

Current Scheme Implementation and Forecasting for the NDIS

Response to the Terms of Reference

February 2022

Acknowledgement of Traditional Owners

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. The interests of people experiencing, recovering from, or at risk of, family violence is at the heart of everything we do. Our vision is a world beyond family and gender-based violence, where women, children and people from marginalised communities are safe, thriving, and respected. We recognise the gendered nature of violence in our society, and the multiple intersecting forms of power and oppression which can compound the impacts of violence and limit people's access to services, support, and safety. We work closely and collaboratively with other organisations and support the leadership of victim-survivors to amplify their voices and create change.

We provide specialist expertise across primary prevention, early intervention, response and recovery approaches and the inter-connections between them. Our work is focused on developing and advancing specialist practice for responding to victim-survivors, building the capability of specialist family violence services and allied workforces, organisations and sectors that come into contact with victim-survivors; building the capabilities of workforces focused on primary prevention; and leading and contributing to the translation of evidence and research, practice expertise, and lived experience into safe and effective policy, system design and law reform.

We develop family violence practice and support workforces to ensure that victim-survivors are safe, their rights are upheld, and their needs are met. The prevalence and impact of family and gender-based violence will be reduced because we are building a strong and effective workforce responding to victim survivors that can meet the needs of the community we serve, while also having a growing and impactful workforce working to prevent violence.

We work to strengthen and connect organisations, sectors, and systems to achieve safe and just outcomes for victim survivors irrespective of entry point, jurisdiction and individual circumstances. Joining efforts across prevention, response, and recovery we work to ensure the family violence system is informed and supported by a well-resourced and sustainable specialist sector. Our contributions to primary prevention workforces, initiatives and alliances contribute to social change for a safer and more respectful community.

We are building momentum for social change that drives meaningful action across institutions, settings, and systems for a safer and more equal society. Our workforce and practice development efforts are coupled with a partnership approach that builds community awareness and commitment to change. Our expertise and efforts enable citizens across the community to recognise and respond to family and gendered violence, hold perpetrators to account and support the ongoing recovery and empowerment of victim survivors.

We are a strong peak organisation providing sustainable and influential leadership to achieve our vision. The work we do and the way we work are integrated and align with our values. This is achieved through inclusive culture, and a safe and accessible workplace supported by robust systems and processes.

Terms and language used

Family violence

Safe and Equal recognises family violence as any behaviour that occurs in family, domestic or intimate relationships that is physically or sexually abusive; emotionally or psychologically abusive; economically abusive; threatening or coercive; or is in any other way controlling that causes a person to live in fear for their safety or wellbeing or that of another person. This definition includes violence within a broader family context, such as extended families, kinship networks and **'family-like' relationships which can include a paid or unpaid carer for people with disabilities**; families of choice for LGBTIQ people; and cultural kinship networks.¹ In relation to children, family violence is defined as behaviour by any person that causes a child to hear or witness or otherwise be exposed to the effects of the above behaviour.²

Victim-survivor and perpetrator

Family violence is predominantly driven by gender-based oppression and inequality. Research to date demonstrates that the majority of perpetrators are men, and the majority of victim-survivors are women and children. As such, gender-binary language and terminology is often used in specialist family violence services to acknowledge and communicate about this deeply entrenched social problem. At the same time, family violence impacts people across a diversity of gender identities, social and cultural contexts, and within various intimate, family and family-like relationships. Consequently, this submission uses the gender-inclusive terms 'victim-survivor' and 'perpetrator' without assigning gender-binary terms (i.e. women and men) or pronouns (i.e. she/her and he/him) to acknowledge the complex ways family violence manifests across the community³.

Where the term **'victim-survivor'** is used it refers to people with disabilities who experience family violence (adults and children), and the term **'perpetrator'** is applied to adults who use family violence. Although we refer to 'victim-survivors with disabilities who experience family violence' throughout this submission as though they are 'one homogeneous group', we recognise that each victim survivor will have their own unique support needs and experience of family violence⁴.

Where this submission does use gender-binary terms (i.e. women and men), it does so to accurately reflect the current evidence-base which predominantly pertains to the experience of women with disabilities who experience family violence perpetrated by men within the context of intimate partner or family-like relationships. This manifestation of family violence results from the intersection of

¹ See *Family Violence Protection Act 2008 (Vic)* s.5; the Royal Commission into Family Violence noted that, "the dynamics between a person with a disability and paid carers may give rise to 'family-like' relationship very quickly [and] where elements of a 'family like' relationship do exist in relation to non-related carers or co-residents, then the FVPA definition should be applied", pp193-194

² *ibid*

³ Domestic Violence Victoria (2020). *Code of Practice: Principles and Standards for Specialist family violence services for Victim-Survivors*. 2nd Edition. Melbourne: DV Vic. p9.

