



Office of the Public Advocate

Safeguarding the rights and interests of people with disability

Joint Standing Committee on the National Disability Insurance Scheme

Inquiry into the experience of NDIS participants in rural,
regional and remote Australia

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Office of the Public Advocate

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Abbreviations

ACCO	Aboriginal Community Co-operative
CISO	Corrections Independent Support Officer
GA Act	<i>Guardianship and Administration Act 2019 (Vic)</i>
ITP	Independent Third Person
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
OPA	Office of the Public Advocate

Recommendations

Recommendation One

OPA recommends that NDIS review recommendation 9– *Deliver a diverse and innovative range of inclusive housing and living supports*– should be extended in scope to include the commissioning of specialist disability accommodation in regional and rural areas.

Recommendation Two

OPA recommends that to enhance its responsiveness, consistency and effectiveness when working with Aboriginal peoples, the NDIA should create First Nations Consultation and Engagement teams within its regional teams to provide secondary consultation and education to all NDIA planners and decision makers. These teams should be comprised of First Nations identified positions.

1. Introduction

The Public Advocate of Victoria welcomes this opportunity to submit to the Federal Parliamentary Inquiry by the Joint Standing Committee (the Committee) on the National Disability Insurance Scheme (NDIS) on the NDIS participant experience in rural, regional and remote Australia (the Inquiry). The Public Advocate has made several submissions to the Committee on topics including planning, supported independent living, workforce, independent assessments and the Quality and Safeguards Commission, and has also appeared before it as a witness.

1.1. Acknowledgement

This submission was written on the land of the Wurundjeri people of the Kulin Nation. We acknowledge and pay our respects to Aboriginal and Torres Strait Islander peoples and Traditional Custodians throughout Victoria, including Elders past and present. We also acknowledge the strength and resilience of all Aboriginal peoples whose social and emotional wellbeing continues to be negatively affected by discrimination, racism, child removal and other devastating ongoing effects of colonisation.

As far as possible Aboriginal peoples is the language used in this submission¹, except where the Inquiry or other reports are referred to and First Nations people is used.

1.2. About the Office of the Public Advocate

The Public Advocate is a Victorian statutory appointee. The Office of the Public Advocate (OPA) is independent of government and government services and works to safeguard the rights and interests of people with disability.

The Public Advocate is appointed by the Governor in Council and is answerable to the Victorian State Parliament. The Public Advocate has functions under the *Guardianship and Administration Act 2019* (Vic) (GA Act), all of which relate to promoting the independence and human rights of people with disability and protecting people with disability from abuse, neglect and exploitation. To this end, OPA provides a range of critical programs for people with cognitive impairment or mental illness and those who support them, including guardianship, investigations, advocacy, advice and education.

In 2022-23, OPA was involved in 2079 guardianship matters (977 of which were new), 314 investigations, and 282 cases requiring advocacy.²

OPA is supported in its advocacy work by more than 600 volunteers across three volunteer programs: the Independent Third Person Program (ITP Program) and the Corrections Independent Support Officer (CISO) Program and the Community Visitors Program.

Independent Third Persons assist persons with cognitive impairment when giving interviews and making formal statements to Victoria Police. The ITP Program is a 24 hour, 7 days a week, state-wide volunteer service operating in all police stations in Victoria. In 2022-23, ITPs attended a total of 4,419 interviews and statements. CISOs are experienced ITPs who support prisoners who have an intellectual disability at General Manager's Disciplinary Hearings at Victorian prisons and/or remand centres. In 2022-23, CISOs supported prisoners in 67 disciplinary hearings.

Community Visitors are Victorian Governor in Council appointed volunteers who play a vital role in safeguarding the rights of people with disability and fostering their inclusion in the community. They are empowered to make unannounced visits to supported accommodation facilities to monitor and report on the services and quality of care being provided to

¹ In keeping with the writing style guide of the Victorian Department of Justice and Community Safety.

