

## **Community Visitors' Role in the Safeguarding System, NDIS and Proposed Changes to the Victorian Disability Act 2006 – Address to the 2022 Community Visitors Annual Meeting**

Acknowledgement of Country

I would like to acknowledge and thank you for the work you do every day as community visitors. Thank you for your dedication, commitment, persistence and for fearlessly highlighting cases of violence, abuse, neglect and exploitation and for being outstanding individual and systemic advocates and so also identifying system reforms and Improvements.

May I also acknowledge, the Public Advocate, Colleen Pearce, whom I have known for more than a decade and for whom I have the highest regard. Thank you for your courage, shining a bright light where others fear to tread and for giving voice to the deeply disadvantaged, poor and voiceless.

In 2010, I had the great privilege of addressing the OPA Volunteering Conference, which also included your colleagues who are community guardians and Independent Third Persons. My speech was entitled “The Who, What, How, Why and When of an NDIS”. This was a time when I was travelling the length and breadth of the country to promote the benefits of the NDIS.

Now, 12 years later, we have the NDIS. There are more than 520,000 people in the scheme and 297,000, or nearly 60 per cent, of participants are receiving supports for the first time. This highlights how underfunded and inadequate the previous system was and there are many shining examples of the NDIS transforming lives.

But the NDIS is not working for everyone.

And this is now the great challenge: How do we all work together, how can we unite to ensure the NDIS achieves its original vision?

One of the areas I am hoping will see significant improvement is safeguarding under the NDIS.

At the heart of safeguarding in a contemporary context is balancing protection of the vulnerable versus protecting and upholding rights and the need to take account of individual capabilities and circumstances.

This means that the old approach of framing safeguards around services or funding sources is no longer appropriate.

So let me start with a few important observations and comments.

First, the current safeguarding system which has emerged in recent years is unbalanced. Specifically, the NDIS Quality and Safeguards Commission should be the National Quality and Safeguards Commission. This distinction is very important, because it is not only people with disability who receive funding through the NDIS who experience heightened risks.

Second, in 2013, as part of the work of the Quality and Safeguarding Committee of the COAG NDIS Advisory Panel, I helped to develop a personalised approach to safeguarding. This is a very important framework which has never been implemented and which I believe is central to an optimal contemporary structure to safeguards for people with disability. This personalised framework is built on three essential elements. These are:

- Developmental safeguards, which build the capacity of people with disability to protect themselves. These are the most effective safeguards
- Preventative safeguards, such as the Community visitors Scheme
- Corrective safeguards, if there is violence, abuse, neglect or exploitation.

Third, I believe we need to now give deep consideration to how best to integrate community visitors into the safeguard system, right across Australia, not just in Victoria.

In 2013, as part of the work on quality and safeguards, we could not reach a consensus on the need for community visitors, in large part because of opposition from WA. They did not have a community visitors scheme and could see no reason to introduce it.

Against this background, our recommendation was to collect essential information on the effectiveness of community visitor schemes in each State to make an informed decision about the best way to include community visitors in a national framework.

In my view, it was a wonderful opportunity to undertake what researchers call a “natural experiment”, in other words trialling different approaches in different jurisdictions at the same time to identify the best features and an optimal way forward. However, regrettably, this data has not been collected.

In 2018, as many of you would know, the Commonwealth conducted a *Community Visitor Schemes Review*. The review found that Community Visitors are a valuable part of the safeguarding system for NDIS participants who are

considered at risk, and that their critical role should be reflected in the NDIS Quality and Safeguard Framework.

At the same time the Commonwealth review noted that the power of Community Visitors to enter homes without invitation and to access all areas, including personal files and records, could be seen to run counter to a contemporary understanding of disability equality, underpinned by the UN Convention on the Rights of Persons with Disability<sup>1</sup>.

I believe we now need to move beyond these two conclusions from the 2018 review in order to identify the best practical way forward.

These issues were the sole subject of the Melbourne Disability Institute (MDI) submission to the Review of the Victorian Disability Act 2006 and so I would now like to outline the key recommendations in our submission.

My hope is that the MDI submission will provide a constructive framework within which we can all work together to improve the community visitors scheme for the benefit of all Victorians and also assist other jurisdictions, as part of the development of a national framework.