⁴ Maher, J. M., Spivakovsky, C., McCulloch, J., McGowan, J., Beavis, K., Leas, M., Cadwallader, J., Sands, T. (2018). *Women, disability and violence: Barriers to accessing justice: Final report. Sydney: ANROWS*: note that it is important to recognise and identify the 'diverse types of violence that impact on the everyday safety and security of women with disabilities'.

systemic gender-based discrimination against women and disability-based discrimination against people with a disability⁵.

Intersectionality

Intersectionality is a critical principle that must be understood as it influences particular barriers and risks victim-survivors may face, and shapes appropriate and safe responses. Safe and Equal recognises that gender and disability intersects with a range of other structural inequalities experienced by victim-survivors. This interconnectedness of structural inequalities exposes victim-survivors experiencing violence to overlapping forms of discrimination and marginalisation, which exacerbates the risk and impact of family violence for those who are members of particularly marginalised groups.

For example, gender and gender inequality overlap with the social construction of disability, as well as race, ethnicity, culture, religion, colonisation, socioeconomic status, sexual identity, age, and geographic location to create diverse and complex experiences of family violence and family law for women as individuals and groups. For many victim-survivors experiencing transecting social divisions, multiple sites of oppression increase the risk of family violence and result in more frequent and severe experiences of family violence and discrimination within the systemic response.

Social model of disability

Historically, disability has been viewed within the context of the medical model, where disability is considered a tragic health condition that should be ‘fixed’ or ‘cured’ or the charity model where people with disability are viewed as in need of ‘help’, unable to do things for themselves⁶. For decades disability advocates have been working tirelessly to shift thinking about models of disability to a *Social Model* which views ‘disability’ as:

“the result of the interaction between people living with impairments and an environment filled with physical, attitudinal, communication and social barriers. It therefore carries the implication that the physical, attitudinal, communication and social environment must change to enable people living with impairments to participate in society on an equal basis with others.”⁷

The *Social Model* recognises that disability is socially constructed and does not seek to change or deny the reality of living with a disability or impairment; rather, it is the social and physical environment that must change to enable the full and equal participation of people with disabilities.⁸ This was reflected in a key finding of research undertaken by ANROWS, which concluded that focus must remain on barriers to support, rather than impairment when responding to the needs of mothers and children with disabilities⁹.

⁵ Women with Disabilities Victoria (2015). *Royal Commission into Family Violence: Submission by Women with Disabilities Victoria*. p4 <https://www.wdv.org.au/documents/FV_RC_submission_Women_with_Disabilities_Victoria_2015.pdf>

⁶ ‘Shifting models of thinking’ (n.d). In Disability Advocacy Resource Unit. Retrieved from <<https://www.daru.org.au/what-is-advocacy/shifting-models-of-thinking>>.

⁷ Domestic Violence Victoria (2020). op cit. p80.

⁸ ‘Social model of disability’ (n.d). In People with Disability Australia. Retrieved from <<https://pwd.org.au/resources/disability-info/social-model-of-disability/>>

⁹ Australia’s National Research Organisation for Women’s Safety. (2020). *Violence prevention and early intervention for mothers and children with disability: Building promising practice: Key findings and future directions* (Research to policy and practice, 16/2020). Sydney: ANROWS, p1.

Throughout this submission, we use the term disability within the context of a *Social Model* of disability to examine the systemic, structural and attitudinal barriers that restrict equal access to and participation in systems and decision-making processes for victim-survivors of family violence with disabilities.

Recommendations

Recommendation 1: Strengthen referral pathways and collaborative service delivery arrangements between specialist family violence services and NDIS funded disability support services.

Recommendation 2: Address the interface between the NDIA, the disability sector, and the family violence service system, in close consultation with both sectors and people with lived experience of disability and family violence to bridge the crisis response gap in the NDIS.

Recommendation 3: Categorise NDIS plans and/or reviews that result from a change in circumstances due to family violence, as urgent requests.

Recommendation 4: Establish clear, formalised and transparent processes for prioritising and triaging urgent requests for people with urgent support and safety needs.

Recommendation 5: Reduce the amount of time allowed for the NDIA to process and approve an urgent request (either for a new plan or an unscheduled plan review) that result from a victim-survivor experiencing family violence.

Recommendation 6: Fund, either directly or via State and Territory governments, an immediate brokerage response (for example, the Disability Family Violence Crisis Response Initiative) that can address the 'crisis response gap'.

