



**Melbourne  
Disability  
Institute**

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# Where is the risk and what is the risk?

The visiting remit of Community Visitor Schemes within the NDIS and OPCAT landscapes in safeguarding the rights of Australians with disability

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## Contents

Acknowledgements.....	5
Disclosures .....	5
Glossary.....	5
Abbreviations .....	6
Executive Summary .....	7
What Did the Study Involve?.....	8
What Did the Study Find? .....	8
Recommendations .....	13
Structural Recommendations .....	13
Practical Application Recommendations.....	14
Background .....	17
Community Visitor Schemes .....	17
The Impact of the NDIS on Community Visitor Schemes.....	17
International Human Rights Law: <i>CRPD</i> and <i>OPCAT</i> .....	18
Different State and Territory Approaches to Community Visiting .....	19
South Australia .....	19
Victoria .....	21
Queensland .....	21
New South Wales .....	22
Methodology.....	24
Interview Participants table .....	25
Findings/Analysis.....	26
Residents .....	26
Community Visitor Scheme Staff .....	30
Overall Positioning of Schemes in National Service Landscape — National Coordination / State Autonomy.....	30
Visitability Legislation – Existing Legislative Parameters Regarding Visitability across States .....	33
Expanding Jurisdiction of all Community Visitor Schemes to Include Australian Disability Enterprises (ADE) (Supported Employment Sites) and Day Services? .....	36
Lack of Funding and Resources for All Community Visitor Schemes .....	37
Triage Assessment — Who Decides Risk or Visible Sites? .....	38
Visitable People vs Visitable Sites .....	40
Increasing complexity of Community Visitor role under the NDIS .....	41
Announced and unannounced visits.....	43
Feasibility of opt-out and opt-in programs from Community Visitor visits.....	46

In-home visits – Ann-Marie Smith guidelines .....	50
Volunteerism and paid workers - comparisons and contrasts .....	52
New providers in NDIS .....	53
Preventative model versus responsive complaints .....	55
Information sharing between the Community Visitor schemes and the NDIS Quality and Safeguarding Commission.....	57
Area Experts/Academics .....	58
National consistency .....	60
Opt-in / Opt-out .....	60
A call for more preventative safeguarding in addition to Community Visitor schemes .....	61
Optional Protocol to the Convention Against Torture (OPCAT) .....	63
Federal level recommendations.....	63
State level recommendations .....	63
Voices from the field on OPCAT and the NPM .....	64
Area Experts/Academics .....	64
Community Visitor staff .....	65
Defining a visible site for <i>OPCAT</i> .....	67
Discussion .....	68
Conclusion.....	72
References.....	73

## Glossary

Terminology concerning the Community Visitor schemes and the National Disability Insurance Scheme can be technical and complex. The following key terms will be used throughout the report.

### **Australian Disability Enterprises**

According to the Australian Department of Social Services, 'Australian Disability Enterprises' (ADEs) provide 'supported employment opportunities to people with moderate to severe disability across Australia'.<sup>1</sup>

### **Specialist Disability Accommodation**

Specialist Disability Accommodation ('SDA') is accommodation for people who need specialist housing arrangements. People living in SDA tend to have very high support needs and are required to meet specific eligibility criteria to receive SDA funding. SDA houses are specially designed or modified to suit those support needs. SDA refers to the residence itself, not the support a person receives in it, hence why SDA is sometimes referred to as the 'bricks and mortar'. Importantly, the person receives funding for SDA; the funding is not attached to a specific building. This gives people more choice and control over where they choose to live and thus spend SDA funding.

### **Supported Independent Living**

Supported Independent Living ('SIL') refers to the paid personal support, which is commonly used in shared living arrangements like group homes or an individual's own home. SIL funding does not cover things like rent or other day-to-day expenses like groceries. A SIL service provider supplies the workers to support people with daily living tasks either in a group home or their own home. The focus is on developing participants' skills so they can live as independently as possible. SIL may be provided within SDA homes or in non-SDA homes.

### **Individualised Living Options**

An Individualised Living Option ('ILO') is a kind of support that entails at least six hours of support per day and up to 24 hours of daily support. ILO refers to support for a person to live the way that suits them. ILO funding does not pay for a house. ILO funding could be used to:

- Explore different ways to live — with a host or housemate; or
- Design individual supports to help a person live the way she or he chooses.

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<sup>1</sup> Supported Employment | Department of Social Services, Australian Government (dss.gov.au) <<https://www.dss.gov.au/disability-and-carers-programs-services-for-people-with-disability/supported-employment>>

## Abbreviations

ABH — Assisted boarding house

ADE — Australian disability enterprises (supported employment)

ADLS — Activities of Daily Living

CALD - Culturally and linguistically diverse

CRPD — Convention on the Rights of Persons with Disabilities

CV – Community Visitor/Official Community Visitor

CVS – Community Visitor Schemes

DHS DAS — Department of Human Services Disability Accommodation Service

FTE – Full time equivalent

NDIA — National Disability Insurance Agency

NDIS — National Disability Insurance Scheme

NGO – Non-Government Organisation

NPM — National Preventative Mechanism

NSW – New South Wales

OPA — Office of the Public Advocate

OPG – Office of the Public Guardian

OPCAT — Optional Protocol to the Convention against Torture

QLD - Queensland

SA – South Australia

SRS — Supported residential service

UN – United Nations

VIC - Victoria

## Executive Summary

Upholding the human rights of disabled people in ‘closed’ and ‘semi-closed’ care settings is generally agreed to require independent monitoring and reporting. Community Visitor schemes are a key mechanism in this independent process. The unique powers of Community Visitors to undertake unannounced, onsite visits to places such as Specialist Disability Accommodation (‘SDA’) (often referred to as group homes), involuntary psychiatric facilities, and supported residential services (‘SRS’) help monitor people’s safety, well-being, living conditions, and the quality of services they are receiving. Community Visitor schemes have been operating in Australian states and territories (except Western Australia and Tasmania) for over 30 years.

More recently, Community Visitor programs have been significantly impacted by the National Disability Insurance Scheme (‘NDIS’). The NDIS was established in 2013 but only fully rolled out across Australia in 2020. The NDIS primarily comprises of individualised packages of support provided to eligible people with disability. Participants then ‘purchase’ services from an almost fully privatised disability service sector. The new privatised approach has seen most governments move out of direct service provision. Yet state-run services were the main sites visited by Community Visitors in the past. Instead, the new NDIS service landscape comprises many private or non-government organisation (‘NGO’) service providers that are either registered or unregistered with the NDIS (with unregistered providers including individual support workers directly employed by NDIS participants).

This report seeks to examine the role of Community Visitors in being able to undertake adequate safeguarding in the diversified and privatised service landscape of the NDIS. Although there has been ambiguity about what constitutes a ‘closed setting’ for the purposes of Community Visitors, which has pre-dated the NDIS, the NDIS has intensified this ambiguity. Ambiguity centres on what is considered a ‘visitable site’. This includes ambiguity about whether Community Visitors have the statutory authority to visit what we describe in this report as ‘grey-zone’ sites outside of traditional sites.

Grey-zone sites include controlled accommodations in which SIL providers are landlords of the accommodation setting while at the same time providing personal and community support to residents. Grey-zone sites also include Australian Disability Enterprises (‘ADE’) and day services. These sites are all examples of service settings in which it is unclear what role, if any, Community Visitors should play in rights-based monitoring, including whether Community Visitors are (or ought to be authorised) to visit them. In all these settings, the potential remains for people with disabilities to face excessive control or coercion, and even outright violence and abuse, as the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (‘Disability Royal Commission’) has made clear in its recent Report (2023).

To complicate matters, in 2017, Australia ratified the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (‘OPCAT’). OPCAT has implications for the disability service settings monitored by Community Visitor. Under OPCAT, Australia is obliged to create a reporting framework to prevent torture and other cruel, inhuman, or degrading treatment or punishment in closed settings. For Australia, this requires a federal model of ‘National Preventive Mechanisms’ (‘NPM’). NPMs are independent visiting bodies established at the domestic level, composed of one or more bodies, for the prevention of torture and other cruel, inhuman, or degrading treatment or punishment (OPCAT, Article 3). An NPM has the potential to overlap with Community Visitor schemes in monitoring certain disability service settings. Hence, as well as considering the impact of the NDIS, this report takes the opportunity to consider the potential role of Community Visitors in Australia’s OPCAT monitoring obligations.



## What Did the Study Involve?

The project focused on Community Visitor schemes in four jurisdictions: Victoria ('VIC'), New South Wales ('NSW'), Queensland ('QLD'), and South Australia ('SA'). It examined:

1. The Community Visitors' powers of inspection for site visits within and outside of the privatised and diversified service provision landscape of the NDIS, including the extent to which the definition of 'visitable sites' and inspection approaches differ between jurisdictions;
2. The apparent strengths and limitations of the various Community Visitor schemes in relation to inspection powers under the NDIS;
3. The extent to which harmonisation between Community Visitor schemes is needed with regards to defining 'visitable sites' and inspection approaches, including asking how leading practices can be evaluated and applied to other jurisdictions; and
4. The implications for the Community Visitor schemes of the *OPCAT* reporting frameworks under Australia's NPM. Questions included: do *OPCAT* reporting obligations require new approaches? Where might NPM monitoring overlap with the Community Visitor scheme and how should this overlap be managed?

In addition to reviewing scholarly and 'grey literature' related to the *Convention on the Rights of Persons with Disabilities ('CRPD')*, *OPCAT*, NDIS and Community Visitor schemes, we conducted 20 interviews between May and August 2023. The 20 interviewees comprised of:

- Four people with disabilities who live in 'grey-zone sites' who were asked about their experiences of feeling safe at home and connections to safeguarding supports (and referred to throughout the report as '**resident interviewees**');
- Twelve executive staff of Community Visitor schemes interviewed across four jurisdictions (VIC, NSW, QLD, SA) (referred to throughout the report as '**Community Visitor interviewees**'); and
- Four academic and legal experts whose expertise covers Community Visitor schemes, the NDIS, and *OPCAT* (referred to as '**academic interviewees**').

## What Did the Study Find?

All four **resident interviewees** expressed concerns about safety at home, to varying degrees. They described informal and formal means to protect their own safety but tended to be unclear on formal pathways to find support related to safety and their rights more generally.

Experiences recounted by this group included abusive staff and personal strategies to ensure safety when meeting staff for the first time, such as meeting disability support workers in public places in the first instance. Only one interviewee knew of the NDIS Quality and Safeguarding Commission and its complaints mechanism, and none of the four interviewees were aware of their state's Community Visitor schemes. This included one resident who had resided at a group house, which would have been a visitable site by Community Visitors at the time, for several years.

**Community Visitor interviewees** raised serious concern that new accommodation sites under the NDIS, particularly where SIL providers control the accommodation of participants as well as providing personal and community supports, exposed some people with disabilities to coercion, abuse or exploitation due to the power differentials inherent to these settings. Many interviewees reported serious rights concerns emerging within some of these SIL provider accommodation-controlled sites, such as financial exploitation, participants being coerced into poor and isolated accommodation and

‘client capture’ whereby the one SIL provider took control of a participant’s plan and sought to use their networks to provide all of a participant's services.

Most Community Visitor interviewees communicated that they were open visiting these new grey-zone sites (if they became authorised as ‘visitable sites’) and understood the emerging risks of these settings for participants. However, there was an almost uniform concern about existing resource problems.

A picture emerged of serious underfunding that compromised the capacity of Community Visitor schemes to undertake visits even to *existing* visitable sites. With the increase in numbers of NDIS participants in SDAs (up 16% annually over the last three years (NDIS, 2023:48)) interviewees reported that they were only able to visit approximately 50% of their existing visitable sites. This increase in scale of people living in risky service settings, interviewees noted, had not been accompanied by an increase in funding for Community Visitor schemes. Funding, interviewees indicated, would be essential for any expansion of visitable sites.

Yet even assessing resourcing needs was made difficult by a lack of information. Approximately 23,000 NDIS participants live in SDAs across Australia (NDIS, 2023). This indicates that a large cohort of people with physical, intellectual, or cognitive impairment still live in institutional or ‘closed-environment’ accommodation settings that are dependent on staff, and that these residents may have extremely limited capacity to make an independent complaint (WestWood Spice, 2018, 42). Yet there was no database available to the Community Visitor schemes of where these closed settings were. Some Community Visitors praised QLD for introducing a positive obligation whereby all visitable sites such as SDA/group homes and SIL providers must notify the state’s safeguarding authority – the Office of Public Guardian (‘OPG’) – of their basic organisational details before they begin providing services (including both registered and unregistered service providers).

Lack of information was also important because under-resourcing had reportedly led to a sort of ad hoc triaging by Community Visitors, to prioritise visits within available resources. The SA Community Visitors spoke of an ‘informal visiting assessment criteria’ CV6 based firstly on where a visit was overdue, but secondly, based on client complexity. However, it was generally agreed among interviewees that without information about new service configurations, it was difficult to confidently triage visits to those most in need. One insightful comment was that such triaging can only occur based on information at hand, yet Community Visitors had limited and sometimes very limited information about many NDIS-funded service settings.

Another issue discussed by interviewees was the increasing reports of abuse and violence occurring in ADEs and day service settings. Community Visitors discussed whether there should be an expansion of visitable sites to ADEs and day service settings. Community Visitors again were in general in agreement that this was probably an area of safeguarding where improvement was needed. This became apparent with the TV airing of the NDIS Four Corners exposé in September 2023 that highlighted shocking abuse at an autism day service setting in Melbourne under the guise of behavioural therapy. The Four Corners program demonstrated issues with the complaints-based scheme where it required parents and support workers to blow the whistle on the provider to get the service provider deregistered, but in the meantime, 18 teenagers endured violence and abuse at the day service (ABC, 2023). Community Visitors highlighted that you would need to determine what makes an environment or a service type risky to support the expansion of visits into these settings.

Some interviewees suggested to provide safeguarding in the new service landscape that there was potential benefit in changing the focus from visitable sites to ‘visitable people’. This is reflected in the

NSW approach, in which the scheme broadened its visiting definition to visit any person with a disability that receives up to 20 hours of support where that individual is dependent on services in their lifestyle. As such, NSW is not constrained by the legislative scope of visitation being attached to a specific place or setting, or strict legal definition of a visitable site. In addition, this works around the distinctive service arrangements between NDIS and non-NDIS participants.

However, some Community Visitor interviewees noted that the group house setting is usually a significant risk factor, and the dynamics and interactions between residents-and-residents and residents-and-staff is usually what creates the risk rather than the individual person. Changing the focus to visitable people, not visitable service, however, did seem in some ways more conducive to safeguarding people in newer 'grey-zone' settings, which aligned with the individualised approach of the NDIS more generally.

The focus on individuals rather than service settings, also drew interviewees to the question of visiting people in their private homes, where an individual was receiving substantial support to live independently. This was discussed in light of the torturous manslaughter of Ms Ann-Marie Smith in 2020 in South Australia. Some interviewees reflected on the potential of an in-home visiting arrangement for Community Visitors that was akin to that run in SA under the Guardianship scheme. This, they argued, could apply to a unique and small number of individuals in complex and high-risk in-home settings, though settling on risk indicators remained an open question. There were also open questions about how this would work. Would visits need to occur when service providers were on-site? Who would be responsible for following items up on a Community Visitor visit report if the client did not have capacity to do this themselves? The interviewees who discussed this pointed out that all Guardian visits were 'announced visits' out of respect for the fact that the visits were to an individual's home.

There were several differences noted in the operation of different state Community Visitor schemes. One example related to frequency of visits. Many interviewees highlighted that frequent visits were a strength of their safeguarding role and enabled them to establish 'working relationships' with NDIS participants. Yet, other Community Visitors felt it was adequate that visits occurred only yearly. This latter group of Community Visitors viewed visits as offering a 'snapshot' of the living conditions and environment in which a person lived. These Community Visitors had even taken an approach of ceasing to visit certain sites for a period of time, described as 'resting' houses, where they felt risk indicators were low.

Another difference concerned whether visits were announced or unannounced. Interviewees indicated that across the states, approximately half of visits were unannounced. This raised concerns about the preparedness of various service providers when they know a scheduled/announced visit was about to occur and their 'buffing-up' of a home (including increasing workforce numbers) before a visit. The QLD and NSW Community Visitors noted that there were some practical realities in needing to announce visits such as that they often needed to travel large distances for a visit, and wanting to ensure particular clients were at the house on the day of the visit.

Of particular concern to SA Community Visitor interviewees was that the scheme was confined to government-run services, which only comprised around 10% of services, and that they were not authorised to visit not-for-profit or private provider settings (90% of accommodation services).

Despite state and territory differences, all interviewees agreed that states and territories should retain autonomy over their schemes but that all schemes should work towards harmonising policy and guidelines for visiting. Interviewees promoted equity of access to Community Visitors as a safeguard

that should be available for all people with disability across Australia in residential and related settings. There was strong support for the idea of establishing schemes in Western Australia and Tasmania.

Some unexpected themes arose. Many Community Visitor interviewees noted that one complexity brought by the NDIS to the Community Visitor role is that the scheme's absence of case management means that Community Visitors are sometimes being required to act as de facto case managers and support coordinators. This requires Community Visitors to follow up with the variety of service providers for each individual NDIS participant regarding issues with service provision, equipment, allied health services, and so on. Further, Community Visitors noted that support coordination services are not always in the NDIS packages of individuals who appear to have complex needs and live in risky service contexts.

A strong area of contention for Community Visitors was around information sharing between the Community Visitor schemes, the NDIA, and the NDIS Quality and Safeguards Commission. Community Visitors felt that the information sharing frameworks were poor and that the current information-sharing frameworks should be formalised to improve the capacity of all three agencies to provide adequate and complementary safeguarding. It was felt that incorporation of Community Visitor schemes into the NDIA Act so that the schemes were officially recognised as a formal safeguarding mechanism of services in Australia would assist with information sharing.

Regarding *OPCAT* discussions, there was no consensus among Community Visitor interviewees, or in the literature, as to whether it was appropriate or desirable for Community Visitors to undertake *OPCAT* inspections and reporting where there is overlap in the sites monitored by Community Visitors and Australia's NPM. If Community Visitors were to be marshalled for this purpose, there was general agreement that considerable resources would be required, including training and capacity building for each of the Community Visitor schemes. Some Community Visitors questioned if disability settings should in fact be under the NPM *OPCAT*, but most noted that the misuse of restrictive practices in a disability house could and did cross over into the definitions of torture and cruelty. Community Visitors noted that they were in settings where there was use of restrictive practices every day and as such, they had a strong level of expertise and understanding of reporting and what constituted use-misuse of restrictive practices.

Views among the four **academic interviews** provided rich insight into the underlying theories of safeguarding, safety, risk and so on, as well as highlighting controversies in policy and practice. One theme was preventative versus complaints-based mechanisms of safeguarding in disability settings. The Community Visitor scheme is one of two major policy mechanisms for safeguarding people with disability who use funded support services in accommodation settings and homes. The second is the recently (2017) established national NDIS Quality and Safeguards Commission. One criticism of the NDIS Quality and Safeguards Commission raised by some academic interviewees is that, as a complaints mechanism, it is primarily reactive. For the complaint system to operate, a serious incident has to happen, be reported by someone, and then get investigated. A response is then formulated by the NDIS Quality and Safeguards Commission and then the response implemented. In contrast, the strength of the Community Visitor scheme is that it is preventative. Community Visitors are there on the ground, observing and enquiring to help keep things at an acceptable standard before an issue is escalated to a complaint.

Another theme was how participants could achieve meaningful control over their living situation to improve their safety, such as having the power to choose – and importantly, dismiss – disability support workers. Examples of control cited by these interviewees included the capacity to ring an advocate

(despite shortages in the system) or capacity to contact a Community Visitor to organise a visit if needed.

One interviewee spoke of the great ‘wound’ of abuse, violence, neglect and exploitation that people with disabilities continue to face. This interviewee characterised many of the contemporary safeguarding mechanisms (including the Community Visitor schemes) as a ‘band-aid solution’ that was unable to adequately address the high levels of abuse and violence across the sector.

Other themes included ‘restrictive practices’, with varying viewpoints among interviewees: some viewed restrictive practices as inherently abusive, and others a matter to be carefully regulated. One interviewee pointed to high rates of restrictive practices currently being used in closed environments, and noted that it would be difficult for many participants to put in a complaint about abuse (and distinguish abuse from a regulated restrictive practice) when they lived in an environment in which restrictive practices were routinely used—and where visits by Community Visitors were infrequent or non-existent to support them with a complaint. However, interviewees expressed appreciation for the Community Visitor role of overseeing the number of restrictive practices being used in a particular service, which could help escalate concerns to the NDIS Quality and Safeguards Commission if the rates were high. One interviewee highlighted that often a Community Visitor is called to visit a site, rather than the police being called, which a lot of people would prefer, but asked what this then said about the accountability of perpetrators of violence and abuse.

Another interviewee discussed the need for improved human rights literacy, particularly around the *CRPD* and *OPCAT*. They noted that there was work to be done around communication and letting people know that Community Visitors are available, and in a way that is accessible and understandably to all people with disability.

Finally, an interviewee invited us to consider Australia’s obligation to provide a safety net for all people, and to challenge the lack of resourcing to safeguard adults receiving disability services. In the interviewee’s words, “answering a rights-based question with a resource answer stops us from answering the question, to just say ‘where are the resources’, it’s actually just not good enough. Yes, there might be people that are better at advocating for themselves and people that need more oversight than others, but actually, the resources should be there for all regardless” A3.