### **Principles and a Matrix of Risks and Benefits**

In looking at the Community Visitors program and thinking about its future under the NDIS, I think it is best to take a principles-based approach and also develop a matrix of risks and benefits.

As you know, prior to the introduction of the NDIS, the Disability Act allowed Community Visitors in Victoria to have a mandatory right of access to visit the homes of people with disability who were living in shared supported accommodation. This included accommodation provided directly by the Victorian Government or accommodation provided by registered disability service providers and funded by the Victorian Government.

Essentially, the funding source, funding type and provider registration determined the scope of the role of Community Visitors Scheme.

Under the NDIS, I believe that the scope of the role of Community Visitors should be operationalised in a more individualised and nuanced way based upon three factors:

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<sup>1</sup> Department of Social Services for the Disability Reform Council, Council of Australian Governments, *Community Visitor Schemes Review* (2018)

- the risks that people with disability experience as a result of their disability, personal factors and the environment
- the potential contributions of Community Visitors to the prevention of abuse, violence, neglect and exploitation of people with disability, and
- a balancing of risks of abuse with privacy considerations and rights as outlined under the UNCRPD.

**It is these factors which should provide the key guiding principles framing the role of Community Visitors. Specifically: Community Visitors should have access rights when the combination of personal and environmental factors for NDIS participants place them at greater risk and it is judged that access rights for Community Visitors could reasonably make a significant difference to protect them from unwanted risks and those benefits outweigh any loss of privacy.**

These principles then point to the need for a methodology to assess risks and benefits, which could be described as a risk-benefit matrix.

Under the NDIS, the matrix of risks and benefits is very complicated because control and choice is leading participants to choose to live in many different forms of accommodation.

They can also choose a wide range of support services from many sources, some of which are regulated and some of which are not.

They may also be supported by workers who are registered or who are not registered under the Victorian Disability Worker Exclusion Scheme.

These examples of control and choice are, of course, most welcome, but also point to a complex picture in which the risks of violence, abuse, neglect or exploitation need to be assessed individually and include:

- The nature and complexity of support needs, communication skills, and behaviours
- Personal factors such as age, education and gender
- Strength of informal supports, including family, friends and support structures such as circles of support
- Whether or not the person with disability has chosen with whom they are living and whether they are compatible with their co-residents
- The number, quality and turnover of support staff

- Whether there is access to specialised supports and advice, such as positive behaviour support, when needed
- Whether or not the person is subject to restrictive practice orders, and
- The suitability of building design and assistive technology.

At the same time, it is essential to recognise that people with disability should not be considered inherently vulnerable. People with disability are people and they have the right to make decisions and to take risks as part of ordinary life.

As a result, the assessment of risks and benefits must be a matrix and take into account of all of these factors - rather than make any assumptions around “inherent” vulnerability.

Let me now turn to how this risk-benefit matrix and principles should be operationalised for NDIS participants, as part of the development of the new Victorian Disability Act.

In my view there are three essential steps.

## **1. Core Visitable Sites**

First, the starting point for agreeing whether NDIS participants should be included in the Community Visitors Scheme should be what I would term “Core Visitable Sites”. These are sites where many of the residents are at greatest risk.

I would suggest that the list of Core Visitable Sites should include:

- a) Specialist Disability Accommodation
- b) Medium Term Accommodation
- c) Short Term Accommodation
- d) Forensic Disability Services
- e) Mental health services, where NDIS participants are resident
- f) Supported Residential Services, where NDIS participants are resident, and
- g) Boarding houses, where NDIS participants are resident.

The recommendation that Medium Term Accommodation, Short Term Accommodation, Supported Residential Services and Boarding houses should

be Core Visitable Sites recognises that environmental factors in these settings can make them unsafe for people with disability.

For example, there could be compatibility issues between residents, poor building design or insufficient or insufficiently trained staff or all of these factors.

In addition, consideration should be given to whether any adult affected by a restrictive practice order should be automatically included under the Community Visitor Scheme, irrespective of where they are living. I know this will be contentious in relation to adults with a disability living in a family home and so this aspect will require extensive consultation to avoid unintended consequences.

There is also another still significant setting where many NDIS participants still live and that is residential aged care facilities. There should therefore be a discussion with this group and their principal representative organisation, Young People in Nursing Homes, to determine whether these settings should also be in scope for Community Visitors or whether the aged care safeguards are adequate<sup>2</sup>.