Recommendation 7: Mandatory training (equivalent to the requirements for Tier 3 workforces under the *Victorian Responding to Family Violence Capability Framework*¹⁰) in identifying and responding to family violence for client-facing NDIA staff (including NDIA planners and those with decision making delegation) and disability service workers funded by the NDIS.

Recommendation 8: Fund workforce development and ongoing cross-sector capacity building to ensure victim-survivors receive a consistent and safe response regardless of where they enter the service system and to strengthen referral pathways between the two service systems.

Recommendation 9: Adequately fund the NDIS model so the workforce can attend training and capacity building activities. This would include providing additional funding so casual and contracted NDIS staff are paid for the time they attend training.

Recommendation 9: Federally funded specialist family violence services (such as 1800 RESPECT) receive sustainable funding, inclusive of resources needed to build the capacity of these services in responding to victim-survivors with disabilities.

¹⁰ Family Safety Victoria (2017). Op cit.

Recommendation 10: Include the family violence service system as a discrete service system in the *Principles to Determine the Responsibilities of the NDIS and other Service Systems*.¹¹

Recommendation 11: List family violence as an 'urgent' circumstance in the 'Access to the NDIS' and 'Planning' sections of the NDIS Operational Guidelines as this would be of great benefit to victim-survivors of family violence with disabilities in facilitating quicker access to the support and services they need.

Recommendation 12: Publish a formal definition of family violence to be used by NDIS funded disability support services, based on the definition of family violence in the *Family Violence Protection Act 2008*¹².

¹¹ *ibid*

¹² *Family Violence Protection Act 2008 (Vic)* s.5

Introduction

Safe and Equal welcomes the opportunity to contribute to this inquiry on the Current Scheme Implementation and Forecasting for 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 need to access support and safety.

This submission will focus on the intersection between the National Disability Insurance Scheme (NDIS) and specialist family violence services, as these are two service systems that victim-survivors with disabilities are likely to encounter if they report family violence or seek help.

This submission will outline the prevalence of family violence against people with disabilities and the need to embed a family violence and trauma-informed lens throughout the NDIS, before responding directly to section (b) in the Terms of Reference.

Prevalence of family violence experienced by people with disability

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 identify as members of other marginalised groups 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 disabilities¹³. 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”¹⁴. Recent research highlights that “women with disabilities are 40 percent more likely to experience DFV [domestic and family violence] than other women and that more than 70 percent of women with disabilities have been victim-survivors of sexual violence”¹⁵.

¹³AIHW (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.

¹⁴ 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)

¹⁵ 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.

The Personal Safety Survey conducted in 2016 found that, when compared with people without a disability, people with a disability are:

- 1.8 times as likely to have experienced physical and/or sexual violence from a partner in the previous year (2.5% women | 1.1% men).
- 1.7 times as likely to have experienced sexual violence (including assault and threats) since the age of 15, with women more likely to experience sexual violence from a partner/ex-partner and men a stranger (1 in 4 women | 1 in 20 men).
- 1.5 times as likely to have experienced emotional abuse from a partner and more likely to report having experienced emotional abuse from multiple previous partners (1 in 3 women | 1 in 5 men)¹⁶.

As noted above, prevalence data for victim-survivors with disabilities who identify as members of other marginalised groups including victim-survivors from Aboriginal and Torres Strait Islander, culturally and linguistically diverse and LGBTIQ+ communities is very limited. Below is a summary of some recent research and data that has emerged in relation to the co-occurrence of disability and family violence in these communities:

- Recent research undertaken by Equality Australia and Drummond Street found that for “LGBTIQ+ survey respondents who had a disability or chronic health condition were 1.9 times more likely than those who did not to be at risk of domestic and family violence”¹⁷.
- Research conducted during the initial stages of the COVID-19 pandemic found that Aboriginal and Torres Strait Islander women with a restrictive long-term health condition were more likely to experience physical or sexual violence or coercive control, the onset of these types of violence and the escalation of physical or sexual violence than non-indigenous women with a restrictive long-term health condition¹⁸; and
- Women from culturally and linguistically diverse backgrounds with a restrictive long-term health condition were more likely to experience physical or sexual violence or coercive control and the onset of physical or sexual violence or coercive control than women from English-speaking backgrounds with a restrictive long-term health condition¹⁹.

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 statistics²⁰.

Given the prevalence of family violence among people with disabilities, there is a high likelihood that many NDIS participants will be victim-survivors of family violence. In order to ensure the safety of

¹⁶ AIHW. (2019). op. cit.

