

SAFE+EQUAL

Standing strong
against family
violence

Independent Review of the NDIS

August 2023

Safe and Equal Submission

Acknowledgement of Traditional Owners

Acknowledgement of Aboriginal and Torres Strait Islander peoples

Safe and Equal acknowledges Aboriginal and Torres Strait Islander peoples as the traditional and ongoing custodians of the lands on which we live and work. We pay respects to Elders past and present. We acknowledge that sovereignty has never been ceded and recognise First Nations peoples' rights to self-determination and continuing connections to land, waters, community and culture.

About Safe and Equal

Safe and Equal is the peak body for specialist family violence services that provide support to victim survivors in Victoria. Our vision is a world beyond family and gender-based violence, where women, children and people from marginalised communities are safe, thriving and respected.

© 2023 Safe and Equal

Contents

Acknowledgement of Traditional Owners	2
About Safe and Equal	2
Introduction	4
Section 1 - Recommendations	5
Prevalence of family violence	5
Inconsistent and lack of urgent responses to victim survivors of family violence	6
Safety and risk management	8
Section 2 - Structural issues and systemic barriers to accessing the NDIS	9
Reducing barriers to accessing the NDIS	9
Addressing siloes and supporting appropriate cross-sector responses	9
Support for NDIS Workers	9

Introduction

Safe and Equal welcomes the opportunity to contribute to the Independent Review (**the Review**) of the National Disability Insurance Scheme (NDIS). Given our central position in the Victorian family violence system, we are well placed to provide insights into the unique and complex experience of family violence for people with disabilities and the provisions victim survivors with disabilities need to access support and safety within the NDIS.

This submission is divided into two parts, the first focuses on recommendations for specific procedural/policy changes that can be implemented immediately to make material differences in the lives of victim survivors with disabilities. The first section of this submission highlights the following:

- Victim survivors of family violence with a disability receive inconsistent and untimely responses to urgent access requests, reviews and changes to NDIS plans that relate to change of circumstance because of family violence.
- There is a lack of transparency and clear processes for actioning urgent requests that relate to a person's safety risks or change in circumstance because of family violence.
- There is a lack of clear pathways for contacting the National Disability Insurance Agency (NDIA) to discuss issues relating to risk management and safety, including what changes need to be put into place to manage risk for the NDIS participant.

The second part of this submission highlights structural issues and systemic barriers to accessing the NDIS. We invite the Review to consider solutions to these issues as part of the review process as they are complex multi-sector issues. This section highlights the need to:

- Reduce the economic barriers to accessing the NDIS, particularly for victim survivors of family violence.
- Break down siloes across sectors to ensure that victim survivors of family violence with a disability receive the appropriate supports no matter which service system they disclose their experience to.
- Provide supports for NDIS workers who are exposed to family violence and/or vicarious trauma.

We need to ensure the safety of victim survivors is prioritised, and that a family violence and trauma-informed lens is consistently applied across the disability service system, including NDIS services.

Section 1 - Recommendations

Safe and Equal recommends the following actions in relation to the NDIS and NDIA operations:

- 1. Appropriately including family violence in NDIS processes and procedures:** The inclusion of a definition of family violence to be used in NDIS funded disability support services and listing family violence in relevant operational guidelines as an urgent circumstance to expedite processes for victim survivors. This definition should be based on the definition in the Victorian *Family Violence Protection Act 2008*.
- 2. Transparent and timely responses:** Clear, transparent, and expedited timelines and processes for actioning urgent requests and/or changes to a person's NDIS plan that relate to a person's safety risks, change in circumstance or care needs because of family violence. This includes not asking for onerous evidential requirements to prove family violence risk in order to action urgent requests.
- 3. Supporting safety planning and risk management:** Establish clear, streamlined pathways for victim survivors to contact the relevant team at NDIA to discuss issues relating to risk management and safety, including removing the perpetrator as a plan nominee without notifying them.

Prevalence of family violence

Family violence is a significant and complex form of violence experienced by people with disabilities that can have far reaching and life-long impacts. Unfortunately, it is difficult to definitively determine the prevalence of family violence experienced by people with disabilities due to a lack of systematic data collection and the multiple and complex barriers people with disabilities face to reporting and disclosing violence they have experienced.

This data is even more limited for victim survivors with disabilities who experience other structural barriers or systemic exclusion, including victim survivors from Aboriginal and Torres Strait Islander, culturally and linguistically diverse and LGBTIQ+ communities. Current research shows that people of all genders with disabilities are more likely to experience family violence than people without disabilities.¹ Further, women and girls with disabilities experience higher rates of violence (including family violence) than men with disabilities, and are more likely to experience family violence than women without disabilities, leading to the conclusion that the “intersection of gender and disability increases the risk of violence against women and girls with disabilities”.² Recent research highlights that “women with disabilities are 40 percent

¹ AIHW (2019). Family, domestic and sexual violence in Australia: continuing the national story. Cat. No. FDV 3. Canberra. p8; State of Victoria (2014-16). Royal Commission into Family Violence: Summary and recommendations, Parl Paper No 132. Melbourne, VIC. p36.

