



Regulating vulnerability: policy approaches for preventing violence and abuse of people with disability in Australian service provision settings

Laura Davy, Sally Robinson, Jan Idle & kylie valentine

To cite this article: Laura Davy, Sally Robinson, Jan Idle & kylie valentine (2025) Regulating vulnerability: policy approaches for preventing violence and abuse of people with disability in Australian service provision settings, *Disability & Society*, 40:4, 1039-1060, DOI: [10.1080/09687599.2024.2323456](https://doi.org/10.1080/09687599.2024.2323456)

To link to this article: <https://doi.org/10.1080/09687599.2024.2323456>



© 2024 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group



Published online: 07 Mar 2024.



[Submit your article to this journal](#)



Article views: 3365



[View related articles](#)



[View Crossmark data](#)



Citing articles: 5 [View citing articles](#)

Regulating vulnerability: policy approaches for preventing violence and abuse of people with disability in Australian service provision settings

Laura Davy^a, Sally Robinson^b , Jan Idle^c and kylie valentine^d

^aCrawford School of Public Policy, Australian National University, Canberra, Australia; ^bCollege of Nursing and Health Sciences, Flinders University, Adelaide, Australia; ^cCollege of Nursing and Health Sciences, Flinders University, Adelaide; ^dSocial Policy Research Centre, University of New South Wales, Sydney, Australia

ABSTRACT

This article analyses policy frameworks designed to protect people with disability from harm in service provision settings and respond to their experiences of violence, abuse, neglect, and exploitation, with a focus on the Australian National Disability Insurance Scheme (NDIS). The creation of a new disability services market has facilitated greater choice and empowerment for NDIS participants, but has also exposed them to new risks and vulnerabilities. Drawing on feminist vulnerability theory, a policy audit, and qualitative research with seventeen key stakeholders, the article reflects on the need to incorporate more nuanced understandings of vulnerability in safeguarding policy and respond to the situational and pathogenic vulnerability created by the way systems and structures operate. It identifies opportunities to enhance the personal autonomy of people with disability through accessible pathways for complaints and justice, and greater focus on natural and mainstream safeguarding systems in complementing disability-specific systems.

ARTICLE HISTORY

Received 19 May 2023

Accepted 9 February 2024

KEYWORDS

Safeguarding; violence; abuse; vulnerability; National Disability Insurance Scheme

Points of interest

- Vulnerability theory is a productive means to analyse existing approaches to keeping people with disability safe and responding to experiences of violence, abuse and neglect in the Australian National Disability Insurance Scheme (NDIS).
- We argue that environmental factors, rather than disability or impairment, increase the vulnerability of NDIS participants to harm, and these environmental factors need to be addressed more proactively by policy and agencies with responsibility for safeguarding.

CONTACT Laura Davy  Laura.Davy@anu.edu.au

© 2024 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group
This is an Open Access article distributed under the terms of the Creative Commons Attribution-NonCommercial-NoDerivatives License (<http://creativecommons.org/licenses/by-nc-nd/4.0/>), which permits non-commercial re-use, distribution, and reproduction in any medium, provided the original work is properly cited, and is not altered, transformed, or built upon in any way. The terms on which this article has been published allow the posting of the Accepted Manuscript in a repository by the author(s) or with their consent.

- To be effective, safeguarding approaches need to help people with disability be part of their community and develop a wider network of relationships.
- Disability-specific service providers and safeguarding agencies, and mainstream service providers and safeguarding agencies, need to work together to stop violence and abuse against people with disability.
- Safeguarding bodies need to provide accessible information about how and where people can make a complaint and do more work to raise awareness about the rights of people with disability and the responsibilities of service providers.

Introduction

Failures in the systems designed to prevent violence against people with disability have been in the spotlight in Australia for some time, most recently and intensively through the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Royal Commission). The Royal Commission is an important opportunity for ‘truth-telling’ within the disability sector and community, to hear how and why violence and abuse has occurred, and to find ways to prevent it in the future. A critical aspect of this conversation is how to prevent violence and abuse in the context of the National Disability Insurance Scheme (NDIS), Australia’s individualised funding scheme for disability support, introduced in 2013. Individualised funding provides eligible people with disability with opportunities to purchase tailored support services that meet their individual goals. The NDIS is a relatively new and market-based system of support, so there are also significant risks for individual participants in terms of service quality and safety. A year-long independent inquiry into the NDIS has just handed down its recommendations for improving the scheme.

This paper has been written in the ‘shadow’ of these two major inquiries in Australia. As we write, final reports of both inquiries have been released (Commonwealth of Australia (Department of Prime Minister and Cabinet) [2023a](#), [2023b](#)) and collective attention is turning to the significance of their findings for improving the lives of people with disability. It is the subject of future papers to engage with these landmark inquiries and their implications, but it would be remiss not to mention them here.

Systems have recently been established that aim to safeguard NDIS participants and to monitor the workers and organisations who provide services and supports to them. The NDIS Quality and Safeguards Framework (the Framework) and the NDIS Quality and Safeguards Commission (NDIS Commission) were established in 2016 and 2018 to address the vulnerabilities experienced by NDIS participants. These include vulnerabilities as consumers of services, whose ability to make choices over service providers are constrained by limited options in the

services market (also known as ‘thin markets’) or deeply sedimented unequal power relationships between service providers and service clients.

This article assesses current policy approaches designed to prevent violence, abuse, neglect and exploitation against people with disability in service settings, through the lens of vulnerability theory. It is based on a 2020–2021 review of national violence prevention initiatives commissioned by the Council for Intellectual Disability (CID), an Australian advocacy organisation run by and for people with intellectual disability. This research found that the disability advocacy community holds concerns about the capability of policy instruments such as the NDIS Commission to prevent and respond to violence, abuse and neglect of people with disability. It found that the vulnerabilities experienced by people with disability in the context of the NDIS – vulnerabilities produced through the design and operation of the scheme itself – have been insufficiently accounted for.