As a final note in the executive summary, we note that the NDIS Review Final Report is imminent at the time of writing. The NDIS Review will no doubt provide recommendations relevant to the Community Visitor scheme, of which we hope our recommendations here are complementary.

## Recommendations

On the basis of our entire report findings, we make the following recommendations.

### Structural Recommendations

1. **State and territory governments should develop nationally uniform, legislated definitions of visitable sites in the context of adult disability service settings.** There are strong grounds to suggest that this definition should extend to a definition of ‘visitable persons’ (discussed below). This recommendation echoes the Recommendation 11.12 from the Disability Royal Commission Report (2023, vol. 11, p. 16) which called for ‘[n]ationally consistent community visitor schemes’, including in relation to ‘the scope of schemes (who community visitors should visit)’ and a definition of ‘visitable services’.
2. **Australian governments must urgently fund Community Visitor schemes so the safeguarding and monitoring role of Community Visitors can be performed effectively.** The NDIS has seen a 16% increase of participants with SDA supports and a 22% increase in the total number of enrolled SDA dwellings over the past three years alone (NDIS, 2023, p. 48), with no commensurate increase in resources for Community Visitor schemes. Well-resourced Community Visitor schemes will help Australia meet its adult safeguarding obligations under international human rights law, and help prevent the high levels of abuse, violence, neglect, and exploitation of people with disability that were detailed in the recent Disability Royal Commission final report. As per the Disability Royal Commission Report Recommendation 11.12 (c), resourcing must ‘ensure [Community Visitors] [...] [can] conduct frequent visits to individuals who may be at elevated risk of abuse or harm’ (2023, vol. 11, p. 16).
3. **Australian governments should *not* absorb Community Visitor schemes into the NDIS Quality and Safeguarding framework, as some have suggested, even as national consistency should be sought in the role and function of Community Visitor schemes.** There is significant value in retaining the unique arrangements of each state and territory Community Visitor scheme given the frequent need for each scheme to engage with multiple state and territory-based agencies concerned with policing, justice, education, guardianship, and trusteeship.
4. **Australian governments should formalise a federal networked body, such as a ‘Council of Community Visitor Schemes (Disability)’.** Such a body could meet several times per year to develop consistency in the role and function of community visitor schemes, and share information, including safeguarding gaps, guidelines, and visiting procedures.
5. **Western Australia and Tasmania should urgently establish Community Visitor schemes, with each state determining whether they adopt voluntary or paid schemes.** This recommendation echoes the view of the Disability Royal Commission (2023, p. 171, Recommendation 11.12(a)) that ‘[s]tates and territories should urgently implement a community visitors scheme if they do not have one’. Further, **SA should revise its policy concerning visitable sites** to expand its visiting beyond state-funded residential settings, and into the remaining 90% of disability service settings run by not-for-profit and private providers.
6. **State and territory governments should expand visitable sites to include ‘Australian Disability Enterprises’ and day services given the well-established evidence that abuse and violence are occurring in those settings.**

7. **State and territory governments should amend legislation to ensure *all* visitable service providers delivering accommodation-based services, are ‘positively obliged’ to notify the relevant safeguarding authority (for example, Office of the Public Advocate (‘OPA’) or Aged and Disability Commission) of their basic organisational details before they begin delivering services.** Such an obligation presently exists in QLD and applies to both registered and unregistered providers delivering accommodation-based services.
8. **Community Visitor schemes should be formally recognised in the *National Disability Insurance Scheme Act 2013* (Cth) (‘NDIS Act’) as a major component of Australia’s safeguarding framework for people with disability.** This recommendation echoes the Disability Royal Commission Recommendation 11.13 to amend the NDIS Act ‘to formally recognise community visitor schemes as a safeguard for people with disability and provide the authorising environment for information-sharing between the NDIS Quality and Safeguards Commission and CVS’ (see also Recommendation 17 below).
9. **The NDIA and the NDIS Quality and Safeguards Commission must establish an information sharing agreement with Community Visitor schemes.** The NDIS Quality and Safeguards Commission must prioritise complaints made by Community Visitors (and respond to them in a timely manner), such as by implementing an expert complaint tier or expert CV report for escalation. Reporting requirements could include progress reports on individual complaints to avoid situations in which Community Visitors are preparing to visit a site but have no information about the progress of a complaint made during a previous visit.
10. **The Australian Government should fund disability advocacy organisations to undertake preventive safeguarding activities, such as self-advocacy, human rights awareness, supported decision-making, peer support, and community development.** Community Visitor schemes are only one form of safeguarding, and they are only designed for ‘closed’ or ‘semi-closed’ settings, some of which will be ideally phased out in coming years (Disability Royal Commission Report, 2023, vol.7, pp. 34-35). Efforts are needed to promote people with disabilities’ opportunities to live independently, in communities, surrounded by ‘natural’ safeguards that can be enjoyed on an equal basis with others. Advocacy and disabled people’s organisations must be resourced to advocate for better housing options and a transitioned end to various forms of congregated and segregated settings in which people with disabilities are often forced to live. These broad aims align with the National Disability Strategy and its goal of transformative equality across the whole of society.

### Practical Application Recommendations

11. **State and territory governments should legislate for a minimum frequency of annual visits by Community Visitors, setting the standard of at least two visits to a visitable site (or visitable person) every year.** Best practice may require a greater number of visits, particularly to sites or persons giving rise to greater concern.
12. **Community Visitor schemes should work towards a majority of visits being unannounced, which we suggest should be at least 80%.** Unannounced visits play a crucial role in viewing services as they are delivered, not as they are presented by forewarned service providers.
13. **The NDIS Quality and Safeguards Commission should establish a mechanism for Community Visitors to ‘red flag’ disability service providers if those services do not respond to**

**Community Visitor authorised requests for information, or where there is clear evidence that services are gatekeeping out Community Visitors.** The NDIS Quality and Safeguards Commission should then develop a separate protocol from that of complaints to allow Community Visitors to escalate their concerns about lack of safeguarding compliance by service providers, to which the NDIS Quality and Safeguards Commission should be required to respond in a timely manner.

14. **People with disabilities and people with deep knowledge of, or responsibility in relevant fields (such as people in government agencies and research), should investigate the following possibility: that it may be helpful to expand the focus of Community Visitors from 'visitable sites' to 'visitable persons'.** 'Visitable persons' could include individuals who experience factors that put them at risk of rights violations that commonly occur where a person is receiving certain disability support services. This may include where a person receives large amounts of support from a small number of service providers, or where few support provider options are available. One option is that a person becomes eligible for visits when they receive a certain number of hours of disability-related support per week (for example, at least 20 hours from a SIL provider, as is the case in NSW). This approach would need careful consideration to ensure the rights of those being visited are respected, even as it would improve equity of access to Community Visitors and safeguarding for people with disability within and outside of the NDIS.
15. **People with disabilities and people with deep knowledge or responsibility in relevant fields (such as people in government agencies and research) should investigate the potential of expanding the scope of Community Visitor schemes to undertake in-home visits on a voluntary basis to a very small number of individuals living in their own homes. This could apply to any person with a disability (NDIS participants and non-participants) who is receiving above a certain threshold of services and where Community Visitors determine that there are multiple indicators of high risk.** This recommendation draws on the SA Guardian in-home visiting program. Indicators may include isolation, CALD-status, a large amount of services being provided by a small number of service providers or a single provider, the existence of a Behaviour Support Plan, and precarious housing arrangements. Research is required to determine the implications of such a visiting scheme for the rights of the individuals, including how to ensure such steps are pursued according to their rights, will and preference.
16. **People with disabilities and people with deep knowledge or responsibility in relevant fields (such as people in government agencies and research) should investigate the possibility of having opt-in provisions for visits by Community Visitors to SIL provider accommodation sites, or expanding the visiting remit of Community Visitors into SIL provider accommodations more generally.** Any review would need to carefully consider how to ensure visits occur in ways that respect people's rights, will and preference.
17. **The NDIA should provide more support coordinators and provide priority access by Community Visitors to NDIS participants' support coordinators (with participants' consent) to help improve the services participants receive.** Community Visitors raised concerns in this study that NDIS participants at high risk of harm do not always have support coordination. This causes problems where Community Visitors feel compelled to undertake case management-like work for NDIS participants as a preventive safeguarding measure, including following up



with multiple service providers on issues, as a support coordinator would ordinarily do. Where an NDIS participant has support coordination, Community Visitors should be given priority access to an NDIS participants' support coordinator if required. The NDIA should expand access by Community Visitors to support coordinators, and – more generally – improve the training and capacity of support coordinators.

18. **A feasibility study conducted by and with all Community Visitor schemes is needed to determine if a formal triage framework to assess risk should be developed for Community Visitors in seeking to prioritise visits.** Interviewees highlighted that Community Visitors are already undertaking informal triage assessments of residents and service settings to help prioritise visits. Several interviewees indicated that such a feasibility study should examine the type of information that would be needed by Community Visitors to triage effectively, with some Community Visitor interviewees pointing out that they cannot be expected to triage new sites without information about them. Further, any triage framework should not be used to rationalise funding to the Community Visitor schemes to reduce visiting levels, rather it should be used to help identify factors to consider when prioritising visits. This recommendation also feeds into the Disability Royal Commission Report Recommendation 11.12 (d) 'as a priority, define the scope of [Community Visitor Scheme] with reference to... mechanisms for identifying factors that may place a person with disability at increased risk of violence, abuse, neglect or exploitation. (2023, vol. 11, p. 16)'
19. **Australian governments should coordinate an awareness-raising campaign to relevant disabled people and the disability service sector about the preventative safeguarding role of Community Visitor schemes.** Targeted, on-the-ground efforts are required to promote knowledge of the Community Visitor schemes to people with disabilities, families, disability service providers, and emergency responders.
20. **The Commonwealth Ombudsman, as the OPCAT National Preventive Mechanism, in close consultation with people with disabilities, and state and territory Community Visitor schemes, should continue to consider Community Visitor schemes undertaking OPCAT monitoring in certain disability settings.** There was insufficient consensus among interviewees and in public commentary to make a strong recommendation on the appropriateness of using Community Visitor schemes in OPCAT monitoring. At a minimum, the NPM should formalise information sharing with Community Visitor schemes, including incorporating the annual reporting of Community Visitor schemes and seeking out their expertise on 'restrictive practices' in the disability context. Any added OPCAT responsibility for Community Visitor schemes would require commensurate resourcing.

## Background

### Community Visitor Schemes

Community Visitor schemes have been operating in most states and territories across Australia for over 30 years (except in Western Australia and Tasmania). The aim of Community Visitor schemes generally is to safeguard and protect the human rights of people with disability. In most cases, Community Visitors provide oversight of closed environments. Historically this has meant institutions, but today it generally means oversight of SDA or group homes, SRS or boarding houses, acute psychiatric settings, and other similar accommodation settings. At present, the primary sites visited by Community Visitors depend on the state or territory-based legislation that governs each scheme.

Community Visitors are authorised to enter these accommodation settings and inquire into all things related to a person's provision of services or treatment in that accommodation setting. They have wide inspection powers, including:

- Inspecting any part of the accommodation premises where services are being provided;
- Meeting with residents to discuss their individual experience of the accommodation setting (with residents being free not to do so);
- Inspecting documents related to the provision of services, such as a participants' NDIS and behaviour support plans, staff communication notes, incident reports, and service contracts and agreements; and
- Enquiring about any issues related to a residents' wellbeing and human rights that is related to the provision of a participant's services and/or the physical environment of the accommodation.

Community Visitors can make both announced and unannounced visits in a team of two or more. At the conclusion of each visit, the Community Visitors prepare a report summarising the findings from the visit and indicating where any actions are required. A copy of the report is provided to the most senior staff member at the group house, facility or the proprietor in the case of an SRS.

The Community Visitor role is preventative in nature, seeking to maintain standards and quality in closed settings through *regular* engagement with residents and onsite staff. Community Visitors can also escalate complaints and concerns about the rights of persons with disabilities.

### The Impact of the NDIS on Community Visitor Schemes

The 2013 establishment of the NDIS significantly impacted community visiting schemes, and heralded a transition to an almost fully privatised disability service sector. Although generally agreed to be a positive social reform, the NDIS has created significant changes in the parameters and scope of where Community Visitor schemes across Australia are able to undertake safeguarding site visits.

The new privatised approach of the NDIS and the marketisation of disability services has seen most governments move out of direct service provision and in their place, has seen the establishment of large numbers of private, profit and not-for-profit service providers. This includes services that are NDIS registered – 'grey-zone' sites such as SIL provider-controlled accommodation, ADEs, day services, and the homes of NDIS participants with high levels of risk indicators. As noted in a 2018 report commissioned by the Commonwealth Department of Social Services for the Disability Reform Council, Council of Australian Governments:

Whereas governments have been able to mandate powers of entry into state-funded services, this will not be the case in the future. There will be many more accommodation types and

actual locations, as well as potentially multiple providers for each individual. There is also the question of service provision taking place in the family home (WestWood Spice, 2018, 31).

Residents living in SDA/group home settings and other residential facilities remain at higher risk of violence and abuse than the general population. It is well known in the disability sector that living in an SDA/group home increases a person's exposure to risk factors for violence and other rights violations (Robinson, 2014; Stone, 2018; Hough, 2019; OPA, 2019; Araten-Bergman and Bigby, 2023). In many such settings, people have no choice over who they live with and face the challenging behaviour of fellow residents, challenging interactions between support staff and residents, and a landscape of restrictive practices related to how services are provided. There is strong evidence highlighting that people living in group homes are at high risk of violence, abuse, and neglect (Balandin, 2002; Marsland, Oaks and Brite, 2015).

Community Visitors seek to identify and resolve issues at a local level before they escalate concerns to appropriate regulators. Community Visitors however are legally required to escalate and refer any serious issues that do occur to the relevant state or territory agencies or, at the Commonwealth level, to the NDIS Quality and Safeguards Commission for investigation and action.

### International Human Rights Law: *CRPD* and *OPCAT*

The oversight role of the Community Visitor schemes broadly aligns with international human rights and protections for people with disability. The *CRPD* provides the clearest articulation of the international obligation to protect, promote, and fulfil the rights of people with disability. In 2008, Australia ratified the *CRPD*, which obliges Australia to uphold the rights of persons with disabilities in a range of areas, including education, accommodation, public transport, employment, and healthcare, to support the flourishing of people with disabilities on an equal basis with others. Article 16(3), in particular, obliges Australia to 'ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities' to prevent 'the occurrence of all forms of exploitation, violence and abuse' (*CRPD*). The federal government has taken some steps to examine the impact of the NDIS in relation to safeguarding the rights of people with disabilities across Australia, specifically under the National Disability Research Partnership and the Australian Disability Strategy.

The *OPCAT* 'is an international treaty designed to strengthen protections for people in situations where they are deprived of their liberty and potentially vulnerable to mistreatment or abuse' (Commonwealth Ombudsman, 2023). Australia signed the *OPCAT* in December 2017. The ratification of the *OPCAT* requires the establishment of a NPM reporting framework that will include independent inspection of places where people are deprived of liberty (Westwood Spice, 2018: 15). Australia postponed its establishment of an NPM until January 2023, yet even at the time of writing this establishment is incomplete. The Commonwealth Ombudsman is the designated NPM for Australia, though its role is operationalised through designated bodies in state and territory jurisdictions (Commonwealth Ombudsman, 2023). Several of the designated monitoring bodies at the state- and territory-level are yet to be underway (Commonwealth Ombudsman, 2023).

According to the United Nations ('UN'), an NPM is not an investigative or complaint-handling body (Lea et. al., 2018). Rather, its role is to conduct monitoring visits and consider systemic issues that increase the risk of torture or ill-treatment. This role includes making recommendations and suggestions for improving the treatment and conditions of people in detention and engaging constructively with governments and detaining authorities to strengthen these protections (Lea et. al., 2018). The Australian NPM will initially focus on traditional sites of detention (prisons, immigration detention centres, and closed mental health settings). However, there has been considerations that the NPM

should be expanded to include disability residential settings (Lea et. al., 2018). NPMs in several comparable countries extend to disability group homes and smaller residential facilities as well as aged care settings. If the Australian NPM expanded its scope similarly, there is an open question of whether this responsibility could fall to NGOs, ombudsmen or Community Visitor schemes. This possibility adds urgency to the need to gain clarity about the ‘visitable sites’ of Community Visitor schemes, some of which may overlap with the ‘closed settings’ that fall within the remit of the NPM. If Community Visitors were to take a role in the NPM, it is clear that at a minimum, additional funding and capacity-building would be required.

The development of the NPM raises similar issues as with Community Visiting schemes across Australia, particularly regarding the question of what constitutes a ‘closed setting’ — or, put more broadly, what constitutes a ‘visitable site’ for inspection in the disability context. If Community Visitor schemes did take on some work of the NPM, a question would arise as to whether *OPCAT* inspectors need to be in paid professional roles or whether they could be volunteers (as with Community Visitors in VIC). Some more specific questions arise about what constitutes ‘torture, cruel, inhuman and degrading treatment’ in disability settings, given much work in recent years to query whether many or even all restrictive practices in disability services could be characterised as such (Spivakovsky, Steele and Wadiwel, 2023). (This latter question is outside the scope of this report, but any answer would have major implications for both Community Visitor schemes and *OPCAT* monitoring in disability settings).

### Different State and Territory Approaches to Community Visiting

As noted, Community Visitor schemes operate autonomously within each state and territory in Australia (excluding Western Australia and Tasmania which do not have schemes). The schemes are composed of a mix of volunteers and paid professionals depending on the state or territory. The Community Visitor schemes are mostly situated and positioned within the state or territory’s OPA or OPG with some exceptions such as in NSW in which the scheme sits within the Aged and Disability Commission.

Powers to inspect, and the definition of what constitutes a ‘visible site’ for Community Visitor schemes, are set out in legislation specific to each state and territory in Australia. These powers of inspection provide strong oversight for people with disability living in closed environments that are often unable to speak out for themselves. Benefits of the Community Visitor schemes include that they are tailored for local disability service policy and practice and that they are seemingly independent of the government agencies that deliver disability services, as well as (at least in jurisdictions other than SA) those run by for-profit and not-for-profit entities. These schemes help ensure that such services are operating at a standard deemed acceptable by the broader public and also provide a chance for disability service settings that are often obscured from public view to be scrutinised by a range of representatives of the broader community.

Four state jurisdictions were included in this study. We have summarised key points concerning the make-up of each of Community Visitor schemes in these jurisdictions (WestWood Spice, 2018).

### South Australia

Key features of SA’s Community Visitor model include the following:

- The scheme operates using appointed volunteers;
- The Principal Community Visitor and Community Visitors are independent statutory appointments established under the *Mental Health Act 2009 (SA)* Part 8 Div 2;

- The scheme is administered by the OPA;
- There are two categories for visitation;
  1. Adult Disability; and
  2. Child and Adult Mental Health (Principal Community Visitor, 2020).
- During 2019–20, Community Visitors conducted 171 visits across 176 Department of Human Services Disability Accommodation Service ('DHS DAS').
- Visiting to NDIS service providers stopped in 2019; Since 2019 within the disability stream, Community Visitors only visit state-funded houses (about 10% of service provision) and not NDIS profit or not-for-profit or privately-operated services, meaning approximately 90% of accommodations are not visited i.e. they do not have permission to visit any NDIS provider.

In SA, there are two separate legislative mandates and policy details, that define what is a visitable site for mental health and disability.

The *Mental Health Act 2009 (SA)* prescribes a visitable site as any treatment and/or community mental health facility that has been Gazetted under this Act, by the Chief Psychiatrist. However, we focus in this report on 'disability services' (acknowledging that there are compelling reasons to define 'disability services' to include mental health services).

*The Disability Services (CVS) Regulations, 2013 (SA)* outline that Community Visitors have the following functions:

s4(1) to visit disability accommodation premises to inquire into the following matters -

s4(1)(a) of the regulations proceeds to refer to a wide variety of matters including participation, complaints, restrictive practices, and access to information.

Prior to 2019, the agreed state policy position for the definition of 'disability accommodation premises' (or a visitable site) was state-run disability services, NGOs and Supported Residential Facilities. Following the introduction of the NDIS Quality and Safeguards Commission in 2019, a review by the State Government determined that the policy definition of 'disability accommodation premises' was changed and limited to state-run disability accommodation services only.

Recently, the Law Society of South Australia (2020) raised concerns about this change, describing the implications for the community visitor scheme thus:

Since the transition from state funded disability services to the NDIS, SA's current community visitor scheme has become largely ineffectual as it is only applicable to State-funded disability accommodation premises, of which there are now very few.

In addition, the scheme previously visited day service programs but has not done so since 2019.

At the time of writing, the SA government, including the OPA, appears to be reviewing the scope and definition of a visitable site in SA following the recent Disability Royal Commission report findings and soon to be released NDIS Review report.

### **South Australia's Novel Safeguarding Scheme for In-Home Visits in Certain Circumstances**

In September 2019, the State Government supported an additional role for the Community Visitor Scheme to visit adults under the guardianship of the Public Advocate who are participants of the NDIS. This is facilitated by a delegation from the Public Advocate to the Principal Community Visitor (and thereby, all Community Visitors) (Advisory group communication, February 2023).

Another relevant feature of SA is that unique safeguarding rules were introduced following the death of Ms Ann-Marie Smith in April 2020. The rules authorised the OPA to visit people living in private homes who were experiencing significant isolation and several other risk indicators. These visitation powers are discussed later in the report, including lessons that could be translated to the Community Visitor program. In the year covered by the annual report of 2019-20, the OPA conducted visits to 19 people pursuant to the new powers. This included nine visits to persons in DHS DAS homes and ten to persons in non-government sector homes.