² All statistics from [OPA Annual Report 2022-2023 - Office of the Public Advocate](#)

residents and patients. They are appointed under three separate Acts of Parliament.³ In 2022-23, 334 Community Visitors made 3411 visits either in person or remotely, visiting 1246 sites.

A key function of the Public Advocate is to promote and facilitate public awareness and understanding about the *GA Act*, and any other legislation affecting persons with disability or persons who may not have decision-making capacity. To do so, OPA coordinates a community education program for professional and community audiences across Victoria on a range of topics such as the role of OPA, guardianship and administration, medical treatment decision making and enduring powers of attorney. In 2022-23, OPA delivered 163 education sessions for an audience of 2538 people. OPA runs an Advice Service which provided 8020 instances of advice or information during the 2022-23 financial year. Under the *Medical Treatment Planning and Decisions Act 2016* (Vic), the Public Advocate has authority to make medical treatment decisions for Victorian patients when they are found to lack medical decision-making capacity, do not have an advance care directive, and do not have a medical treatment decision-maker. In 2022-23, 397 matters were received by the medical treatment decision team.

1.3. A Human Rights Approach

This submission applies a human rights approach that:

- holds that all people with disability have the right to enjoy equality of opportunity and to effectively participate and be fully included in society
- recognises that most challenges experienced by people with disability are a result of disabling systems and environments, rather than an inherent 'lack' in the individual
- considers impairment as an expected dimension of human diversity
- seeks for people with disability to be supported and resourced to have the capabilities to flourish and lead a dignified life.

1.4. About this submission

The Inquiry terms of reference are:

- the experience of applicants and participants at all stages of the NDIS, including application, plan design and implementation, and plan reviews.
- the availability, responsiveness, consistency, and effectiveness of the National Disability Insurance Agency in servicing rural, regional and remote participants
- participants' choice and control over NDIS services and supports including the availability, accessibility, cost and durability of those services
- the particular experience of Aboriginal and Torres Strait Islander participants, participants from culturally and linguistically diverse backgrounds, and participants from low socio-economic backgrounds
- any other related matters.

OPA's focus within this submission is the experience of Aboriginal peoples in rural and regional Victoria who are NDIS participants, particularly addressing plan implementation and review, and the availability, responsiveness, consistency and effectiveness of the National Disability Insurance Agency (NDIA). During the 2022-23 financial year, the Public Advocate was appointed as guardian for 46 Aboriginal people.

- Forty-one of these 46 people (89%) were NDIS participants
- Twenty-seven of these 46 people (59%) were living in rural or regional locations.

OPA has experience working with Aboriginal peoples for whom connection with culture and Country is paramount, as well as some who may have been raised off Country who

³ The *Disability Act 2006* (Vic), the *Mental Health Act 2014* (Vic), and the *Supported Residential Services (Private Proprietors) Act 2010* (Vic).

experience no explicit connection with their culture, who do not seek this connection. In this submission we seek to highlight the experiences of Aboriginal peoples seeking to maintain connection to Country and culture.

Information has been obtained from relevant material from other OPA reports and submissions, with most information derived from OPA's Advocate Guardianship Program by way of a yarning circle facilitated by OPA's First Nations Engagement Officer, who explains that:

'Yarning circles are where problems or issues can be solved in a welcoming environment that people are free to express their thoughts and feelings in. It's an environment that is open and not clinical like a lot of meetings are. They are less formal but also important. Important issues are raised and everyone is able to have input on how to solve them... everyone can express their thoughts freely.'⁴

1.5. Significant recent reports– the NDIS review report and the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

The final report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Royal Commission report) published September 2023 and the NDIS Review published December 2023 each propose recommendations and actions to better address the needs of Aboriginal peoples with disability. OPA notes that many of these recommendations and actions specifically seek to address issues consistently identified for people in rural, regional and remote communities. As National Disability Services reports,

'The Royal Commission's blueprint for reform... fosters cultural responsiveness and trauma-informed approaches, essential elements in addressing the specific needs and experiences of First Nations people with disability.'⁵

2. Experiences of all stages of NDIS

Thin markets, insufficient funding to support culturally sensitive service provision, and culturally insensitive assessment practices by NDIA are three concerns consistently observed at OPA in relation to Aboriginal peoples' NDIS experience when living in rural or regional locations.

