Scheme not a welfare scheme

As well as demonising "case management" and "respite for carers" as concepts and practices, the NDIS has glorified the virtues of the NDIS being an insurance scheme. The idea of universal coverage, social insurance (no premiums) has an attraction until you think about what it is like dealing with other government insurance schemes, like Medicare and Centrelink, or commercial insurance for cars, property or indeed life insurance. Inevitably these insurance schemes become highly bureaucratic and for the client they are *transactional* in nature. The NDIS must consider vertical and horizontal equity across the whole country and, inevitably, that means having clear rules, well-defined procedures, and formal dealings with clients. For NDIS participants, to succeed in the system they must learn the language – never talk about "respite", "case management", "rehabilitation", any of your "long-term medical conditions", "homelessness" – they all smack of needing help from the State health system or the State welfare system – not the NDIS.

If the NDIS was going to be a transactional scheme with well-defined rules about what it would and would not do, then there needed to be an agreement with the States and Territories to pick up the welfare elements that were in the old State system but are not in the NDIS.

7.11 Skills Training oversight

There are significant challenges in finding services with suitably trained and experienced staff. Historically, there have been challenges in attracting and retaining skilled staff in the disability workforce. This has been compounded by the rapid growth in the disability sector since the commencement of the NDIS. The workers' shortage is detailed in the National Disability Services report *State of the Disability Sector Report 2022* with 80% of service providers being

unable to provide the services requested of them, 83% reporting problems recruiting disability support workers[25].

There has been a significant increase in funding into the disability sector since the commencement of the NDIS. This has resulted in the rapid expansion of existing service providers and a growth in new providers entering the market.

In the current market, a service provider can choose who they want to provide services to. Many OPA clients require highly specialised support and have significant funding packages through the NDIS. Some service providers may agree to take on clients with complex needs and later withdraw services when they are unable to adequately provide the specialised support the person requires. For some OPA clients this failure of support results in a cycling through service providers and supports which can be further disruptive and destabilising in their lives. When services are withdrawn for clients with complex needs, it is difficult to source a substitute provider at short notice and highlights the need for a provider of last resort. Specialist/Support Coordinator services are not always well versed in locating housing. Due to the market-based approach, there is not a one stop shop for accommodation. For participants with high and complex needs, locating the right accommodation in the right place can be a lengthy process. The knowledge base of the various market providers varies significantly.

In South Australia, the DHS and NDIA have been exploring ideas for increasing and educating Specialist/Support Coordinators in the various housing opportunities including social housing, community housing and the private rental market. This work is relatively new, but all parties are committed to enhancing access to accommodation. The challenge in the new environment is reaching this audience and that there are only minimum training requirements for service providers registered with the NDIS Quality and Safeguards Commission in an environment where people can choose to use unregistered providers there is no regulation of skills and qualifications. In the previous state system, service providers were contracted to provide services and minimum qualification requirements could be included in these contracts. The state no longer has these levers to ensure minimum standards of skills in the deregulated market.

7.12. Market Thinness

The NDIS Act speaks of choice and control for NDIS participants but participants in regional and remote areas cannot truly exercise choice and control as often there are limited service providers (if any) and participants often have to travel to receive services. There is a shortage of Aboriginal staff who can provide culturally appropriate supports to people with disability in their community. The NDIA is very aware of the challenges of thin markets initiating the *NDIS Thin Market Project* in 2019. We are yet to see any significant outcomes from this but note that there is a current market intervention project in the APY lands in South Australia which is on a small scale.

Recommendation 18: That the NDIA work to proactively address issues of market thinness for regional and remote areas including strategies to engage Aboriginal workers and agencies in areas of need.

The therapy epidemic has been discussed previously, it should be noted that this has created shortages and long wait times to access therapists and behaviour support practitioners. Delays in accessing therapy assessments impact on the timely implementation of NDIS supports. The shortage of Positive Behaviour Support Practitioners can result in people having delayed discharge from hospital and potentially being subject to unauthorised restrictive practices.

[25] SoTDS_Factsheet_2022.pdf (nds.org.au) (accessed 29/12/2022)

Recommendation 19: That the NDIA and NDIS Quality and Safeguards Commission develop and implement proactive strategies to address the future workforce needs including partnering with relevant tertiary institutions and sector partnership.