## Victoria

Key features of the VIC scheme:

- Community Visitors are appointed volunteers;
- The scheme is administered by the Office of Public Advocate (Victoria);
- There are three categories of sites that are visited:
  1. Adult Mental Health;
  2. SRSS;
  3. Disability.
- In September 2023, VIC expanded legislation to enable visits at SIL provider accommodations;
- Across three streams, 334 appointed Community Visitors and 102 trainees conducted 3,411 visits either remotely via phone or video conference or through face-to-face visits. A total of 1,246 facilities were visited, and 5,472 issues were identified (OPA, 2022); and
- There were 241 Volunteers in the disability stream (OPA 2022).

The current definitions in the *Disability Act 2006* (Vic) empower Community Visitors to visit:

- Residential services (as defined in Part 5); and
- Specialist Disability Accommodation enrolled properties and short-term accommodation and assistance dwellings (section 30A).

The definition will change from 1 July 2024 as per the *Disability and Social Services Regulation Amendment Act 2023* (Vic). Despite some opposition, the state government is using the term 'specialist disability accommodation' to capture properties that are not NDIS registered.

## Queensland

Key features of the QLD scheme:

- Community Visitors are paid employees;
- The scheme is administered by the OPG QLD;
- There are two streams:
  1. Children and Young People; and
  2. Adult Disability (and specifically, only those with cognitive impairment), mental health facilities and disability forensic services
- During the 2021–22 reporting period, there were 4,132 visits to 1,901 visitable sites in the Adult Disability stream, which reported on 2,684 issues (OPG, 2022).

'Visitable sites' in QLD are defined in the *Public Guardian Act 2014* (Qld) (s 39) as:

- (a) an authorised mental health service under the *Mental Health Act 2016* (Qld) that provides inpatient services; or
- (b) the forensic disability service; or

- (c) a place, other than a private dwelling house, that is prescribed under a regulation.

Changes to the definition of a visitable site (adult Community Visitor Program) occurred on 1 July 2019. Whereas before the definition of a visitable site included 'a place where a funded NDIS participant lives', from 1 July 2019 this was amended to cover 'sites, other than private dwelling houses, where an NDIS participant is in receipt of high levels of support and care (a relevant class of supports) from a registered NDIS provider' (OPG, n.d.).

The Public Guardian Act defines relevant class of supports as any of the following classes of supports under the *National Disability Insurance Scheme Act 2013* (Cth) ('NDIS Act'):

- High intensity daily personal activities;
- Assistance with daily life tasks in a group or shared living arrangement;
- Specialist positive behaviour support that involves the use of a restrictive practice; or
- Specialist disability accommodation.

The *Public Guardian Act 2014* (Qld) also provides a new definition for residential facility (a category of visitable site for community visitors (child)) to include 'a place at which respite services are provided to a child NDIS participant'.<sup>2</sup>

## New South Wales

Key features of the NSW scheme:

- Community Visitors in NSW are paid professionals who are appointed for a three-year term and paid at an hourly rate (and employed on a casual or permanent part-time basis);
- The NSW Official Community Visitor Scheme is administered by the Aged and Disability Commission;
- There are multiple streams:
  1. Disability Service Accommodations;
  2. Children and Young People in Out of Home Care; and
  3. Assisted Boarding Houses.
- Official Community Visitors ('OCV') are independent statutory appointees of the Minister for Families and Communities and the Minister for Disability Services; and
- For SDAs specifically, 2030 SDA services were visited and 8369 residents were seen over 1661 visits; 3,254 issues were raised from SDAs specifically, five matters of concern escalated up to NDIS Quality and Safeguards Commission (Aged and Disability Commission NSW, 2022).

A 'visitable service' is defined in section 20 of the *Ageing and Disability Commissioner Act 2019* (NSW) as:

- (a) an accommodation service where an adult with disability or older adult using the service is in the full-time care of the service provider, or
- (b) an assisted boarding house, or
- (c) any other service prescribed by the regulations as a visitable service.

Visitable service is defined in section 143 of the *Children's Guardian Act 2019* (NSW) as:

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<sup>2</sup> For more details see <<https://www.publicguardian.qld.gov.au/about-us/community-visitor-program/reporting-visitable-site>> (accessed 24/10/2023)

- (a) an accommodation service where a child in care using the service is in the full-time care of the service provider, or
- (b) a service prescribed by the regulations as a visitable service.



## Methodology

Our research design involved two qualitative data collection methods:

1. Document analysis: Thematic analysis of key documents related to the *CRPD*, *OPCAT* and Australia's reporting obligations in relation to safeguarding, including recent Community Visitor scheme annual reports, key academic literature, reports and documentation on safeguarding, and NDIS Quality and Safeguards Commission documentation; and
2. Interviews: Approximately four to five key stakeholder interviews with executive staff, board members and/or Community Visitors in each of the four listed Community Visitor schemes (VIC, NSW, QLD, SA) and in-depth interviews with 10–15 people with disability themselves who live in 'grey-zone' sites (such as SIL providers) about their experiences of receiving (or not receiving) visits by Community Visitors.

Sample:

- Residents — people with disability living in 'grey-zone' sites, such as SIL provider accommodation on the experiences of receiving (or not receiving) Community Visitor visits;
- Executive staff of Community Visitor schemes in each of the four listed Community Visitor schemes (VIC, NSW, QLD, SA); and
- Experts, key stakeholders and academics.

Interviews were conducted between May and August 2023. In total, 20 interviews ( $n = 20$ ) were conducted. All interviews were voluntary. Ethics approval for the project was obtained through the University of Melbourne Health Research Ethics Committee (Study No. 2023-25820-37959-3). Easy English versions of the participant information and consent forms were generated and distributed to potential participants. Recruitment of Community Visitor staff was done through email to each visitor scheme. Recruitment of academics was done through email within known networks. Recruitment for residents occurred through the distribution of flyers advertising the study to Disabled People's Organisations and Disability Advocacy organisations, such as VALID in VIC.

Resident participants responded to the recruitment flyer by email or text message. As part of the consent process, before interviews, a pre-meeting was held with each resident lasting 10 to 20 minutes by phone. The pre-meeting was to check understanding of what participation in the research involved and to confirm eligibility for the study's participant inclusion parameters. A time for a pre-meeting and interview was arranged with each potential participant and they were emailed the participant information sheet and consent form (these were available in plain English or 'Easy Read' formats).

Pre-meeting discussions were about privacy and safety (e.g. could anybody hear the person if they went to a separate room to conduct the interview online, did they need to go to a private quiet space such as a library meeting room for privacy, would they notify/discuss with their support workers that they were participating in the study). This was especially important as one component of the interview involved safety related to service provision and support workers. Further, discussion was had on whether they felt or understood if there could be any repercussion in critiquing support work or their service provider, if that was the case. There was also discussion on other safety and trauma considerations in participating in the study, such as having to recount past negative events, and if the negative events involved other members of the community that they still saw and networked with, discussion on whether there could be adverse safety events and, again, whether they thought there was any likelihood of repercussions and whether they understood this dynamic. Discussion in the pre-meeting also canvassed the topic of mandatory reporting by the researchers if names related to, or

details of, any violence towards children or vulnerable persons were mentioned during the interview (but which, thankfully, was not required during the data collection).

The pre-meeting also canvassed if any access requirements and support to participate in the research such as captioning where required. One participant notified us in the pre-meeting that they would decide whether they would have their support worker present to help with IT and online connection for the interview.

Following each pre-meeting, a discussion was held within the research team as to the suitability of that resident for participation in the study, and an assessment was then made by the research team about their suitability to participate in the study based on their answers in the pre-meeting and their felt understanding of the study parameters. One person who responded to recruitment for the study was excluded when it was determined that they were living in Western Australia, outside of the study parameters.

Following on from the pre-meeting discussions, one interviewee chose to do the interview with a support worker present; this worker helped them with IT and provided some prompts to aid communication. Another interviewee was joined by his mum, and they did a joint interview. His mum provided IT support and participated in the interview, sometimes being clear that they both held different views on the interview topics. The other two interviewees chose to be interviewed alone and in private.

Following their participation in the pre meeting and interviews, all residents received a \$100 gift voucher to acknowledge their significant contribution to the study.

All interviews were held online on either Zoom or Microsoft Teams. All interviews went from between 30 minutes to 60 minutes and were audio and video recorded, transcribed, and thematically analysed.

An advisory group was established to support the research, which was comprised of senior members of the administering organisations for Community Visitors in each jurisdiction. Two meetings with the group occurred over the course of the research to source input on research design, data collection, findings, and recommendations. A third engagement occurred via email when written feedback was sought on preliminary findings.

### Interview Participants table

Interview group	QLD	NSW	VIC	SA	Total	Female	Male	Total
Residents with disabilities	1	1	2		4*	1	3	4
Community Visitor executive staff	2	3	3	4	12	11	1	12
Academics & area experts			2	1	4**	3	1	4
<b>Total interviews</b>								20

\* One interviewee's mother was present during the interview at his request.

\*\* One academic was based in Tasmania. Despite Tasmania not having a Community Visitor scheme, the academic was an international expert in safeguarding the rights of people with disabilities in general.

Interview quotations below are accompanied by the following descriptor to indicate interview group members: residents with disabilities ('R1', 'R2', 'R3', 'R4'), Community Visitor executive staff ('CV1', 'CV2', 'CV3' and so on), and Academics ('A1', 'A2' and so on).

## Findings/Analysis

### Residents

#### Demographics

Four people with disabilities were interviewed as the resident cohort for the study. Despite extensive recruitment efforts via numerous advocacy organisations over several months, it was difficult to recruit the 10 people with a disability as originally intended.

Of the four residents we did recruit, two resided in VIC, one in NSW, and one in QLD. One interviewee resided in a boarding house, one in community housing supplied through an organisation, one lived in accommodation owned by his family, and one had lived long-term in social housing. The resident in the boarding house was having trouble securing housing and expressed that he would like to move into an SDA but is not funded for it. The latter three residents lived alone, although one of these residents was seeking accommodation suitable for her and her children to be able to live together. Three residents were male, and one was female.

All interviewees utilised formal NDIS-funded support services at their accommodation. The highest amount of support was one receiving 11 hours per day; one received 10 hours per day, one four hours per day, and the other resident received 10 hours of support a week (two days a week for five hours). The main type of support received was for personal care and community access. Other types of support included cleaning and meal preparation.

Two residents sourced support workers from online platforms, another resident recruited support workers through a service provider. It is not known how the other resident sourced their support workers.

#### Safety at Home

Concerns about safety at home were an issue for all interviewees. What interviewees told us highlighted that residents used various informal and formal mechanisms to protect their own safety, but that they were more often unclear as to what the formal pathways were in terms of obtaining support related to safety and the upholding of their human rights.

Residents discussed that their safety support framework most often involved securing support from family and/or friends and/or more trusted support workers. One resident spoke of getting their sister to do a background check on a support worker when there had been an adverse event at the house with him. Residents spoke of strategies such as not going out at night, having their mobile phone on them at all times, making sure the doors are always locked and knowing that they can ring their family members at any time if anything happens.

Three of the four interviewees did not presently feel safe in their homes. One interviewee reported his rights to safety and privacy were not met in his boarding house. Co-residents interfered with his disability support and he had resorted to meeting workers off-site, to initially establish himself as their client, before receiving their support in the accommodation. He chose to do the interview off-site for safety and privacy reasons. He had a history of unsafe and insecure housing and described extremely limited options regarding support and alternative housing options.

The second interviewee felt unsafe in his community housing because of constant threats from neighbours who would regularly approach the property, yell at him from a distance, and threaten to kill his dog. He also had a high level of trauma from a previous group home where he witnessed

violence and sexual acts. 'It was a terrible, terrible — like, there were atrocities that he witnessed firsthand, that were not helpful to his mental health...' R2's mum; '...It was an over-60-year-old group home, and I didn't like it, because there was a guy masturbating near me and all that.' R2.

His main support is his mum who had tried multiple remedial avenues to improve his safety including contacting the police and the NDIS Quality and Safeguarding Commission, but with poor responses from both:

It is two duplexes in a residential setting, on a quiet — well, generally a quiet street — but the first several years he was here, there were lots and lots of difficulties with neighbours, and each and every time that they threatened him, assaulted him — I had to ring the police... Then, the police were woeful. For instance, when the bloke over the back jumped the back fence and assaulted him in his yard, the neighbour two doors up would hear what was happening, and he also rang the police, and then the police literally turned it around and said, well, he shouldn't have been making a noise in his yard. So, I had a meeting with the police superintendent at that time, but nothing was done, and he just said, oh yeah, they're going to have training, but you know, it's just not on. R2

She was completely unsatisfied with these avenues and described missing the state-based system pre-dating the NDIS where a Case Coordinator could provide information and assistance:

In my view, like, people with IDs, or any disability, are shoved aside and told just get on with it yourself. There's nothing done that's proactive for them, to assist them to achieve better, to do better, to have people — I mean, you can't make people be kind, but just be more respectful. I know, like, how many issues he's had here, and like, living a fair distance from him, it's pretty stressful. R2

A further interviewee, who had recently escaped a relationship where she experienced family violence, was experiencing ongoing concerns about safety in her community, feeling threatened by levels of crime in her public housing building and in her community:

There are a lot of people around who use drugs where I live... moving around in the external environment to the unit... I asked the Ministry of Housing guy if he could move me into a nice house or unit with a backyard, and also because my aunt wants to live with me, and it needs to be three-bedroom unit because of the kids, and there is nothing! Nothing is available! R3

She described knowing that she could return to family violence intake services if family violence became a recurring problem, and the personal strategies she used to keep safe: 'I keep away from people, I lock the doors, and I have my safety plan.' R3. She described having knowledge about disability rights support avenues and knew of an advocacy organisation that she could ring if there were issues around her safety. However, she seemed to not have confidence that they would provide support. She was distressed that she had not heard back from her Support Coordinator for two months and did not see that as a remedial pathway.

The last interviewee was currently feeling safe in his home. He had previously been in public housing which he felt unsafe in, citing an unsafe level of property maintenance, but now felt safe and settled in his new home. He noted that he was in contact with a citizen advocate and said that he did not feel it would be necessary for a Community Visitor to do an in-home visit to ensure his safety because he knew and was able and confident to contact his advocate or a family member if there were any safety issues.

### **Safety in the Support Service Interaction**

Safety in the support service interaction emerged as a concern for the residents. Interviewees did not report familiarity with formal options of oversight. Family and support workers themselves were the primary sources of oversight. One interviewee's mother was present during the interview at his request, and she indicated that she felt high levels of responsibility and stress providing oversight to ensure the safety of her son in receiving disability services. She travelled to her son's residence at some distance to monitor encounters with service providers.

One resident described taking measures to reduce risk when recruiting support workers:

I met with them first offsite. If I feel comfortable, I will then do an onsite meeting, and if I don't feel comfortable, then I'll just say goodbye... That's the real bad part about all these websites and businesses, you can just be anyone and sign up for a job. No training, no experience, no qualifications. R1

The same resident described an incident where a support worker they had recruited became abusive after he cut back his hours of work. He described not knowing if the feedback that he provided had gone anywhere, having only had one opportunity to provide feedback, and not knowing of any formal means to make the worker accountable:

There's no blacklist, there's no blocklist, there's no red flag system. There's nothing. Once you put in feedback, that's it. If you put in good feedback one day, but two or three weeks later you have to put bad feedback in, you can't. You get one feedback, and that's it. R1

He described now feeling cautious about getting more workers and was not making much effort to recruit new support workers even though he needed them because he was in fear of an incident of abuse happening again with the next support worker.

Another resident noted had had mixed experiences with support workers — some were great, some were not — providing a quality service. He described where a previous service provider had defrauded him and spent excessive amounts of his package of funding.

The third resident said that she felt very safe around her support workers and that there were no issues and that she even felt safe with the workers that were recruited to do cleaning through an external company that was not disability specific.

The final resident had had mixed experiences feeling safe with workers in his home. In one instance, feeling unsafe around a support worker, he talked to his family and got his sister to run a background check on the support worker. He then dismissed the worker. He felt that if he had safety concerns about support interactions that he could again approach his family or a trusted support worker for assistance.

The lack of options for service oversight and safety support is perhaps extra stark given that three of the four interviewees were born with disabilities and had gone to special schools. This indicates that outreach and continuous formal oversight connections may not be built into the lives of Australians receiving disability support services.

One interviewee reported that they had not heard back from their Support Coordinator for two months and had a number of issues that needed resolving immediately that they needed to talk to them about to resolve.

Only to a minimal extent did interviewees seek to contact the service provider themselves to discuss issues with workers or the provision of services. One resident described the poor responses they continually received in trying to negotiate with their service provider:

There's always a dispute (with the service provider) when he wants to visit family, you can't do this, you can't do that, and it's all got to be pre-approved by a coordinator, and they're not easily contactable, because they're busy trying to rake money in for their private organisations. And yeah, it's profit-driven, basically, it's not choice and control for him. R2

### **Knowledge of NDIS Quality and Safeguarding Commission**

While interviewees did raise concerns about worker accountability, provider fraud, service quality, and personal safety in services, the NDIS Quality and Safeguarding Commission and its complaints mechanism were not widely known about by the residents or understood as an avenue for pursuing concerns.

One interviewee discussed having pursued concerns about service quality and safety with the Commission but had not received a relevant response, support, or information through this avenue.

### **Knowledge of Where to Get Help or Who to Contact in the Case of an Adverse Event**

Each of the residents had some knowledge of who to contact and where to go in the case of an adverse event, although they felt that their safety would be threatened in acting upon this knowledge. This included both formal and informal networks.

Two of the interviewees nominated their mums as their primary source of support in the case of an adverse safety incident. One resident stated that he knew to contact an advocate from an organisation if there were any issues or if he needed to discuss anything about his safety, and that he felt comfortable knowing that this person could advocate for him. Residents also noted that they could contact the following if there were any safety issues:

- Able-bodied flatmates who they lived within the accommodation;
- Mum or sister (family network);
- Family violence services;
- Trusted support worker;
- Police;
- Agencies (e.g. Ministry of Housing, Administrative Appeals Tribunal);
- Support coordinator; or
- Service provider.

### **Knowledge of Community Visitors**

None of the four resident interviewees had knowledge or awareness of their state's Community Visitor schemes. This included one resident who had resided, for several years, at a group house that would clearly have been within the jurisdiction of the Community Visitor scheme throughout that time. All the residents interviewed were now living independently in units, receiving support services at home. Only one of the residents met the current eligibility criteria for their state's Community Visitor scheme, however, this would come under the SRS stream, not the disability stream, as they lived in a boarding house.

One resident had not heard of the schemes but thought that an in-home visit sounded good: 'the Community Visitor could meet me outside the house and ask me how he's going.' R1

Another resident thought that the Community Visitors might be able to help with the problems he was having with his flatmates:

One of my housemates likes to talk to my support workers whilst they are working for me, and there have been times when I've had to pay for an extra hour or two because he's talking with them. Or he thinks he knows the answer to a question, but my support worker knows the answer, and so they end up arguing. So, I don't want to bring support workers here. R1

Another resident thought maybe a check-in phone call would be good, but his mother was pushing for more scrutiny at the ground level.

### **Housing Options**

The two interviewees in social housing had been in their accommodation for more than five years. One resident felt secure: that he could go inside and lock the door and be safe. The other resident appreciated having permanent housing but received constant threats and attacks from neighbours living in a social housing setting and dreamt of moving to the country. This resident was also eager to move into a place big enough for her to live with her family and be away from the levels of crime in her neighbourhood.

The resident in the boarding house experienced the most pressing housing stress and was distressed at the lack of options he faced:

I have applied for about 20 different houses. That was 2021. I'm still waiting for probably three quarters of those to get back to me in regards to accommodation being accessible... I'm still on their email list ...they send me new properties and stuff. But I actually have to physically ring them and yell at them ...or text message or email, to say, 'Answer my question.'... I looked at one property and it was great, and then I don't hear anything... I wait, and wait, and wait, and get nothing. R1

He also described not being eligible for an SDA house despite being in housing stress and having a disability: 'So, they're building a lot of new houses that are SDA-specific, but they are higher categories. So, I can't move into these places because the rent would be huge, and my package is only a small package. I would be better off in a non-SDA sort of rental.' R1

### ***OPCAT***

None of the residents had heard of *OPCAT* or of reporting obligations in relation to torture or restrictive practices in the disability field.

### **Community Visitor Scheme Staff**

Twelve interviews were conducted with Community Visitor Scheme staff. In terms of state breakdowns, two staff were from QLD, three staff were from NSW, four staff were from SA, and three staff were from VIC.

The following themes emerged from our interview discussions:

### **Overall Positioning of Schemes in National Service Landscape — National Coordination / State Autonomy**

The autonomy of Community Visitor schemes in each state was important to most staff. A number of scheme staff made strong claims that Community Visitor schemes should remain autonomous and should remain distinct entities from the NDIS Quality and Safeguarding Commission. Several inquiries,

including that of the Senate Joint Standing Commission (Australian Government, 2023) and the WestWood Spice Report (2018), have recommended that Community Visitor schemes should potentially be merged into the NDIS Quality and Safeguarding framework.