¹⁷ Madeline Gibson, Ghassan Kasssieh, Alic Lloyd and Beth McCann (2020). *There's No Safe Place At Home: Domestic and family violence affecting LGBTIQ+ people*. Equality Australia: Sydney and Melbourne, and the Centre for Family Research and Evaluation, Drummond Street Services: Melbourne. <<https://equalityaustralia.org.au/resources/dvreport/>>

¹⁸ Boxall, H., Moran, A. and Brown, R. (2021). *Experiences of domestic violence among women with restrictive long-term health conditions*. Australian Institute of Criminology.

¹⁹ ibid

²⁰ 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”.

victim-survivors is prioritised, a family violence and trauma-informed lens must be consistently applied across the disability service system, including NDIS services.

Response to terms of reference

This section responds to item (b) of the Terms of Reference.

- b. The interfaces of NDIS service provision with other non-NDIS services provided by the States, Territories and the Commonwealth, particularly aged care, health, education and justice services.**

As outlined above, this submission focuses on the interface between NDIS services and specialist family violence services. The interface between these two service systems is complex and dynamic as a result of the roll-out of the NDIS which has created specific challenges and barriers for victim-survivors of family violence in accessing the services and supports they need. Whilst noting that the NDIS has also had many positive impacts and outcomes, it is only through examining current issues and concerns that we can build a better and safer response for victim-survivors of family violence.

To examine these concerns, this section will address siloed service systems and the resultant 'crisis response gap', inconsistencies in the way the NDIS responds to family violence, and the lack of prominence given to family violence in NDIS principles and guidelines, along with 12 recommendations to improve the safety and quality of response to victim-survivors with disabilities.

Siloed service systems and the 'crisis response gap'

Siloed service systems

Victim-survivors of family violence with disabilities may have support needs that require them "to navigate multiple service systems"²¹ (i.e. disability, family violence, housing, justice, health systems etc). This is primarily due to the "majority of services [being] funded to address a particular issue or concern"²² which leads to 'siloed' service responses. Unfortunately, individuals with multiple support needs that span numerous service systems are often labelled as 'complex clients' or 'clients with complex needs' which can result in excuses or justifications being made that a client's support needs cannot be met by services because their needs are too complex. As noted by Maher et al. (2018), "knowledge silos and assumptions made about the needs of victim/survivors with disability as well

²¹ Robinson, S., Valentine, K., Newton, B. J., Smyth, C., & Parmenter, N. (2020). *Violence prevention and early intervention for mothers and children with disability: Building promising practice* (Research report, 16/2020). Sydney: ANROWS. p1: mothers interviewed in this study had difficulty accessing services they were entitled to, and had to navigate multiple service systems" <
<https://www.anrows.org.au/project/mothers-and-children-with-disability-using-early-intervention-services-identifying-and-sharing-promising-practice/>>

²² Salter, M., Conroy, E., Dragiewicz, M., Burke, J., Ussher, J., Middleton, W., Vilenica, S., Martin Monzon, B., & Noack-Lundberg, K. (2020). *"A deep wound under my heart": Constructions of complex trauma and implications for women's wellbeing and safety from violence* (Research Report, 12/2020). Sydney: ANROWS. p8

as a lack of understanding about referral pathways prevent women from accessing the support services they require”²³.

In framing disability within the Social Model of disability we contend that the reason why victim-survivors of family violence with disabilities often face insurmountable barriers to accessing the support they require lies in the complexity of structures, systems and services rather than in the complexity of an individual’s support needs. This systemic complexity often manifests at the interface between different service systems and is exacerbated by siloed service responses which result in fragmentation and create additional access barriers. This presents critical safety risks for victim-survivors of family violence with disabilities and results in responsibility for navigating extremely complex systems resting with an individual rather than the systems that create the complexity²⁴.

Given the evidence that clearly shows that people with disabilities are at increased risk of experiencing family violence and when they do it is more frequent and severe, it is critical that the NDIS and specialist family violence services provide a coordinated continuum of support to victim-survivors to manage family violence risk and address safety concerns and disability support needs. If these two systems do not provide a coordinated response, the risk to victim-survivors with disabilities is great and can result in them:

- falling through the service gaps created by siloed service responses,
- having to navigate confusing and complicated service systems on their own,
- having to undergo numerous assessments and retell their stories which can result in re-traumatisation (also known as ‘secondary victimisation’), and
- being exposed to further family violence from the perpetrator as it can present perpetrators with opportunities to exploit any gaps to perpetrate further violence and abuse.

Although victim-survivors of family violence with disabilities experience higher levels of violence than those without disabilities, they are “under-represented as users of family violence, sexual assault, counselling and victim support services”²⁵. This underrepresentation is due, in part, to barriers to reporting and disclosing family violence but is also due to issues/challenges that exist at the interface of the family violence and disability service systems. This results in victim-survivors with disability not being able to access services, referrals not being made between the two systems and consequently, the two service systems not providing a coordinated and collaborative response to victim-survivors.