8. Five main reasons why the cost of the NDIS is blowing out

Some of the key contributors to the costs of the NDIS exceeding initial predictions of $22 billion. These are worthy inclusions for this submission and they are:

- The States/Territories have resiled from several areas where they previously were responsible and active.
- Tier 2 was ignored, and people felt they had to be in Tier 3 to be in the scheme.
- The quantum of therapy has been allowed to blow out both in amount and duration without sufficient addressing the efficacy of additional therapy.
- Cheaper solutions like respite for carers and case management for those lost in the system have been eschewed.
- When clients of State/Territory disability services transferred to the NDIS there was an insistence that people did not just carry their (probably inadequate) State/Territory funding across to the NDIS. That meant that hasty and generous decisions were often made by the NDIA which are now difficult to undo.

9. Conclusion

This submission, although lengthy draws together information from many of the reports submissions and statements from the South Australian Public Advocate and Disability Advocate.

The overarching points from this submission are that the NDIS:

- needs to be accessible and easy to navigate
- available to all people with disability who need it
- accessible to support people at all times
- responsive to individual needs
- flexible in its engagement to ensure it is culturally appropriate
- Responsive to people with cognitive impairment who need support to exercise choice and control on decision making.

The review of the NDIS is timely and welcome as it enters its 10th year. At the commencement of the scheme the metaphor of flying the plane whilst it was being built was used, this is a good depiction of how the NDIS has rolled out. At the 10-year mark it is time to take the learnings of the last 10 years to redefine the scheme to truly meet the wide and varying needs of people with disability and their families. The scheme is welcomed and needed by the approximate 555,000 participants and their families to level the playing field for people with disability.

Thank you for the opportunity to make this submission.

10. Recommendations

Recommendation 1: That amendments are made to the *National Disability Insurance Scheme Act 2013* to recognise the role and functions of public guardians and administrators who are formally appointed through the relevant State tribunals.

Recommendation 2: That the State, NDIA and NDIS Quality and Safeguards Commission work together to improve information exchange between entities to better safeguard people with disability.

Recommendation 3: That a NDIA crisis response pathway and intensive case management support be set up to respond to urgent situations which arise suddenly for individuals with complex needs, who would otherwise be thrust into inappropriate circumstances e.g. hospital.

Recommendation 4: That the Commonwealth government commit to fund new and replacement social housing to assist the States to address the current demand.

Recommendation 5: That the NDIA and the NDIS Quality and Safeguards Commission better address conflicts of interest e.g. Support Coordinators being independent of any services they assist a participant to access, and ensuring tenancy and support agreements are kept separate.

Recommendation 6: That case management is recognised and employed by the NDIA as an important role/function to support people with complex needs to access the NDIS and utilise their funding. Case management should be a service funded outside of the participant's plan i.e. is not time- or funding-limited.

Recommendation 7: That funding for Specialist Support Coordination is automatically included in the NDIS plan for any complex and/ or vulnerable person i.e. people under guardianship of the Public Advocate, people with significant and profound intellectual disability, Aboriginal people, those from Culturally and Linguistically Diverse (CALD) communities and those exiting prison.

Recommendation 8: That the need for supported decision-making support is assessed for all NDIS participants and, when required, supported decision-making is funded in the participants plan

Recommendation 9: Information is provided in a range of formats to ensure accessibility including languages, easy-read easy English, audio and YouTube videos.

Recommendation 10: That case management which recognises and responds to the family need for holistic support is provided for children, especially those with complex needs.

Recommendation 11: That the NDIA review the Applied Principles and Tables of Support (APTOS) to review the Commonwealth and the States/Territories responsibilities.

Recommendation 12: That the Commonwealth and States/Territories promote the importance of Tier 2 and the extent to which it can assist people with disabilities (with or without a Tier 3 package of support).

Recommendation 13: That the NDIA direct LACs to have little to do with developing people's NDIS support plans but LACs concentrate on assisting people with access to mainstream services and community connection.

Recommendation 14: The Commonwealth needs to take Australia's Disability Strategy 2021-2031 seriously. This means negotiating measures with the States and Territories to identify initiatives that will further the Strategy and fund them through grants programs such as the ILC and other DSS grants. This will bolster supports for tier 2 participants.

Recommendation 15: That an expert group established to examine the high percentage of NDIS participants with ASD and whether there are other and perhaps better ways of managing autism e.g. through schools.

Recommendation 16: The NDIA need to establish an expert working group on therapy, asking how decisions about quantity and duration of therapy are made and how efficacy and stopping rules are established.

Recommendation 17: Respite should be allowed to be included in NDIS plans to support informal caring arrangements such as family.