In our view, Community Visitors have had an important role historically in standing with a degree of independence from the government, and their primary aim is to benefit people in disability and mental health settings whose rights may be restricted. Any merger of schemes into the NDIS Quality and Safeguarding framework would appear to mean that the Community Visitors themselves would become bureaucrats and officers of the state. Several staff interviewees from Community Visitor schemes stressed the importance of the statutory independence of Community Visitor schemes, which could be undermined if the schemes were reporting for a federal government division focused on disability service funding arrangements, inspection, and auditing, with less focus on the experiences of participants' safety and rights.

A VIC Community Visitor noted that 'we would be uncomfortable about being absorbed into NDIS, we are very clear that we want to remain independent. We want to be an independent agency accountable primarily to parliament as we are now.' CV2

However, our findings also support a strong argument that the various Community Visitor schemes could be more uniform in certain respects. Hence, we think there are strong grounds to formalise a federal networked body, such as a 'Council of Community Visitor Schemes', which is required to meet several times per year to discuss alignment and uniformity and to share ideas around guidelines and procedures of visiting, including harmonisation with the safeguarding arrangements.

To ensure a greater degree of national consistency, this effort should include the development of Community Visitor schemes in Western Australia and Tasmania, with the options for those states to decide whether they have voluntary or paid Community Visitors within their schemes. In SA, resources are required to expand its Community Visitor scheme into the not-for-profit and private provider space.

Harmonisation with state autonomy would include having an agreed set of principles about what should be done on a visit, frequency of visits, and uniform reporting templates in addition to uniform visitable sites and visitable persons: 'we're all doing something slightly different. I don't know how that could be helpful [for] the national regulators. I don't know how that's really helpful for providers who operate across state borders. So, I think that there might be some value in that'. CV12

Another interviewee stated that:

I think that this is a very difficult space because we've evolved with state-based schemes, [and are] now faced with a national regulation framework. As a result, different people are getting different visits so not everybody's being treated sort of equally in that way, and there's no real priority about who should be visited and who shouldn't and the risk for some people if they don't get a visit. So, I think the Royal Commission is possibly going to recommend, and already has in its interim report, a national scheme. It's imperative that Commonwealth– state relations work effectively and efficiently in this area going forward, or else [we will] still be sitting here in 10 years' time talking about it. So, I think as researchers, Commonwealth–state relations are really challenging, and this is a Commonwealth regulator in the Quality Safeguards Commission with these State-based schemes that are all different. Somehow some effort needs to go into supporting that and funding it, working it through, who do we want to visit and why and who pays... but certainly, some uniformity across the scheme, and very much how each of the schemes work[s] in with the national frameworks and the Quality and



Safeguarding Commission... Maybe there needs to be some Commonwealth–state funding that’s shared, you know, rather than it all sitting on the state now that we’ve got a nationally regulated scheme. I think that’s just interesting how it all varies but it does hinder progress. CV6

Others were focused on national consistency in relation to the NDIS scheme being national.

I think it’s really important, especially because one of the aims of the NDIS has been to have like a nationally consistent scheme... and so a lot of the focus of the conversations of our national meetings... The talk is of having sort of principles of visiting and then each state still can sort of run it however they want. But the importance of getting together just to share information and make sure that we all are on the same page and know what’s happening in other jurisdictions... even just... [that] sharing and learning from each other I think is really good. CV10

I just think each state does have important aspects... VIC can do what it does partly at least because it’s a small state and partly because it’s got a really strong history of volunteering. You can’t impose a culture on another state without losing all the benefit of what you’ve already got. So, I would be hoping that within [the] NDIS there’s really good communication, that the state schemes remain state schemes communicating with the commission and so forth and recognised under the Act... That they remain with their own distinctive features, yeah. CV2

Only one Community Visitor supported a move to a national Community Visitor scheme and noted that harmonisation reform would take years, but still supported harmonisation principles:

I really do think there needs to be a national Community Visitor scheme and I hope they work towards that... Because harmonisation... when we visit certain premises and it’s different in NSW, different in Victoria, unless you harmonise legislation, which we all know takes five years plus, just some of those operational principles... that way we can share information with each other as well... I think that would be useful... We’ve all got different priorities about risk... I think some shared understanding about the risk in those settings would be really helpful as well. CV12

Some of those states where they’re having real problems just getting out into the market and the environment... And they’re having trouble getting volunteers and they’re not functioning well... and then there’[re]... two states in Australia that don’t even have Community Visitor schemes... Tasmania and WA. So, I think the NDIS Quality and Safety Commission is going ‘well we don’t have scope really [i.e. safeguarding on the ground scope] in three or four states. What do we need to do?’ CV11

Another participant noted that some of the providers now operate nationally across different state and territory jurisdictions, so harmonised principles in operationalisation would help there.

In contrast, it was queried if it was realistic that the NDIS Quality and Safeguards Commission would be proactive in terms of getting out and seeing people. What would be the frequency and regularity? How would the familiarity of Community Visitors, a significant factor in residents being confident enough to speaking up, be achieved?

The function of Community Visitors is substantially different. It enquires into the wellbeing of individuals and it is quite different from what a visitor coming from the NDIS Commission might do... we’re not a bureaucrat or we’re not an officer of this and we’re not of the Commission, the whole history and legacy of all the Community Visitor schemes has been

that they are independent from government and they have those eyes and the lens. They're separate from government, because they want to look after the rights of the individual in the government setting which most of the facilities historically have been. CV7

### **Visitability Legislation – Existing Legislative Parameters Regarding Visitability across States**

Pre NDIS, a 'visitable site' was clearly defined for Community Visitors — Community Visitors were authorised to visit any group house that was state-funded and, pre-NDIS and privatisation, most group houses were state-funded and run. With the implementation of the NDIS, state and territory governments were encouraged to transition the operationalise of their group houses (now rebranded as SDAs) to service providers within the market. This shift to visiting SDAs now run by privatised service providers was not in itself complicated - the scope of visiting remained largely the same and as all SDAs were required to be registered with the NDIS Quality and Safeguards Commission, the definition of a visitable remained clear.

However, the emergence of many private and for-profit SIL providers in particular, and other forms of independent living options have seen a vast array of accommodation models emerging with the NDIS, and as noted, is creating lack of clarity and 'grey-zones' in what constitutes a visitable site.

Most of the states do not allow for Community Visitors to lawfully enter these new settings, or it remains unclear whether they may lawfully do so. Many of these schemes (such as VIC) have had to adjust legislative frameworks in order to bring these new forms of providers within the jurisdiction of the Community Visitor schemes. This is being driven by a realisation that some of the participants and residents residing within these new and emerging forms of accommodation are still at risk and very isolated in their living situation – that eyes on the ground are needed in these settings. One scheme (NSW) has broadened out their visiting jurisdiction to be defined by the individual (i.e. a person with a disability receiving more than 20 hours of support and very dependent on services), and conversely another state (SA) has simply stopped visiting residents in private provider spaces. According to one interviewee:

Increasing number of SIL providers, particularly non-registered and/or non-regulated ones, are popping up. In particular, there have been a lot of concerns about the ones that don't register and are therefore not regulated; are they going to be brought in under the amendments that are currently before VIC parliament? CV2

Here is commentary on state legislation in relation to disability visits only:

#### **Victoria**

The emergence of new 'concierge' type apartment styles is where SIL providers provide landlord facilities and then attached personal and community care services. In many instances, there is a support worker in an apartment downstairs and, say, ten resident apartments upstairs where residents are living independently. These are not technically group houses but potentially there are power dynamics at play and a need for oversight in terms of how they are operating. There are questions as to whether these providers are respecting and safeguarding the human rights of residents, and whether they are providing services in a quality matter:

Obviously, VIC's being very proactive because they've already changed the legislation [for Community Visitors] to be able to visit [a] broader amount of sites (eg, SIL providers). So, they've seen the issue early and just said: 'okay we need to change the legislation so we can get into some of those other sites.' Like none of the other states have changed any legislation.

Except for NSW they've got a quite — very broad one anyway like we spoke about. So obviously VIC are progressive because they've seen that already as the issue. CV11

In VIC, the OPA has recently promoted the need for legislative reform to widen its visiting jurisdiction in July 2023. A new amendment developed in September 2023 through the *Disability Act and Social Services Regulator Amendment Bill* will expand the number of properties in the disabilities stream that Community Visitors can visit to include SIL provider-controlled accommodation and services, including where registered SRSs rent a separate property for two or three clients and organise private rental arrangements or tenancy arrangements. Community Visitors note that these participants are effectively 'captured' and as such new authority was required for Community Visitors to go in there.

### **Queensland**

QLD have a half-page list of all the visitable sites (see above in background literature on the QLD Community Visitor scheme). Their visiting site legislation is very defined, however problems with flexibility could emerge outside of that list.

We've got pretty good powers here in QLD. We've probably got some of the most comprehensive powers in terms of entering sites, being able to obtain information, speak to people, and compel people to give us information. I think in terms of those legislative provisions we don't see that there... [are] any barriers. We've never had any issues in terms of entry into sites where NDIS participants reside. CV12

### **New South Wales**

The NSW government has adopted a broad definition clause of visitable person in addition to their visitable sites: any person with a disability that has 20 hours of support, that is in a dependent relationship with the service provider, plus SDAs and boarding houses.

NSW have pulled their whole NDIS NGO private provider out of it and said: any person with a disability that has 20 hours of support, that is in a dependent relationship with the service provider is eligible for a visit, regardless of where they are [i.e. accommodation]. So they've just gone really broad and taken the whole accommodation NDIS/non-NDIS/non-NGO, state-funded thing out of the equation and they just [go] to the person wherever they are. CV7

NSW has a progressive stance when it comes to defining the jurisdiction of Community Visitors.

It feels like ours can be relatively broad because it doesn't matter if it's an SDA property, as long as they've got an NDIS service provider that is providing as I said that sort of minimum number of hours of support... if someone buys a house and they've got kids living there but they've got a service provider that comes in like they can then be included. Whereas I know that there's some limitations in that in other states and territories... other states, they've got very prescribed — this is where we visit, like a level A house here or only state-funded disability accommodation or only an SRS or only this — somehow NSW has come out of emergence of the NDIS and they've got this really nice, broad guideline of just a person with a disability that uses services funded up to about 20 hours a week that have high dependency. That [is] very, very different than where any other States have landed in terms of defining the jurisdiction. CV10

This NSW Community Visitor clause also allows for safeguarding visiting to non-NDIS people that receive funding for their disability support services through for example transport or WorkCover schemes – an element most other states have not addressed. Further, the NSW clause does currently allow for visiting to SIL providers accommodation and in-home settings where 20 hours or more of support hours are provided. However as one NSW Community Visitor stayed SIL providers might not be prioritised by Community Visitors in a triage type of system because the residents are more independent, are able to advocate for themselves, or may not wish to engage with the Community Visitors.

Like it's actually an interesting concept of how you actually get buy in for those people to want to talk to [a] Community Visitor when they're able to raise issues for themselves and they're able to advocate for themselves. Yeah, it was very interesting, it'll be interesting to see what that space looks like. But yes, at the moment they are covered, but it'd be interesting to see how they get prioritised in the visiting — as opposed to — because we only visit around 40 per cent of disability accommodation services. So, it would be — if you had to prioritise those ones above some of the ones that might have more intensive support needs. CV10

As such, NSW Community Visitors can also do in-home visits to people with disability as long as they are receiving disability services from a registered SIL provider. The broad legislation of NSW is notable:

We had a base line that someone had to have 20 hours support a week because some people were, in the past, visiting drop-in services; visitable people must use 20 hours [of disability services a week], that's really progressive compared to the rest of the states ...they put people in this keyhole model. But some of the people [in NSW] thought clients had capacity to have lesser support and they didn't. We raised it and it was a budgetary consideration, but the ombudsman at the time was very engaged in the scheme and there was money. And so there was this benchmark that they [set] — so 20 hours a week ...]and] people who could typically access public transport. But it was supervision around medication, personal care and that kind of thing. So that's the model. CV5

### ***South Australia***

In SA, Community Visitors do not have legal authority now to visit non-government accommodation, meaning they are only visiting approximately 10% of accommodations. This contrasts significantly with how the scheme operated prior to the NDIS and up until 2019. As such, Community Visitors have no jurisdiction to visit any NGO or private NDIS provider which is an extremely large gap in the disability services market. It was explained that this occurred because of a legal ruling between federal and state jurisdiction related to safeguarding whereby it was ruled that Community Visitors could only go into state-funded houses, and the rest of the disability services sector was left to the federal safeguarding parameters, that being the NDIS Quality and Safeguards Commission and its complaints framework. In essence there are many people living with disability who are not receiving visits from Community Visitors - eyes on the ground - to safeguard their human rights.

In addition, Community Visitors in SA voiced that they are concerned about a new and emerging issue called 'client capture' with SIL providers:

So, a closed SIL is where the service provider is also the landlord. So, you've got a service provider dominating both the housing and the support arrangements. So, you could go as far as saying there's a bit of client capture going on there or there's not enough other eyes looking into that client's life, particularly where it's a person who's living alone. So, in the past we used to worry about people in group homes. Well, there's more eyes in a group home than there

are in a closed SIL arrangement, and closed SIL has eventuated as an unintended consequence of the NDIS scheme. CV6

They feel that these accommodation settings 'need eyes' and they are concerned about client capture where there is a significant dependency by the client for a number of services from one provider.

The SIL provider has rented houses in the private rental market, and they say we've got a house, here's the person, they're often unskilled... they're taking on clients with big packages, big SIL packages, and they fail. So, it's a broader issue for the system. But they'll take them on and then the support fails and of course the tenant loses their house and the support because it's all rolled up by that SIL provider... They're risky... so in terms of a visitable site going forward, people think oh well, they're independent, they've got 24/7 [support]... well, no, they're at risk when they're captured by a service provider like that. CV6

### **Expanding Jurisdiction of all Community Visitor Schemes to Include Australian Disability Enterprises (ADE) (Supported Employment Sites) and Day Services?**

The question was put to Community Visitor staff as to whether parameters for visiting should be expanded to include visits to ADEs (Supported Employment Sites) and day services. Prior to the NDIS, SA Community Visitors used to visit day services and provide reporting and safeguarding of these sites.

We queried, given the reporting of levels of abuse and violence at both of these sites, whether the Community Visitors now have a role in preventing abuse and violence at these sites through safeguarding visits.

Reactions by Community Visitors were mixed. Some Community Visitors said that this would be OK, but that they are so under-resourced that they cannot meet the needs of the visiting parameters that they are currently legislated to visit, let alone undertake this expansion as well. Community Visitors noted that they do not at present have the resources to do further visits and, again, how would you assess the prioritisation of visits?

One Community Visitor staff member said that you would need to consider what is the purpose and aim of visits to these sites. What is the risk? How is the risk being operationalised at these sites? What could a safeguarding visit achieve?

If the purpose of the visit is to ensure... to try and identify abuse, neglect, exploitation, or to speak to people to hear their views and wishes about what is happening in those settings... that's much more achievable 'what's the aim?' I think we need to, instead of just expanding scope... actually take a step back and say: 'Where is the risk and what is the risk?' Because Community Visitors need to know why they are visiting a place primarily to help them understand what to do when they may only be there an hour once a year. So I would say, I mean, absolutely I don't think anything would be off the table to visit. But I would think that we need to be fully understanding of what the risk is, of why we need to visit [this place] above other places that might be at risk, and what is the purpose there and to really focus on that purpose... so it's a meaningful visit for everyone involved. CV12

Community Visitors highlighted that you would need to determine what makes an environment or a service type risky. Do we think day programs are inherently risky because of how many people are there or because of who is there? 'I don't know the answer to that.' CV3

One Community Visitor again referred to resourcing and what would result in a triage assessment:

We still see massive gaps and we know that there's people that we're missing the opportunity to speak with who may also be vulnerable, and I mean we don't go into Daycare programs and things where there might be other people who we can speak to and supported employment work centres. There are still lots of gaps that we obviously get quite frustrated with. CV4

One Community Visitor noted that they were aware of abuse occurring in day service settings from the communication books at the accommodation where they visited already:

100%... because quite often you see in the communication book that someone was assaulted or the behaviour support plan wasn't followed while there... there's been a lot of sexual assaults in day services, police need to do better. Yeah, I think day services and employment services definitely need an absolute increase in oversight and in that unannounced framework as well. CV5

Another Community Visitor noted that a large amount of time was spent by NDIS participants at these settings and so there should be some oversight in terms of safeguarding in these settings, whether that was Community Visitors or something else: 'For many people with disability at a day service, a large portion of their week is spent in that service. You want to ensure that they're receiving as good a treatment potentially as they are in a group house where they might be spending the equivalent amount of time.' CV8

### **Lack of Funding and Resources for All Community Visitor Schemes**

All the Community Visitor staff agreed that their schemes were underfunded and under-resourced and that the amount of funding they received did not match the increasing scale of NDIS participants now on the scheme. The Community Visitor staff noted that they were under-resourced and underfunded to the point where they were having trouble even visiting the existing legislated sites, let alone an expanded range of visitable sites. Interviewees in one jurisdiction reported that they were only able to visit approximately 60% of the people they were legislatively required to visit.

The rapid increase of people receiving NDIS services, a fivefold increase on some estimates, has not been accompanied by an increase in funding for the Community Visitor schemes in any of the states. This is not withstanding the fact that the NDIS has resulted in a larger, more complex, and dispersed models of residential disability supports. The interviewees were aware of many private, residential service providers who have never been visited due to a lack of resources.

One Community Visitor raised the question of whether the NDIA or NDIS Quality and Safeguards Commission should be funding some of the Community Visitor schemes as well as the states: 'as long as we were left to the autonomy of our role... with the realisation that it will help them [NDIS Quality and Safeguards Commission] too. It will help them to have less issues and less complaints that they're dealing with. And less difficulties for each individual client that they deal with'. CV11

Another Community Visitor staff member noted that:

You would probably need to inject 50 times the resourcing to be going as regularly as you might want to... to truly have that kind of model... it's not auditing, compliance or enforcement... it isn't our role to uphold the regulator's requirements and the legislation. So, we're not filling that gap... we're an oversight service... because I actually see that the responsibility of the regulator is really to go in and make sure there's the monitoring and compliance of what they are upholding in their primary safeguarding legislation. CV12

One Community Visitor who had worked previously in the child protection system compared the resourcing problems to that system: 'It feels like the child protection system. There is no end of need to respond to reports of abuse, but the resources being allocated to that area force the regulators to ration their effort.' CV9

Another Community Visitor highlighted that it's hard to assess resourcing when they do not even know the number of accommodations in the community:

So we know we visit quite a lot of them now and most of those are properties that have become SDA, [they] existed before NDIS and then have enrolled as SDA over the last 10 years... properties we've been visiting on the whole for a long time. But we know, because we've done some work to contact providers we already visit and say: 'Do you have any other SDA properties?'" I've rounded up about 250 that exist that we are not visiting... we've made a policy basically in the programme that we're not accepting more properties onto our list whether they're eligible or not, excepting quite exceptional circumstances. CV3

This same Community Visitor highlighted that:

this is a back of the envelope guess because we haven't had — we don't have the resources to fully cost the gap. But my sense of it for the existing programme and the existing number of properties that we visit we probably need twice as much funding than we have. The awareness that staff are under to respond to issues is extreme and we have had some staff who have left because of burnout in the program, which is very concerning. CV3

### **Triage Assessment — Who Decides Risk or Visible Sites?**

Across all schemes, Community Visitor staff spoke of needing to do some form of informal triaging and assessment to assess those at the most risk and thus those most in need of a visit. Triage assessments are mainly required because of resource shortages.

A very insightful comment was that you can only do a triage assessment based on information you have and a major issue was Community Visitors getting the information about risks: 'the only way that we can make decisions about a risk model would be if we had access to information about risk... some sort of risk assessment or risk framework that we can agree on... and look, we would need to be provided that information.' CV3. Risk assessment requires information, and often the Community Visitors do not have that information. We queried where do you get information from?

[If] a complaint comes in from a different agency or something comes in from the side and then you follow it up... I know in other states they talk about having a prioritisation... at the moment, we use information if information comes to our attention, like that service then will get prioritised for a visit. But how do you get that information of who to prioritise... Like we're prioritising new services that have never sort of been visited before. But we've only been able to visit less than half, I always worry that there's so many that we're just missing... so any information that we get that's how we prioritise, but it's only as good as the information that you receive. CV10

Community Visitors communicated that they did not like to have to conduct triage assessments and were disappointed in having to consider them because of resource constraints. They recognised triaging who would get a visit often resulted in the unintended tightening of visiting criteria and they were strongly aware that sites might be missed and hence the safeguarding of residents may be compromised: 'unless there's endless funding, which there won't be, in which case someone is going



to have to triage. Yes, you might as well better your way in which you triage, but almost invariably, that triage will start to mirror the tightening of the criteria'. CV1

In terms of assessing risk, another Community Visitor highlighted that informally they had people who they would consider met certain risk thresholds, and said that if they knew about those people, they could prioritise visiting them but noted that, at the moment, none of that formally exists. A different Community Visitor noted that it is unclear whose responsibility it is to identify people and places at risk. Community Visitors identified that it was often the environment itself that created the risk not the individuals or their behaviour. For example, a group house with approximately four to six residents was inherently risky.