We begin with an overview of vulnerability theory, drawing on the taxonomy of vulnerability outlined by MacKenzie, Rogers, and Dodds (2014). We then report on how national violence prevention initiatives are being implemented in Australia, and the views of sector stakeholders on their effectiveness. Our analysis of how these initiatives construct people with disability as vulnerable subjects, and how they respond to the vulnerabilities people with disability may experience within service settings, has three key implications:

- The need to think beyond traditional paradigms of vulnerability, risk and protection when designing appropriate safeguards for people with disability.
- The need to promote the autonomy of people with disability through safe service environments, accessible information and accessible complaints mechanisms.
- The need to strengthen natural and mainstream safeguarding systems rather than relying primarily on specialised instruments and strategies.

We argue that applying the lens of vulnerability theory can shed light on the weaknesses of current approaches and inform future policy responses to violence, abuse and neglect. Current approaches to preventing and responding to violence too often adopt a deficits-based perspective that focuses on the perceived inherent vulnerability of people with disability rather than on their agency or capability. The narrow focus on regulating the quality and safety of services draws attention away from other areas where attention and investment is needed, such as on strengthening the mainstream supports and services that minimise situational and pathogenic forms of vulnerability by building capacity, connection and autonomy.

Theoretical approach

There has been growing attention to the concept of vulnerability, due in large part to the work of influential thinkers such as gender theorist Judith Butler (2006), sociologist Bryan Turner (2006), political philosopher Martha Nussbaum (2006) and legal philosopher Martha Fineman (2008). Uniting the work of these thinkers is an emphasis on vulnerability, dependency and precarity as essential features of what it means to be human, and a challenge to the myth of the independent autonomous subject. All human beings have fragile bodies, finite lifespans, and are dependent on others, and are therefore inherently vulnerable. Butler (2006, 20) observes: 'Loss and vulnerability seem to follow from our being socially constituted bodies, attached to others, at risk of losing those attachments, exposed to others, at risk of violence by virtue of that exposure.' In other words, it is *because* we are dependent on relationships with others for our social and physical welfare that we are vulnerable to violence, aggression, rejection or abandonment by the other.

This scholarship on vulnerability has been treated with suspicion by disability scholars and advocates. In theory, recognising our shared embodied fragility and imperfection should disrupt the binary between disabled and non-disabled. But in practice, the universal aspects of shared ontological vulnerability have been underplayed, and the vulnerability label has been over-applied to people with disability and other marginalised groups. People with disability act as social 'containers of vulnerability' (Lid 2015, 1563), allowing the able-bodied and healthy to maintain an illusion of invulnerability, with all vulnerabilities projected outwards and onto groups constructed as 'specially vulnerable' and 'radically other to normative citizens' (Leach Scully 2014, 219). Discussions of vulnerability therefore run the risk of intensifying negative stereotypes and deficit-based accounts of disability.

Ascribed vulnerability is also often a rationale for differential treatment, for example in research ethics, legal proceedings, and public policy. This designation can lead to paternalistic or coercive interventions in the name of protection against harm and exploitation. As Silvers writes, 'invocations of vulnerability too often have been pretexts for social isolation of individuals who may be especially susceptible to harm, and almost never serve as inducements for inclusive interaction with them' (2015, 831).

Recent work on vulnerability has sought to counter the negative connotations of victimhood and individual pathology that are associated with this concept (Mackenzie 2014). For example, proponents of the social model of disability have argued against the pathologisation of disability as a form of 'special vulnerability' and directed attention instead to contingent and disablist beliefs, practices and institutions as the source of the barriers and vulnerabilities that are experienced by people with disability. Elsewhere, attention has shifted from universal or ontological human vulnerability to the unequal *distribution* of

vulnerability. This formulation is in line with the foundations of the social model of disability, as it facilitates an understanding that people with disability may be more vulnerable to harm, compared to others in society, due to issues such as systemic barriers to participation, hate crimes, attitudes of exclusion, and discriminatory reforms to the welfare system (Lid 2015). This framing also enables an approach to protection which is premised on removing social barriers in order to grow individual autonomy and agency, as opposed to the paternalistic or coercive approaches to protection discussed above.

The 'taxonomy of vulnerability' sketched out by MacKenzie, Rogers, and Dodds (2014, 7) is useful for analysing inequities in vulnerability and the nuances in associated protection responses. It distinguishes different sources of vulnerability: inherent, situational, and pathogenic. *Inherent vulnerability* is intrinsic to the human condition, although it is experienced differently by different people, including because of their personal history and experiences, their social identity and circumstances, and any embodied experience of impairment. *Situational vulnerability* is context specific, 'caused or exacerbated by the personal, social, political, economic or environmental situations of individuals or social groups' (2014, 7). *Pathogenic vulnerability*, a subset of situational vulnerability, is the result of dysfunctional or abusive social relationships, socio-political oppression and injustice. Pathogenic vulnerability might exacerbate existing harms, or create new harms, for example when reporting abuse might result in reprisals from a service provider. Pathogenic vulnerabilities include susceptibilities of individuals to be harmed by the very policies or practice mechanisms that are supposed to support or protect them. Inherent and situational vulnerability are not empirically distinct, but rather overlap and influence each other. For example, an individual's inherent vulnerability might be latent in a supportive environment but triggered within a hostile one.

In this article we focus on analysing the situational and pathogenic forms of vulnerability people with disability often experience within service provision settings. Both the services designed to support people with disability and the safeguards developed to protect them from violence and exploitation are too often implicated in doing harm. We argue that institutional responses to vulnerability such as those that seek to prevent violence and abuse against people with disability in service settings must incorporate autonomy and relationality as core principles to achieve their aims and avoid becoming sources of pathogenic vulnerability themselves. Our approach in this research also recognises the significance of the ecological model of disability applied in disability abuse research by several scholars (e.g. Fitzsimons 2009; Hollomotz 2009; Sobsey 1994). This approach aligns with understandings of disability which recognise it as a product of individual, environment and social factors and calls for responses which move beyond individualistic conceptions of 'vulnerability' and 'risk', looking to multi-dimensional solutions for complex social problems (Hollomotz 2012).

Australia's disability policy environment

Expert evidence tendered to the Royal Commission found that people with disability experience violence, abuse and neglect at significantly higher rates than people without disability, and are more likely to experience repetitive and prolonged forms of violence (Koh, Kumbhavi-Tam, and Rose 2021). People with disability face at least 2.2 times the risk of sexual violence than others in the community, and women with disability make up about half of all domestic violence reports in Australia (CRE-DH (Centre of Research Excellence in Disability and Health) 2021). People with intellectual disability and psychosocial disability are even more likely to experience violence than people with other impairment types (CRE-DH (Centre of Research Excellence in Disability and Health) 2021).

