

10 September 2021

By email: [agencypolicy@ndis.gov.au](mailto:agencypolicy@ndis.gov.au)

**National Disability Insurance Scheme – Consultation Paper: Supporting you to make your own decisions**

Thank you for the opportunity to comment on the Consultation Paper, *Supporting you to make your own decisions*. Relationships Australia welcomes the work being undertaken to better recognise and support the autonomy and dignity of people living with disability. In particular, we welcome reforms and initiatives to support people to build and exercise decision-making capabilities.

**Recommendations**

*Recommendation 1(a)*

That the Federal Government implement the *National Decision-Making Principles* (the Principles) articulated by the Australian Law Reform Commission in its 2014 report, *Equality, Capacity and Disability in Commonwealth Laws* (ALRC Report 124).

*Recommendation 1(b)*

That the NDIS adopt the Principles as the normative foundation for the Decision Making Capability Framework (the Framework).

*Recommendation 2*

That the NDIS collaborate with the Attorney-General's Department to:

- implement, as a matter of urgency, a national register for enduring powers of attorney (EPOAs) in relation to financial matters
- re-energise and lead development of a national register for all enduring instruments, recognising that support the integrity of decision-making frameworks for people with disability requires a far broader focus than simply financial matters, and
- lead harmonisation of laws about enduring powers of attorney and other advance decision-making instruments.

*Recommendation 3*

That the NDIS collaborate with the Attorney-General's Department to design and deliver a public awareness and education campaign about advance decision-making instruments.

*Recommendation 4*

That the Federal Government undertake a surge of policy and programme effort to close the digital divide and eradicate systemic and structural barriers to participation in the social, economic, political and cultural dimensions of the digital environment ('digital participation').

### *Recommendation 5*

That the NDIS undertake a programme of workforce capability planning and development, to support NDIS staff, individuals/organisations providing services funded by the NDIS, and unpaid or informal carers, to:

- understand concepts of autonomy, dignity and dignity of risk, and their significance in enabling people to flourish, and apply those concepts on a daily basis
- recognise circumstances in which a person needs support to make decisions
- identify what kinds of support are necessary, and
- provide, or arrange for the provision of, the needed supports.

### **Work of Relationships Australia**

Relationships Australia is a federation of community-based, not-for-profit organisations with no religious affiliations. Our services are for all members of the community, regardless of religious belief, age, gender, sexual orientation, lifestyle choice, living arrangements, cultural background or economic circumstances. We respect the rights of all people, in all their diversity, to live life fully and meaningfully within their families and communities with dignity and safety, and to enjoy respectful relationships. A commitment to fundamental human rights, to be recognised universally and without discrimination, underpins our work.

Relationships Australia has, for over 70 years, provided a range of relationship services to Australians, including individual, couple and family group counselling, dispute resolution, services to older people, children's services, services for victims and perpetrators of family violence, and relationship and professional education. We aim to support all people in Australia to live with positive and respectful relationships, and believe that people have the capacity to change how they relate to others and develop better health and wellbeing. We are committed to:

- Working in regional, rural and remote areas, recognising that there are fewer resources available to people in these areas, and that they live with pressures, complexities and uncertainties not experienced by those living in cities and regional centres.
- Collaboration. We work collectively with local and peak body organisations to deliver a spectrum of prevention, early and tertiary intervention programs. We recognise that some families need a complex suite of supports (for example, family support programs, mental health services, gambling services, drug and alcohol services, and housing).
- Enriching family relationships, and encouraging clear and respectful communication.
- Ensuring that services are accessible, including ensuring that social and financial disadvantage is no barrier to accessing services.
- Contributing our collective practice evidence and skills, built across the Relationships Australia federation, to research projects, the development of public policy, and the provision of compassionate and effective supports to families.

### *Centrality of human rights*

Relationships Australia respects the rights of all people, in all their diversity, to live life fully and meaningfully within their families and communities with dignity and safety. A commitment to

human rights, recognised universally and without discrimination, underpins our work, reflecting our convictions that:

- the basic needs for safety and survival for all people in the community must be met to enable Australia to flourish as a vibrant and inclusive country
- all people have a right to participate in the community through relevant family, community, work and recreational activities
- there are major structural and systemic barriers in our society which prevent full participation of some people in the social, political, cultural and economic life of our country
- some segments of society are more exposed to social, economic, health, educational and employment risks than others, and bear disproportionate burdens in seeking to manage and mitigate these risks, and
- children and adults experiencing and exposed to family violence are vulnerable and in need of support.