Community Visitors were aware that you cannot reach everybody eligible and spoke about the challenges of determining who to visit. Questions such as, what makes somewhere a more visitable site, or how to measure that, were live questions for Community Visitors. They noted that it is hard to try and capture and measure how many visits a house might need: 'There's so many providers out there; we don't even know who's out there really to even get a grasp of. let alone how do we actually try to drill down in terms of being resource-strapped to make sure we're visiting those most in need; that would require an independent lens on it. It's worrying'. CV7

One VIC Community Visitor noted that the frequency of visits was a strength in their scheme, that they liked to keep things more relational than transactional with visits:

because we can't — we're not keeping up. But I would say, for example, if Community Visitors have got long-term relationships with people, they're not just there to be like in the kind of transactional sense but they're there in that relational sense. Yeah, it would be hard for OPA to say 'No more visiting that house. We need you here instead.' Yeah, that would be difficult for them to kind of break that. CV11

The NSW scheme had taken a contrasting approach by 'resting' houses for a period of time:

now we've started to come into a space where, at the end of each six months, we're having a bit of a review of our services and going — okay, well what's been happening for us? Have there been any serious issues that have been raised by residents in the house? Is there anything that is still open? Is there anything that we feel that would warrant us to keep visiting that? It's a very semi-risk assessment that's based upon what's being provided to us and what kind of issues we've been gathering... if I've been consistently going to a service, the service is responding really well for any concerns that are being raised. There's nothing of any significance. The residents are able to raise concerns themselves with the service and are confident in doing that, they know of the other mechanisms and were able to contact us. If I'm feeling confident in that space I would potentially say to our management — look, that's probably a service that could be rested for a period of time, so that I could actually go and visit somewhere else. CV4.

These Community Visitor staff were quite candid about this model and the sometimes low frequency of visits, viewing the visit as more of a snapshot in time of conditions and how things were at the house:

with us, we only get to visit them once in a six-month period... that's not a great deal of time to get to know them, and particularly if you've got five residents in that home and everybody has some complex communication, strategy is needed. It can be really hard, and you don't necessarily have the time to actually spend more than 10 minutes with someone... it's a really



tricky juggling act I would have to say, and there's always the potential to miss a lot of stuff because you're not there for a long time and you can't seem to do everything. I see it as a snapshot, a photograph of time and what can I get out of this picture that I'm seeing on the floor today. CV4.

The SA scheme spoke of informal visiting assessment criteria based on client activity:

[The] criteria we've used is: firstly, who's overdue? Secondly, are those clients fairly stable or do they have behaviours that might put a volunteer at risk? So, volunteers have got insurance... but clients with low activity... we've prioritised that work for the Community Visitors [as opposed to guardianship staff]; we prioritise low-risk behaviours ...I suppose we haven't really prioritised group homes, [but] they are probably the two ways we do... but if we didn't have any limits... I think that criteria would need to be a bit more sophisticated. I think the low-risk clients [are] one to tick off from a behaviour point of view, not necessarily from risk of harm. But we don't want to send two volunteers, because ours are not paid in SA, into managing high and complex clients. They need to be trained. So that's how we've looked at it initially... in our State because of the risk profile we'd prioritise, we would pick certain types of clients as I've described, or certain characteristics for clients. CV6.

### **Visitable People vs Visitable Sites**

Traditionally, visiting criteria for all Community Visitor schemes has been defined in legislation through the lens of 'visitable sites', evolving from Community Visitor schemes in their origin providing oversight into state run institutions – fixed closed settings. Following deinstitutionalisation and then the development of the NDIS as the scheme funding most (but not all) disability services, there has been an emergence of a number of accommodation models such as SDAs that now require visiting thousands of sites. In addition, new SIL provider accommodation models within the NDIS are creating many 'grey-zone' accommodation sites where breaches of human rights have been reported as occurring and where power dynamics in these accommodations are suggesting there may be need for Community Visitors to visit these sites. There is also a cohort of people with disability receiving funded services and in accommodations that sit outside of the NDIS, such as WorkCover and transport accident clients.

As a result of this, there has been debate in the safeguarding field as to whether the focus of visiting may need to change or expand from 'visitable sites' to 'visitable people'. Indeed, this is already occurring in NSW, which broadened its visiting definition to cover any person with a disability that receives up to 20 hours of support where that individual is dependent on services in their lifestyle (Aged and Disability Commission n.d.:p19). As such, NSW is not constrained by the legislative scope of visitation being attached to the site or legal definition. In addition, this also addresses the distinction between NDIS and non-NDIS participants.

This broadening of the scope of visitation appears at first glance, to be preferable to focusing merely on sites of service provision because it appears to resolve a number of issues that have emerged in the safeguarding field. However, some Community Visitors have highlighted that it is the group house setting *itself* that is usually the greatest risk factor. Namely, it is the dynamics and interactions between residents and residents, and residents and staff, that creates the risk rather than the individual person or the amount of hours of disability support they receive.

Commentary on the use of 'vulnerable people' not 'vulnerable sites' was provided by some Community Visitor interviewees:

[b]ecause everything's so individualised ...you've got some people that are living in these SIL provider accommodations and in their own homes now very dependent on services and potentially only see service provider people as their only people for the day that they see. In those settings ...do the parameters now have to move a little bit away from a site to the individual person? In terms of how you're doing the assessment for a visit.CV11

One Community Visitor noted:

with new settings we would want to be clear what's the purpose of visiting them? Who's the audience of where referrals would go? Whose responsibility is it to respond to a scenario where someone lives in their own home? What are the risks? Is it a role for Community Visitors, or is it a role for someone else? CV11.

They noted any such move would require great care to promote individuals' rights to living independently and being included in the community, while also protecting rights to an adequate standard of living and social protection:

I don't think we'd be opposed to considering a model that isn't based on property type [but] I mean, historically property type has been one of the most significant risk indicators CV3

Another Community Visitor highlighted that this difference comes down to what is creating the risk:

an unanswered questions for me is [a situation] where you [are] at risk because you were living with 4 or 5 other adults in a small house, and some of those adults didn't get along, and some of them you hated living with and there was drama and violence in the house. Now that you're not living with those people ... the question is, what creates the risk? I am yet to see a framework we could use that we could pump information into ...for example, all people who have a behaviour support plan ...we might say, "there's something going on there and therefore [that individual is] visitable." ...[so] we need to come together to make sure that the people who we've traditionally visited for general safeguarding and existing risks [are visited], but also owning the fact that these risks are not inherent to the person; they are built into and baked into the systems that we have. They don't have to be. CV3

Another Community Visitor reflected on the changing landscape of the NDIS with more and more individuals living on their own and receiving services in the home:

Now it makes less and less sense to talk about settings because you'll have people who might have comparably high support needs who are living on their own in community with one other person, compared to people who were previously living in a group home or a residential service in Victoria [level three residential service up here in Queensland]. ...So I think increasingly ...we have to focus on meaningful definitions on the level of supports that a person is receiving rather than the setting in which they're receiving the support. That's the challenge ...If we are wanting to make this a safeguard that applies to particular individuals, we've got to find a way of defining those individuals. And I suspect we just do that by identifying the care and support needs ...just define them as being people who are funded for particular levels of support CV1

### **Increasing complexity of Community Visitor role under the NDIS**

All of the Community Visitors staff spoke of the increasing complexity of the Community Visitor role under the NDIS. They described that pre-NDIS, you had set houses and you would deal with most issues at a local level through the house manager - and that included equipment, allied health, dental and medical services etc - meaning that you could deal with one person. Whereas within the

individualised landscape of the NDIS, there is now complexity because of the variety of providers that a Community Visitor may have to follow up issues with for each resident. They noted that they often had to act as virtual case managers for each resident in following up multiple issues such as the provider for the resident's wheelchair repair, an Occupational Therapist for updated referrals, the SIL provider about workforce performance or the podiatrist for adjustments to orthotics. They noted that there is much more complexity in the Community Visitor role. More time and resources are needed for each resident to follow up with the various service providers attached to each resident:

[T]he environment has become so much more complex ...we're not meeting current demand ...we can't keep up as it is ...the number of places that you might have to go to find the responsible party is unmanageable ...and the number of providers therefore that Community Visitors are needing to have relationships with has just kind of gone gangbusters. and therefore the support that the Community Visitor program needs to provide... has become more time consuming and resource intensive" CV11

Another Community Visitor noted that house managers and SIL providers really needed to take a lot more responsibility:

Whose responsibility is it? ...I think since the NDIS, there is a lot of leeway for the provider to say it's not my responsibility. Like if a person isn't getting a service then they'll simply say well there's no funding for that, or if they've got funding, we're waiting on the support coordinator to follow that up or that's not our issue, or if it's a property thing say it's an SDA thing, like there just seems to be ...there's more mechanisms for providers to be able to just.....[handball]. CV10

Another commented:

if you go and do a visit and someone's wheelchair is not working you can't just talk to the house manager and say, "are you going to follow up?" It's a matter of, well, who's the wheelchair provider or who's your support coordinator... they're having to do much, much more work as a Community Visitor to try and resolve issues because it's not just speaking to the single [contact] point. CV12

One Community Visitor spoke of needing to now manage unrealistic expectations because of reduced resources and increasing complexity:

[J]ust because a Community Visitor is entering and having that visit with people it's just the expectation that they will be across all of those things to a depth of understanding that might be really tailored to an individual. The reality remains that at some places we visit, there could be, you know, quite a number of people living there; residents. So you only have a certain amount of time with each person to understand what's happening for them in their life. CV12

Another Community Visitor highlighted that the safeguarding role is being impacted by the complexity of privatisation not just the NDIS:

It goes to obviously the safeguarding role of Community Visitors in terms of raising the concern and also the expectation that if they raise a concern that it should be taken seriously. I think that's fair ...I think what has become increasingly difficult for Community Visitors in VIC is [that] in the past all roads led back to state government one way or the other. The state government was the funder, the regulator and also the main service provider; [you were] able to have that conversation and try and get a fix. It wasn't always very effective but you knew where to go ...now the Community Visitors in the disability stream may visit a resident with a SIL provider

...we raise an issue about this resident having an unsuitable wheelchair, [and] has for some months now, and we ask what is happening with this issue? Then the answer we get back from the SIL provider is very unsatisfying ...so then we need to contact the support coordinator or the Occupational Therapist. CV3

This led to discussions about the role of support coordinators and their current effectiveness within the NDIS scheme. For NDIS participants with complex and multiple needs, the role of a support coordinator was established to support NDIS participants in finding service providers for their various needs and in maintaining contact with these service providers in relation to ongoing reviews, maintenance and repairs of equipment and generally just to ensure that there is a good ongoing working relationship between the NDIS participant and the service provider.

Community Visitors spoke of the need for there to potentially be an expansion of scale of funding of support coordinator roles to more NDIS participants in closed settings so that they do not have to case manage so many individual participants. They noted that more support coordinators were required to take on the role of maintaining work relationships with the service providers and following up on issues. Further, it was noted that Community Visitors should have priority access to the support coordinators where they have permission from residents to follow up with issues. This would hasten up the resolution of pending issues. In addition, Community Visitors noted that the existing support coordinators needed more training and capacity-building to do their role more effectively and be more responsible for resident service arrangements, again so that Community Visitors were not required to follow up on so many issues. Where a resident did already have a support coordinator, that person was meant to be undertaking this role.

Another Community Visitor also highlighted that there is increasing complexity with the increasing number of diagnoses under the disability stream, requiring a broader-based level of knowledge and skills:

The profile is changing. So I visit people that have got acquired degenerative diseases like Huntington's or Parkinson's or acquired brain injury ...and the staff aren't skilled at Huntington's for example, they need to refer to the local hospital, they've got a skillset there. But that's what we're seeing now, people with acquired brain injuries, car accidents, sepsis, Huntington's, Parkinson's, dementia and it's not the traditional model of disability. CV5

### **Announced and unannounced visits**

An interesting finding in our research was that Community Visitor schemes in different jurisdictions vary as to the percentage of announced and unannounced site visits they conduct.

State breakdowns from our data are:

- VIC – 95% unannounced [the 'vast majority'];
- SA– 90% announced;
- NSW – 95% unannounced [in the 'high 90s']; and
- QLD – 90% announced.

This is of interest in thinking about the preparedness of various service providers when they know a scheduled/announced visit was about to occur. Anecdotal evidence suggests that newer residential service providers may clean the house/facility more thoroughly, take disruptive residents out of the residence during the time of the Community Visitor visit, make sure the books are up to date, put on extra staff and are generally defensive and resistant to Community Visitor visits.

In contrast, many traditional providers have reportedly built up a good rapport and working relationship with Community Visitors and understand the role of the Community Visitors. They are more likely to accept the value of unannounced visits as providing a more authentic view and insight of the 'on the ground' living arrangements of residents as distinct from that of their management structures.

It appeared evident to Community Visitors that many service providers new to the NDIS required education programs to explain the exact role of Community Visitors, and that this would help counter some of the resistance and defensiveness of new providers in having Community Visitors come into their accommodation settings. They noted that more accessible Community Visitor information was also needed for people with disability, so that they had a source of accessible information on their rights within these accommodation settings that was independent from information provided by service providers (who may have more vested interests such as financial profit or industry reputation than the human rights of their clients).

Victorian Community Visitors noted that the vast majority of their visits were unannounced. They noted that only on rare occasions were visits announced and this would only be where there was, say, need for a particular client or staff to be at home.

In contrast, QLD Community Visitors noted that the majority of their visits were announced. They explained that this was because of the sheer distances that had to be travelled by Community Visitors to make a house visit in some regional areas. They noted that a lot of organising was often required to visit regional locations and that the Community Visitors wanted to ensure clients were at the house on the day of the visit so that they could talk with them about their experience of living at the accommodation. QLD Community Visitors highlighted that they were currently trying to ensure that residents, staff and the public knew that they could request a Community Visitor visit at any time if they were concerned about anything they witnessed or experienced at a house. Community Visitors felt that complaints to them were an important part of the Community Visitor safeguarding tool that had not been promoted enough:

We may only visit annually at the moment, unless there are issues that we need to resolve and then it would be a higher frequency ...[and] it is much more of an operational impact to travel and have no one there because they're all on community access ...[otherwise] you just cannot manage a community visiting team, because we have to allocate and schedule visits and our Community Visitors are casual and most work under half an FTE. So, you know, you have to really announce a visit. CV12

Community Visitors from NSW noted that unannounced visits would be in the 'high 90s' (i.e. approximately 95% would be unannounced visits). They noted that the only times that they would do an announced visit was if, for example, they were driving long distances to very remote locations or if say someone had to fly out to Broken Hill or a similar location, then they would probably announce those visits:

Currently we've been doing these one-off visits and identifying that there's a lot of services that have never had an Official Visitor at all since their commencement. I did some the other day where they said, can you go to the Illawarra? Here's five services that have never been visited. Can you spend a couple of days down there? Visit those five services as a one-off visit. So [for] those, I announced I would be coming, [and said] "This is going to be the information that I'm going to need when I come." I did the visit. I did a visit report, and I won't see them again. That was just a one-off. Clean slate. If there were things that had to remain open or

couldn't be resolved following my visit report, they just got handed over to management to continue to follow up on that. That would probably be the only announced ones that we generally do or if there was a specific reason and a specific person that maybe had contacted us and we needed to make sure they were home or something like that. CV10

Community Visitors from NSW noted that:

with unannounced [visits] providers don't have time to pretty everything up before someone comes in ...[and] there's no one else really that can do that ...that can just pop in ...[and] a visitor that's turning up unannounced they can just see things. It is only a point in time visit but it's a good opportunity for them to be able to identify little things that can have a significant impact on the person's life ...it's definitely a safeguard I think for people with disability. CV10

Community Visitors from SA noted that all visits were announced in their disability stream and that on a recent visit, staff were 'hovering':

I went out on a visit yesterday and the service delivery [management] were there ... ..it was like everything was on show because they knew we were coming ...[and] I really wanted the team leader there when were looking through the documentation so I could say 'hey, can you show us this or that?' ...[but] I think there's absolutely room for improvement. Again, it's about being really clear that this is who we are as Community Visitors and that this is what we're here to do. CV7

Community Visitors from SA also spoke about the need to educate and inform the disability sector in their state about the role and responsibilities of Community Visitors:

That's the comms piece as well, isn't it? You mentioned around some providers thinking – 'oh, who are you?' and being defensive; it's almost like 'okay, here we go again, what roadshow do we need to do? How do we need to really set the scene properly so that our Community Visitors get the welcome and the access that's needed' ...[so] we're going to start to put together our roles and responsibilities. So we're really clear about 'we are here to be hearing your client's voice ...by all means, wait in the office and we'll look at the documentation part after, but basically step away and allow us to do what we need'. If it is one of their support staff that can help support that facilitation with the conversation, then it really should just be those senior staff ...because you go there and it's like - I had the dining room table with two clients and then four staff and then myself and my fellow visitor. CV7.

As another Community Visitor noted:

How do we say to them that it's actually useful for us to see the challenges? It should be natural. Sometimes they also have layers of management come along and things like that which I think is really unhelpful ...they will greet you at the door ...you know, we need time with people independently. CV8

Community Visitors from SA also noted that in-home visits by the OPA to a client with a disability (see below section on in-home visits Ann-Marie Smith guidelines) were all announced:

If we're going into a person's home, it is respectful to be invited in rather than to just turn-up and surprise people; people have ownership over their own space and that is incredibly important ...[and] if I come unannounced, that's a very different dynamic, of two people that you've never seen before arriving on your doorstep. CV7.

The Community Visitors referred to the *CRPD* and noted that with in-home visits, clients had the right to choose who enters their home. This was a significant difference from a visit to a group home:

It can be very easy to forget that you're going into somebody's home if you're not consciously reminding yourself that you are going into someone's home. I try to come from the approach as well that [I need] to be extremely respectful in that regard, and always ask – do you mind if I have a look in this area? Or would you like to show me, or whatever. It's a little bit of a guidance for staff as well, because the number of times that you walk into a [group] home and staff will say, oh, this is Johnno's bedroom and staff open the door – and Johnno's not home at the time of the visit – but they open the door and say there's his bedroom in there. I'm like, whoa. CV4

### **Feasibility of opt-out and opt-in programs from Community Visitor visits**

Approximately 23,000 NDIS participants live in SDAs across Australia (NDIS 2023). This indicates that a large cohort of people with physical, intellectual or cognitive impairment still live in institutional or 'closed-environment' accommodation settings that are dependent on staff, and that these residents may have extremely limited capacity to make an independent complaint (WestWood Spice 2018:42). The latest NDIS Quarterly Report (2023) details that the number of NDIS participants with SDA supports has increased by 16% annually over the last 3 years (NDIS, 2023:48). It also details that the total number of enrolled SDA dwellings at June 2023 was 7,925, up 22% annually over the last 3 years (NDIS, 2023:48). As at June 2023, there were 4,619 participants in an SDA dwelling seeking an alternative dwelling, and an additional 1,305 participants who were not in an SDA dwelling seeking a vacancy (NDIS, 2023:48).

The latest NDIS Quarterly Report also detailed that approximately 31,500 NDIS participants now utilise SIL provider supports (NDIS 2023:47). We were not able to obtain data about how many NDIS participants utilising SIL provider services were also in a private rental accommodation controlled by that SIL provider within this cohort (i.e. the SIL provider was both the landlord and the provider of personal and community support services).

During our research we asked Community Visitors their thoughts about, and the perceived merit of, having opt-out or opt-in approaches to clients receiving Community Visitor visits. This idea was raised at the 2022 OPA annual general meeting in VIC in seeking ways to manage visiting obligations amidst the shortage of resources (author correspondence, December 2022).

As noted above, the NDIS has expanded the range of accommodation options available to participants, including clients who receive 24/7 hour support in their own home and people living in accommodation organised (and controlled) by the same SIL provider providing their personal and community supports. This could include the new concierge type models where the SIL provider is the landlord of purpose-built individualised accommodation units congregated together at one site (say in an apartment block), and where the SIL provider provides services to participants in these units and operates from an 'office' which is a unit within the same accommodation block. Utilising this model means that the participants get some independence of living in their own unit without staff hovering around, but staff are available in the office unit 24/7 and are close by to provide any support needed.

The advantages and independence that this provides on the surface seem progressive, however anecdotal reports have suggested that some of the people living in these concierge type arrangements are still within a controlled service provider system, and that power dynamics over how support is

provided and issues with staff control are still relevant. SA advocates have pointed out that client capture can occur, where a single provider is controlling both the accommodation and the full service provision, meaning the resident has no choice or control over their own service provision.

Our question about an opt-out scheme sought to examine firstly, whether Community Visitors should be visiting these concierge style SIL provider sites (or any house/site where the SIL provider is both landlord and personal and community support service provider), and if so, should there be an option that these clients could opt-in for visits. Or secondly, should there be an option to opt-out of receiving visits if community visitor parameters were extended to include these SIL providers.

Some Community Visitors spoke of being overwhelmed at the thought of having to extend visiting into the array of these SIL provider sites given the resources that they are currently operating with, and that this would only work with a very limited opt-in scale. Other Community Visitors did not feel that Community Visitor visits were needed in these settings as most of the residents should be empowered enough to ring and advocate if needed, but also highlighted that finding an advocate in the current landscape would be a challenge as they are all also under resourced and under enormous strain since the establishment of the NDIS.

However, some Community Visitors noted that residents in SIL controlled accommodation settings should be given the opportunity to opt-in to the Community Visitor scheme to receive visits if they felt at risk, felt unable to make a complaint independently about their provider, or felt that they could not contact an advocate independently for some support and advice.

Of particular concern were situations where, a resident, in raising a complaint against a current service provider (who they remained dependent on for service provision until the complaint was resolved), risked receiving retribution from that provider for putting in a complaint. A complaint made to or through a Community Visitor at least provided a buffer where a third person made the complaint and it was not as obvious that it originated with the resident concerned.

