

Appendix 1 - Robertson Review Recommendations

- (1) The Commission should act to identify earlier those people with disability who are vulnerable to harm or neglect. Every stage of decision-making, including corrective regulation, should be alive to factors indicating that a participant may be vulnerable to harm or neglect. (Although not within my terms of reference, the NDIA should also so act in the planning process and continually.) The Commission and the NDIA should have a freer and two-way flow of information for this purpose.
- (2) No vulnerable NDIS participant should have a sole carer providing services in the participant's own home. The relevant statutory instruments and guidelines should be amended to provide expressly for this.
- (3) For each vulnerable NDIS participant, there should be a specific person with overall responsibility for that participant's safety and wellbeing. That individual should be clearly identified by name and, ideally, introduced in person, to the vulnerable NDIS participant. (Although not within my terms of reference, that individual should be identified in a participant's plan.)
- (4) Consideration should be given to the Commission establishing its own equivalent to State and Territory based Community Visitor Schemes to provide for individual face-to-face contact with vulnerable NDIS participants. Such contact is also important in emphasising the personal values necessarily involved in providing services to individuals with disability. The NDIS Act should be amended to provide explicitly for this function. Until that happens, the Commission should continue to support the State and Territory Community Visitor Schemes and any doubt about State and Territory powers under those schemes in relation to NDIS participants should be resolved between the law officers of the Commonwealth and of these States and Territories. The State and Territory Community Visitor Schemes will of course continue to apply directly in relation to those with disability who are not NDIS participants.
- (5) Because of the inherent limitations in record based systems in preventing harm or the risk of harm to vulnerable participants, the Commission should conduct occasional visits to assess the safety and wellbeing of selected individual NDIS participants, whether or not a complaint has been made or a "reportable incident" notified. The Commission should miss no opportunity for face-to-face assessment of vulnerable participants. (Although not within my terms of reference the NDIA should also so act.) The Commission and the NDIA should have a freer and twoway flow of information for this purpose so that the NDIS Commission's selection of participants to visit is an informed one.
- (6) The statutory definition of "reportable incident" in s 73Z of the NDIS Act should be amended to make it clear that it includes a real or immediate threat of one of the listed types of harm. The word "complaints" in s 73X of the NDIS Act should be defined to remove any doubt that it includes concerns and observations in relation to the provision of supports or services by NDIS providers.

- (7) The Commission must at all times be able to know whether a person is or is not an NDIS participant. The Commission should also have readily available access to information held by the NDIA concerning what supports a participant is receiving and the provider of such supports. The Commission should not depend on providers to provide it with such information only after a request.
- (8) There should continue to be improvements to the exchange of information and more formal lines of communication between those running the State and Territory emergency services (including police) and schemes for people with disability and the Commonwealth agencies, being the Commission and the NDIA, and vice versa.
- (9) To this end, s 67A(1)(e) of the Act should be amended so that the word “serious” is deleted. A threat to an individual’s life, health or safety should be enough to authorise the use of the protected Commission information. Also the word “necessary” should be replaced with a word such as “needed” so that the information may be used even if it is not essential to preventing or lessening a threat to an individual’s life, health or safety. Consideration should also be given to defining the word “threat” in the expression “prevent or lessen a threat” so that it includes preventing or lessening for the future a threat which has passed. (Corresponding amendments should be made to, or considered for, s 60(2)(e) for protected NDIA information.)
- (10) The Commissioner should have statutory power to ban a person from working in the disability sector even where that person is no longer so employed or engaged. Page 9 This aspect is the subject of the National Disability Insurance Scheme Amendment (Strengthening Banning Orders) Bill 2020 currently before the Commonwealth Parliament. The Commissioner should have the same power in relation to NDIS service providers, that is, to include as subject to the power to ban those entities no longer providing those services.