## **2. Individualisation through Opt-in and Opt-out provisions**

Second, in order to individualise and tailor the role of Community Visitors and, especially, balance the protections provided by Community Visitors with the needs for privacy, there should be provision to opt in and out of visits.

Opting-in should be available to any NDIS participant.

It will therefore be important to make sure that information about the Community Visitors program is widely available to all NDIS participants and that the information is both sufficient and accessible so an informed choice can be made.

One of the groups who may consider opting in are people with intellectual disability. Prior to the NDIS, people with an intellectual disability who moved out of the family home, were most likely to move into shared supported accommodation or group home. These settings were included in the Community Visitors Scheme.

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<sup>2</sup> See Co-design section below.

In the future, people with an intellectual disability are likely to live in a wide range of places, including in private homes or rental properties, as they are not eligible for Specialist Disability Accommodation or SDA unless they also have a physical disability or require robust housing.

However, it would clearly be inappropriate in my view to start from a position that private homes or rental properties are regarded as Core VISIBLE Sites. Therefore, an opt in model, and using a matrix which considers the full range of risk factors for each individual, would be more appropriate.

Opting out, of course, is much more complicated and will need to have very significant safeguards built in. The key issue will be who makes this decision and ensuring that any person who opts out has not been pressured into this decision and therefore put at risk of violence, neglect, abuse or exploitation. If a person chooses to opt out, it will be essential to have confidence that they fully understand the implications of their decision.

For people with an intellectual disability, any decisions to opt-in or opt-out should allow for supported decision-making to facilitate an informed decision.

### **3. Co-design**

This then brings me to my third and very important point: Co-design.

Given the potential consequences, both the selection of core visible sites and the circumstances in which people should be able to opt in or out must be the subject of careful and considered co-design.

The co-design process should be extensive and bring together people with disability, their families, their representative organisations, the Office of the Public Advocate, you as Community Visitors with your deep on-the-ground experience, the National Disability Insurance Agency, NDIS Quality and Safeguards Commission, disability service providers and local area coordinators to advise the Victorian Government on the final details of the new legislation.

The co-design process will need to take account of the myriad of living arrangements that have begun to emerge and are likely to grow under the NDIS.

It will also need to balance safeguarding and privacy considerations, seek agreement on who would be responsible for any decision to either opt in or opt out and include provision for supported decision-making to ensure that as

much as possible, people with disability can make their own informed decisions.

It will be a very complex and very important task.

### Effective Coordination of Safeguards with the NDIA and NQSC and Resourcing

Finally, I would note that that for the Victorian Community Visitors Schemes to have maximum benefit, there are two essential foundations.

First, there must be much more effective communication channels and coordination between the OPA and the NDIA and the NQSC, and this will require a strengthening of information sharing mechanisms. This work will need to be championed by governments, because I know Colleen has been doing everything she can to push for better coordination between agencies and to ensure that Community Visitors receive essential feedback to ensure their full effectiveness.

Second, the OPA must also be sufficiently resourced for its Community Visitors to be able to visit all eligible NDIS participants. I expect this will require additional resources, given that the number of NDIS participants eligible for SDA is expected to double, SDA settings will have fewer residents than before the NDIS and other NDIS participants are likely to opt-in.

### Conclusions

In closing, I would like to express my optimism and also my gratitude to you.

Twelve years ago, when I addressed you and your colleagues, the NDIS was a dream. Today, it is directly supporting more than 520,000 Australians and indirectly benefiting millions of family members and carers.

It is one of the pillars on which the decency and fairness of Australian society now stands.

However, quality lives for people with disability are not just built on funded supports through the NDIS.

Quality lives are built on loving relationships, friendships, neighbourliness, volunteering, social capital and inclusion.

They are built on effective safeguards, both formal and informal.



And it is this combination of safeguarding, volunteering, friendship and building social capital which makes you and your role so special and for which I thank you most deeply.

Going forward, I hope that the suggestions I have made today will ensure that the Community Visitors Scheme and your work, will continue to flourish and that we unite to improve the lives of people with disability through co-design.

Together, we can ensure that the NDIS achieves its full vision and that it provides still untold new opportunities and provides appropriate safeguards.

Thank you.

**Professor Bruce Bonyhady AM**  
**Executive Chair and Director**  
**Melbourne Disability Institute**

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