2.1. Experiences of plan implementation and plan reviews

OPA guardians report that implementing NDIS plans in rural and regional locations is made difficult by the scarcity of service or 'thin markets' in these areas. The NDIS Review reported that limited culturally appropriate services means that 'First Nations participants may need to choose between supports that are not culturally safe or not getting funded supports at all,'⁶ and this reflects the observations about the experience of Aboriginal peoples represented by the Public Advocate.

This scarcity can have a cumulative impact, particularly for people with complex presentations for whom the integration of the full schedule of services is needed for the supports to function as planned, as the absence of one critical provider can destabilise all other aspects of the plan. For example, scarcity of behaviour support practitioners in a regional area created extensive wait times for much-needed support and strategies without

⁴ Personal communication to author 15/2/24.

⁵ *NDS analyses DRC recommendations about First nations people with disability*, p.5.

⁶ [Access to supports for First Nations communities and all participants in remote communities | NDIS Review](#)

which the housing options available to a young Aboriginal person with complex needs were so reduced that relocation to a metropolitan area was proposed.

Exercising choice or having control regarding supported housing options can be particularly difficult for all people with multiple and complex needs living in regional and rural locations, and for Aboriginal peoples with disability, OPA guardians have variously reported that preferences for staying on Country, maintaining cultural connections to place, or seeking culturally safe plan processes at times appear to be wholly disregarded by NDIA planners.

OPA has consistently advocated over many years for ‘provider of last resort’ provisions including robust housing options that are urgently required for people with multiple and complex needs. OPA welcomes recommendation 9 of the NDIS review (Deliver a diverse and innovative range of inclusive housing and living supports) and argues that the proposed action (9.6)—to commission specialist disability accommodation in remote areas⁷—should be extended in scope to include regional and rural areas.

Recommendation 1- OPA recommends that NDIS review recommendation 9– *Deliver a diverse and innovative range of inclusive housing and living supports*– should be extended in scope to include the commissioning of specialist disability accommodation in regional and rural areas.

OPA guardians additionally report that when working in regional areas with Aboriginal peoples for whom culturally safe supports are available, insufficient funding is an obstacle to accessing these supports. This concern has arisen primarily in relation to the model of housing that NDIA is prepared to fund. For example, at a plan review where detailed evidence was provided about a person’s strong belief in the importance of remaining on Country, the NDIA’s position was that the person should move off Country to the location of the service provider, while the guardian argued that it was reasonable and necessary to obtain additional funds for service providers to travel to the home in the preferred location.

Further to how appropriate funding levels are determined, guardians reflected that trauma experiences appeared to be perceived by some NDIA planners as separate to disability rather than integral to the experience of the person; as the Royal Commission report states, ‘trauma ‘dominates’ the lives of First Nations people and communities today, and this trauma co-occurs with disabilities.’⁸ Similarly OPA guardians observed that in the context of the support services Aboriginal peoples may require to be safe within their housing, separating disability and trauma-related supports is unreasonable and frequently results in insufficient funding.

2.2. Availability, responsiveness, consistency and effectiveness of NDIA

Aboriginal peoples represented by OPA have experienced inconsistent application of NDIS policies and limited availability of Aboriginal NDIA staff, including planners. Subsequently there have been mixed experiences about the effectiveness of NDIA, with most examples indicating significant advocacy efforts have been required by guardians to obtain adequate outcomes for Aboriginal represented persons who are NDIS participants living in rural and regional Victoria.