² Family Safety Victoria (2019). MARAM Practice Guides: Foundation Knowledge Guide. Melbourne, VIC: State of Victoria. p51; Family Safety Victoria (2018). Family Violence Multi-Agency Risk Assessment and Management Framework: A Shared Responsibility for Assessing and Managing Family Violence Risk. Melbourne, VIC: State of Victoria. p35: “people with disabilities, both adults and children, are at higher risk of experiencing family violence [and] women and girls with disabilities experience even high rates of abuse and violence than men with disabilities, who are at higher risk than men in the general population”; Australian Bureau of Statistics (2017).

more likely to experience domestic and family violence than other women and that more than 70 percent of women with disabilities have been victim survivors of sexual violence”.³

Due to current limitations in the way surveys are conducted and data collected and the barriers many victim survivors face reporting family violence, these figures are likely to be an underestimate of the extent of family violence experienced by people with disabilities with the scope and extent being much higher than reflected in available statistics.⁴

Given the prevalence of family violence among people with disabilities, there is a high likelihood that many NDIS participants or prospective participants will be victim survivors of family violence. In order to ensure the safety of victim survivors is prioritised, a family violence and trauma-informed lens must be consistently applied across the disability service system, including NDIS services and NDIA policies and procedures.

Inconsistent and insufficient urgent responses to victim survivors of family violence

The absence of a consistent national definition of family violence, and the lack of a definition of family violence within the NDIA Operational Guidelines presents a major concern, as currently there is a lack of consistency in the way family violence is conceptualised and understood by disability service systems. This can create barriers to the family violence and disability systems working collaboratively and can impact on referrals being made between the two service systems.

This lack of family violence awareness is also reflected in the NDIS Operational Guidelines, where ‘experiencing family violence’ is not recognised as an ‘urgent’ circumstance in relation to accessing a new NDIS plan or when requesting an unscheduled plan review to speed up the legislated timeframes. However, even if family violence is included as an ‘urgent’ circumstance, the guidelines do not require the NDIA to process new access requests in an urgent manner. This is reflected in the guidelines use of the word ‘may’ rather than ‘must’ in Section 4.11 of the Access to the NDIS Operational Guideline.⁵ This should be changed to ensure that decision makers make decisions in an appropriately urgent timeframe.

There is also no clear process or consistency for prioritising unscheduled plan reviews and no legislative requirement for urgency to be taken into consideration. This is reflected in comments made by Safe and Equal member services that have assisted clients to apply for unscheduled plan reviews who note that there does not seem to be a systematic approach to determining urgency which results in specialist family violence services having to spend a great deal of time and resources advocating for victim survivors with disabilities to have their plans reviewed more quickly. Further, whether an application or plan review is considered

³ Backhouse, C., & Toivonen, C. (2018). National Risk Assessment Principles for domestic and family violence: Companion resource. A summary of the evidence-base supporting the development and implementation of the National Risk Assessment Principles for domestic and family violence (ANROWS Insights 09/2018). Sydney, NSW: ANROWS; p19.

⁴ Australia’s National Research Organisation for Women’s Safety. (2020). Improving family violence legal and support services for Aboriginal and Torres Strait Islander peoples: Key findings and future directions (Research to policy and practice, 25–26/2020). Sydney: ANROWS: “90 percent of incidents of violence perpetrated against Aboriginal and Torres Strait Islander women go undisclosed”.

⁵ Access to the NDIS Operational Guideline – General matters relating to access requests. Section 4.11: Prioritising prospective applicants with urgent circumstances: refers to “In urgent circumstances, the NDIA may determine whether a prospective participant meets the access criteria sooner than the timeframe set out in the NDIS Act.”
<https://ourguidelines.ndis.gov.au/home/becoming-participant/applying-ndis#4.8> >

urgent often depends on the knowledge of the NDIA decision-maker about family violence and the risk and urgency it presents to victim survivors.

The absence of a consistent and structured urgent response to family violence in the current NDIS framework is problematic, challenging and potentially compromises safety for victim survivors. For example, when a victim survivor needs to transfer NDIS supports due to needing to change accommodation for risk management, they need an immediate response to reduce the risk they are experiencing and to enhance their safety.

To adequately address the significant risk that victim-survivors of family violence with disabilities experience, it is crucial that greater recognition and prominence of family violence risk and safety is included in NDIS principles and guidelines.

Example of the need for transparent and timely responses of NDIS reviews and the inclusion of family violence as a reason for review

Mia* and her daughter Rebecca* fled family violence and were living in motel accommodation. Rebecca has multiple disabilities including cerebral palsy, and required specialised equipment including a bed, wheelchair, and support workers for daily activities such as bathing.

Due to the serious risk of family violence, Mia was not able to bring Rebecca's disability equipment with them, and they were accommodated over an hour away from their original home. Support workers advised they could not attend to support Rebecca as there was no hoist in her motel room – Rebecca was left sleeping on the floor, with her mother having to sponge bath her each day.