As noted in recent research conducted by ANROWS into violence and early intervention for mothers and children with disability, “as recommendations are developed and implemented from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability (2019-2022), careful attention should be paid to bridging existing gaps between policies, strategies, funding

²³ Maher et al (2018) cited in ANROWS (2020). *Working across sectors to meet the needs of clients experiencing domestic and family violence*. (ANROWS Insights, 05/2020). Sydney. p8

²⁴ Australia’s National Research Organisation for Women’s Safety. (2020). *Violence prevention and early intervention for mothers and children with disability: Building promising practice: Key findings and future directions* (Research to policy and practice, 16/2020). Sydney: ANROWS; Salter et al. (2020). Op cit.

²⁵ DVRCV & WDV. 2018. *Working with women with disabilities: Tip Sheet*. http://www.dvrcv.org.au/sites/default/files/Advocate_201808_p15_Working%20with%20women%20with%20disabilities%202.pdf.

arrangements and services that address DFV and those that address disability”²⁶. To bridge the existing gaps, long-term cross-sector capacity building and high-level leadership and collaboration across State and Federal government departments is required.

The ‘crisis response gap’

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. This may include situations where they:

- Need to relocate to a refuge in another area because it is too dangerous for them to stay near the perpetrator.
- Have been dependent on the perpetrator for care and the perpetrator is removed from the home by the police and they are left in the home on their own without support.
- May have been told by Child Protection that if they do not relocate/leave the perpetrator their children may be removed.
- Must attend court soon after a family violence incident because the police have applied for a Family Violence Intervention Order/Family Violence Safety Notice²⁷.

Consequently, the family violence service system has been established to be responsive to crisis to ensure that a victim-survivor’s immediate support and safety needs are met. Within funding and resource limitations, a specialist family violence service can provide crisis accommodation/refuge, brokerage, risk assessment and management and safety planning, immediately at the point of crisis to mitigate and manage risk.

In comparison, the NDIS was not established or intended to provide a crisis response and consequently is not agile or flexible enough to immediately meet the needs of a victim-survivor of family violence at a time of crisis. The legislated timeframes for determining a participant’s eligibility for the NDIS (21 days²⁸) or conducting an unscheduled review of a participant’s existing plan (14 days to decide whether to conduct a review plus time for the review to be completed²⁹) are inadequate to respond to changes in a victim-survivors disability support needs resulting from a family violence crisis. Whilst there are provisions in the NDIS Operational Guidelines for reducing the timeframe for determining eligibility if an application is deemed ‘urgent’, the definition of ‘urgent’ is not well-defined, ‘family violence’ is not listed as an ‘urgent circumstance’ and by using the word ‘may’ rather than ‘must’ in Section 4.11 of the Access to the NDIS Operational Guideline it arguably does not compel decision makers to make decisions sooner³⁰.

There is also no clear process 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

²⁶ Australia’s National Research Organisation for Women’s Safety. (2020). Violence prevention and early intervention for mothers and children with disability: Building promising practice: Key findings and future directions (Research to policy and practice, 16/2020). Sydney: ANROWS. p1.

²⁷ See Magistrate’s Court of Victoria for more information on Family Violence Intervention Orders: <https://www.mcv.vic.gov.au/family-matters/family-violence-intervention-orders-fvio>

²⁸ *National Disability Insurance Scheme Act 2013* (Cwlth) s20 <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/ndisa2013341/s20.html>

²⁹ *Ibid.* s48(2)

³⁰ *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://www.ndis.gov.au/about-us/operational-guidelines/access-ndis-operational-guideline/access-ndis-operational-guideline-general-matters-relating-access-requests#4.8>>

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 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 crisis response in the current NDIS framework is problematic, challenging and potentially compromises safety for victim-survivors as at the time they seek help from the service system they need an immediate crisis response to reduce the risk they are experiencing and to enhance their safety. Currently, the specialist family violence service system must fill the crisis response gap and meet a victim-survivor's family violence *and* disability support needs until the disability service system can respond.