NDIS structures, systems, and processes should be grounded in an explicit human rights framework within which the autonomy of principals is paramount. This would be consistent with, *inter alia*, the Convention on the Rights of Persons with Disabilities (CRPD) and the recommendations of the Australian Law Reform Commission in Report 124, *Equality, Capacity and Disability in Commonwealth Laws*.<sup>1</sup>

#### *Social model of disability and the CRPD*

This submission interprets disability using the social model which recognises that ‘disability’ is socially constructed. Disability is a one-dimensional term used to illustrate medical abnormalities in comparison to the ‘normal’ population. The social model acknowledges the impact of impairment on individual experience, but sees ‘disability’ as a result of the interaction between people living with impairments and an environment filled with physical, attitudinal, communication and social barriers (People with Disability Australia, 2021).

The social model of disability recognises that the physical, attitudinal, communication and social environment must change to enable people living with impairments to participate in society on an equal basis with others. Importantly, it acknowledges that any accommodations for impairment should be an *expected* incident of human diversity. The CRPD marked the official paradigm shift towards the social model of disability.

Relationships Australia’s service provision, research and advocacy is grounded in the social model. We believe that the barriers that face people living with disability result from an ill-equipped and ill-considered social environment. Despite the paradigm shift achieved by the CRPD, there are still many structural, attitudinal, physical, technological and social changes needed to enable those living with disability to participate in society on an equal basis with others.

---

<sup>1</sup> See, eg, paragraph 1.19 of ALRC Report 131.

## **Relationships Australia's services for people who live with disability**

Relationships Australia provides a range of services that support people who live with disability and/or have complex needs, including due to trauma. Some of our specialised trauma and family mental health services include our:

- Disability Royal Commission Counselling and Support service – for people with disability who have experienced violence, abuse, neglect and exploitation, and those affected by the Disability Royal Commission
- Redress Support Services for people contemplating or going through the National Redress Scheme
- Forced Adoption Support Services, which offer counselling, information and referral to those affected by past forced adoption practices, and
- Senior Relationship Services assisting older people and their families to prevent and resolve family conflict, plan for the future (including medical, health, financial and living arrangements), improve communication skills, make decisions that protect the interests, rights and safety of family members, and to reduce the risk of elder abuse.

These services support people by providing:

- person-centred and trauma-informed counselling, capacity building, mental health and transition support and mediation
- warm transfers to other support services if required, and
- information and referrals about other useful services.

## **Services relating to the Disability Royal Commission**

Since December 2019, Relationships Australia has been funded across seven states and territories to provide Frontline Counselling and Support Services for the Disability Royal Commission (DRC). During this period, we have provided counselling and support via face-to-face, video conferencing and telephone media to people with disability, their families and others who are involved in the Royal Commission.

Our frontline counselling and support service focuses on the psychological and support needs of our clients who are affected by violence, abuse, neglect, and exploitation, and works closely with a range of other support services such as disability advocacy services.

This submission will touch on themes that have emerged throughout the provision of this service and other Relationships Australia services. These themes emerge from the pervasive challenges which affect those living with disability throughout Australia. However, we do note that we write from a policy-focussed, provider's perspective; accordingly, there is a myriad of issues and perspectives from those living with disability that this submission does not reflect, but which should centre the development of the Framework.

## **Implementation of the National Decision-Making Principles**

Relationships Australia has, in previous submissions, advocated that Australia should implement recommendations made in Report 124 of the Australian Law Reform Commission,

*Equality, Capacity and Disability in Commonwealth Laws*; in particular, recommendations relating to:

- the National Decision-Making Principles
- supported decision-making in Commonwealth laws
- recommendations 6-1, 6-2, 6-3 and 6-4
- recommendations 8-1 and 8-2, and
- recommendation 10-1.<sup>2</sup>

To fully and consistently prioritise autonomy, as is contemplated in the Consultation Paper, it is vital to understand that notions of ‘care’, ‘protection’ and ‘safeguarding’, deriving from the moral principle of beneficence, take substance from the principal’s past and present autonomy. Thus, autonomy (choice) and beneficence (care, safeguarding and protection) should be seen here not as being in conflict, but as existing in a relationship of complementarity.<sup>3</sup>

#### *Recommendation 1(a)*

That the Federal Government implement the *National Decision-Making Principles* (the Principles) articulated by the Australian Law Reform Commission in its 2014 report, *Equality, Capacity and Disability in Commonwealth Laws* (ALRC Report 124).

#### *Recommendation 1(b)*

That the NDIS adopt the Principles as the normative foundation for the Framework.

### **Meaningful federal progress on enduring instruments**

Nationally effective laws and cultural norms around EPOAs and similar instruments have significant potential to support autonomy and dignity, and to enhance prevention, detection and remediation of abuse. In light of evidence<sup>4</sup> that financial abuse (of older people) is often preceded, and enabled, by emotional and/or psychological abuse, public knowledge and widespread use of effective EPOA laws may assist in addressing these forms of abuse.