Social structures enable this violence, including policing and justice systems, where people with disability are also at elevated risk. People with disability are represented disproportionately as victims, offenders and witnesses in the criminal justice system and experience violence and abuse from police and other actors within these systems at a higher rate than people without disability (Dowse et al. 2021). As witnesses or victims, the testimony of people with disability is less likely to be believed and acted upon by law enforcement officials because they are perceived as less credible, reliable or trustworthy than the perpetrators of violence (Schatz 2018).

One of the key governmental responses to the prevalence of violence and abuse against people with disability in service settings has been to increase regulation of disability service providers and disability support workers (Hough 2021). The NDIS Quality and Safeguards Framework ('the Framework') was released in 2016 after considerable consultation with the disability community. It has three key aims: (1) to ensure the quality and safety of NDIS services, (2) to empower and support participants, and (3) to provide a consistent approach to regulating providers and responding to reports of harm against service users.

The Framework was developed in recognition of the risks to people with disability embedded in the individualisation of social services. While individual choice and control are consistently framed as empowering for NDIS participants, the components of the system that deliver choice and control also individualise the risks that service recipients face. This is because within an individualised funding and support delivery framework, individuals are expected to actively negotiate and manage the risks they are exposed to by articulating their goals in a personalised support plan, investigating what mix of support services from different providers can best help them achieve those goals, and withdrawing their funding and choosing a new support service when a service provider does not meet their needs or expectations. In reality, many NDIS participants, including those with support coordinators

and plan managers, find it extremely difficult to access reliable information about the quality of the services available through the NDIS, and to understand and navigate the new system (David and West 2017; Malbon, Carey, and Blackwell 2021). The existence of thin markets can limit the ability of NDIS participants to access the services they need and to receive services that are safe and of a high quality (Malbon, Carey, and Dickinson 2018). Consequently, when combined with the high incidence of abuse and neglect described above, the expectation that NDIS participants actively negotiate and manage services can actually heighten their vulnerability to abuse, neglect, and exploitation from predatory or subpar service providers.

The NDIS Quality and Safeguards Commission (the Commission) is the independent watchdog agency designed to operationalise the Framework by improving and regulating the quality and safety of NDIS services. Its role is focused on developing national service standards, registering service providers, regulating restrictive practices, and responding to complaints from service users. The Commission commenced operating in some states in 2018 and has been operating nationally since 2020. It combines both rules-based and principles-based regulation, detailing specific actions that providers are required to adhere to as well as describing the intended outcome of safe and high-quality support services from the perspective of participants (Hough 2021). It uses both 'soft' self-regulation amongst service providers and legally binding, compliance-based regulation.

As part of its role, the Commission responds to concerns, complaints and reportable incidents, including abuse and neglect of NDIS participants. It receives a high volume of complaints but uses the stronger enforcement actions available to it only rarely. According to the NDIS Commission's annual Activity Report (NDIS Quality and Safeguards Commission 2021), from June 2020 to June 2021, the Commission received more than 7200 complaints but issued only 19 fines, revoked three registrations and banned 22 organisations or individuals from providing NDIS services. The Commission also received over a million (1,032,064) reports from NDIS providers of 'unauthorised restrictive practices' during this same period. Restrictive practices are interventions used in disability service settings that restrict the freedom of movement, communication, or behaviour of people with disability. Examples include physical restraint, seclusion, chemical restraint (the use of medication to control behaviour), and mechanical restraint (using equipment to restrict a person's movement). Some restrictive practices have been 'authorised' as part of a person's support plan, generally as a last resort to manage behaviours that may pose a risk to the individual or others after other positive behaviour support strategies have been tried and failed. 'Unauthorised' use of restrictive practices occurs outside of relevant legislation, policy, or standards. In response to these reports, the Commission issued just eight compliance notices and two fines to providers that have failed to comply with restrictive practice rules.

Restrictive practices, even when ‘authorised’ and used to protect an individual from self-harm or harm to others, compromise the individual’s rights and personal autonomy and can have serious and enduring physical and psychological consequences. ‘Unauthorised’ restrictive practices are particularly problematic because they could indicate that an intervention has not been formally anticipated or planned for within a person’s behaviour support plan and has been applied without endorsement or consent from the person themselves, their advocates/supporters, or a behaviour support practitioner. There have been significant critiques of the use of all forms of restrictive practices, for example, Steele (2017) argues that they constitute lawful institutional violence against people with disability. The Australian Government has committed to encouraging and facilitating alternative, person-centred behaviour support strategies that prioritize the autonomy and dignity of people with disability through the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector. Since 2022, the Commission has initiated a range of strategic initiatives to reduce restrictive practices and improve the reporting around them, including Own Motion inquiries (inquiries initiated by the NDIS commissioner in response to a complaint or series of complaints about NDIS services), and targeted and broad education projects (NDIS Commission 2023a).

The NDIS Framework and Commission were designed to address and ameliorate the vulnerabilities that people with disability may experience within the decentralised market-based services environment. However, the Commission’s first few years have been beset with operational issues including lengthy response times for people who have registered a complaint and minimal consequences for providers who break the rules, and Cortis and Van Toorn describe the NDIS Quality and Safeguarding Framework as a ‘light touch’ and ‘laissez-faire’ (2021, 5) approach to regulation that gives considerable discretion to providers.

Methods

This paper draws on a review of national quality and safeguarding initiatives commissioned by the Council for Intellectual Disability (CID). The study was conducted in two phases; a desktop review, and targeted interviews ($n=17$) with key stakeholders. The desktop review comprised an analysis of the legislative and policy environment that governs safeguarding bodies at a national level, both currently and through recent history (5 years). The review also scoped relevant submissions and reviews relating to the development of legislation and policy in safeguarding, such as parliamentary inquiry reports, submissions to inquiries and coroner’s reports. Interviews with stakeholders provided a broad selection of informed/expert stakeholder views from advocacy ($n=6$) and self-advocacy groups ($n=5$), government agencies ($n=4$) and

service providers ($n=1$). Ethics approval was provided through Flinders University Human Research Ethics Committee (HREC 2746).