In Victoria, the Disability Family Violence Crisis Response Initiative (DFVCRI)³¹ provides support to a victim-survivor with disabilities at times of crisis. This initiative fills an important gap for victim-survivors with disabilities because the funds can be distributed quickly and flexibly at short notice (at times within 24-hours) to pay for disability support workers, equipment, accessible transport etc. This enables victim-survivors with disabilities to access disability supports when the connection to support workers has been lost as a result of fleeing family violence. Although the DFVCRI is funded until 2024, we note that the DFVCRI cannot cover the period of time it may take for an NDIS plan to be approved and/or reviewed. Whilst the DFVCRI is a vital and crucial support for Victorian victim-survivors with disabilities who experience family violence it cannot alone address the 'gap' that exists at a 'systemic' level due to the absence of a 'crisis' response in the current NDIS framework, and for which there remains an absence of immediate, 'crisis gap' responses in other States and Territories. Further, if a victim-survivor does not engage with the family violence service system or does not know about the DFVCRI, the loss of disability supports is a huge barrier to victim-survivors leaving. It is therefore important that the NDIS recognises itself as a service that responds to victim-survivors of family violence and adopts family violence crisis intervention approaches, as it may be the first and only support for victim-survivors.

For victim-survivors of family violence with disabilities there is a pressing need to address the "crisis response" period so that services can respond to a victim-survivors support and safety needs quickly. The time it takes for an NDIS plan to be approved/reviewed must not act as a barrier to a victim-survivor escaping family violence and a victim-survivor must never have to make the impossible choice between safety and going back to the perpetrator to access the care/support they need.

Recommendations

Recommendation 1: Strengthen referral pathways and collaborative service delivery arrangements between specialist family violence services and NDIS funded disability support services.

Recommendation 2: Address the interface between the NDIA, the disability sector, and the family violence service system, in close consultation with both sectors and people with lived experience of disability and family violence to bridge the crisis response gap in the NDIS.

Recommendation 3: Categorise NDIS plans and/or reviews that result from a change in circumstances due to family violence, as urgent requests.

³¹ Disability and family violence crisis response (n.d.) <<https://providers.dhhs.vic.gov.au/disability-and-family-violence-crisis-response>>

Recommendation 4: Establish clear, formalised and transparent processes for prioritising and triaging urgent requests for people with urgent support and safety needs.

Recommendation 5: Reduce the amount of time allowed for the NDIA to process and approve an urgent request (either for a new plan or an unscheduled plan review) that result from a victim-survivor experiencing family violence.

Recommendation 6: Fund, either directly or via State and Territory governments, an immediate brokerage response (for example, the Disability Family Violence Crisis Response Initiative) that can address the ‘crisis response gap’.

Inconsistencies in responses to family violence

It is important that regardless of where victim-survivors enter the service system, they can access safe and consistent responses.

Improving the understanding of family violence in disability services

As noted above, victim-survivors with disabilities are at higher risk of experiencing family violence and experience family violence more intensely and frequently than other people³². Given the prevalence and increased risk of family violence against people with disabilities, it is essential that services providing responses to people with disabilities understand the additional types of family violence experienced by victim-survivors with disabilities (referred to as ‘disability-based abuse³³’) and the **unique nature and dynamics of family violence risk**. Especially since these services may present the only opportunity victim-survivors with disabilities have to seek support for family violence. Identifying and assessing family violence risk at every opportunity will promote consistent, safe and nuanced responses for victim-survivors.

In Victoria, the *Family Violence Protection Act 2008* provides a broad definition for family violence. Furthermore, the Family Violence Multi-Agency Risk Assessment and Management (MARAM)³⁴ framework is crucial in creating a shared understanding of family violence across different service systems to ensure that no matter where a victim-survivor enters the service system, they receive a consistent, safe and family violence informed response. The MARAM framework also emphasises that it is everybody’s responsibility to identify and respond to family violence within the boundaries and responsibilities of their role and establishes clear referral pathways from mainstream services to specialist family violence services. Over time there will be a legislated requirement³⁵ for

³² 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.; Family Safety Victoria (2019). op. cit.

³³ For example, reproductive control, forced or withheld medical treatment or administration of inappropriate medication, forced isolation or restraint, withholding medication or aids, limiting access to support services, threats to withdraw care, denial of impairments and abuse of enduring Power of Attorney. As per Healey, L. (2013). *Voices Against Violence: Paper 2. 2: Current Issues in Understanding and Responding to Violence Against Women with Disabilities*. Women with Disabilities Victoria, Office of the Public Advocate and Domestic Violence Resource Centre Victoria. pp38-40; Frohmader et al. 2015 cited in ALHW (2019). op. cit.; Maher et al (2018). Maher et al (2018) cited in ANROWS (2020). *Working across sectors to meet the needs of clients experiencing domestic and family violence*. (ANROWS Insights, 05/2020). Sydney; Backhouse, C., & Toivonen, C. (2018). op. cit.

