# Feedback on the proposed NDIS Support for Decision Making policy

## About Domestic Violence Victoria (DV Vic) and the Domestic Violence Resource Centre Victoria (DVRCV)

Domestic Violence Victoria (DV Vic) and the Domestic Violence Resource Centre Victoria (DVRCV) have merged to form a new peak body for specialist family violence services (SFVSs) responding to victim survivors in Victoria. The merge brings together the current peak body for Victoria’s specialist family violence services supporting victim survivors (DV Vic) and Victoria’s only specialist family violence Registered Training Organisation (DVRCV). As an independent, non-government organisation that leads, organises, advocates for, and acts on behalf of its members utilising an intersectional feminist approach, the new peak body will work towards a world beyond family and gender-based violence, where women, children and all marginalised communities are safe, thriving, and respected.

Working across family violence response and prevention, the peak body is recognised as the statewide voice of SFVSs responding to victim-survivors and holds a central position in the Victorian family violence system and its strategic governance, providing family violence subject matter expertise to the SFVS sector, government, and other partners and stakeholders. The peak body’s work is focused on advocating for, supporting, and building: the capability of specialist family violence practice and service delivery for victims-survivors; broader sector workforce development and capability building across family violence response and prevention; and family violence policy development and analysis, law reform and research.

## Introduction

We welcome the opportunity to provide feedback on the National Disability Insurance Scheme proposed *Support for Decision Making policy* (the *policy*) outlined in the consultation paper. The proposed *policy* provides an important opportunity to strengthen the rights of people with disability to participate in decision-making processes and to incorporate adequate safeguards to ensure that *decision supporters* are acting in the participants’ best interests. As the Peak Body for specialist family violence services in Victoria, Domestic Violence Victoria (DV Vic) and Domestic Violence Resource Centre Victoria (DVRCV) is well placed to provide on-the-ground insights to inform the development and implementation of the proposed *policy* to ensure it meets the needs of victim-survivors.

As noted in the consultation paper, despite the recognition of ‘decision-making’ as a basic human right in the [National Disability Insurance Scheme Act 2013,](https://www.legislation.gov.au/Details/C2020C00392) people with disability are often excluded from decision making processes that affect them due to limited opportunities to explore and exercise different choices in the current system. Exclusion from decision-making processes and a lack of control over outcomes can have serious implications for victim-survivors of family violence with disabilities as it replicates the abuse they experienced in their relationship.

DV Vic and DVRCV welcome reform that embeds the participation rights of people with disability and recognise that having an informal support person is crucial for many NDIS participants. However, due to the increased risk and prevalence of family violence for people with disabilities, discussed in detail in our [submission](http://dvvic.org.au/publications/submission-to-the-royal-commission-into-violence-abuse-neglect-and-exploitation-of-people-with-disability/) to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability[[1]](#footnote-1), we recommend that a family violence lens is applied to the proposed *policy* to ensure that it is responsive to the support and safety needs of victim-survivors of family violence. Applying a family violence lens to the development and implementation of the proposed *policy* will ensure it does not increase risk for victim-survivors of family violence with disability and ensure adequate safeguards are included.

While the consultation paper contains a number of consultation questions for feedback, DV Vic and DVRCV will be responding to three questions below to highlight how a family violence lens can be applied to the proposed *policy* and to identify safeguards that could be incorporated to ensure the *policy* does not increase risk for victim-survivors of family violence.

Questions 10 and 11 – How can we help reduce conflict of interest and undue influence?

As noted in the consultation paper, *conflict of interest* occurs when a person or organisation takes advantage of their position and *undue influence* occurs when a support person makes a participant do something they don’t want to do by making them feel scared or threatened. Conflict of interest and undue influence lead to participants not being able to influence critical decisions about their lives. The dynamics of family violence and the pattern of abusive behaviours and tactics used by a perpetrator of family violence to gain power and control over a victim-survivor mean that in situations where an informal supporter and/or plan nominee is a perpetrator of family violence, there is an inherent conflict of interest and an implicit exercise of undue influence. This has significant safety implications for victimsurvivors of family violence. Given the prevalence of family violence against people with disabilities2, safeguards must be incorporated into the *Support for Decision Making* policy to ensure it does not

increase risk for victim-survivors, and to ensure they can freely make decisions that reflect their autonomy and preferences.