A theme that emerged during this questioning was in relation to tensions between obligations and responsibilities of the state to provide oversight and safeguarding protections for people with disability on the one hand, and the right of an individual to choose who enters their own home and related rights to privacy on the other. These tensions are articulated in the *CRPD*.

### **Opt-out discussions**

The examination then branched out to consider whether there should be some general opt-out provisions in the general community visiting accommodation settings of group homes. For example, where there was a SDA /group house that historically had few or no incidences of any observable risk or safety issues, and the clients were independent, empowered and cognitive enough to be able to contact the Community Visitor scheme or an advocate if there were any issues with the provider or staff, would an opt-out provision be appropriate?.

Some Community Visitors raised concerns that residents who opt-out may not be aware of some of the risk factors in their living situation and may think things are going along well, whereas in reality there could be a high risk of serious incidents.

Another concern was that some residents could be unduly influenced by newer SIL providers who could put pressure on them to opt-out of the Community Visitor visiting oversight – in effect, gatekeeping out Community Visitors. Community Visitors discussed that if a resident chooses to opt-out from visits, but then their circumstances change (say a very controlling SDA house manager or SIL provider manager takes over the accommodation), what arrangements would be needed for that client



to opt back in to visits? One Community Visitor raised that you would probably need to remain in contact with those clients and say make a regular 12-monthly phone call querying if they still wanted to opt-out, and to determine if the capacity of that person to make decisions independently had changed over that time as well.

Community Visitors felt that some form of formal assessment should be undertaken if a resident chooses to opt-out from Community Visitor visits (in either SDA or SIL provider accommodation). As noted in the report introduction, the Community Visitor scheme model operates as a model designed to *prevent* violence, abuse, neglect or exploitation from occurring and aims to resolve issues before they escalate with their frequent oversight of accommodations. Community Visitors highlighted that the *fact* of their regular visits acted as a deterrent and reduced the risk of harm at the places they visited. They noted that removing a Community Visitor visit could allow a risk to escalate that the person with a disability did not realise would arise without the Community Visitor oversight. However, another imperative was the need to avoid subjecting people with disability to protectionist interference such that they have state officials or state-appointed volunteers surveying their personal space and making unwanted judgements about their safety. These are difficult issues that require further attention.

One academic felt that the Community Visitor schemes should not be doing opt-out if it is just a resource issue. They noted that in effect, it mixed up human rights and economics, and that it would be disappointing if people were being pushed to or given choice to opt-out of a Community Visitor visiting scheme only because it was something easy to do in a resource depleted landscape and not in relation to empowerment.

One Community Visitor noted that it comes back to the purpose of the visit. What is the risk that comes with the accommodation? Does the safeguarding response need to be tailored to differing types of risk?

As long as they're not being coerced into opting out ...as long as it's free will ...that's why there probably needs to be some assessment or some discussion if they [clients] opt-out to make sure they're not being coerced into opting out [and] ...there would be some places that you would say well no ...anybody living there probably hasn't made a choice to live there, they're probably there because there's nowhere else to be. They should be visited. CV2

Another Community Visitor noted that quite often they go to a house and there will be residents who do not want to talk to them or do not want to engage with them in any way, or anything else, and they just respect that decision. They noted they will ask the resident if they would like to speak to them and if they respond 'no' then that was fine. They noted that they always asked residents if they could look at their file to look at relevant things about their support:

Not everybody obviously has the capacity to be able to give that consent but we're still able to look at those documents if we need to ...obviously we try to respect the residents' wishes, but if we had concerns around it, we would still go ahead and look anyway. CV4

The importance of respecting residents' wishes was reflected in the observations of another Community Visitor who noted that:

there will be times in residents' lives when they shall say, we don't need it ...we respect that as well ...It's such a dynamic changing thing ...so we've definitely thought about that. I think it's also people might say no because they don't know what it is and that worries me too

because they don't like a stranger coming into their home and who they think is poking around and looking at something ...that might feel very intrusive. It's really tricky.CV8

A Community Visitor from SA highlighted that if a resident has cognitive capacity and are empowered, that they can request a Community Visitor visit or contact an advocate anyway:

there would be a lot of people I visit for example in the disability scheme that are run by State government, they'd need to really be talked through and supported in understanding what the benefit of the visit is. Not just a tick or a cross, yes I opt in, no I don't, people have to really understand the value of it. I think if people are articulate and able and don't have any cognitive or decision-making impairment, that those people are more likely to use existing mechanisms like complaints and put their hand up and request it [a visit] anyway. CV6

In relation to new SIL providers as landlord and support provider, one Community Visitor noted that possibly residents in a concierge model accommodation may choose to opt-out:

These people have got the communication skills and are able to advocate for themselves ...it assumes a little bit that they understand all the risk factors around them and they understand their dependencies and the dynamics of the service provision. It sort of then assumes that they're not in risk [though] ...sometimes we know the clients don't always see the issues or are unaware of the coercion and the dynamics being played out sometimes ...things can go downhill relatively quickly. CV10

Another Community Visitor highlighted that it was a balancing act with opt-out:

I think yes ...there's capacity ...they know that if something changes, here is the way you can contact me ..but there are some cowboys out there, there's [sic] some real cowboys and you know it's a money making thing` ...where I've visited people with physical disabilities ...I've left a fact sheet; they can contact me via the government email if they've got an issue that they can't resolve. So that's how I've done it because I've worked for the government a long time, I'm well aware of resources and I'd rather visit some forensic criminal justice house than someone under Spinal Cord Australia who can usually advocate. But if they're facing an implacable manager who doesn't understand, then they can contact me. CV5

One Community Visitor highlighted that any opt-out discussion would need to be face-to-face:

Yeah the main thing I would want to ensure is how this is operational, but I'd want a kind of ideally face to face discussion with the person just to ensure there's not – they're not saying this because the service providers convinced them. And that's a clear case ...a clear case where they don't understand what the Community Visitor is doing. They think the Community Visitor is checking on them rather than – they may be unaware of the potential benefit. So just making sure that's clear. And I imagine it would need to be face-to-face. CV1

### **Opt-in discussions**

Community Visitors had fewer comments about an opt-in option. It was highlighted by a Community Visitor that at the moment, opting-in in effect occurred at the point of becoming an NDIS participant

As noted above, there has been discussion in the safeguarding field as to whether residents in new SIL provider accommodation settings should be given the opportunity to opt-in to the Community Visitor scheme. Further, (as will be discussed below in the section concerning in-home visits and the Ann-Marie Smith Guidelines), with increasing numbers of moves by residents from 'closed accommodations' to their own homes with SIL provider hours, there were discussions about whether

clients should be able to opt-in to receive a Community Visitor visit in their own home. For both of these scenarios, risk indicators for any visit would need to be established such as if a participant felt at risk, was socially isolated and highly dependent on support services, did not feel they could call a Community Visitor or an advocate independently for some support/advice or felt unable to make a complaint about a provider independently. Community Visitors immediately pointed out that an opt-in option could not be available for all in-home NDIS participants realistically, because the capacity of each scheme would need to increase 50-fold:

If there was an opt-in [option], you've got a bigger question of well, have you got enough capacity, if everybody opted-in or if 50 per cent opted-in, can you meet that [demand], can you deliver on it? I don't know about the other jurisdictions, but with a volunteer-based scheme, if we had 50 per cent of the participants in SA opting in, or even 30 [per cent], we would never be able to reach them all in a timely way. So if it's an opt-in... [we would need to consider] which is a good human rights choice, [and what do we have] capacity to deliver. CV6

A Community Visitor from QLD noted that in disability, they operated in an intellectual/cognitive impairment framework and did not really think there would be much call for an opt-out option:

If you've got a very empowered, very knowledgeable person who would have capacity to be able to just pick up a phone if there was an issue and ring a community advocate ...if their life's going along well ...we don't visit them at the moment ...[there are] 200,000 participants in QLD alone ...at the moment we visit about 6000 people. I don't even know how in a scale you would actually operationalise that [an opt-in model]. You'd have to probably narrow it down more than just opt-in model I'd say. I'd love to think governments would fund that. CV12

However, many Community Visitors, particularly considering the Ann-Marie Smith case, noted that in a very small number of instances, there could be a place for clients to opt-in for Community Visitor visits in-home or SIL provider controlled accommodations if requested and at the discretion of Community Visitors. One Community Visitor noted that 'having an opt-in when we get a request definitely needs to happen.' CV7

### **In-home visits – Ann-Marie Smith guidelines**

The devastating and torturous death of an NDIS participant, Ann-Marie Smith, in 2020 at the hands of her paid support worker (employed through a SA NDIS registered service provider) was a shocking low in the safeguarding of Australians with disability. A number of other serious cases resulting in the deaths of NDIS participants in their homes because of neglect, abuse and service delivery failure have demonstrated gaps in the broad safeguarding framework.

A SA taskforce inquiry investigating the death of Ann-Marie Smith (Vincent and Caudrey, 2020) recommended that the SA Public Advocate (not the Community Visitor scheme) should be granted powers by the state to make a small number of in-home visits to people with disability where it became evident there was potentially high amounts of isolation and risk in the living situation of that person.

In terms of safeguarding and the changing settings for accommodation and service delivery emerging within the NDIS, the in-home visits by OPA staff are of interest in terms of how safeguarding models are being utilised in Australia, and whether there is a potential for this model to be translated across into the Community Visitor schemes for clients deemed at risk and highly isolated.

Within SA, the Public Advocate now has authority to go into a client's home (on request) if information comes to them that a person with disability may be at risk, is isolated and/or might not have voice or capacity to independently make a complaint. This would include any client living alone in a home

where restrictive practices/positive behaviour supports are being used (and in some situations even where the person is living with relatives).

Obviously they are under [the care of] the Public Advocate because there aren't any support networks ...there isn't any family interface ...so they're normally the clients that are really isolated. So us coming in and saying – what community participation is there? How is the person being managed? Are they doing enough activities? ...being able to query if there are any blocks with NDIS funding or what's in their plan ...at least we've had the conversation if there needs to be negotiation with the NDIS. Because generally those clients are really isolated. There's [sic] not any other connections that they have. CV7.

The SA OPA staff described being very conscious of appropriate boundaries, respect for the community member and of the safety criteria and guidelines applicable to home visits. One noted that 'there are always two visitors at a time, and we have strict guidelines [which] say we never go into someone's bedroom for example.' CV7

A Community Visitor from NSW highlighted that CALD and English second language clients with disability would very much benefit from an in-home visit model:

On every level like you know white, middle class, wealthy, if anyone was going to have protection that was Ann-Marie Smith and I think about ...you know people who are from CALD backgrounds, people who live in parts of western Sydney that are complex, all that kind of stuff. CV5

Another Community Visitor noted that in relation to the OPA visits:

I understand that some of those visits usually are annual I think. They're not frequent. That's the way we see people more in their own space ...they are announced visits. It's had a slightly different focus because we're not doing that under the Disability Services Regs, we're doing them under the Guardian Administration Act. It's more that care planning, participation; I think it's going pretty well and I think they just welcome the chance to speak to somebody and just raise any concerns to an independent party. I think there's challenges because ...the number of people under guardianship orders is just [skyrocketing?] ... I think there are realities of caseloads and things like that, [but] it's another opportunity. CV8

The Community Visitor from SA noted that this financial year the number of OPA visits made was approximately 40:

The definition of who we visit is Public Advocate clients who are NDIS participants with disability. It's important legally that there is a delineation between the two roles (from the Public Advocate to the Community Visitor) ...they're not visiting as Community Visitors ...it's technical but important ...they are not there to advocate for the person not to be [or to be] under guardianship ...they're there to [establish] is the service responding to the client's needs, are they getting into the community, all of the safety, wellbeing, abuse angles that they are required to report on under the delegation. CV7.

The Community Visitor noted that all OPA visits needed to be announced visits out of respect for the fact that this is a person's home: 'it's very difficult to just rock up and say we're turning up ...and you want to make sure you've got the person at home.' CV7

The extent to which in-home visits by OPA staff should be extended to Community Visitor schemes across Australia needs to be considered. As Community Visitors have noted above in the section on

opt-in models, it would take a significant increase in resources to operate an in-home visiting model at even a small level for each Community Visitor scheme. The in-home scheme by the SA Public Advocate provides us at least with an opportunity to observe benefits and issues with in-home visiting and how an in-home model might be operationalised. Issues immediately evident might be that the referral role of the community visitors would not work if there was not a service provider on site and who would have responsibility for following up items from the Community Visitor visit report where the client did not have capacity to do this themselves. In contrast, another Community Visitor from SA did not think that Community Visitor schemes should expand to include in-home visits:

We did the safeguarding task force following Ann-Marie's death in SA. People with lived experience of disability on our task force were very outspoken about not having [this] invasion of privacy. So going into private homes ...they didn't think a Community Visitor scheme should do that [for] people who don't have cognitive impairment; it's a choice for them and they're probably going to be very empowered ...they'll probably go 'no I don't want people visiting me' ...I get a feeling that people would say that. Then the people who might benefit from the visitor might be people with less voice for want of a better term and may not even be aware of the value of the Community Visitor. CV6

The broad visiting definition of the NSW Community Visitor scheme allows for in-home visits to clients living alone, but again at a very small margin. One Community Visitor noted:

We are often trying to wrestle with clients that are isolated and [who] have particular levels of support. [In NSW] you can have a Community Visitor, but not when you're living with some family members, because it's kind of like a private house ...so we are trying to tease that apart. CV1

### **Volunteerism and paid workers - comparisons and contrasts**

The autonomy of the different Community Visitor schemes across Australia is strongly impacted by whether the schemes operate with a paid Community Visitor workforce or a volunteer Community Visitor workforce. The debate, contrasts and comparisons in this area are not new and have gone on for decades since the establishment of Community Visitor schemes independently across Australia in each state and territory.

The extent to which a paid Community Visitor workforce or a volunteer Community Visitor workforce is better than the other is not really of great importance were they are both carrying out safeguarding functions adequately. However, there may be implications around this delineation if the NPM *OPCAT* reporting utilises Community Visitors for inspections. Author discussion with Community Visitors over many years has identified that this debate of volunteerism versus a paid workforce is quite polarised, with people sitting sharply on either side of this debate. The extent to which visiting parameters are impacted by this debate is outside of the scope of this study, however, as an insightful Community Visitor noted - no volunteer workforce pool is limitless, and no paid workforce has an unlimited budget. Given this debate came up in our data gathering, we are providing a summary of commentary provided by Community Visitors on this debate with the dot points below summarising some of the contrasts and comparisons mentioned by Community Visitors of each workforce model:

VOLUNTEER Workforce comments (quotation marks omitted):

- as volunteers, we have more of what you might call 'cred' with the community in the sense that people recognise that we are volunteers;
- as volunteers, we are more likely to provide some kind of social contact for that resident;
- you can't easily dismiss a volunteer;

- in Victoria, the Community Visitors are appointed by the state governing council, so we have a lot of independence;
- many residents with very high support needs will rarely have contact with people who aren't paid service providers, other than sometimes family
- because we're volunteers, we're more likely to spend some time just chatting with residents rather than clock watching and in and out;
- 'volunteerism' is a feature; it is 'local' and it is important to have those eyes and ears at a local level; pretty much everything that the commonwealth coordinates, distances the scheme from the people who they are intending to benefit;
- reputation: an important part of the program is maintaining respect within the community and for the parliament [volunteerism achieves this];
- as volunteers, we have a community building role; we talk to people and friends in the local area about what it is that we're volunteering with and that really enhances community inclusion; and then there's greater interest in why we are visiting people with disability;
- serious complaints can get directed and referred on – there is a view that as Community Visitors, we shouldn't be dealing with everything, that we should be doing what we do well in houses; but we escalate serious issue up to OPA paid staff or public advocate or to the NDIS Quality and Safeguards Commission or other agencies; and
- we are local people taking responsibility for checking in on people who are living in risky environments and making that information transparent to the Minister responsible and also other community members, and saying 'this is how we're treating people and it's not okay.' ...that's the nature of the role. It's not to check whether your NDIS service agreement is any good'.

PAID Workforce comments (quotation marks omitted):

- I think it will be very hard now to introduce a volunteer scheme where one doesn't already exist [in reference to the current economic environment];
- we vehemently reject the volunteer model because I think that it is dangerous. You need people who are independent, you need people who've got skills, you need a variety of people, you need people who are prepared to work out of hours. You need people who are prepared to sit and talk; it's monitoring community standards;
- there's a place for volunteers, I volunteer in community sport all the time, but this is an oversight community standard role; they don't have the skill set and they are not respected as a peer by the service provider, they are like the meals on wheels person, so no, not at all;
- I don't think the providers respect volunteers at all

### **New providers in NDIS**

Community Visitors discussed their experiences with 'new service providers' in the NDIS. Interviewees indicated that many new service providers did not seem to clearly understand the role of Community Visitor visits. They noted that prior to the NDIS, they had well-established relationships with traditional service providers who understood the role of Community Visitors. These providers were colloquially referred to as 'legacy providers' Community Visitors noted that with the new providers, they now had to undertake a transition process that included informing them of the role of Community Visitors:

There are more and more providers coming on every day, and their understanding of their safeguarding role, let alone our safeguarding role, is very minimal; it is ...work that needs to be done for sure and ...it's neglected at the moment. CV3

One Community Visitor spoke of some new providers not knowing anything about the Community Visitor program - that the Community Visitors walk up to the door and the staff do not even know who they are or will not let them in because they do not know if they are allowed in the house or not.

A particular issue with new service providers was in negotiating safeguarding and seeking to ensure the protection of client's human rights in the privatised, corporate environment that these providers operated in. Interviewees spoke of the new NDIS providers having less experience with Community Visitors and that consequently Community Visitors encountered some resistance or defensiveness when arriving for a visit. They spoke of new providers in NDIS sometimes being concerned about what the visit might do to their commercial reputation. Community Visitors noted that these new private providers at times did not respond or take on board the issues that Community Visitors had raised with them at visits:

Absolutely, absolutely... it's more bureaucracy, we know what we're doing when clearly they don't. ...so there's a lot of push back, there's a lot of unskilled workers; a lot of people who don't understand restrictive practice don't understand the role medication plays. [They] don't understand the need to understand epilepsy management, manual handling ...all the safeguards, so you've got an unskilled workforce ...I've seen so many near misses with someone with epilepsy left unsupervised or people that think just giving Panadol is okay because you buy the no-brand from Woollies ...so I do see a lot of informal restrictive practices around over the counter medications in new providers and I think that's quite scary. CV5

Community Visitors also spoke about some new providers coercively influencing clients to not accept visits, effectively seeking to gatekeep out Community Visitors:

They feel like they're getting audited, even though it's not the role of a Community Visitor; and they're sort of a little bit defensive and even ...we've heard some sort of reports that they're coercive to the clients about telling them not to have the Community Visitors to come in in some of these newer sites because they're just so unsure of what the role is ...it's a jungle out there ...we have plenty of evidence of unscrupulous providers exploiting people financially and then that obviously has kind of social impacts as well ...and the unscrupulous providers and the new accommodation options and that people have more choice now about where to live and more things are possible. Like that's all a good thing. But yeah it is that - yeah the grey sites, the unknown... CV11

One Community Visitor from SA said they felt that a lot of newer providers did not understand the benefits of the Community Visitor role:

I think with so many new providers and so many new NDIS participants on the scheme we're querying how can they opt out of something they probably don't know about, like what you said, exactly what is it? or what it's meant to do and what is it's oversight and human rights role is meant to be. CV6

They noted that new service providers were tentative about the Community Visitors coming in, and demonstrated an attitude of 'what is this unannounced role, and are we going to get investigated?' without understanding the human rights oversight process.

A Community Visitor from NSW noted that a lot of the new providers often have high staff turnover, and that often, the new staff do not understand the function of Community Visitors:

They think Community Visitors are coming in there to wave a big stick ...[and] they just don't have that legacy knowledge of the Community Visitors ...I think that a lot of these providers don't understand [our role] ...we provide information when we do our initial visits ...[but] with the change in staff turnover, I think there's a lot more cases of Community Visitors going to houses where the staff don't know what their role is, what the functions are, what they've got the authority to do, and that creates a level of, I guess, anxiety for the provider. CV10

A Community Visitor from SA spoke of needing a social media campaign to raise awareness for new providers. In contrast, the QLD Community Visitor Scheme has legislated a 'positive obligation' on all new providers whereby any new provider within the definition of a visitable site must notify the QLD Community Visitor Scheme before trading and providing services. QLD is the only state that has that obligation in the legislation. At least in this instance, the Community Visitor scheme would have the opportunity to send a pack of information to the new provider and educate the new provider about the role of Community Visitors, including that they would be undertaking visits in the near future and what to expect from a visit. There is debate on whether this kind of notification role is one for the NDIS Quality and Safeguards Commission if it operates in their state.

### **Preventative model versus responsive complaints**

Within Australia, two formal and separate entities are used to ensure the safety of people with disability utilising funded support services in accommodation settings and homes. They are the recently (2017) established national NDIS Quality and Safeguards Commission, and the longstanding state-based Community Visitor programmes which operate across most states/territories in Australia (excepting WA and Tasmania).

The NDIS Quality and Safeguards Commission operates as a separate entity from the NDIA and the NDIS. The key aim of the NDIS Quality and Safeguards Commission is to prevent all forms of neglect, abuse, financial or sexual exploitation, harsh or rough treatment, depriving a person of food, sleep or basic needs, bullying, or intimidation and/or vengeful behaviour. The NDIS Quality and Safeguards Commission has only been fully operational at a national level since December 2020 (NDIS Quality and Safeguards Commission, 2023a).