³⁴ See State Government Victoria (2022). *Family Violence Multi-Agency Risk Assessment and Management Framework*: <https://www.vic.gov.au/family-violence-multi-agency-risk-assessment-and-management>

³⁵ *Family Violence Protection Act* (2008). Part 11-Family Violence Risk Assessment and Risk Management Framework. s190: “A framework organisation that provides services relevant to family violence risk assessment and family violence risk management must ensure that its relevant policies, procedures, practice guidance and tools align with the Framework”.

prescribed organisations to align their policies, procedures, practice guidance and tools to MARAM (which will contribute to developing a shared understanding of family violence across different service systems) including requirements for workforces to meet certain levels of family violence knowledge and capability³⁶. In time, this requirement will apply to State-funded disability services, but our understanding is that this requirement does not apply to Federally funded NDIS services, thereby creating a discrepancy between the two.

The absence of a consistent national definition of family violence and the NDIA Operational Guidelines not defining family violence presents a major concern, as currently there is a lack of consistency in the way family violence is conceptualised and understood by the family violence and disability service systems. This can create barriers to the two systems working collaboratively and can impact on referrals being made between the two service systems. For victim-survivors who do access both service systems, the lack of a shared understanding of family violence across the two service systems can result in them receiving an inconsistent response and not being referred to appropriate services. For example,

- If a disability support worker does not have an understanding of family violence, they may not identify family violence or family violence risk factors that mean that a victim-survivor is at imminent risk of harm and make appropriate referrals to specialist family violence services.
- If a disability support worker is unable to recognise patterns of coercive and controlling behaviour, they may not provide the victim-survivor with an opportunity to meet with the NDIS separate to their perpetrator, preventing potential disclosures of family violence.
- If an NDIA decision maker does not have an understanding of family violence and risk, they may not assess a plan review request from a victim-survivor as 'urgent'.

While we do not hold statistics on the knowledge of family violence held by disability services nationally, the *Victorian Census of Workforces that Intersect with Family Violence*³⁷ found that disability services were screening for family violence risk 14% of the time, identifying family violence 9% of the time, and completing a family violence brief or intermediate risk assessment 7% of the time³⁸, despite the high prevalence of family violence perpetrated against people with disabilities.

If the disability system cannot identify and respond to family violence it may result in referrals not being made to specialist family violence services who can comprehensively assess risk and develop safety plans with victim-survivors. Further, without an understanding of the nature and dynamics of family violence perpetrated against victim-survivors with disabilities, it may result in disability services not acting urgently and therefore leaving the victim-survivor in an unsafe, dependent relationship with the perpetrator. It could also result in disability service providers unintentionally colluding with perpetrators (i.e. by assuming the perpetrator is a support and/or believing the perpetrator and not the victim-survivor) which can lead to increased risk for victim-survivors and result in them not getting the support they need to be safe.

Further, it is critical that trauma-informed practices are implemented across the disability system to ensure that if a victim-survivor decides to seek help they receive a safe response that identifies and

³⁶ Family Safety Victoria (2017). *Responding to Family Violence Capability Framework*. Victorian Government.

³⁷ <https://www.vic.gov.au/family-violence-workforce-census>

³⁸ Family Safety Victoria (2021). *2019-20 Census of Workforces that Intersect with Family Violence*. Victorian Government.

acknowledges the trauma they have experienced and recognises the impact trauma has on them and the support they require to engage with services.

Improving specialist family violence services responses to victim-survivors with a disability

It is also important that victim-survivors with disabilities feel safe and confident to disclose their disability and other support needs when they seek help from specialist family violence services. This requires family violence practitioners to:

- be skilled in asking questions about disability,
- have an awareness of disability-based abuse and how family violence risk factors may present for people with disabilities,
- have a detailed understanding of the ways a perpetrator can use a disability against a victim-survivor, and
- have an understanding of barriers victim-survivors face in trying to access support and safety.

Having these skills will allow specialist family violence services to respond appropriately to the disability and safety needs of victim-survivors with disability, ensure appropriate supports are put in place for the victim-survivor to engage with the service and ensure that they are referred to appropriate disability supports and services.

Following the introduction of the NDIS, family violence practitioners now need to have additional skills and knowledge to support victim-survivors, which requires:

- an in-depth understanding of NDIS guidelines and processes,
- the ability to recognise risks and protective factors in NDIS plans and support arrangements, and
- the capacity to provide guidance and support to victim-survivors on how to increase family violence safety within the NDIS.

Long-term, sector-wide capability building is required to ensure that the unique risks and needs of victim-survivors with disabilities remain at the forefront of responses provided by specialist family violence services. This is particularly important given that the service system landscape is continuing to evolve as the NDIS is refined and adapted and family violence practitioners need ongoing support to navigate what is often a complex service system environment.