Clear processes for identifying if the nominee/informal supporter is a perpetrator of family violence need to be incorporated into the proposed *policy* to ensure the safety of victim-survivors with disability. This should include incorporating mechanisms into the proposed policy that allow the NDIS participant to communicate their decision-making preferences independently of the informal supporter/nominee. Implementing processes for identifying family violence will reduce opportunities for conflict of interest to arise and will safeguard against informal supporters and/or plan nominees exerting undue influence over participants. This will ensure that the participants’ safety, interests and preferences are at the centre of decision-making processes and policy and that the decision supporter(s) are acting in a participant’s best interests.

Question 13 – What else could we do to help people with disability to make decisions for themselves? Is there anything missing?

It is essential that the *Support for Decision Making* policy keeps safety of participants in focus and processes are introduced to identify and manage family violence risk. This will ensure that victimsurvivors of family violence can safely and freely participate in making decisions without fear or undue influence. Mechanisms that could be included in the proposed *policy* to support victim-survivors of family violence with disability make decisions for themselves are outlined below.

### Roles and responsibilities

Identification of family violence and particularly whether an informal supporter/nominee is a perpetrator of family violence is critical. Including identification of family violence in the role of service providers (see p22 of the consultation paper) is a precursor to safeguarding victim-survivors with disability against undue influence in decision-making and is essential in the assessment of decisionmaking capability. As mentioned above, a person experiencing family violence may have little to no control over decision making if the perpetrator is the informal decision supporter/nominee and it is therefore crucial that the person(s) with responsibility for identifying family violence is clearly articulated in the policy.

### Recognition of the impact of family violence and trauma on decision making

Decision-making capacity of a participant may be impacted if they have or are experiencing family violence as they might not be able to identify their needs or make any ‘primary decisions’ due to fear and/or the impacts of trauma. This may result in a victim-survivor finding it difficult to communicate their decision-making needs due to significant barriers associated with reporting and disclosing family violence and fear of harm and increased violence from the perpetrator[[2]](#footnote-2). It is therefore imperative that family violence is identified and taken into consideration as part of the assessment of decision-making capacity so that the participant is better positioned to make their own decisions and to allow appropriate supports to be put in place.

### Capacity-building of NDIS workforce to identify and respond to family violence

The [Inquiry into Family, Domestic and Sexual Violence](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/Familyviolence/Report) included a recommendation that NDIA staff and disability service workers funded by the NDIS complete mandatory training in identifying and responding to family, domestic and sexual violence affecting people with disability[[3]](#footnote-3). A similar recommendation was also made by the Victorian Royal Commission into Family Violence to ensure that “all disability services workers involved in assessing needs and delivering services have successfully completed certified training in identifying Family Violence and responding to it”[[4]](#footnote-4). Based on these recommendations and the information provided above, we argue that capacity building of the NDIS/NDIA workforce to recognise and respond to family violence is critical and that this must be specialist informed and supported in policy and operational guidance. It is essential that NDIS staff making important decisions about a participant’s plan understand all forms of family violence, to ensure the unique risks and needs of victim-survivors with disabilities remain at the forefront of NDIS policy and guidance. The MARAM framework in Victoria emphasises that it is everybody’s responsibility to identify and respond to family violence, within the boundaries and responsibilities of their role, and establishes clear referral pathways from mainstream services to specialist family violence services. For the NDIS system to be ‘safe’ for victim-survivors with disabilities it is crucial that the workforce is family violence informed and the NDIA has structures in place to support ongoing capacity building, including clear understanding of referral pathways and secondary consultation with specialist family violence services (in line with MARAM responsibilities).

### Strengthening policy relating to the appointment and removal of plan nominees

One of the next steps identified in the consultation paper is to update the ‘Operational Guidelines to improve how nominees or other representatives are appointed'. We welcome updates to the Operational Guidelines that ensure safeguards are in place to prevent a perpetrator of family violence being appointed as a plan nominee but recommend that changes are also required to the ‘suspension

and cancellation of nominee appointments’, as the current policy and guidelines increase the risk of harm to victim-survivors of family violence.