The NDIS Quality and Safeguards Commission seeks to achieve these aims by, in the main, working through service providers. Service providers can volunteer to be registered with the NDIS Quality and Safeguards Commission. To ensure these service providers are meeting compliance standards and guidelines related to how they deliver services, the NDIS Quality and Safeguards Commission undertakes auditing processes reviewing governance frameworks and policies and procedures of service providers. This should include investigating if the service users are happy and satisfied with the quality of services that they receive, and that the workforce is satisfied in their work role and with working conditions and that the workforce has undertaken the required amount of professional development and training.

Service providers who choose to undertake the registration process with the NDIS Quality and Safeguards Commission are designated a 'registered provider' in the market with the implied status that the provider is providing services to a higher standard and with better quality due the oversight and compliance processes undertaken by the NDIS Quality and Safeguards Commission. In terms of the NDIS Quality and Safeguards Commission framework, people with disability are looking for



assurances that they will be safe when utilising support services and that they will receive quality services if using a service provider registered with the NDIS Quality and Safeguards Commission.

The NDIS Quality and Safeguards Commission also can also receive a complaint about any NDIS funded service, not just registered service providers, and undertake an investigation with this service provider based on this complaint.

The auditing process is preventative in seeking to prevent violence and abuse and neglect, whereas the complaints process is a responsive model in needing to respond through investigation into allegations of violence and abuse and neglect that may have already occurred (NDIS Quality and Safeguards Commission 2023b).

In contrast to the NDIS Quality and Safeguards Commission, the Community Visitor schemes are very much focused on a preventative safeguarding model. Community Visitors undertake outreach monitoring to people with disability and physically visit an accommodation site.

Community Visitors often refer to themselves as ‘the eyes and the ears’ of the public advocate in seeking to ensure the human rights of people with disability are upheld. The Community Visitors resolve most issues at a localised level with discussion and negotiation with the service providers themselves. They engage service providers to become aware of standards that they need to adhere to, what good practice is and reflect on any gaps in the service delivery where improvement is needed. In most cases, the service providers listen to the advice and respond well, improving their service delivery, and the issue is resolved. However, Community Visitors also have the statutory power and obligations to refer serious incidences to NDIS Quality and Safeguards Commission for further investigation or to the principal Public Advocate/Guardian of their state in relation to state-based issues such as housing and justice agencies related to service provision.

For those people with disability who may face increased risks in their lives, such as people with a disability who are solely dependent on services for supports, live in group accommodation settings, people with limited communication capacity, and people with profound behavioural challenges, all where paid support staff are coming into their homes and residencies, it is generally agreed that some kind of additional safeguards are needed. Safeguards include assurances that paid support staff entering their homes are of known good character, and that service providers are providing quality services that meet the human rights of persons with a disability, and that these services are delivered within clean, well maintained and appropriate accommodation settings. Without these safeguards, individuals may be subject to violence and abuse, which as Cadwallader et al (2018) have highlighted, is often just reframed as ‘service failure’. Balancing the prevention of any mistreatment, violence or abuse of people with disability in utilising support services while preserving their freedom is paramount. The role of Community Visitors is preventing abuse and violence before it occurs and escalates.

Thus one of the critiques of the NDIS Quality and Safeguards Commission is that it is only a complaints framework - so something has to happen, then it has to be reported, then escalated and then investigated and responded to. Whereas the strength of the Community Visitor scheme is meant to be preventative, ‘to get in there and have a look and sort of keep things at a good level and observe things, keep them at a good level before they escalate’. CV10

## Information sharing between the Community Visitor schemes and the NDIS Quality and Safeguarding Commission

Our findings identified a serious issue concerning information sharing between the Community Visitor schemes and the NDIS Quality and Safeguards Commission. Although this is outside the scope of our project, we thought it would be helpful to summarise the issues that have emerged from our data.

Some Community Visitors spoke of information sharing issues with the NDIS and NDIS Quality and Safeguards Commission. They noted that when they escalated issues to the NDIS Quality and Safeguards Commission, they did not receive a response or updates about their report for many weeks, if at all. Without knowing the status of the investigation, it was then often difficult for Community Visitors to continue liaising with the individual concerned, and/or the relevant service provider because no response had been received in time for the Community Visitor's next visit.

Community Visitors noted that escalation pathways and feedback from the NDIS Quality and Safeguards Commission did not appear to be working well. Community Visitors noted that they understood concerns about the privacy, but that this did not account for all issues, and that it did not seem clear that this was the sole reason for a lack of information sharing. Conversely, some interviewees noted that the NDIS Quality and Safeguards Commission has information about at-risk NDIS participants but that this information is not shared with the Community Visitors to allow them to triage and prioritise if a visit is needed to that particular participant. The NDIS Quality and Safeguards Commission holding that information and not forwarding it down to the Community Visitor schemes often meant Community Visitors were unable to target visits or extend oversight to participants who may be at risk but were not known to them. The Community Visitors noted that reporting to the NDIS Quality and Safeguards Commission reporting is at present challenging and not a positive experience.

Community Visitors also spoke of the Community Visitor schemes needing to be given legislated priority status to the NDIS Quality and Safeguards framework so they have increased information sharing capability, not just the complaint escalation pathway. They noted that at present, the synergy between the Community Visitor schemes and the NDIS Quality and Safeguards Commission was not good because any escalation of an issue had to be framed as a complaint.

So the broad questions became 'how we can improve information sharing so that everyone can support each other to achieve their safeguarding goals?' and 'what different avenues of information sharing might there need to be?' and 'where could we insert innovations?'. Community Visitors spoke of wanting to work in a collaborative way with the NDIS Quality and Safeguards Commission while still having their independence.

As one Community Visitor noted:

After 10 years of the NDIS ...we do not have an active information sharing agreement, nor does our state government, with the NDIA ...the NDIA will not give information back to other agencies. What we hear [is] that the reason NDIA won't give us the SDA enrolled dwelling list is because of privacy. Well, of course, we want to maximise people's privacy; it's their home. It is very private business. But there's a reason why Community Visitor schemes exist; a reason why they have [a] right of entry into certain property types because of everyone else's understanding in the history of visiting; which is hundreds of years old, that some environments are more dangerous to people than others and some people who live in those environments are less able to raise the alarm. CV3

Community Visitors spoke of wanting reform from the NDIS Quality and Safeguards Commission:

If we make a complaint, we want an acknowledgement that the complaint is received, with a sense of the timeline of the actions that are likely to be taken by the NDIS Commission, you know, 'we will go out to the house ...we will talk to staff ...we will talk to the person and we will let you know of the outcome to the extent that it's relevant to your complaint ...this would instil trust in the Commission. CV3

Conversely, a Community Visitor spoke of the information sharing from the Community Visitor schemes that could help the NDIS Quality and Safeguards Commission:

Some people who have, you know, no family, no next of kin, who are very isolated ...However, how is the NDIA going to determine who is in that position? ...now, they could, if they were smart, ask Community Visitors to tell them that because Community Visitors who visit people regularly will absolutely be able to tell about family visits, who has active family, who has birthday card only family, who has nobody at all ...their ultimate concern, of course, is for people that really don't have anyone outside funded services in their lives ...there's information that Community Visitors collect that would be very helpful in terms of the safeguarding role that the NDIS Commission has. CV3

Other Community Visitors noted that there are some information sharing arrangements but they seem to be very slow in being actioned:

There's already information sharing agreements, but I think they're just so slow acting on their complaints that by the time we get the information, it's probably quite historical. To be honest, a lot of the complaints probably come from us as well ...we'll raise and escalate an issue. The legislation says we have to do that. So yeah, look, the information exchange is not really a two-way process. We would love to get more information. If something is really significant they - we do all work together pretty quickly, so I would say that if something's escalating and is urgent, then we do just pick up the phone ...and we will work with them on that. But that doesn't - it's not required so often day-to-day ...so there's not a lot of information sharing. CV12

## Area Experts/Academics

Four interviews were conducted with academics and experts on the safeguarding of people with disabilities in relation to Community Visitor schemes and OPCAT in Australia. These interviews provided rich insight into the underlying theories of safeguarding, safety, risk and so on, as well as highlighting controversies. Interviewees specialised in human rights, specifically the *CRPD*, complaints mechanisms, regulatory frameworks, mental health law, legal advocacy, and the use of technology in improving safety.

One broad theme was how people could achieve meaningful control over their living situation to improve their safety, such as having the power to choose – and importantly, dismiss – disability support workers. Examples of control cited by interviewees included the capacity to ring an advocate (despite shortage in the system), capacity to contact a Community Visitor to organise a visit if needed, and being supported to make decisions over most life choices (as opposed to having someone exercise substitute decision making).

One interviewee spoke of the great 'size of the wound' of people with disability as a group, in terms of the abuse, violence, neglect and exploitation they have and continue to face. This interviewee

characterised many of the contemporary safeguarding mechanisms (including the Community Visitor schemes) as a 'band-aid solution' that was unable to adequately address the high levels of abuse and violence across the sector.

One interviewee noted that governments in some states seemed to use the Community Visitor schemes as grounds to argue that current oversight of closed settings was sufficient, even as those schemes were clearly under-resourced and broader opportunities for independent living were not well supported. This interviewee expressed the view that all 'restrictive practices' constitute abuse. They argued that the way the current system was set up effectively authorised support workers to use restrictive practices as long as they were documented in a behaviour support plan. The interviewee pointed to high rates of restrictive practices in closed environments, and noted that it would be difficult for a participant to put in a complaint about abuse and violence when they lived in an environment of in which restrictive practices were routine. The interviewee asked how a person in such a controlled environment, particularly those with intellectual disabilities, could be expected to distinguish between restrictive practices and abuse or violence that constitutes a criminal offence.

Another interviewee noted that the Community Visitor role of overseeing the number of restrictive practices being used in a particular house might be helpful in terms of putting in a complaint to the NDIS Quality and Safeguards Commission if the rates were high (i.e. what is going on in the house?), but the interviewee was mostly concerned with the authorising environment of abuse created around the use of restrictive practices (i.e. if it was documented then it was ok). There was also discussion on the extent to which restrictive practices are used as a first resort by untrained staff rather than as a last resort to prevent harm to the participant or others.

Other viewpoints discussed were the capacity of the regulator, the NDIS Quality and Safeguards Commission, to really be effective in creating safety for participants in closed environments. Discussion turned to the regulator role of enforcing compliance of registered providers. This included a lack of oversight of support workers, although the interviewee noted though that the NDIS Quality and Safeguards Commission had designed a good online human rights module for support workers. The interviewee noted that the NDIS Quality and Safeguards Commission itself had communicated that they felt that previous 'reactive' complaint framework had failed, and that they were working to improve this. The interviewee did feel that the NDIS Quality and Safeguards Commission had been proactive in publishing standards and with information sharing. They also felt that the Community Visitors played a fantastic role, and that for service providers, it was often great to get that fresh set of eyes of what is going on 'on the ground' within the organisation houses. They noted however that what does it say about the internal supervision in an organisation if external eyes are needed to raise issues?

One academic interviewee highlighted a model used in the United Kingdom – 'Quality Checkers' – whereby people with disability, who are viewed as peers, undertook visits to houses and then reported back to the organisation. The interviewee queried whether a similar scheme could operate in Australia, with visiting reports being forwarded to the NDIS Quality and Safeguards Commission [and/or could more people with disability themselves become Community Visitors?].

In relation to Community Visitors specifically, discussion focussed on their ability to foster safety, prevent harm and gain accurate information about what was happening in these closed-setting residential settings. Regular visits by Community Visitors enabled distress indicators and bullying behaviours to be recognised and addressed by the Community Visitors. One interviewee highlighted that often a Community Visitor is called to visit rather than the police, which a lot of people would

prefer, but raised the question: what did this say about the redress of perpetrators of violence and the prevention of abuse?

Another interviewee discussed two main issues - frequency of visits and gatekeeping. They discussed the need for frequency of visits for safety because of difficult situations made more difficult by workforce turnover, but of the Community Visitors in some states not attending frequently enough to achieve this:

Because so much of this relies on someone being known, and known well, and their communication styles being known, and their preferences known, and all that stuff. I don't know enough about the Community Visitors, in a sense, but I assume if they're not going frequently enough and they not going to the same places, that they would not then know enough about the person [to prevent harm]. CV3

Another interviewee discussed the need for improved human rights literacy, and awareness particularly around the *CRPD* and *OPCAT*. They noted that there was work to be done around communication.

Here we highlight key themes raised in interviews with academic and area experts:

### **National consistency**

Nationally consistent legislation was not a priority for interviewees, although they were concerned that some states did not even have a legislated Community Visitor scheme. One interviewee put forward the view that, as appealing as nationally consistent legislation is, there would still need to be state legislation related to policies and shared practice with state-based agencies such as police, justice systems, education and ombudsmen:

I'm really drawn to the national consistency argument and I'm drawn to having a national approach ...and then I worry about taking the states out of it. You know when you need the police to respond, need the ombudsman to respond, when you need these sorts of bodies where they're all predominantly local but also there's some – there's a nuance amongst the jurisdictions about how they want to address certain matters that impact the Community Visitor scheme. So I'm on the fence a little bit but I think that it would be really interesting to do some of that legislative thinking. But it would not matter whether it was federal or state-based legislation. You would still need standalone legislation at either level which would be able to have policy powers for it." Human rights law professional

### **Opt-in / Opt-out**

Interviewees were invited to share their views on whether people should be offered the choice to opt-in or opt-out of receiving Community Visitors. This was not a black and white issue for interviewees, especially when we explored the complexity of catching people who had opted-out if their circumstances had worsened. The first interviewee said, 'it's obviously the tricky bit'. They had studied United Kingdom discussions on the concept of 'self-neglect', where people may opt-out of safeguarding options to their self-detriment. They identified a solution to this problem was to boost supported decision-making provisions.

The second interviewee shared what they had learned from reading legal documents about the manslaughter of Ann-Marie Smith in SA. They explained that Ann-Marie was assessed as having 'full legal competence' up until the days before her death, yet she made a series of what we could call

choices to isolate herself – she would almost certainly have opted-out of a visitor scheme. Evidence suggests however that her ‘choices’ may have been manipulated by a worker abusing their power:

If Annie had been offered a Community Visitor, from everything that we know from the statement of claim, she would have refused... she would have opted-out of a Community Visitor scheme... and yet she was one of the people who, at a particular point in her life, clearly might have benefited from the protection of such a scheme. Human rights and academic professional.

The third interviewee signalled that what is needed is likely more fluid than simply an opt-in or opt-out system. They invited us to consider Australia’s obligation to provide a safety net for every individual, and to challenge limitations placed on resourcing safeguarding:

Sort of answering a rights-based question with a resource-based answer stops us from answering the question of where are the resources, it’s actually just not good enough. Yes, there might be people that are better at advocating for themselves and people that need more oversight than others but actually, the resources should be there for all regardless. Disability rights and academic professional.

A fourth interviewee, who has a disability, observed historical hesitance to opt-in to schemes for people with disability, but that this is something that could be shifting through the generations.

Overall, the interviewees’ sentiments signal that an opt-out system may not be fit for the purpose of people’s changing circumstances such as the influence of abusive workers coming into their lives and unexpected isolation.

### **A call for more preventative safeguarding in addition to Community Visitor schemes**

Interviewees looked at the Community Visitor schemes as providing valuable and valued functions. Prevalent in their discussion was the view that more preventative safeguarding was needed to, as one person described it, ‘answer the problem of social connection and inclusion.’ One interviewee stressed that focus on Community Visitors distracts us from everything that is missing in closed environments and preventative safeguarding approaches. They described Community Visitors as ‘a little band aid for a very large wound...’ and questioned ‘how do we tend to the rest of the wound that’s still being exposed?’ A3

Another interviewee speculated about ways to combat safeguarding barriers such as the high levels of support worker turn-over and service providers preventing Community Visitor entry. They pointed to Circles of Support as an approach to preventative safeguarding that could provide frequency of contact, increased safety with informal supports and reduced isolation and increased familiarity with a group of people that would aid supported decision making.

In many ways, these sentiments matched what we heard from people with disability about the lack of on-the-ground, continuous inter-personal connections and connections to safeguarding resources. When residents spoke about concerns for their safety in their home and in the community, and concerns about their disability support services, they highlighted that they did not have many, if any, options for finding information about their rights or gaining decision making support:

I really hope that there will be more types of key services that come through for community. And I hope that we as a country start to place more value on social connections ...the necessity of the Community Visitors is in part a demonstration of the bare minimum that actually exists around some of this stuff, so that if you remove the Community Visitors from this you would

actually see that there is a huge amount of stuff that's missing in terms of how do you actually support people. Disability rights and academic professional

## Optional Protocol to the Convention Against Torture (OPCAT)

As noted, the NPM, when fully established, will provide a means of monitoring closed environments and sites of detention (such as prisons, detention centres etc. (Chesterman and Naylor 2023). It is still unclear whether the scope of the NPM will extend to closed disability service settings; particularly those where restrictive practices are used that often amount to deprivations of liberty (Chesterman and Naylor, 2023).

As with the Community Visitors scheme, the main form of monitoring for torture is through frequent visits (inspections) to sites where it is known that inhuman, degrading or torturous treatment is more likely to occur. In a practical sense, these OPCAT NPM inspection visits are usually only a single visit to each site once every two to three years (Chesterman and Naylor, 2023).

Similar to the community visitor visitable site definition dilemma will be ‘what do inspectors operating under the NPM define as a visible site if they choose to include disability settings in their inspections?’ (Chesterman and Naylor 2023) Also problematic and mirroring the issues discussed in the above sections of the report on the new landscape of the NDIS, will be that OPCAT NPM inspectors will have problems in determining what are the actual sites for visitability required and hence what is the actual scale of visits then needed.

There have been suggestions that Australia’s NPM should be expanded to cover disability residential services (group homes) - sites of informally imposed detention and sites where use of restrictive practices on people remains prevalent. This includes use of chemical and physical restraints, forced seclusion, and mechanical and environmental restraints on people with disability – restrictive practices of which most would be classified as a form of torture or degrading treatment.

Community Visitor schemes are a mechanism in achieving a line of sight into these disability residential settings (group homes) viewing ‘on-the-ground’ use and documentation of restrictive practices. There has been further suggestion that if disability residential services (group homes) are brought into the NPM, that Community Visitors should be the group to undertake reporting to the NPM.

### Federal level recommendations

At the federal level, the Commonwealth Department of Community Services released a review in 2018 that recommended, inter alia, that the ‘Commonwealth and states and territories should work towards national consistency around key aspects of the Community Visitor schemes including ... any role within the OPCAT NPM’.<sup>27</sup> The review noted that OPCAT encourages ‘a broad definition of places of detention and includes mental health and forensic disability services.’<sup>28</sup> Furthermore, it alluded to the existing similarity between the Community Visitor schemes and NPM: ‘[i]ndependent visiting [is] a key tool in quality and safeguarding’ used by both programs.<sup>29</sup> However, the review did not specify how Community Visitor schemes can be incorporated into NPM requirements.

### State level recommendations

At the state level, the Offices of the Public Advocate in VIC, SA, and NSW have reported on the implications of OPCAT for their Community Visitor schemes and have made a number of recommendations.

VIC’s OPA recommended that the Commonwealth government ‘implement OPCAT requirements in respect of *all* places of detention ... from the outset’ including sites such as residential aged care facilities and disability residential services (group homes), ‘rather than starting the implementation process with a focus on primary places of detention.’<sup>30</sup> VIC’s OPA has also stated that it ‘envisages that the Community Visitor’s Program may have a role in the implementation of *OPCAT* and that it may be



designated as an NPM along with other bodies’, and that it will ‘remain engaged with the Australian Human Right Commission on this topic (OPA, 2022)’.<sup>32</sup>

VIC’s OPA also considers that ‘detention in a mental health service, residential treatment facility or prison following a finding of unfitness to be tried and/or not guilty because of a mental impairment ...should fall within the deprivation of liberty and places of detention under OPCAT’ (OPA, 2022).<sup>33</sup> Whilst the VIC OPA notes that if ‘the Community Visitors Program is designated as an NPM body ...the current mandate and practical capabilities of the Community Visitors would need to be expanded to meet OPCAT requirements (OPA, 2022)’.<sup>34</sup>

In SA, the OPA has written on Community Visitor schemes. Echoing the Commonwealth review, SA’s OPA recommended that ‘Commonwealth and states and territories should work towards national consistency around key aspects of the Community Visitor schemes including ...any role within the OPCAT NPM’ (Principal Community Visitor, 2020).<sup>38</sup>

In QLD, the OPG recommends collaboration of NPM mechanisms between existing Community Visitor schemes ‘The NPM should draw on existing oversight mechanisms in Queensland, such as the OPG’s Community Visitors Program, to maximise its inspectorate of all people in detention.’(OPG, 2022).<sup>39</sup> However, the OPG seeks further direction in defining:<sup>41</sup> ‘what is considered to be torture and whether restrictive practices are included in the context of the OPCAT’, ‘what facilities are to be included in the Australian context’ and ‘universal/agreed definitions of what constitutes containment, seclusion, chemical restraint and other types of restrictive practices’ (OPG, 2022). It nevertheless recommends that ‘facilities such as the Forensic Services and high secure mental health services are included (OPG, 2022)’.<sup>42</sup>

## Voices from the field on OPCAT and the NPM

### Area Experts/Academics

When we enquired about the potential role of Community Visitors in undertaking the *OPCAT* reporting to the UN sub-committee, the academic and legal professionals interviewed were not in consensus that it would be possible. One interviewee said the proposition highlighted broader problems for them about how the *OPCAT* convention would be communicated to the community, and general questions about human rights literacy in the community to be able to undertake reporting processes. They noted very specific levels of training and capacity building would need to be resourced to the Community Visitors, and that potentially, specialised teams and streams would need to be trained up as separate from other Community Visitor streams such as disability. Another interviewee said that beyond documenting restrictive practices, there needs to be much more focus on general safety and quality of life in reporting to the UN sub-committee.