Recommendation 18: That the NDIA work to proactively address issues of market thinness for regional and remote areas including strategies to engage Aboriginal workers and agencies in areas of need.

Recommendation 19: That the NDIA and NDIS Quality and Safeguards Commission develop and implement proactive strategies to address the future workforce needs including partnering with relevant tertiary institutions and sector partnership.

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Children and Young People and the NDIS (June 2021)

Culturally and Linguistically Diverse People and the NDIS (January 2021)

Submission to the Social Development Committee Inquiry: NDIS impact on South Australian participants with complex needs who are, or are at risk of living in inappropriate accommodation for long periods (August 2022)

People in Corrections and the NDIS (December 2022)

Seven Key Questions asked by NDIS participants about Housing and Home Support (May 2022)

Statement of Anne Gale Royal Commission into Abuse Neglect and Exploitation of People with Disability (June 2021).

Submission: Royal Commission into Abuse Neglect and Exploitation of People with Disability, Supported Decision-making and Guardianship: Proposals for Reform (June 2022)

What's Wrong with the NDIS and How to Fix It (January 2023)

Attachment 1: Terms of Reference

Part 1: Design, operations and sustainability of the NDIS

Objectives

The Independent Review Panel will make findings and recommendations to Disability Reform Ministers on:

a. the participant experience and costs of engaging with the Scheme and opportunities to rebuild trust and improve key scheme design and administration, including by examining:

- the user journey, including awareness and access to the scheme,
- assessment, planning, review processes, and navigation of supports and key transition points;
- ways to improve the evidence-based understanding and usage of services covered in a plan now and over time;
- ways to improve and make more timely decision making in relation to home modification, assistive technology and accommodation; and
- ways to ensure participants are well informed and supported as relevant remaining in-kind services are transitioned into the NDIS.

With a view to putting people with disability back at the centre of the NDIS.

b. the effectiveness and sustainability of the NDIS, including the achievement of participant meaningful employment and lifetime outcomes and broader social and economic benefits, through the provision of reasonable and necessary supports and consider:

- the effectiveness of: Information, Linkages and Capacity Building; Local Area Coordination and Community Connectors; and early childhood early intervention; and
- the suitability of the NDIS outcomes framework and data to measure
- effectiveness, and options to improve the ongoing monitoring and evaluation of the Scheme's effectiveness, including economic and social participation for participants and their families;
- the fiscal sustainability of the scheme, including the longer term fiscal trajectory.

c. ways to better ensure the delivery of value and outcomes for participants and government, including capacity building and assistive technology supports;
NDIS Review | Terms of Reference 3

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;

e. efficiencies within the Scheme and improving the interaction between the NDIS and other significant related policies and systems, including mainstream services

delivered by the Australian Government, the states and territories, local government, and the community sector;

f. whether there has been any service and financial impact, positive or negative, on other service systems and programs and the adequacy of supports for people with disability outside the NDIS; and

g. financial risks and the drivers of cost pressures, and the most appropriate levers to manage these risks and cost pressures.

Part 2: Building a more responsive and supportive market and workforce

Objectives

The Independent Review Panel will make findings and recommendations to Disability Reform Ministers on reforms to:

a. foster and steward an innovative, effective and sustainable market where providers (commercial or otherwise) invest, grow and improve outcomes for participants and the Scheme;

b. improve the pricing and payment system to incentivise providers to improve outcomes for participants, improve productivity, support workforce development and ensure market and system sustainability;

c. improve access to supports in thin markets – including cultural and regional, remote and very remote communities and service categories – and ensure participants with complex needs have continuity of support where a provider withdraws from the market;

d. attract, build and retain a capable workforce, including employment and training models that enhance participant experience and worker attraction, retention and career pathways;

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;
NDIS Review | Terms of Reference 4

f. improve consumer information and dissemination on supports / services (type of service, price, quality and availability) and the role of intermediaries to make it easier for participants and carers to find value for money supports that meet their needs and deliver outcomes;
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;

h. improve the efficiency and effectiveness of current price setting and regulatory functions (market oversight, monitoring and enforcement), including interaction with other relevant Commonwealth, state and territory regulatory systems; and

i. improve performance monitoring, compliance, reporting and responses to breaches, unscrupulous behaviour, including the detection of fraud and sharp practices.

The Independent Review Panel will consider interactions across the broader care and support sector, including aged care, veterans' care and primary health care, as well as broader community based activities, and identify how programs could achieve better outcomes through an integrated approach.