Recommendations

For the disability service system to be safe for victim-survivors it is crucial that the workforce is family violence and trauma informed and disability organisations/services have systems and structures in place to support ongoing capacity building. This is consistent with the two recommendations made by the Victorian Royal Commission into Family Violence which related to training and upskilling disability services workers in identifying and responding to family violence³⁹ to ensure they have a

³⁹ State of Victoria (2014-16). *Royal Commission into Family Violence: Summary and recommendations*. op. cit. p91. Recs 172 and 173: We note that in response to Recommendation 173 of the RCFV an 'identifying and Responding to Family Violence Risk Unit' has been developed and is available in Victoria but this does not seem to have been incorporated into the National curriculum for community services training packages relevant to the NDIS.

contemporary and comprehensive understanding of family violence. Specific initiatives that may address the lack of a shared understanding of family violence include:

Recommendation 7: Mandatory training (equivalent to the requirements for Tier 3 workforces under the *Victorian Responding to Family Violence Capability Framework*⁴⁰) in identifying and responding to family violence for client-facing NDIA staff (including NDIA planners and those with decision making delegation) and disability service workers funded by the NDIS.

Recommendation 8: Fund workforce development and ongoing cross-sector capacity building to ensure victim-survivors receive a consistent and safe response regardless of where they enter the service system and to strengthen referral pathways between the two service systems.

Recommendation 9: Adequately fund the NDIS model so the workforce can attend training and capacity building activities. This would include providing additional funding so casual and contracted NDIS staff are paid for the time they attend training.

Recommendation 9: Federally funded specialist family violence services (such as 1800 RESPECT) receive sustainable funding, inclusive of resources needed to build the capacity of these services in responding to victim-survivors with disabilities.

Lack of prominence given to family violence in NDIS principles and guidelines

The prominence, recognition and priority given to family violence in NDIS principles and guidelines does not reflect the increased prevalence of family violence among people with disabilities and the increased risk victim-survivors with disabilities experience. This creates challenges and barriers at the interface of the two service systems, particularly in access to the NDIS for victim-survivors with disabilities and collaborative practice and referrals between the two service systems (outlined above).

This absence of prioritisation of family violence within the NDIS places further strain on the specialist family violence service system to respond and creates barriers to collaborative practice.

Examples of the lack of prominence given to family violence principles, processes and guidelines include:

- The *Principles to Determine the Responsibilities of the NDIS and other Service Systems*⁴¹ do not list the family violence service system as a separate service system. Rather, family violence is only mentioned in the “Child Protection and Family Support” section. By including family violence in this section, it potentially excludes victim-survivors who do not have children and/or do not engage with child protection or family support services, diminishes the importance of disability and family violence services working together and makes it difficult to establish how these principles apply to how the family violence and NDIS work together to improve responses to victim-survivors with disabilities.

⁴⁰ Family Safety Victoria (2017). Op cit.

⁴¹ Principles to determine the responsibilities of the NDIS and other service systems (2015).

https://www.dss.gov.au/sites/default/files/documents/09_2021/ndis-principles-determine-responsibilities-ndis-and-other-service-1.pdf

- In the *NDIS Operational Guidelines*, ‘experiencing family violence’ is not recognised as ‘urgent’ in relation to accessing a new NDIS plan or when requesting an unscheduled plan review (see discussion above).
- The lack of a formalised and publicly available definition of family violence in NDIS guidelines.

To adequately address the significant risk that victim-survivors of family violence experience and the increased prevalence of family violence experienced by people with disabilities it is crucial that greater recognition and prominence of family violence risk and safety is included in NDIS principles and guidelines. With all professionals in the disability system being trained in identifying and responding to family violence (see above), and family violence being given greater prominence in NDIS principles and guidelines, there is greater opportunity for timely, consistent, safe and appropriate responses for victim-survivors of family violence.

Recommendations

Recommendation 10: Include the family violence service system as a discrete service system in the *Principles to Determine the Responsibilities of the NDIS and other Service Systems*.⁴²

Recommendation 11: List family violence as an ‘urgent’ circumstance in the ‘*Access to the NDIS*’ and ‘*Planning*’ sections of the NDIS Operational Guidelines as this would be of great benefit to victim-survivors of family violence with disabilities in facilitating quicker access to the support and services they need.

Recommendation 12: Publish a formal definition of family violence to be used by NDIS funded disability support services, based on the definition of family violence in the *Family Violence Protection Act 2008*⁴³.

⁴² *ibid*

⁴³ *Family Violence Protection Act 2008 (Vic) s.5*