To nurture an inclusive and diverse society which respects and values all of its members and is hardened against opportunities for abuse and exploitation, Australia’s laws must support people to make effective advance planning instruments, confident that their instructions and views will be respected. A mandatory and searchable national register is a prerequisite for confidence

---

<sup>2</sup> See, for example, the Relationships Australia submission to the Royal Commission into Aged Care Quality and Safety at <https://www.relationships.org.au/national/submissions-and-policy-statements>

<sup>3</sup> This is consistent with the position taken by the ALRC in Report 131; see, eg, paragraph 1.17.

<sup>4</sup> In the context of abuse of older people, for example, Kaspiw *et al* observed that ‘there is some evidence that suggests psychological and financial abuse often co-occur, and that psychological abuse may be a form of “grooming for financial abuse”’: Kaspiw, Carson & Rhoades, p 10 (references omitted). In its 2007 report on *Older People and the Law* (‘Older people report’), the House of Representatives Standing Committee on Legal and Constitutional Affairs noted observations from submitters and witnesses to the effect that powers of attorney can function as both protection against abuse and as vehicles for abuse (see, eg, paragraphs 3.47-3.62). On balance, though, the Committee concluded that enduring instruments, supported by effective, well-calibrated regulation and a national register, could be a valuable means of deterrence and more timely detection.



among makers and users of instruments, including third parties such as businesses that provide goods and services for the benefit of a maker.

However, progress on developing a register languishes in ‘consultation phases’ under the auspices of the Meeting of Attorneys-General.<sup>5</sup> We call on Government to reinvigorate momentum to remove this barrier to exercising autonomy.

This part of the submission sets out more detail to support Recommendations 2 and 3.

#### *Primary purpose of enduring instruments*

Relationships Australia considers that the primary purpose of enduring instruments is to provide legal mechanisms by which principals can, notwithstanding future diminution of decision-making capacity, ensure that decisions affecting them are made:

- to the greatest extent possible – by them or, if that is not possible, with their active and supported participation
- by people known to, and trusted by, them,<sup>6</sup> and
- by reference to their recorded values, wishes and preferences.

This view of the primary purpose of enduring instruments – as mechanisms to extend the exercise of autonomy – underpins this submission and Relationships Australia’s advocacy to other bodies and inquiries concerning human rights, including rights to make decisions.

#### *Principles underpinning reforms relating to enduring instruments*

Across a range of policy domains, Relationships Australia advocates for all Australians to have access to legal arrangements which:

- support their quality of life, including through embracing dignity of risk, according to their rights, wishes, preferences, values and capacities
- empower them to express their individuality and draw on their own strengths/abilities as they see fit, defining for themselves and achieving a quality and meaningful life; including by enabling them to:
  - maintain existing family and social relationships, and
  - belong to and participate in group activities that they value, and
- enable their community engagement, inclusion and participation, support them to maintain valued family and social connections, access to health care and allied health services, nursing services, mental health services, and palliative care services in seamless, place-based and culturally safe formats.

Effective advance planning instruments can be enablers of these goals. Ineffective, unclear and uncertain planning, or lack of planning, can thwart their realisation.

---

<sup>5</sup> See the Communiqué of 31 March 2021, at <https://www.ag.gov.au>.

<sup>6</sup> In Report 131, the ALRC noted ‘There was also evidence that third parties sometimes simply did not know of the existence of an enduring guardianship arrangement, which led to the older person’s choice of representative not being respected.’ (see paragraph 5.106). Consequently, the ALRC suggested that enduring guardianship appointments also be registered. Relationships Australia supports this suggestion.

Relationships Australia notes several reviews and inquiries over past decades that have recommended reforms to Australian laws about enduring instruments, to achieve objectives including:

- more certainty for principals that their wishes will be respected and their affairs managed appropriately
- greater clarity for attorneys as to the nature and scope of their obligations,<sup>7</sup> and
- more certainty for third parties about the nature, scope and effect of enduring instruments.<sup>8</sup>

### *A mandatory and searchable register of advance instruments*

The following case study illustrates how EPOA issues come to the attention of Relationships Australia staff and the practical benefits of a searchable register.

**Case Study 1:** An Aboriginal woman living in the Northern Territory approached Relationships Australia Northern Territory for assistance. She is a survivor of child sexual abuse in an institutional setting, who was supported to prepare an application for the National Redress Scheme (the Redress Scheme) for people who have experienced institutional child sexual abuse. Over a period of time, the client provided very positive feedback to the Relationships Australian Northern Territory (RA-NT) worker about the support she was receiving in this matter.