A summary of findings from the desktop review were circulated to participants prior to interviews. A plain English summary was developed for the five participants with intellectual disability. Participants were asked to identify current practice around safeguarding, the limitations and constraints of practices, and opportunities to improve systems and structures. Data from the interviews was transcribed and coded using NVIVO computer software. A thematic analysis was completed, using themes derived from an initial coding framework based on the interview questions, and inductive codes added as the data built (Richards, 2019). The findings presented below draw primarily from the stakeholder interviews, while the desktop review informed the background and discussion sections of this article.

Findings

There was widespread recognition from stakeholders that the NDIS Commission is a new institution with responsibility for implementing a new Framework within a complex and evolving service environment. This is a challenging task, particularly in a context of changing service delivery and safeguarding practices and expectations, but the relative newness of these policy instruments was seen to also present an opportunity to address safeguarding gaps early on.

Stakeholders expressed concerns about specific aspects of the NDIS safeguarding environment and the impact of these in exacerbating vulnerability. These concerns were all situational, and included: the new disability services environment under the NDIS and the individualisation of risk that can occur within it, lack of awareness across the community about the NDIS Commission and its roles and responsibilities, insufficient capacity within the NDIS Commission to respond to complaints, and inaccessible complaints processes. As we argue below, these safeguarding gaps both reflect and perpetuate the general lack of protections and accessible mechanisms for complaint and redress for people with disability, both within and outside of the NDIS.

The stakeholders also identified areas in which a change of focus or increased investment in safeguarding approaches could reduce vulnerability. These included enhancing the interface between specialised disability and mainstream safeguarding services, enhancing and expanding the educative function of the Commission, and engaging more with NDIS participants. Finally, they saw an important potential role for the Framework and Commission in promoting and facilitating the development of natural safeguards, the personal relationships and supportive networks that have an important protective role in reducing vulnerability in the lives of all people, including people with disability.

Factors that increase vulnerability in the current safeguarding regulatory environment

In the interviews, stakeholders described numerous ways in which the new disability services environment had increased the situational vulnerability of people with disability to violence and abuse. For example, they discussed how a single service provider is often responsible for delivering different services to the same NDIS participant across life domains, creating a potential or actual conflict of interest and making it more difficult for the participant to extricate themselves from situations with poor quality or abusive providers. They also discussed the inability of the NDIS to deliver on its promise of choice and control for some participants because of insufficient service options and insufficient flexibility in how participants can use their funding packages. These are broad, multi-causal issues that go beyond the scope and powers of the Quality and Safety Framework and Commission to the design and functioning of the NDIS system as a whole, but the NDIS Commission has an important market oversight role to monitor and mitigate structural aspects of the NDIS market that pose risks to participants.

The stakeholder interviews also identified issues related to the Commission's functioning that may increase the situational vulnerabilities faced by NDIS participants, specifically, a lack of community awareness of the Commission's role, a mismatch between the Commission's legislated role and powers and community expectations, and problems with complaints handling processes.

Lack of knowledge and awareness

While information about the NDIS Commission is publicly available, stakeholders consistently noted that people with disability, families, service providers, and the broader community have limited practical knowledge of the Commission and its role and responsibilities. Some stakeholders suggested there is limited information about the work the Commission is actually doing to implement the Framework, and some of the information that is available is unclear and difficult to find (such as the banned providers and banned persons' lists). They suggested the Commission needed to engage people with disability, families, and the wider community more, and through diverse methods (this theme is addressed again in more detail in the following section).

Misalignment with community expectations

Stakeholders commented that this general lack of knowledge and awareness has in turn led to misalignment between the NDIS Commission's role, as established in legislation, and community expectations. Government stakeholders in particular pointed to a mismatch between community expectations about what the NDIS Commission can and should do and what it is in fact able to do under its legislative remit, which is considerably narrower than is commonly

realised. In some circumstances, community expectations have not been met as the Commission was not assigned the relevant responsibilities and powers. This issue was demonstrated in submissions received by consultations to inform the development of the NDIS Framework and Commission, many of which raise concerns around the use of restrictive practices in non-NDIS settings like hospitals, schools and mental health facilities, all non-disability-specific service settings which now exist outside the Commission's legislative remit (People With Disability Australia and Women With Disabilities Australia 2015, 8).

Complaints handling processes

The most significant concern raised by stakeholders related to the NDIS Commission's complaints handling capacity and resourcing, as well as the accessibility of complaints processes. Government, service provider and advocacy organisation representatives described complaint processes as opaque and difficult to negotiate. Advocacy and service provider stakeholders noted that people with disability experienced processes as confusing and too formal, and that interaction with the NDIS Commission had even led many people to give up on their complaint altogether. Advocacy organisations were particularly troubled by the demanding formal consent processes for lodging complaints and the high threshold of consent for others to register complaints on behalf of people with disability. Highlighting the complexity of the process, one advocate stated,

You shouldn't need an advocate to liaise with the body that has the responsibility of safeguarding your rights and protection. (advocate)

Several submissions to the Joint Parliamentary Inquiry into the NDIS Quality and Safeguards Commission called to increase Commission resources to address these issues (Every Australian Counts 2020; VALID 2020; Victorian Disability Services Commissioner 2020).

None of these shortcomings in the current NDIS safeguarding environment relate to any form of vulnerability 'inherent' to people with disability. Instead, these factors relate to situational vulnerabilities experienced by NDIS participants as a result of the service delivery models and systems they interact with. They also represent forms of pathogenic vulnerability. As discussed earlier, pathogenic vulnerabilities include susceptibilities of individuals to be harmed by the policies or practice mechanisms intended to support or protect them, which applies particularly to the difficulties stakeholders reported in negotiating the Commission complaints processes.

Ways to reduce vulnerability in future safeguarding policy, regulation and practice

Stakeholders identified many opportunities for improving safeguarding that could reduce the situational vulnerabilities faced by people with disability by

ensuring that systems are person-centred and that safeguards against violence and abuse are embedded in people's lives. These can be grouped into four key themes: safeguarding across disability and mainstream service systems, the scope of the Commission's educative functions, the Commission's engagement with NDIS participants, and building natural safeguards beyond service systems.