Because Rebecca required around the clock care, and support workers were not attending whilst they were in motel accommodation (a combination of support hours required, being accommodated over an hour away, and not having sufficient funding within the plan) Mia was unable to attend housing inspections to secure a private rental as she wasn't able to leave Rebecca alone, thereby extending the time they spent in inaccessible motel accommodation.

Mia and Rebecca spent over 6 months in motel accommodation. A review was submitted to the NDIA; however, it took 5 months for Rebecca to receive an appropriate bed. Eventually, they secured transitional housing and are now in the process of applying for further reviews to secure funding for hoists, a permanent accessible bed, and to transfer support workers into the new catchment area.

This case study highlights the extent of systems failures due to unclear NDIA guidelines and untimely responses pertaining to support for victim survivors of family violence. At the time of consultation, Rebecca was yet to receive a hoist for bathing.

* Names have been changed to protect client confidentiality. This case study was provided by Wayss.

Recommendation 1

Appropriately including family violence in NDIS processes and procedures: The inclusion of a definition of family violence to be used in NDIS funded disability support services to improve a consistent understanding of and response to family violence and listing family violence in relevant operational guidelines as an urgent circumstance to expedite processes for victim survivors. This definition should be based on the definition in the Victorian *Family Violence Protection Act 2008*.

Recommendation 2

Transparent and timely responses: Clear, transparent, and expedited timelines and processes for actioning urgent requests that relate to a person's safety risks, change in circumstance or care needs because of family violence. This includes not asking for onerous evidential requirements to prove family violence risk in order to action urgent requests.

Safety and risk management

Victim-survivors who experience family violence often become known to the family violence service system at a point of crisis where they are at an increased risk of harm and an immediate and timely response is critical to mitigate risk and enhance their safety. Clear, streamlined pathways for victim survivors and those working with them to contact the relevant teams at the NDIA to discuss issues relating to risk management and safety are imperative to mitigate these risks.

Comments made by Safe and Equal member services point to how the inability to contact the relevant team at the NDIA or a lack of family violence understanding by NDIA staff has resulted in unsafe outcomes, including situations where the perpetrator was notified of being removed as a plan nominee, which can lead to increased risk for victim survivors or could compromise their location if the perpetrator is notified of a new location where the victim survivor is receiving NDIS supports.

Recommendation 3

Supporting safety planning and risk management: Establish clear, streamlined pathways for victim survivors and/or their support workers to contact the relevant team at NDIA to discuss issues relating to risk management and safety, including removing the perpetrator as a plan nominee without notifying them.

Section 2 - Structural issues and systemic barriers to accessing the NDIS

Reducing barriers to accessing the NDIS

Women and girls with disabilities are underrepresented in NDIS recipients. Only 37% of participants are women and girls, despite 49% of under 65 year-olds with disabilities being women or girls.⁶ Research found this underrepresentation was at least in part due to the gendered nature of family care and less time/ability to focus on the administrative burden of applying for the NDIS.⁷ This gendered administrative burden is likely to only be exacerbated if a victim survivor needs to apply for the NDIS during or following a family violence crisis.

In addition to this gendered administrative burden, perpetrators of family violence will often preclude the victim survivor from accessing health services and other supports, resulting in the victim survivor having minimal or no contact with medical professionals and/or psychosocial supports. Victim survivors may also experience financial/economic abuse from the perpetrator, meaning they have limited financial means to fund diagnostic reports and assessments required for NDIS access through the private sector.

Access to the NDIS should not rely on having the economic means to go through the administratively burdensome application process. We invite the Review to consider how to reduce or remove the financial and administrative barriers to accessing a NDIS plan in order to ensure that there is equitable access to the NDIS. This should include streamlined access pathways for someone who is experiencing family violence and needs access to NDIS supports while in crisis.

Addressing siloes and supporting appropriate cross-sector responses

Victim survivors with a disability will potentially come into contact with both the specialist family violence sector and the NDIS system. Victim survivors should receive a consistent and coordinated response from both systems that recognises and responds appropriately to their family violence related needs and disability needs.

In order to meet this goal, there needs to be increased understanding of family violence and NDIS systems across both sectors through workforce capacity building and clear processes for the two systems to interface in a way that meets victim survivor needs. Any cross-sector workforce capacity building should be done in collaboration with disability and family violence and lived experience expertise and needs to be grounded in a human rights and trauma informed approach.

Support for NDIS Workers

Disability support workers and other NDIS workers may be exposed to vicarious trauma and are potentially at risk of threats or harm from the perpetrator. This can result in disability support workers having to cease their engagement with the victim survivor (either for their own

⁶ Yates, Malbon, Carey and Hargrave (2022). "Women make up half the disability population but just over a third of NDIS recipients." <https://theconversation.com/women-make-up-half-the-disability-population-but-just-over-a-third-of-ndis-recipients-173747>

⁷ *ibid.*

safety, or due to perpetrator demands) which results in the victim survivor being left in the unsafe home with no support.

We invite the Review team to explore what best practice supports could be put in place to protect the safety and wellbeing of workers within disability services.