The client had re-connected with a son in his adulthood. He had been forcibly adopted. The client was apparently very happy to regain this relationship with her son; however, she also raised some concerns with her RA-NT worker about her son wanting to control any financial settlement she received from the Redress Scheme. Shortly after she raised these concerns, she further advised RA-NT staff that her son had told the Redress Scheme administrators that he had Enduring Power of Attorney in relation to her decisions and needed to be in charge of her affairs, and that he didn't want his mother to be supported by RA-NT. On the basis of her son's claim, and without checking with the client, the Operator (or their delegate) apparently amended the client's case file to reflect the son's instructions. The client had apparently made an appointment in favour of her son, but had not kept a copy of it. Nor did the client wish for her son to take on this role at this time. The RA-NT worker believed that the client's general cognition and decision-making capacity was sufficiently intact to enable her to continue to manage her own affairs in respect of the Redress Scheme.

Mandatory registration of EPOAs and a searchable repository (for authorised third parties), with a status marker to indicate if the EPOA has come into force, would have enabled the Operator to check the son's claim to hold an activated EPOA. The existence of an electronic record

---

<sup>7</sup> As noted by Dean, p 15. Johannesen & LoGiudice, 2013, suggested that 'Formal social supports or networks for older people have been suggested as a key protective factor for older adults at risk of social isolation.'

<sup>8</sup> These have included, for example: the report of the House Standing Committee on Legal and Constitutional Affairs, *Harmonisation of Legal Systems Within Australia and Between Australia and New Zealand* (2006), especially Chapter 4; *Older people* report, especially Chapter 3; VLRC Report 24, especially Chapter 16; ALRC Report 124; ALRC Report 131; the Council of Attorneys-General, *National Plan to Respond to the Abuse of Older Australians* (2019), especially Priority Area 4; AGAC Options paper (2018), especially Parts 5 and 7; AGAC, *You Decide Who Decides*, 2019, <https://www.publicadvocate.vic.gov.au/resources/booklets/642-you-decide-who-decides-accessible-pdf?path=>.

could also address the issue of the client not having access to a paper copy of the document (which is easily misplaced or can deteriorate over time).

Further, a 'new system' incorporating a mandatory and searchable register of instruments could be a significant step in re-building trust for people who have been previously victimised by unscrupulous people exploiting gaps and limitations of the *status quo*. If the limitations of the existing approach are not addressed, more people are likely to rely on government services such as Public Guardians or Public Trustees – meaning that more people may be subject to substituted, not supported, decision-making arrangements.

### *Overcoming fragmentation of laws and systems relating to enduring instruments*

Fragmentation is innate to a federal system of government. It is a responsibility of governments, however, to manage the complexities arising from fragmentation, and to minimise the extent to which the burden falls to those least equipped to shoulder it.<sup>9</sup> This includes governments taking up the highly complex challenge of achieving geographic equity, so that the degree and kind of 'safeguards and remedies' is not contingent on location in Australia of principals, their attorneys/donees or third parties.<sup>10</sup>

As in numerous policy domains, users of enduring instruments are confronted with fragmented laws and systems.<sup>11</sup> In this context, fragmentation includes:

- gaps in mutual recognition of instruments<sup>12</sup>
- inconsistent legislation about foundational concepts such as tests for decision-making capacity<sup>13</sup>
- differing formats
- differences in the powers that can be conferred on attorneys, and
- various remedies for misuse.<sup>14</sup>

This creates particular difficulties and inefficiencies for individuals whose affairs cross jurisdictional boundaries<sup>15</sup> and for agencies and institutions that operate nationally. A national mandatory register would ameliorate these burdens, as well as making enduring instruments easier to use and thus more appealing than informal (and potentially more risky) arrangements.

Relationships Australia has previously expressed its misgivings that the then Council of Attorneys-General (now the Meeting of Attorneys-General) elected to pursue development of an

<sup>9</sup> As recognised in the *Older People* Report; see especially paragraph 3.117.

<sup>10</sup> See AGAC Options paper (2018), p 21.

<sup>11</sup> See AGAC Options paper (2018), pp 20-22. See also *Older people* report, especially paragraph 3.137, where the Committee observed that 'Part of the difficulty in having banks recognise powers of attorney may reflect the national bureaucratic structure of banks struggling to deal with a variety of state based legislative arrangements.'

<sup>12</sup> See, eg, AGAC Options paper (2018); *Older people* report, paragraphs 3.37ff, recommendations 16 and 17.

<sup>13</sup> In this regard, Relationships Australia accepts the functional approach adopted by the ALRC in Report 124, recommendation 3-2. See also AGAC Options paper (2018), p 51.

<sup>14</sup> See ALRC Report 131, paragraph 5.13. At paragraphs 5.96-5.98, the ALRC noted restrictions on the jurisdiction of state and territory courts and tribunals to hear matters involving residents of different states. This is an additional strand of fragmentation confronting principals, attorneys and third parties. See also AGAC Options paper (2018), especially section 6.3.

<sup>15</sup> And opportunities for the unscrupulous: see, eg, ALRC Report 131, paragraph 5.123, where the ALRC notes that it 'heard of situations where a person is taken interstate by family members, "beyond the reach" of a guardianship order.'