Safeguarding across disability and mainstream service systems

Stakeholders highlighted the need to urgently improve the interface between specialist disability safeguarding systems and mainstream safeguarding systems such as police, social workers, and advocacy organisations. The Commission's role focuses on promoting the quality and safety of NDIS services, regulating NDIS providers, and responding to NDIS participants. One of the flow-on effects of creating a separate statutory body to regulate NDIS service quality and safety has been to corral reports of violence and abuse within a specialist disability system. This risks the emergence of safeguarding gaps associated with non-NDIS services (accessed by people with disability who may or may not be NDIS participants), but it also risks mainstream safeguarding actors retreating from the NDIS space altogether, whether or not they may be the appropriate institution to respond to incidences of violence, abuse, or other service quality and safety issues.

Stakeholders highlighted the role that institutions and actors outside of the Commission and the NDIS need to play in ensuring that people with disability are not placed in pathologically vulnerable situations, *whether they are NDIS participants or not*. The self-advocate interviewees stated they did not want to have to rely on 'special' responses to be safe in the disability services. They wanted to have access to the same kinds of protections that everyone has, because

special services... do not respond like the police do. (self-advocate)

Stakeholders noted that the focus in the disability sector on the NDIS and the NDIS Commission has 'taken the pressure off' other institutions (advocate interview), but safeguarding needs to be addressed more broadly across the community as an obligation for mainstream agencies as well. They gave examples of specific conditions and situations in disability service settings that prevent safeguarding interventions by agencies with responsibilities for responding in violent situations. For example, the lack of recognition of group homes as domestic environments means that people with disability can only access personal safety violence orders, rather than stronger domestic and family violence orders, resulting in lower consequent levels of police intervention to protect people with disability. In the case of rental agreements, a special tenancy agreement for a person with disability will permit a community visitor, however, regular tenancy agreements do not contain this provision.

Stakeholders noted that data transparency and information sharing are critical to coordinating safeguarding efforts. Government representatives described difficulties in accessing relevant information from the NDIS Commission to support safeguarding practice inquiries, particularly on the use of restrictive practices. Information sharing about service providers who may be under investigation would support mainstream inquiries into safeguarding, although privacy issues would need to be managed. For advocate and self-advocate stakeholders, it was very important that information that could support the safety of NDIS participants was made available to people with disability. One self-advocate noted that service providers who were 'in the bad books' with the NDIS Commission could continue to work while being under investigation, and they would not know about it.

Expanding educative functions

The second key theme to emerge from the stakeholder interviews was the need to expand the scope of the Commission's educative function. All stakeholders agreed on the need for broad education across all sectors of the community around the responsibilities and role of the NDIS Commission. Advocate stakeholders argued that the Commission could be much more active in promoting preventative and proactive safeguarding measures in the broader community as well as in other systems with responsibilities for safeguarding such as justice, community services, health and education. As one advocate stated, a helpful change in approach would be to look at

how to make the rest of the world more responsive and better tailored to people with disability when things go wrong in their lives (advocate).

Engaging people with disability

The third theme was the need to strengthen engagement with NDIS participants. According to stakeholders, the effect of close attention to regulation and process (although necessary in the establishment phase of the Commission) has been to prioritise a compliance approach to safeguarding. This has brought the Commission into life as a body which engages with provider organisations more than it does with people with disability. This view was also taken by some provider stakeholders, one of whom stated that the focus on bureaucratic and compliance processes led to spending

more time on reporting than on providing services (provider interview).

Stakeholders were particularly concerned about the need to engage more with people with intellectual and cognitive disability, including those living in closed and/or group settings, who may require more assistance to access information and support. Supported decision making is key to a rights-based Framework, and some

advocate and self-advocate stakeholders recommended that the Commission engage further with people with intellectual disability to co-design ways to support them to make complaints. As noted by one stakeholder:

[There is a] group of people who are never heard and will never be heard [in formal complaints processes], due to consent processes, which prevent people who are most likely to be abused and neglected as they cannot provide consent. (government representative)

Both advocacy and government stakeholders suggested the NDIS Commission should take a vigorous and proactive approach to working with people with disability to understand their contexts and draw out systemic and individual safeguarding issues, and that its regulatory functions should not preclude it from this approach. Additionally, it could be pro-active in monitoring more risky environments through Community Visitor schemes, visits by Commission staff, and vigorous own-motion investigations by the Commissioner. Some stakeholders felt that on some issues the Commission was 'silent on policy' and could be taking a stronger public position to promote the rights of people with disability on key safeguarding issues.

The recent COVID crisis is an example of the potential for the Commission's leadership in this space. A Royal Commission report about the experiences of people with disability during the COVID-19 pandemic found that in the early stages of the pandemic 'no agency of the Australian government made any attempt to consult with people with disability or their representative organisations' (2020, 59). The report is critical of the Commission in failing to respond in a timely and active manner with steps to address risks for people with disability in residential settings. It found that the Commission could have played a more active leadership role at the outset of the pandemic, and the decision to maintain existing policies and practices was a 'lost opportunity to protect and safeguard the safety, health and wellbeing of National Disability Insurance Scheme participants' (Royal Commission 2020, 59). In the time since the interviews, the Commission's own motion report into aspects of supported accommodation has been released (NDIS Commission 2023b), detailing a range of planned actions.

Building natural supports

The final theme to emerge from the stakeholder interviews was the need for implementation of the Framework to move beyond formal safeguarding instruments and examine ways to encourage and embed natural safeguards in the lives of NDIS participants. Stakeholders across government policy, service provision and advocacy domains argued that safeguarding is 'everybody's business'. As one advocate stated:

Quality and safety need to relate to all the things and places where people with disability interact. (advocate)

The value, role and function of natural safeguards is recognised in the NDIS Quality and Safeguards Framework, which notes:

Natural supports (family, friends and community connections) provide an important informal safeguard for people with disability. A person with disability who has a supportive network of family and community members and is included in their community will be better protected by these natural safeguards than they could by any safety net built by governments (Department of Social Services 2016).