NDIA planners and decision-makers were reported to respond inconsistently to requests related to Aboriginal peoples’ cultural connections. Some guardians reported that requests for Aboriginal planners were accommodated, others felt that they had occasionally been fortunate that an Aboriginal planner happened to be in the relevant team, whereas others stated that requests were directly refused without much apparent consideration of cultural

⁷ [A more diverse and innovative range of inclusive housing and living supports | NDIS Review](#) Accessed 19/2/24

⁸ The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final report- Volume 9: First Nations people with disability*, p.41.

safety. As case story one demonstrates, a failure by NDIA to speak about or acknowledge the participant's Aboriginality has also been observed.

Case story one – Sammy's story

Sammy* is an Aboriginal young adult who loves being physically active outdoors. They live on Country, located on the outskirts of a regional centre.

Sammy has an intellectual disability and has experienced trauma including abuse at home. Sammy moved to temporary accommodation after making the decision they no longer wanted to have contact with family. Like all young adults Sammy has a lot of potential, however, their experience at home was one of neglect so they had received limited or no support to develop basic daily living skills prior to moving out, still less for independent living skills like decision-making for more detailed tasks or issues.

It was important to Sammy to stay on Country, and the care team had explored a range of housing and support models in the area, but those encompassing less support hours were found to be unsuitable. Evidence was provided about the level of support required to adequately and safely support Sammy in longer-term accommodation, however, Sammy's NDIS funding was reduced.

The Public Advocate was appointed as guardian to make decisions related to Sammy's insecure housing, and the delegated guardian assisted with a NDIS plan review, arguing that increased funding was essential. The process involved internal and external reviews and took close to a year to resolve.

Ultimately Sammy was able to obtain an appropriate level of funding and continue to live on Country. They are enjoying their new housing arrangement and the support received, and gradually increasing their knowledge and capacity for independent living with support.

*Name has been changed

Reflections on the NDIA' response to and engagement with Sammy, an Aboriginal person in a rural area:

- throughout the extensive review processes, the NDIA made no mention of Sammy identifying as an Aboriginal person nor the importance to them of connection to Country and culture
- review processes were held interstate by people far removed from the context of the rural area
- practitioners engaged by NDIA did not mention nor factor into their assessments the impoverished support environment of Sammy's formative years and their trauma experience
- the NDIA objected strongly to Sammy using one provider for multiple services, even though the town had very few provider options, and this choice was both in line with Sammy's will and preference and assessed as appropriate by the guardian
- the NDIA argued that a change in providers must be arranged, a demand which was perceived as government paternalism and culturally insensitive.

OPA staff have found it extremely beneficial to engage OPA's First Nations engagement team for secondary consultations where represented persons are Aboriginal peoples. NDIA already has a similar work model which acknowledges the value of specialist knowledge of service system overlap and multifaceted personal circumstances in the Justice Liaison Officer role. OPA guardians have observed improved responsiveness and availability from the NDIA for NDIS participants when Justice Liaison Officers are involved, noting that the Justice Liaison Officers make an effort to meet the participants, and have expertise in considering the hurdles and barriers they experience.

The recommendations of the Royal Commission report and NDIS review are heavily and rightly focused on addressing the extreme disadvantage experienced by Aboriginal peoples with disability living in remote and very remote areas, and the NDIS review also reports on some initiatives to improve First Nations participant experience, for example:

'The NDIA is currently building cultural competency of NDIA staff and NDIA Partners [for example, local area coordinators] through cultural awareness training. They are also embedding dedicated Aboriginal Disability Liaison Officers to support NDIA Partners to deliver a more culturally inclusive and responsive participant experience.'⁹

While OPA welcomes these initiatives, change within NDIA is also required to better support Aboriginal peoples with disability in regional and rural areas, especially those with circumstances too complex for referral to NDIA Partners. OPA supports the Royal Commission report's recommendation 10.29: *Establishing a First Nations Unit* [within the NDIS Quality and Safeguards Commission] with a strong state and territory presence¹⁰. However, OPA believes that this model must be implemented regionally and accessible to NDIA planners.