EPOA register before achieving nationally consistent laws and a single national model instrument. We support the ALRC's view that

An effective national register requires consistent state and territory legislation and a single model enduring document that can be registered.<sup>16</sup>

We are, nevertheless, of the view that 'out of sequence' establishment of a mandatory register is both achievable and valuable to pursue in parallel with ongoing reforms of substantive safeguarding laws.<sup>17</sup>

### *Recommendation 2*

That the NDIS collaborate with the Attorney-General's Department to:

- re-energise and implement, as a matter of urgency, a national register for enduring powers of attorney (EPOAs) in relation to financial matters
- lead development of a national register for all enduring instruments, recognising that the integrity of decision-making frameworks for people with disability transcends financial decisions to decisions in all facets of life, and
- lead harmonisation of laws about enduring powers of attorney and other advance decision-making instruments.

### *Education and awareness – scope of powers and inadvertent misuse*

In 2007, the House of Representatives Standing Committee on Legal and Constitutional Affairs observed that

...Most people do not put in place an enduring power of attorney due to a general lack of awareness and understanding of the instrument.<sup>18</sup>

This situation remains unaltered. To maximise the benefits of enduring instruments, it is necessary to raise public awareness and understanding of the different kinds of instruments that can be made (formal or informal), what the instruments can achieve to support their choices, preferences and values in the future, and what are the limitations on these instruments.

Relationships Australia acknowledges that attorneys/donees who are acting *bona fide* may nevertheless inadvertently misuse their powers to the detriment of principals, because attorneys do not understand the scope of their powers, or how to operate instruments of appointment according to law (for example, when and how powers come into effect). The ALRC has noted that

<sup>16</sup> See ALRC Report 131, paragraph 5.142; see also AGAC Options paper (2018), pp 7-8, 60-61

<sup>17</sup> See ALRC Report 131, especially p 164. Noting also international experience that supports the utility of a register for enduring instruments: see ALRC Report 131, paragraphs 5.124ff; Ryan *et al*, p 355. See also Chesterman, 2019, noting 'An increasingly accepted view [is] that scoping of a register needs to happen at the same time as national consistency in relevant laws is being sought, in order to improve the likelihood that both developments will occur.' (at p 4).

<sup>18</sup> *Older people* report, paragraph 3.14; see also paragraphs 3.66-3.72 and recommendation 18.

...there is generally a limited understanding in the community of the powers and duties of the attorney.<sup>19</sup>

Instances of misuse could be minimised by making available reliable, high quality and easily accessible information about the responsibilities of attorneys, and where attorneys can go for advice and guidance about operating under an instrument of appointment.<sup>20</sup> For example:

- the online landing page for a register could include some short video clips for attorneys/donees (and principals) to view that would provide this information
- depending on regulatory calibrations, governments may wish to require proof that attorneys have taken reasonable steps to inform themselves about their responsibilities<sup>21</sup>
- all awareness and education should be accessible regardless of geography and should be accessible using assistive technology,<sup>22</sup> and
- all awareness and education should be made available in culturally appropriate ways, including by being provided in language.

### *Recommendation 3*

That the NDIS collaborate with the Attorney-General's Department to design and deliver a public awareness and education campaign about advance decision-making instruments.

### **NDIS support for digital inclusion of people living with disability**

As noted above, Relationships Australia contextualises its services, research and advocacy within imperatives to strengthen connections between people, scaffolded by a robust commitment to human rights. Accordingly, this submission refers to evidence demonstrating:

- the adverse impacts of social isolation and loneliness, which include increased risk of becoming a victim or perpetrator of abuse, as well as pervasive negative effects on mental and physical health, and
- the protective qualities of social inclusion and connection.

In 2021, digital inclusion is a critical enabler of social inclusion and connection, and digital exclusion heightens risks of social isolation and loneliness, with its consequent morbidities, as described below. For the purposes of this submission, a person experiences digital exclusion when that person cannot access and maintain telecommunications services because of socio-economic, demographic, technological or geographic factors. Policy, regulatory and service interventions that strengthen connections and reduce isolation are the most promising

<sup>19</sup> ALRC Report 131, paragraph 5.111 and, noting experience in the United Kingdom, paragraph 5.126. See also paragraph 5.178.

<sup>20</sup> It is possible that some incentive should be created to encourage attorneys to seek advice and guidance and to inform themselves of their responsibilities.

<sup>21</sup> The ALRC, in its Report 131, recommended reforms to impose on private guardians and financial administrators an obligation to sign an undertaking about their responsibilities: see Chapter 10. Relationships Australia acknowledges that, in designing safeguards for use of enduring instruments, policy-makers must carefully calibrate regulatory controls so that they do not deter people from making valid registrable instruments and consequently encourage people to rely on informal arrangements which may facilitate abuse and exploitation. See also ALRC Report 131, paragraph 5.27 note 39, citing the Ontario Law Reform Commission, 2017, and also the report of the Victorian Law Reform Commission, *Succession Laws*, 2013.