Advocates, service providers and government policy stakeholders discussed the need to turn this recognition into policy action to improve access to natural. Natural safeguards are foundational to protecting against the situational and pathogenic vulnerability to violence and abuse that many people with disability face. Advocates in particular stressed the importance of this for people who are socially isolated or have few unpaid people in their lives. Strengthening formal safeguards is critically important for both violence response and prevention, but building opportunities for these informal ties is also critical as a longer-term capacity building and participation measure to reduce vulnerability. Some stakeholders questioned whether current policy mechanisms were able to respond to systemic problems impeding the inclusion and safety of disabled people:

The Commission is not set up to take complaints about systems level problems like the fact that the NDIS is impossibly difficult for people to navigate, or has this regulatory system improved the level of quality of services? (advocate)

Discussion

The stakeholder perspectives canvassed in this research provide insight into the current gaps in safeguarding approaches within the NDIS and the effects of these gaps in intensifying the situational and pathogenic vulnerability experienced by NDIS participants. They also shed light on the broader context of how people with disability – and the circumstances under which they may experience violence and abuse – are framed in policy. Key implications from the research will be explored in the remainder of this article. The first of these is the need to attend more closely in safeguarding policy and practice to the situational and especially pathogenic production of vulnerability in service systems. This requires thinking beyond the individualistic conceptions of vulnerability and risk that have traditionally structured and narrowed approaches to protecting people with disability. The second implication is the need to attend to the ways that safeguarding approaches and the disability support system more generally can better facilitate and enable personal autonomy. Safeguarding and service delivery approaches that strip people of their agency by generating barriers and fostering pathogenic dependencies entrench vulnerability. Safe service environments, accessible

information, and accessible complaints pathways and processes support autonomy in ways that both mitigate risk and promote empowerment, dignity and justice when violence occurs. Third and finally, as the stakeholder interviews highlighted, safeguarding is 'everyone's business'. It is important that safeguarding bodies invest in encouraging and building natural safeguards wherever possible.

Thinking beyond individual risk and vulnerability

The concept of vulnerability has played an integral part in the way NDIS systems and processes have been designed to understand, measure and respond to risk. Within this policy environment, people with disability are sometimes positioned as active and informed consumers, empowered to negotiate the risks associated with marketised delivery of support services. At other times, they are positioned as inherently vulnerable subjects who need to be protected from these risks through specialised safeguarding systems. The stakeholder interviews demonstrate that both of these images are unrealistic portrayals of how individuals interact with the systems and people around them, and neither tell the full story. Rather, the extent to which choice, agency, decision-making and autonomy are possible is determined by supportive systems and safeguards, not by inherent characteristics.

In the case of the NDIS, the systems surrounding people with disability create various situational and pathogenic risks. Although the NDIS Commission and Framework were introduced to ameliorate these risks, the stakeholder interviews indicate that NDIS safeguarding policy and practice is still bound up in individualistic conceptions of what it means to be vulnerable and what it means to be kept safe. Stakeholders perceived the Commission's focus as on compliance-based mechanisms directed at service providers, with insufficient engagement with participants and their support networks. This approach positions service providers as having agency and the power to harm people with disability, who in contrast are positioned as passive and un-empowered receivers of potential harm. In this way, the NDIS's safeguarding approach reflects traditional, individualistic approaches to vulnerability which perceive people with disability as inherently vulnerable service recipients in need of protection from exploitative or abusive providers.

This is significant because the circumstances under which protection is given and received can lead to relationships that alleviate vulnerability or produce more vulnerability. By focusing on service quality and compliance, the Framework and Commission perpetuate a narrative of inherent vulnerability which fails to address situational and pathogenic vulnerabilities. As interview participants noted, a more structural focus on pathogenic service delivery arrangements and wider social marginalisation was left out of the implementation of the NDIS Quality and Safeguarding Framework. This

omission may exacerbate the existing risks embedded within the NDIS's funding model. For example, where a participant experiences abuse or neglect due to thin markets, and is then unable to submit a complaint and access appropriate redress, they experience additional harm. As this subsequent harm arises from a pre-existing situational vulnerability, it is classified as a form of pathogenic vulnerability; in other words, the NDIS safeguarding environment's approach to protection paradoxically produces more vulnerability.

To avoid this phenomenon, safeguarding initiatives must set aside individualistic categorisations of people with disability as inherently vulnerable, in favour of a greater appreciation of the social inequalities, situational and pathogenic relationships that entrench vulnerability. This is because, as demonstrated, the vulnerabilities experienced by NDIS participants are largely a result of the way these services are delivered, rather than a result of participants' individual attributes. To ensure the safety of people with disability, it is thus necessary to design and implement safeguarding approaches that resist narratives of inherent vulnerability, and instead focus on situational vulnerability.

Promoting autonomy

By focusing on service quality and compliance, traditional individualistic approaches to safeguarding overlook opportunities to build the autonomy of people with disability. Autonomy has traditionally been understood as an attribute of 'invulnerable' individuals – a condition that can only be achieved once the individual has shed or overcome their dependencies and vulnerabilities to become an independent actor in the world. Vulnerability and autonomy are often viewed as oppositional concepts, where autonomy is understood as independent self-sufficiency and vulnerability is understood as dependency on the protection of others. Reformulations of the concept of autonomy in feminist theory (Nedelsky 2011; Davy 2019) have challenged the dichotomous opposition between vulnerability and autonomy. They have shown that like vulnerability, autonomy is necessarily relational, and the level of autonomy and vulnerability a person experiences and is exposed to in their lives depends on the scaffolding and support of the people, relationships and systems around them.

Disability support services, specialist safeguarding bodies and mainstream agencies need to respond to the situational vulnerability experienced by NDIS participants and other people with disability in ways that support autonomy rather than undermine it. Rather than focusing on narrow mechanisms of protection, such as service quality and compliance, effective safeguarding approaches would provide people with disability with the resources they need to maintain autonomy and safety. As Sherwood-Johnson, Mackay and Greasley-Adams state, 'responses to vulnerability need to engage the

agency and participation of the individuals or groups affected' (2022, 487). Strategies identified by stakeholders to achieve this include providing access to information and resources that enable individuals to make informed choices and decisions; and encouraging all services and systems, not just specialist disability ones, to listen to people with disability. These strategies will support people with disability when they require more accessible services, need to make a complaint, or need to report a crime.