Attachment 2: Glossary

Acronym	Full title
ACCHO	Aboriginal Community Controlled Health Organisations
ADS	Australia's Disability Strategy (2021-2031)
AGD	Attorney-General's Department (SA)
APP	Accommodation Placement Panel (SA)
APTOS	Applied Principles Tables of Service
APY	Anangu Pitjantjatjara Yankunytjatjara lands
CALD	Culturally and Linguistically Diverse
CHP	Community Housing Provider
CoS	Change of Situation (formerly Change of Circumstance (CoS)
CVS	Community Visitor Scheme
CSNP	Complex Support Needs Pathway
DCP	Department for Child Protection (SA)
DCS	Department for Correctional Services (SA)
DHS	Department of Human Services (SA)
DRC	Royal Commission into Abuse Neglect and Exploitation of People with Disability
DSS	Department of Social Services (Cwlth)
FASD	Foetal Alcohol Syndrome Disorder
GAA	*Guardianship and Administration Act 1993* (SA)
ILC	Information, Linkage and Capacity Building
IPP	Information Privacy Principles (SA)
ISG	Information Sharing Guidelines (SA)
LAC	Local Area Coordinator
MOU	Memorandum of Understanding

MTA	Medium Term Accommodation
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
NDS	National Disability Strategy (2010-2020)
OPA	Office of the Public Advocate (SA)
PA	Public Advocate (SA)
PITC	Partners in the Community
PSG	Participant Service Guarantee
RHLS	Request for Home and Living Support
PT	Public Trustee (SA)
SAAS	South Australian Ambulance Service
SACAT	South Australian Civil and Administrative Tribunal
SACID	South Australian Council on Intellectual Disability
SAHA	South Australian Housing Authority
SAPOL	South Australian Police
SDA	Specialist Disability Accommodation
SDC	Social Development Committee (of SA Parliament)
SC	Support Coordinator
SIL	Supported Independent Living
SSC	Specialist Support Coordinator
STA	Short Term Accommodation
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities

Government of South Australia

Attachment 3: Housing pathway for NDIS Participants

The client needs housing (They may want to move out of home or are homeless or in crisis)	
If the client is not already an NDIS participant, they will need to join. To become a participant involves: • Gathering evidence (28 days) • Assessments • NDIS Access Request • Meet NDIS Eligibility criteria Access confirmed	90 days for participant to provide evidence. 21 days for access decision 28 days to explain a decision 14 days to make a decision about who can use the NDIS after receiving more information.
For existing participants, a Change of Situation is submitted if required.	21 days minor, 50 days larger changes
NDIS Planning meeting held. Participant needs to request that the following be included in plan: • A goal related to Home and Living Supports in your plan • An allocation for allied health assessments • Specialist Support Coordination (SSC)	21 days to start making plan Making meeting time – ASAP 28 days to have meeting 7 days to give you a copy of the plan
Plan needs to be approved by the NDIA.	70 days to approve a plan
The Request for Home and Living Supports Form needs to be completed by the individual or person on their behalf and submitted to the NDIA.	Dependent on individual guardian/ nominee
Once the NDIA has reviewed the request and if further information required the NDIA will advise what is needed. This may include further	This is a new process so timeframes not clear. This may also be depending on whether the participant engages with therapists for assessments if they are required.
If approved, the NDIA may provide funding for: Assisted Daily Living — Capacity Building Individualised Living Option — Home Modifications Short Term Accommodation — Specialist Disability Accommodation Medium Term Accommodation — Assistive Technology Supported Independent Living	
Support Coordinator or Specialist Support Coordinator utilise the plan and connect them with services. Note: The SSC needs to have appropriate skills and experience in the following: culturally appropriate/ have capacity/ Mental Health and adequately trained.	Variable
Housing • Community Housing The participant needs to register and be eligible for Community Housing • Public Housing • Private rental • SDA If SDA approved in plan and property is not an SDA property • SDA providers need to be registered with the NDIS Quality and Safeguards Commission • Property needs to be enrolled	If SIL quote needs to be submitted and approved by the NDIA • Participant profile • property profile • Participant outcomes • Roster of support (inclusive of all house participants)	21 days depending on complexity and agreement on funding. There are often discrepancies about what is in the EHO, what the NDIS will fund and what the Service Provider will accept for the safety of participants and staff. This can delay transition.
Housing modifications to be undertaken if required.	Variable
The participant commences transition to the new home	Variable

Please note time frames are an estimation only and vary from client to client

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