### Appointment of plan nominees

Under current NDIS operational guidelines, if a person with disability is unable to make decisions, a nominee can be appointed by the National Disability Insurance Agency (NDIA) or the person themselves. An NDIS nominee has the authority to act on behalf of a participant and make decisions that are related to the NDIS[[5]](#footnote-5). This places an NDIS nominee in a powerful position in relation to the participant as it gives an NDIS nominee access to and control of the participants’ plan. Although nominees have a duty to involve the NDIS participant in decisions, this is unlikely to occur if the nominee is a perpetrator of family violence.

### Removal of plan nominees

The current operational guideline relating to the suspension and cancellation of nominee appointments requires the NDIS to inform the nominee in writing when an NDIS participant makes a request to cancel the appointment of a nominee. The requirement to provide written notification in cases where the nominee is a perpetrator of family violence increases risk for victim-survivors of family violence[[6]](#footnote-6) as it might alert the perpetrator to the possibility that the victim-survivor/NDIS participant is considering ending their relationship. This is particularly concerning given that research shows that victim-survivors of family violence are most at risk of being killed or harmed during or immediately after separation[[7]](#footnote-7).

It is therefore crucial that policy and guidance relating to the appointment and removal of NDIS plan nominees includes processes for identifying family violence and assessing whether a nominee is a perpetrator of family violence. This will ensure that NDIS policies do not actively increase risk to victimsurvivors of family violence with disabilities.

We appreciate the opportunity to provide feedback on the proposed *Support for Decision Making* policy. Given the increased risk and prevalence of family violence for people with disabilities strongly recommend applying a family violence lens to the policy. This includes embedding processes for identifying family violence, incorporating safeguards to prevent perpetrators of family violence exerting undue influence via decision making processes and ensuring the NDIS/NDIA workforce is trained in identifying and responding to family violence. This would ensure the *Support for Decision Making* policy, and those responsible for implementing it, are responsive to the support and safety needs of the victim-survivors of family violence with disabilities.

We would welcome the opportunity to discuss the topic of support for decision making with you in more detail and look forward to working with you in future.

1. Domestic Violence Victoria (2021). Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of

   People with Disability. Melbourne: DV Vic and DVRCV. http://dvvic.org.au/publications/submission-to-the-royalcommission-into-violence-abuse-neglect-and-exploitation-of-people-with-disability/ 2 Ibid. p12-14. [↑](#footnote-ref-1)
2. For a comprehensive overview of the impacts family violence has on people with disabilities please refer to Healey, L.

   (2013). Voices Against Violence: Paper 2: Current Issues in Understanding and Responding to Violence Against Women with Disabilities. Women with Disabilities Victoria, Office of the Public Advocate and Domestic Violence Resource Centre Victoria. [↑](#footnote-ref-2)
3. House of Representatives Standing Committee on Social Policy and Legal Affairs. (2021) Inquiry into family, domestic and sexual violence. Canberra. pxxxv.

   <https://www.aph.gov.au/Parliamentary\_Business/Committees/House/Social\_Policy\_and\_Legal\_Affairs/Familyviolence/Re port> [↑](#footnote-ref-3)
4. State of Victoria (2014-16). Royal Commission into Family Violence: Summary and recommendations, Parl Paper No 132. Melbourne, VIC. p91. Recommendation 173. [↑](#footnote-ref-4)
5. NDIS (2021). Consultation Paper: Supporting you to make your own decisions. p15. [↑](#footnote-ref-5)
6. Refer to section 91(2)(a) and section 91(2)(b) of NDIS Operational Guidelines. https://www.ndis.gov.au/aboutus/operational-guidelines/nominees-operational-guideline/nominees-operational-guideline-suspension-and-cancellationnominee-appointments [↑](#footnote-ref-6)
7. Toivonen, C., & Backhouse, C. (2018). National Risk Assessment Principles for domestic and family violence (ANROWS Insights 07/2018). Sydney, NSW: ANROWS. p.12. [↑](#footnote-ref-7)