Although vulnerability is a shared and universal condition, there are varied experiences of vulnerability exacerbated by social injustice and by failures to listen and respond to experiences of harm. If people with disability have less access to mainstream safeguarding institutions; or if, having accessed or interacted with the police, health or community authorities or other agencies, their voices are not heard or no one is willing to pursue the matter, their personal autonomy is constrained and they are rendered more vulnerable. Both disability and mainstream services need to build capacity to listen and respond to people with disability, their families, and advocates. Like everyone else, people with disability live their lives at the intersections of multiple systems, and their experiences are not neatly siloed or 'bucketed' into separate organisations or responsibilities. For people with disability to come closer to parity in terms of personal safety, all consumer, complaints and justice agencies must have capacity to raise awareness and educate, proactively seek out and respond to individual problems and collective inequities, and promote restorative solutions.

Natural safeguards

One of the clear messages from the stakeholder interviews was that keeping people safe is not the sole responsibility of safeguarding agencies. A sense of personal safety is something experienced by a particular individual in a particular context, but it is relationally secured, a result of being connected and embedded within one's community. Formal services and safeguards alone are unlikely to deliver this to NDIS participants.

Natural safeguards are formed through the relationships that people have with others in their day to day lives, people who value them and who they trust. Previous research has demonstrated that these relationships are foundational in protecting people with disability from violence, abuse, neglect and exploitation (Robinson 2015; Hutchison and Stenfert Kroes 2015). Safeguarding approaches that develop and support relationships and networks, enhance natural safeguards. Such practices build on the knowledge of people with disability, their families and advocates, and facilitate opportunities across communities, organisations, individuals and systems to recognise the responsibilities we hold for and to each other. In thinking beyond risk and protection, oversight bodies such as the NDIS Commission can progress

human rights principles into practice, which means building higher expectations about where, when, how and why people with all kinds of disability take their place(s) in their communities, and what action is needed to ensure their positive presence in public worlds.

Conclusion

The ascription of vulnerability is a double-edged sword for marginalised individuals. On the one hand, being labelled vulnerable marks difference, with an implicit negative comparison to a fictional invulnerable norm. On the other hand, being labelled vulnerable can provide access to services and protections that wouldn't be offered otherwise (Hall 2019). Given the extreme diversity encompassed by the term disability (in terms of diagnoses, support needs, and personal life circumstances), and the potential for paternalism associated with labelling a whole group intrinsically or inherently vulnerable, there is little practical use and perhaps significant potential pathogenic harm in approaching people with disability as a particularly vulnerable group. However, it can be useful to catalogue the situational vulnerabilities people with disability might be exposed to in order to address these potential vulnerabilities through robust safeguarding policy and practice. Continual evaluation of safeguarding approaches through research that privileges the perspectives and priorities of people experiencing barriers to accessing complaints bodies is needed because this area of policy and practice is continually evolving. Other jurisdictions have other models of individualised funding and safeguarding in place, and although beyond the scope of this paper, comparative research into what is working and what requires improvement would also be very beneficial in identifying good practice and common challenges in this space.

The Commission is a very new body and its regulatory frameworks are still being established, so over time, we can hope that its systems will become more effective and accessible and the emphasis will shift from regulating the unauthorised practices reported by providers to investigating the complaints made by people with disability. But this research identified features of the current NDIS and safeguarding environment that produce situational and pathogenic vulnerability and increase susceptibility to various harms, highlighting broader design issues with the scheme and its protections. Addressing the widespread lack of awareness about the frameworks and institutions designed to protect people with disability from the risks they may be exposed to in the NDIS environment is clearly a matter of urgent priority. Improving information provision, the coordination between mainstream and NDIS safeguarding agencies, and designing and enacting accessible and supportive processes through which people with disability can make a report or a complaint when things go wrong are additional critical ways to support the

autonomy of NDIS participants negotiating the risks and opportunities of the new disability support system. Vulnerability theorist Martha Fineman argues that while vulnerability is universal, it is 'also particular: it is experienced uniquely by each of us and this experience is greatly influenced by the quality and quantity of resources we possess or can command' (Fineman 2008, 8). To meet broader responsibilities towards people with disability, proactive strategies to embed people with disability within communities as equal and valued citizens must be a core component of safeguarding processes.

Disclosure statement

The authors confirm that there are no relevant financial or non-financial competing interests to report.

ORCID

Sally Robinson  <http://orcid.org/0000-0002-5768-0065>

References

- Butler, Judith. 2006. *Precarious Life: The Powers of Mourning and Violence*. London and New York: Verso.
- CRE-DH (Centre of Research Excellence in Disability and Health). 2021. *Research Report: Nature and Extent of Violence, Abuse, Neglect and Exploitation against People with Disability in Australia*. Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. Commonwealth of Australia (Department of Prime Minister and Cabinet). 2023a. *Executive Summary: Our Vision for an Inclusive Australia and Recommendations*. Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.
- Commonwealth of Australia (Department of Prime Minister and Cabinet). 2023b. *Working together to deliver the NDIS: Independent review into the National Disability Insurance Scheme: Final Report*.
- Cortis, Natasha, and Georgia Van Toorn. 2021. "Safeguarding in Australia's New Disability Markets: Frontline Workers' Perspectives." *Critical Social Policy* 42 (2): 197–219. <https://doi.org/10.1177/02610183211020693>
- David, Christina, and Raelene West. 2017. "NDIS Self-Management Approaches: Opportunities for Choice and Control or an Uber-Style Wild West?" *Australian Journal of Social Issues* 52 (4): 331–346. <https://doi.org/10.1002/ajs4.23>
- Davy, Laura. 2019. "Between an ethic of care and an ethic of autonomy: negotiating relational autonomy, disability, and dependency. Angelaki." *Journal of Theoretical Humanities* 24 (3): 101–114. <https://doi.org/10.1080/0969725X.2019.1620461>
- Department of Social Services. 2016. *NDIS Quality and Safeguarding Framework*. https://www.dss.gov.au/sites/default/files/documents/04_2017/ndis_quality_and_safeguarding_framework_final.pdf.
- Dowse, Leanne, Simone Rowe, Eileen Baldry, and Michael Baker. 2021. *Police Responses to People with Disability: Research Report*. Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