Recommendation 2 – OPA recommends that to enhance its responsiveness, consistency and effectiveness when working with Aboriginal peoples, the NDIA should create First Nations Consultation and Engagement teams within its regional teams to provide secondary consultation and education to all NDIA planners and decision makers. These teams should be comprised of First Nations identified positions.

This approach is in line with the 12 guiding principles for developing policies, programs, services and systems for First Nations peoples with disability contained in the Disability Sector Strengthening Plan.¹¹ The principles of cultural safety, cultural integrity, equity and place-based all emphasise the importance of place-based, local approaches, as well as the inclusion of First Nations people in the planning of policies and programs.

Bodhi and Tali's story outlined in case story two demonstrates the possibility of positive outcomes when NDIA staff are available and responsive, and culturally sensitive services are made available.

Case story two – Bodhi* and Tali*

First Nations siblings, Bodhi and Tali, accessed culturally safe services for the first time as young adults and it was life-changing for them.

⁹ Accessed 16/2/24. [3. Opportunities | NDIS Review](#)

¹⁰ The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final report–volume 10: Disability Services*, 2023, p.488

¹¹ First Peoples Disability Network Australia, Community Controlled Disability Sector, Disability Sector Strengthening Plan, (YEAR) 8-10, also referred to by NDIS Review, Improving access to supports in remote and First Nations communities, 29-35 (chapter [4. Implementing a placed-based, community-driven alternative commissioning approach | NDIS Review](#)) accessed 15 February 2024

Bodhi and Tali live in regional Victoria and they both have a disability. They have been NDIS participants for several years with services provided by support coordinators, support workers and allied health practitioners. OPA records show that OPA's advice service was contacted more than once by providers who had concerns about the siblings' home environment and on each occasion, OPA's advice to make application to VCAT for the appointment of a guardian was not followed. Action was only taken when the siblings started being supported by ACCO Plus*, an Aboriginal community co-operative (ACCO) and NDIS registered provider, who uncovered the extent of the family violence, exploitation and neglect in the home environment. Short-term alternative accommodation was secured for the young adults and the Public Advocate was appointed as guardian.

The delegated OPA guardian made decisions to cease services with the providers who rather than speaking out about the intentionally limited circumstances of the young adults, had followed the parents' demands without question. Culturally safe therapists and providers were engaged by the guardian. ACCO Plus supported the young adults to connect with culture and engage in new education and employment experiences.

During this period of extensive transition, an NDIA short-term planner met fortnightly with the guardian and care team to ensure that planning was on track, before referring the young adults to an NDIA complex support team.

*Names have been changed

Reflections on this experience include:

- The availability of the NDIA planner to the care team through frequent, regularly scheduled meetings greatly improved the NDIA's responsiveness, compared to most guardianship matters where this approach is not used. In turn this reduced the friction in the planning of very complex matters.
- In-depth cultural awareness was critical to putting in place the changes that stopped the family violence.
- The young adults were not able to exercise choice and control until the ACCO was engaged, and their funding was not genuinely used for their benefit until that occurred.
- It was extremely beneficial for Bodhi, Tali and the delegated guardian to have OPA's First Nations engagement officer closely involved, as this ensured that culturally safe approaches to decision-making were considered and employed.

3. Conclusion

Both the Inquiry's focus and OPA's recommendations are place-based. OPA recommends NDIA-commissioned specialised disability accommodation in rural and regional areas and regionally based First Nations Engagement and Consultation teams within the NDIA so that Aboriginal peoples may experience greater cultural safety as NDIS participants. OPA advocates for Aboriginal peoples with disability to be supported and resourced to have the capabilities to flourish and lead a dignified life and believes that supporting cultural safety and increasing opportunities to access appropriate housing on Country are critical foundations for achieving this.