<sup>22</sup> Design of the register needs to take into account the digital divide. See Thomas & Barraket et al, 2020; see also AGAC Options paper (2018), p 67.

and feasible avenues for reducing the risk of abuse and exploitation of people who face structural and systemic barriers to participation in society.

### *Digital exclusion and human rights*

We serve many cohorts who are disproportionately more likely to experience systemic and structural barriers. Relationships Australia is concerned that without conscious attention to and support for maximising digital inclusion across all policy domains, members of these cohorts will be left behind, social inclusion eroded, and the autonomy of affected individuals chronically compromised. Conversely, those with privileged access to digital services and other socio-economic capital will continue to leverage and monetise these resources. This is a recipe for:

- denial of social, political, educational, economic and cultural human rights
- social exclusion and isolation, leading to loneliness and its consequent adverse health impacts (described below), and
- further polarising our society and thus avoidably limiting Australia's capacity to flourish.

### *Digital inclusion, social inclusion and loneliness*

As our social, economic and cultural lives increasingly move online – a move accelerated markedly through the COVID-19 pandemic - digital exclusion will lead to increased isolation and loneliness, with their attendant morbidities, for those facing digital exclusion. An obvious example is that people without smartphones could continue to face barriers to 'check in' to both essential and optional services, and to have an easy, 'low friction' means of demonstrating vaccination status. Another example was identified at the National Summit on Women's Safety 2021 by the Chief Justice of the Federal Circuit and Family Court of Australia. His Honour noted that, under streamlined arrangements for matters involving family violence (which has for many years now constituted an overwhelmingly dominant proportion of matters brought to the Court), victim survivors can use a mobile telephone, tablet or other device to get help from the Court. If victim survivors cannot access telecommunications services, it is much more difficult for them to get the benefits of these streamlined services.<sup>23</sup>

Research indicates that digital exclusion is strongly affected by a range of demographic and other factors which erect barriers to social inclusion more broadly (see, eg, Park, 2017). Thus, digital exclusion and social exclusion (which can lead to loneliness) are associated. Loneliness is a complex social problem stemming from dissatisfaction with our relationships, a lack of positive and respectful relationships, or both of these. It is often caused by experiences of exclusion due to structural and systemic social realities that form obstacles to participation in social, economic, cultural and political life. Loneliness is not only an individual burden; it is a public health concern (Heinrich & Gullone, 2006; Holt-Lunstad et al, 2015; Mance, 2018; AIHW, 2019). It has been linked to physical health risks such as being equivalent to smoking 15 cigarettes a day and an increased risk of heart disease (Valtorta, 2016). Loneliness is a

---

<sup>23</sup> For data on the experience of domestic and family violence by women with disability, see Dyson *et al*, 2017; AIHW, 2019, at p 95ff.

precursor to poorer mental health outcomes, including increased suicidality (Calati et al, 2019; McClelland et al, 2020; Mushtaq, 2014).<sup>24</sup>

Relationships Australia has welcomed the Government's prioritisation of improvements to mental health and suicide prevention services, and the substantial funding, announced in May 2021, for mental health and suicide prevention measures under the *National Mental Health and Suicide Prevention Plan*.<sup>25</sup> Mental health and suicide prevention are cross-cutting issues, and the prioritisation accorded them by the Government requires policy makers across all portfolios and agencies to take into account potential impacts on mental health, including impacts caused by digital exclusion and limited access to decision-making rights. Similarly, the authors of the Digital Inclusion Index concluded in 2020 that

Digital inclusion should take a central role in national policy making and planning, with a greater degree of coordination across sectors and the different levels of government. With the NBN now substantially completed, and the economic and social effects of the pandemic becoming clearer, Digital Ability and Affordability are critical areas for attention. (Thomas & Barraket et al, 2020, p 7)

#### *How Relationships Australia prioritises addressing loneliness and building social inclusion*

Relationships Australia has a particular interest in isolation and loneliness. We are invested in supporting respectful and sustainable relationships not only within families, but within and across communities. Relationships Australia is uniquely positioned to speak on isolation and loneliness as we have clinical experience supporting clients who experience loneliness, have conducted pioneering research into who experiences loneliness (eg Mance, 2018), and manage a social connection campaign, Neighbour Day,<sup>26</sup> which supports people to create connections which combat loneliness. In our clinical practice and our advocacy, we apply a social model of loneliness which recognises systemic and structural barriers that inhibit people from making fulfilling social connections and from participating as fully as they would wish in all facets of our community.