- Every Australian Counts. 2020. *NDIS Quality and Safeguards Commission Inquiry: Submission 63*. https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/QS_Commission/Submissions.
- Fineman, Martha Albertson. 2008. "The Vulnerable Subject: Anchoring Equality in the Human Condition." *Yale Journal of Law and Feminism* 20 (1): 1–23.
- Fitzsimons, Nancy, M. 2009. *Combating Violence and Abuse of People with Disabilities: A Call to Action*. Baltimore, Maryland: Paul H. Brookes Publishing.
- Hall, Margaret Isabel. 2019. "Relational autonomy, vulnerability theory, older adults and the law: making it real." *Elder Law Review* 12 (1):1–22.
- Hollomotz, A. 2012. "A Lad Tried to Get Hold of my Boobs, so I Kicked Him": An Examination of Attempts by Adults with Learning Difficulties to Initiate Their Own Safeguarding." *Disability & Society* 27 (1): 117–129. <https://doi.org/10.1080/09687599.2012.631801>
- Hollomotz, Andrea. 2009. "Beyond 'Vulnerability': An Ecological Model Approach to Conceptualizing Risk of Sexual Violence against People with Learning Difficulties." *British Journal of Social Work* 39 (1): 99–112. <https://doi.org/10.1093/bjsw/bcm091>
- Hough, Alan. 2021. "Regulating Disability Services: The Case of Australia's National Disability Insurance Scheme Quality and Safeguarding System." *Research and Practice in Intellectual and Developmental Disabilities* 8 (2): 99–110. <https://doi.org/10.1080/23297018.2021.1942176>
- Hutchison, Andrew, and Biza Stenfort Kroese. 2015. "A Review of Literature Exploring the Possible Causes of Abuse and Neglect in Adult Residential Care." *The Journal of Adult Protection* 17 (4): 216–233. <https://doi.org/10.1108/JAP-11-2014-0034>
- Koh, Joel, Gayatri Kembhavi-Tam, and Vanessa Rose. 2021. *Research Report – Rapid Evidence Review: Violence, Abuse, Neglect and Exploitation of People with Disability*. Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Centre for Evidence and Implementation and Monash University.
- Leach Scully, Jackie. 2014. "Disability and Vulnerability: On Bodies, Dependence and Power." In *Vulnerability: New Essays in Ethics and Feminist Philosophy*, edited by C. MacKenzie, W. Rogers and S. Dodds. New York: Oxford University Press.
- Lid, Inger Marie. 2015. "Vulnerability and Disability: A Citizenship Perspective." *Disability & Society* 30 (10): 1554–1567. <https://doi.org/10.1080/09687599.2015.1113162>
- Mackenzie, Catriona. 2014. "The Importance of Relational Autonomy and Capabilities for an Ethics of Vulnerability." In *Vulnerability: New Essays in Ethics and Feminist Philosophy*, edited by C. MacKenzie, W. Rogers and S. Dodds, 33–58. New York: Oxford University Press.
- MacKenzie, Catriona, Wendy Rogers, and Susan Dodds. 2014. "Introduction." In *Vulnerability: New Essays in Ethics and Feminist Philosophy*, edited by C. MacKenzie, W. Rogers and S. Dodds, 1–29. New York: Oxford University Press.
- Malbon, Eleanor, Gemma Carey, and Helen Dickinson. 2018. "Accountability in Public Service Quasi-Markets: The Case of the Australian National Disability Insurance Scheme." *Australian Journal of Public Administration* 77 (3): 468–481. <https://doi.org/10.1111/1467-8500.12246>
- NDIS Quality and Safeguards Commission. 2021. *Activity Report 1 July 2020 to 30 June 2021*. <https://www.ndiscommission.gov.au/resources/reports-policies-and-frameworks/ndis-commission-activity-reports#paragraph-id-3116>.
- NDIS Quality and Safeguards Commission. 2023a. *NDIS Commission Activity Reports*. <https://www.ndiscommission.gov.au/resources/reports-policies-and-frameworks/ndis-commission-activity-reports#paragraph-id-6269>.
- NDIS Quality and Safeguards Commission. 2023b. *Own Motion inquiry into aspects of supported accommodation*. <https://www.ndiscommission.gov.au/own-motion-inquiry-aspect-s-supported-accommodation-action-plan>.

- Nedelsky, Jennifer. 2011. *Law's Relations: A Relational Theory of Self, Autonomy, and Law* (1st ed.). Oxford University Press.
- Nussbaum, Martha C. 2006. *Frontiers of Justice: Disability, Nationality, Species Membership*. Cambridge, Mass: Belknap Press of Harvard University Press.
- People With Disability Australia and Women With Disabilities Australia. 2015. *Consultation Paper Proposal for a National Disability Insurance Scheme Quality and Safeguarding Framework*. <https://wwda.org.au/publication/consultation-paper-proposal-for-a-national-disability-insurance-scheme-quality-and-safeguarding-framework/>.
- Robinson, Sally. 2015. "Preventing Abuse of Children and Young People with Disability under the National Disability Insurance Scheme: A Brave New World?" *Australian Social Work* 68 (4): 469–482. <https://doi.org/10.1080/0312407X.2014.950977>
- Royal Commission. 2020. *Report - Public hearing 5 – Experiences of people with disability during the ongoing COVID-19 pandemic*. Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. <https://disability.royalcommission.gov.au/public-hearings/public-hearing-5>.
- Schatz, Samson J. 2018. "Interrogated with Intellectual Disabilities: The Risks of False Confession." *Stanford Law Review* 70 (2): 643–690.
- Silvers, Anita. 2015. "Vulnerability: New Essays in Ethics and Feminist Philosophy, Edited by Mackenzie, Catriona, Rogers, Wendy, and Dodds, Susan! [Book Review]." *Australasian Journal of Philosophy* 93 (4): 831–833. <https://doi.org/10.1080/00048402.2015.1016992>
- Sobsey, Dick. 1994. *Violence and Abuse in the Lives of People with Disabilities: The End of Silent Acceptance?* Baltimore, DC: Paul H. Brookes Publishing.
- Turner, Bryan S. 2006. *Vulnerability and Human Rights*. University Park, PA: Penn State University Press.
- VALID. 2020. *NDIS Quality and Safeguards Commission Inquiry: Submission 33*. https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/QS_Commission/Submissions.
- Victorian Disability Services Commissioner. 2020. *NDIS Quality and Safeguards Commission Inquiry: Submission 13*. https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/QS_Commission/Submissions.