In contrast, one interviewee described a philosophical argument stating that any attempt to ‘regulate’ torture is inherently flawed, and that documenting ‘torture’ (even to the UN) can lead to torture being authorised and continued and not necessarily prevented and stopped. They noted this was currently the landscape in relation to overuse of restrictive practices which they viewed as a form of torture and where they felt that long-term documenting of the use of restrictive practices had not brought about an eradication or reduction in their use ‘...how is overall quality of life being promoted for individuals in supported accommodation in what seems at times a singular emphasis on use of restrictive practices...’ Academic and safeguarding professional.

The final interviewee was clear they did not have a firm view, but echoed sentiments about potentially expecting too much from the Community Visitor schemes, where sometimes volunteers were used, to report to a UN sub-committee on the heavy topic of torture.

### **Community Visitor staff**

In discussion with the Community Visitor staff themselves, their views were mixed if not polarised. Initial thoughts were about whether a restrictive practice happening in a disability house crossed over to the definition of torture and cruelty?

They noted Community Visitors are already overlooking a lot of restrictive practices documentation anyway, looking at reports of what has happened in a house and how the restrictive practices are operating in each house. One Community Visitor noted 'there are many instances of misuse of restrictive practices that a Community Visitor would readily pick up on ...because they have been doing those types of visits on a daily basis.' CV12

Some Community Visitors noted that Community Visitors have got the capacity to report to the NPM because they already see a lot of use-misuse of restrictive practices and cruel treatment at a day-to-day level. They highlighted that they're already sort of doing it in a way and queried whether you could use their current report forms or annual reports as a form of NPM reporting: 'there's already documentation from the Community Visitors on this, we could use that, why do they need to even go in and do another visit?' CV11

Another Community Visitor stated:

OPA already have independent third persons who go to homicide interviews to support people at 2am in the morning. We have people who attend governor's disciplinary hearings with people with intellectual disabilities who are in prison. We have Community Visitors who do extensive visits at Thomas Embling and other, you know, forensic facilities. I don't think it's beyond volunteers. I would not say that. I think obviously you'd want to have some really good training and you'd need a well-funded programme around them of staff who can support them in it ...our Community Visitors and independent third persons already see very - and are exposed to very difficult material ...it requires a pretty heavy conversation about resourcing and timing and where that information goes - does it only go to the UN? or does it also land in a public report? CV3

In contrast, some Community Visitors noted that Community Visitors shouldn't be reporting to the NPM: 'you need a different type of lens that's a more bureaucratic formal lens to be doing this.' This Community Visitor felt that there would be an increased level of responsibility, burden and authority that came with reporting to a UN sub-committee and that that is very different from the Community Visitor role.

One Community Visitor noted that it might not necessarily be the right response just to extend the role of the Community Visitor to fit within the framework of yet again something else:

We are already doing that in the NDIS space ...Community Visitors shouldn't be limited by, or defined by, or confined by the NDIS ...they're not an NDIS tool. They're broader than that. They were around long before the NDIS ...the same would apply to OPCAT. CV3

Other Community Visitors from paid Community Visitor schemes felt that 'volunteers' should not be doing NPM or UN reporting:

You're asking an unpaid volunteer to be doing UN reporting ...it is quite a jump in terms of authority and responsibility and the capacity of what you're asking them to do ...I'm worried about the level of skill and knowledge and assessment that would be required to undertake what would be the OPCAT inspection arm. CV10.

Another Community Visitor was concerned about consistency with volunteers:

I think the challenges with the volunteer workforce are that they are volunteers, they have a life and things happen. We might put all the investment in that and you might pick a cohort and be quite specific around that in terms of skills and knowledge and training, but sometimes they are a little unreliable" CV6

Another interviewee stated: 'It must be a paid workforce, because we need different expertise.' CV9  
Further:

you've got to have [a] skilled workforce, there has got to be a thorough report and investigation. You can't use a volunteer scheme in my view ...I've enough trouble with quality of reports using a volunteer scheme let alone across a range of volunteers, let alone the NPM. So it's got to be resourced properly. Similarly, if you were going to run it into disability areas you've got to have a properly resource scheme ...you've got to be serious about it if you're going to really do it. CV6

Amongst the VIC Community Visitor scheme interviewees, there was discussion on whether you would need to create a different stream, a fourth stream that was the OPCAT reporting stream under OPA because of the specialised training that would be required. They noted they would need to know what the template was, how they do the reporting, what would be required of the reporting and what would be their obligations in terms of response if any. Other discussion looked to the VIC Community Visitor Regional Convenors to undertake any NPM reporting 'because they've got that extra experience and knowledge.' CV11

Amongst the QLD Community Visitor scheme interviewees, there was discussion on their new independent inspector of detention services:

Well, it's far from settled in QLD. We actually have a new independent inspector of detention services here in QLD ...so they inspect a range of detention settings where restrictive practices are used. Bu at the moment that does not include, you know, non-government disability settings; so that's still open for discussion. I think it's far from resolved about whether those inspectors would be expanded to enter into those types of environments or would you duplicate and up skill our Community Visitors who already enter those areas? CV12

They noted further:

Do you duplicate training 100 Community Visitors or do you just expand the inspectors who are already trained in doing that to enter more locations? I see risk in trying to roll that out with a lot of different individuals involved and then maintain that consistency of inspection and consistency of practice. But I can see that they do already enter those places and have relationships with people. So, yeah, I'm not - I'm just not sure what the best model is, but both are on the table I'm sure. CV12

One Community Visitor noted it may be confusing for the residents to have multiple sets of Community Visitors coming in with different functions and trying to determine the purpose of each visit, and on top of compliance auditing inspections. They noted particularly the complexities and potential trauma

for residents in reporting torture or cruelty within an NPM framework, that residents may not even understand what the NPM is, and that no referral or follow-up of issues will be raised with NPM disclosures:

If it is a Community Visitor function and then you're coming in and saying – oh actually I'm here to do this today ...residents might be asking which reporting are you doing today?" CV7.

Again, another Community Visitor noted that if it is not Community Visitors doing NPM reporting, then it means there is another layer of visitors going into the houses:

So you'd have a hoard of people going in...you'd have the Community Visitors going in to speak with the clients themselves and protect their human rights. Then you can now have another layer of the OPCAT people going in and doing another review ...it goes back to that conversation we had at the start about your rights to people coming into your house and how many people come into your house ...would it be saturation heavy? CV8.

In contrast, another Community Visitor noted:

They're not always that often. I don't think they expect there to be a high frequency. They might visit every two years – the OPCAT. Community Visitor.

And finally:

I guess we're canvassing it because after the Ann-Marie Smith case, we know that there's potential worst-case scenario for torture and degrading treatment to occur in a disability sector. Then at probably one level less than that, we know that restrictive practices are occurring at a very high level in disability services and in group homes, and they constitute a breach of human rights in many cases, if there's seclusion, or if someone's brakes are put on and it's a mechanical restriction, or sedation, if people are over-sedated. We know that that's happening a lot in the disability sphere out in the community, in group homes. CV9

### **Defining a visible site for *OPCAT***

As with all the discussion on visitable sites above, the parallel argument exists as to what is a visitable site definition for *OPCAT* visiting in disability settings if and when the NPM is finally established. One would imagine that once the visitable sites have been clarified in the disability sector, these would then be mirrored in relation to *OPCAT* visits for disability closed environments. As one Community Visitor noted:

We know there's some obvious places of detention in the social care field, anything from a locked dementia ward to mental health services. But what group homes would we call places of detention? You'd have to look at the restrictive practice in use there. So that's not a simple question to answer. The way I'd answer it is by involving the senior practitioner where one exists, say in Victoria. I'm actually calling for that to be introduced here in Queensland. And they would be best placed to be able to identify those situations where restrictive practice use is such that it amounts to a deprivation of liberty ...so if someone's been kept in a locked room or something or if they don't have capacity to leave the house themselves and the front doors are locked, it basically becomes a closed environment. CV1

## Discussion

No disability service framework can be risk free. There is risk that people with disability could receive poor quality supports that do not help them achieve their personal goals and be active, inclusive members of our society. There is risk of neglect from support workers that are too busy, too new or are just uncaring or risk of outright abuse with misuse of restrictive practices. There is risk that people with disability could be financially exploited in an individualised, market-based system. There is risk that people with disability could be harmed (physically, emotionally, sexually) in some way, either by another resident or a staff member within a group house. There is risk that people with disability do not receive adequate healthcare and allied health services and that they die young and unnecessarily or remain unable to socialise or communicate their entire lives.

However, we know what risk looks like. We know where abuse and violence has 'traditionally' occurred, and we know one element that can help ameliorate risks – eyes on the ground. We know that there is a high risk of abuse and violence occurring in closed setting such as in group homes and boarding houses and high risk where people with disability are isolated, have reduced communication opportunities and/or are highly dependent on service providers for personal care supports and community interaction.

This research was conducted to examine, contrast, and compare the differing definitions of a Community Visitor visitable site across various states in Australia within this changing NDIS service landscape. We sought to examine what innovations were emerging and what changes were occurring within this Community Visitor field, and conversely, what barriers were Community Visitors facing in terms of visiting and conducting effective safeguarding. This also included safeguarding parameters related to OPCAT and if Community Visitors would have a role in safeguarding reporting as a part of Australia's NPM in disability settings.

In conducting this research, we utilised a codesign methodology in not only having an academic with a disability and a community researcher in our research team, but in speaking with Community Visitor staff themselves and residents impacted by grey-zone accommodations and safety – those at the frontline of disability services and those in the field experiencing service-safety interfaces. We sought to hear and listen to the people having to provide the safeguarding and what the landscape of this now looks like post full NDIS roll-out.

As with most social research, unexpected insights emerged, and differing layers of factors impacted and intersected on our original topic based on visitable sites. Most notably, Community Visitors spoke of their frustration and disappointment with not being able to undertake more frequent visits to the entire visible sites cohort because of the under resourcing and underfunding of their schemes. Most noted that they felt overwhelmed with the scale of safeguarding now required under the NDIS and were challenged by how they would cope if new grey-zone additional sites were put into their existing visiting remit. As the above findings have shown, for risk to be reduced in both traditional and new service settings through 'eyes on the ground', Community Visitor schemes need to be well resourced and adequately funded – at present this is impacting on their capacity to undertake effective and frequent safeguarding visits. This includes states such as NSW, QLD and SA making single visits per year to some resident accommodations, and houses being 'rested' from visits where there appeared to be few issues and residents appeared to be living in good and safe living conditions. It was conveyed that the SA scheme did not have legal capacity to visit private or NGO service providers (meaning 90% of the service provider market in SA is not visited) and as a reminder two states in Australia do not have Community Visitor schemes to examine what risk looks like on the ground.

Effectiveness of safeguarding was impacted by resource shortages. Community Visitors stated that they were only managing to effectively visit 50 per cent of their existing cohort of defined visible sites, let alone trying to find resources and capacity to visit into expanded sites such as in-home visits, ADEs or day services. Community Visitors were not adverse to extending visits into these sites, however they were very concerned about having resources and capacity to be able to do this and were worried that they were getting stretched too thin, especially if they were then required to do NPM reporting on top of expanded visiting sites.

Community Visitors noted that the frequency of visits was a strength in their scheme, and that they liked to keep things more relational than transactional with frequent visits to build long-term relationships with residents and have time to develop communication pathways with all residents.

As the findings show, under resourcing has meant that most of the Community Visitor schemes are undertaking some form of informal triage assessments to try and prioritise where visits need to occur and where there potentially may be a resident in high risk who needs a visit. A very insightful observation however was that you can only do a triage assessment based on information on risks you know, and a major issue for Community Visitors was in getting the information about risks - any risk assessment requires information and Community Visitors need to be provided that information. Representatives of the SA scheme spoke of an informal visiting assessment criteria based on client behaviour where clients that are fairly stable or clients with low activity were prioritised so more visits were being undertaken. This was a result of the increasing complexity and difficulty with NDIS service frameworks, where more intensity and time was needed with residents in complex circumstances - in a resource poor environment this was not available and as such low-risk visits were prioritised. Community Visitors communicated that they did not like to have to conduct triage assessments and were disappointed in having to consider them because of resource constraints and they're constantly worried about what they may be missing in having to triage and prioritise particular visits.

A key finding from the study was the increasing complexities that Community Visitors were having in undertaking the role within the new NDIS landscape. Community Visitors spoke about poor support coordination or no support coordination with residents meaning they were virtually having to undertake case management roles in following up the variety of service providers of one client in order to address issues and problems. Community Visitors noted to some extent this was creating unrealistic expectations for Community Visitors and they often needed to manage these. They noted that their primary role was to engage with service providers to ensure the human rights and good living conditions of people with disability were being met and to review documentation that supports this. Their role was not to provide an assessment on whether service standards were being met, or undertake any audit on the service providers or undertake an 'inspection'. They highlighted that this was the role of the NDIS Quality and Safety Commission and their role in ensuring compliance in order to ensure safeguarding of residents.

The role of Community Visitors in being preventative rather than responsive was highlighted in the findings. One Community Visitor highlighted that you needed to determine what makes an environment or a service type risky and then work to prevent or reduce these risks with visits and service provider engagement. As the recent ABC NDIS 4 Corners documentary (ABC, 2023) highlighted, a complaints-based scheme means that violence and abuse have to actually occur and is then responded to, whereas Community visits work towards deescalating issues before they can manifest into violence and abuse. In the case of the ABC NDJS 4 Corners documentary, it took parents and disability support workers to put in complaints to the NDIS Quality and Safeguards Commission and then for an investigation of the service provider to occur. Meanwhile 14 teenagers endured torturous

behaviour treatment by the service provider until the therapy was stopped. If Community Visitors had been able to visit the site, they may have been able to query why a number of small rooms had padded walls and why staff were walking around with motorbike helmets during their first visit.

Community Visitors also spoke about announced and unannounced visits. They noted that where they could, they preferred unannounced visits so they could see the real and natural environment in which services were being delivered, including real staff ratios, quality of documentation and if there was fresh food in the fridge - the real living environment of the site rather than one preprepared and buffed up where an announced visit was known about by the service provider. Community Visitors noted that they were not trying to 'catch out' the service providers, they were just trying to identify risks to try and work towards best practice in identifying problems and issues. They noted that in most cases issues were addressed at a localised level through engagement and not through escalation to higher agencies. The counter argument to this was that in areas where significant distances had to be travelled for visits, such as to outback NSW or QLD, there needed to be an announcement of their visit to ensure clients and staff were at the house on the day.

In examining the definitions of 'visitable sites', discussion on whether the definition needed to change from visitable sites to visitable people was raised. This is reflected in the NSW approach to disability community visits whereby NSW has broadened its visiting definition to visit any person with a disability that receives up to 20 hours of support where that individual is dependent on services in their lifestyle. As such, NSW is not constrained by the legislative scope of visitation being attached to specific place or legal definition of a visitable site. In addition, this works around the distinctive service arrangements between NDIS and non-NDIS participants.

This broadening of the scope of visitation appears to be preferable to defined visiting legislation that focuses on sites of disability service provision and mostly group houses at that. Shifting the locus of attention from the site to the individual should be considered as an option. Some Community Visitors noted however that the group house setting is the usually the risk factor and the dynamics and interactions between residents-to-residents and residents-to-staff is what creates the risk rather than the individual person.

The use of people at risk rather than sites of risk seemed more conducive to these newer grey-zone settings. One Community Visitor noted there needed to be a focus on meaningful definitions on the level of supports that a person is receiving rather than the setting in which they are receiving the support. If Community Visitors are wanting to make this a safeguard that applies to particular individuals then they have got to find a way of defining those individuals such as people who are funded for particular levels of support.

The findings around an opt-out option for community visiting were that Community Visitors were tentative around how this would be operationalised. Three key themes emerged in relation to this. Firstly, that any opt-out mechanism would need an assessment, face to face, and that the assessment would need to determine if a resident was opting out because they felt independent enough and were empowered enough to contact an advocate or arrange a Community Visitor visit if any safety or rights issues began occurring. Secondly, the assessment would need to determine that the resident was opting out of their own free will and not because of coercion by the service provider who was acting to gatekeep out visits and keep the Community Visitors away from the site and residents. Thirdly, and perhaps most importantly, was that any opt-out mechanism should not be used to reduce the number of visits because they weren't enough resources in a system. Academics highlighted that governments should not be responding to human rights and safeguarding issues with economic rationale responses.

The NDIS quarterly report noted that 31,500 NDIS participants utilised SIL provider supports (NDIS, 2023:47). It is not known the breakdown of these living in accommodation control by the SIL provider (i.e. the SIL Provider as landlord) and then providing personal and community supports. Community Visitors noted that if brought into visiting jurisdiction, then potentially only an opt-in scheme for those most at risk would work because Community Visitors would not be able to deal with the sheer scale of SIL Provider accommodation residents. As such this would need to mirror the in-home Ann-Marie Smith provisions, whereby only a small and specific number of residents who are at very high levels of risk were visited in SIL Provider accommodation or in in-home settings.

Some Community Visitors raised concerns that clients who opt-out may not be aware of some of the risk factors around them in their living situation and may think things are going along well, whereas in reality there could be a high risk of serious incidents and they may not be aware that they were losing the preventive safeguarding mechanism that was keeping them safe in the first place.

Another concern was that some clients would be unduly influenced by newer SIL providers who put pressure on them to opt-out of the Community Visitor visiting oversight. Community Visitors discussed that what would happen if a client chose to opt-out from visits, but then their circumstances changed (say a very controlling SDA house manager or SIL provider manager takes over the accommodation) what arrangements would be needed for that client to opt back in to visits? One Community Visitor raised that you would probably need to remain in contact with those clients and say make a regular 12-monthly phone-call querying if they still wanted to opt-out, and also try to determine if the capacity of that person to make decisions independently had changed over that time as well.

However, another imperative was the need to avoid subjecting people with disabilities to a protectionist interference / surveillance life such that they have state officials or state-appointed volunteers surveying their personal space and making unwanted judgements about their safety, particularly in SIL accommodation. This was noted by residents who participated in the study that said there might be confusion between Community Visitors doing a visit in the house and then OPCAT visits and potentially NDIS QSC auditing and inspection. They described that people with disability could be confused by the number of visits occurring in a house and the differing roles of each visitor. This once again goes back to the tension within the *CRPD* of an individual having the control over right to entry of their home versus the responsibility of the state to provide a safe living environment and uphold human rights.

Finally, we must, as one academic noted, ask ourselves what is the size of the wound in terms of the abuse, neglect, exploitation and violence and question ourselves on how we can most effectively safeguard people with a disability in Australia to gradually repair this wound? Risk in disability has certainly changed a lot over the last 10 years. As one Community Visitor described:

In 2023 the responsibility for safeguarding has exploded, you know, it's massive and there's lots of agencies that are involved with that now and what an amazing and different world it is. The things that are happening to people, while very distressing and are very concerning, that we still see happening, they're very different from what was happening 10 years ago, in my experience; and certainly very different from 30 years ago. Clearly things have improved substantially. The question of what is risk now I think is a question that we need to put our minds to - as a whole field ...we need to think very carefully about how we define risk and therefore what your risk level entitles you to ...from the NDIA, from the Commission, from Community Visitors, from police, from whomever. CV3



## Conclusion

As we write this conclusion, the four-and-a-half-year Disability Royal Commission has just released its final report (Disability Royal Commission, 2023). The scale of violence, abuse, neglect and exploitation documented in the report is extensive – the wound is indeed large. People with disability continue to face high levels of violence, abuse, neglect and exploitation, particularly those who live in closed and isolated settings.

Rates of use of restrictive practices are high. Many in the sector see the use of restrictive practices as a form of torture. Where support staff are untrained and where there is a high turnover of support workers, there is high risk that a restrictive practice will be used as the first port of call rather than as a last resort. This includes use of any physical, mechanical, chemical or environmental restraints. Where this becomes a daily event and normalised in practice, it makes it impossible for a resident to be able to differentiate between abuse and an ‘authorised’ use of a restrictive practice and then make any form of complaint. In these instances, an on the ground visit by a Community Visitor may be the only voice and support the resident has.

Community Visitors are well versed and experienced in the field of monitoring use of restrictive practices. If resourced and provided with training, they will be well positioned to undertake *OPCAT* NPM reporting in working to improve the human rights and living conditions of people the disability in Australia.

It is vital that schemes such as the Community Visitor schemes, which play such a key on-the-ground safeguarding role, are adequately funded so that they can undertake their full safeguarding role, and undertake this role within the increasingly complex landscape of the NDIS and within the new and emerging grey-zone accommodation sites evolving within the NDIS. Both top-down and bottom-up approaches are required in keeping people with disability safe and for people with a disability themselves to have confidence in Australia’s disability safeguarding frameworks. However, it is eyes on the ground and discussion with residents themselves that will play a significant safeguarding role in ensuring Australians with disability stay safe and at reduced risk within their own living environments.

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