Relationships Australia considers that to address loneliness, we must address the structural and social barriers which inhibit participation and connection - digital exclusion is one of these barriers. The *Australian Digital Inclusion Index 2020* identified that

Across the nation, digital inclusion follows some clear economic and social contours. In general, Australians with lower levels of income, employment, and education are significantly less digitally included. There is consequently a substantial digital divide between richer and poorer Australians. (Thomas & Barraket et al, 2020, p 5)

---

<sup>24</sup> The campaign *Ending Loneliness Together* has released a guide that explains how community organisations can use validated scales to measure loneliness: [https://endingloneliness.com.au/wp-content/uploads/2021/08/A-Guide-to-Measuring-Loneliness-for-Community-Organisations\\_Ending-Loneliness-Together.pdf](https://endingloneliness.com.au/wp-content/uploads/2021/08/A-Guide-to-Measuring-Loneliness-for-Community-Organisations_Ending-Loneliness-Together.pdf)

<sup>25</sup> See <https://www.pm.gov.au/media/historic-2-3-billion-national-mental-health-and-suicide-prevention-plan>

<sup>26</sup> Neighbour Day is Australia's annual celebration of community, encouraging people to connect with their neighbours. Neighbours matter (whether near, far, or online), and now, more than ever, is the time to make creative connections and to stay connected; see <https://neighbourday.org/>

*Digital inclusion and building decision-making experience and confidence*

Bridging the digital divide for people living with disability will open up access to the social, educational, political, cultural, economic and commercial activities that are increasingly shifting online. With access to those activities come an enormous array of opportunities to develop and express preferences, to make choices and decisions, and to enact these. Digital inclusion is a key enabler for building the capacity and the confidence to build and implement decisions, and should therefore be front of mind for the NDIS.

*Recommendation 4*

That the Federal Government undertake a surge of policy and programme effort to close the digital divide and eradicate barriers to participation in the social, economic, political and cultural dimensions of the digital environment.

**Workforce capability**

Relationships Australia notes that services, systems and supports can prevent, rather than enable, people from making their own decisions (as observed at p 5 of the Consultation Paper). These barriers can be lowered by ensuring that the NDIS workforce, as well as paid and unpaid supporters, have the knowledge and skills to fulfil the vision articulated in the Consultation Paper (at p 4).

*Recommendation 5*

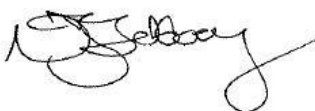
That the NDIS undertake a programme of workforce capability planning and development, to support NDIS staff, individuals/organisations providing services funded by the NDIS, and unpaid or informal carers, to:

- understand concepts of autonomy, dignity and dignity of risk, and their significance in enabling people to flourish
- recognise circumstances in which a person needs support to make decisions
- identify what kinds of support are necessary, and
- provide, or arrangement for the provision of, the needed supports.

**Conclusion**

Thank you again for the opportunity to contribute to this consultation. Should you wish to discuss any aspect of this submission, or Relationships Australia services, please do not hesitate to contact me at 02 6162 9300 / [ntebbey@relationships.org.au](mailto:ntebbey@relationships.org.au) or our National Policy Manager, Dr Susan Cochrane at 02 6162 9300 / [scochrane@relationships.org.au](mailto:scochrane@relationships.org.au).

Kind regards



Nick Tebbey  
National Executive Officer



## REFERENCES

- Australian Guardianship and Administration Council. (2018). *Enduring Powers of Attorney (financial): Options Paper*. <https://www.agac.org.au/assets/images/agac-consultation-paper.pdf>.
- Australian Guardianship and Administration Council, *You Decide Who Decides*. (2019). <https://www.publicadvocate.vic.gov.au/resources/booklets/642-you-decide-who-decides-accessible-pdf?path=>
- Australian Institute of Health and Welfare. (2019). *Family, domestic and sexual violence in Australia: continuing the national story*. Cat. no. FDV 3. Canberra: AIHW.
- Australian Law Reform Commission. (2014). *Equality, Capacity and Disability in Commonwealth Laws* (Report 124).
- Australian Law Reform Commission. (2017). *Elder Abuse: A National Legal Response* (Report 131).
- Calati, R., Ferrari, C., Brittner, M., Oasi, O., Olié, E., Carvalho, A. F., & Courtet, P. (2019). [Suicidal thoughts and behaviors and social isolation: A narrative review of the literature](#). *Journal of Affective Disorders*, 245, 653-667.
- Chesterman, J. *The Abuse of Older Australians (Elder Abuse): Reform Activity and Imperatives*. (2019). <https://doi.org/10.1080/0312407X.2019.1680715> .
- Council of Attorneys-General, *National Plan to Respond to the Abuse of Older Australians*. (2019).
- Dean, A. (2019) *Elder Abuse: Key Issues and Emerging Evidence*. CFCA Paper No. 51. <https://aifs.gov.au/cfca/publications/cfca-paper/elder-abuse>.
- Detering, KM, Buck, K & Ruseckaite, R, *et al*. Prevalence and correlates of advance care directives among older Australians accessing health and residential aged care services: multicentre audit study. *BMJ Open* 2019;9:e025255. doi: 10.1136/bmjopen-2018-025255 .
- Dyson, S., Frawley, P., & Robinson, S. (2017). *'Whatever it takes': Access for women with disabilities to domestic and domestic violence services: Final report* (ANROWS Horizons, 05/2017). Sydney: ANROWS.
- Ending Loneliness Together*. (2021). *A Guide to Measuring Loneliness for Community Organisations*. [https://endingloneliness.com.au/wp-content/uploads/2021/08/A-Guide-to-Measuring-Loneliness-for-Community-Organisations\\_Ending-Loneliness-Together.pdf](https://endingloneliness.com.au/wp-content/uploads/2021/08/A-Guide-to-Measuring-Loneliness-for-Community-Organisations_Ending-Loneliness-Together.pdf)
- Heinrich L., M. & Gullone E. (2006). The clinical significance of loneliness: a literature review. *Clin Psychol Rev*. 2006 Oct;26(6):695-718. doi: 10.1016/j.cpr.2006.04.002. Epub 2006 Jun 19. PMID: 16952717.

- Holt-Lunstad J, Smith T, Baker M, Harris T & Stephenson D (2015). Loneliness and Social Isolation as Risk Factors for Mortality: A Meta-Analytic Review. *Perspectives on Psychological Science* 10:227–37.
- House of Representatives Standing Committee on Legal and Constitutional Affairs. (2006). *Harmonisation of Legal Systems Within Australia and Between Australia and New Zealand*.
- House of Representatives Standing Committee on Legal and Constitutional Affairs. (2007) *Older People and the Law*.
- Johannesen, M & LoGiudice, D. (2013). *Elder abuse: a systematic review of risk factors in community-dwelling elders*. *Age Ageing*. 2013 May;42(3):292-8. doi: 10.1093/ageing/afs195. Epub 2013 Jan 22. PMID: 23343837.
- Kaspiew, R, Carson, R., & Rhoades, H. (2015). *Elder abuse – understanding issues, frameworks and responses*, AIFS Research report no. 35.
- McClelland, H., Evans, J. J., Nowland, R., Ferguson, E., & O'Connor, R. C. (2020). Loneliness as a predictor of suicidal ideation and behaviour: a systematic review and meta-analysis of prospective studies. *Journal of Affective Disorders*, 274, 880-896.
- Meeting of Attorneys-General (2021) Communiqué, 31 March 2021, <https://www.ag.gov.au>
- Mushtaq, R. (2014). [Relationship Between Loneliness, Psychiatric Disorders and Physical Health ? A Review on the Psychological Aspects of Loneliness](#). *Journal of Clinical and Diagnostic Research*.
- Ontario Law Reform Commission. (2017). *Final Report on Legal Capacity, Decision-making and Guardianship*.
- Park, S. (2017). Digital inequalities in rural Australia: A double jeopardy of remoteness and social exclusion. *Journal of Rural Studies*, 54. 339-407. doi.org/10.1016/j.jrurstud.2015.12.018.
- Pillemer, K., Burnes, D., Rifn, C., & Lachs, M. S. (2016). Elder abuse: Global situation, risk factors, and prevention strategies. *Gerontologist*, 56, S194–S205. doi:10.1093/geront/gnw004.
- Robinson, S., valentine, k., Newton, B. J., Smyth, C., & Parmenter, N. (2020). *Violence prevention and early intervention for mothers and children with disability: Building promising practice* (Research report, 16/2020). Sydney: ANROWS.
- Ryan, T., Baer Arnold, B. & Bonython, W. 'Protecting the Rights of Those with Dementia Through Mandatory Registration of Enduring Powers: A Comparative Analysis' (2015) 36 *Adelaide Law Review* 355.
- Thomas, J., Barraket, J., Wilson, CK., Holcombe-James, I., Kennedy, J., Rennie, E., Ewing, S., & MacDonald, T (2020). *Measuring Australia's Digital Divide: The Australian Digital Inclusion Index 2020*, RMIT and Swinburne University of Technology, Melbourne, for Telstra. DOI: <https://doi.org/10.25916/5f6eb9949c832> .

Valtorta, N., Kanaan, M., Gilbody, S., Ronzi, S., & Hanratty, B. (2016). Loneliness and social isolation as risk factors for coronary heart disease and stroke: systematic review and meta-analysis of longitudinal observational studies. *Heart*, 102(13), 1009-1016.

Victorian Parliament Law Reform Committee. (2008). *Final report – Inquiry into Powers of Attorney*.

Victorian Law Reform Commission. (2012). *Guardianship: Final Report (2012)* ('VLRC Report 24').

Victorian Law Reform Commission. (2013). *Succession Laws*.