



**NDIS Quality  
and Safeguards  
Commission**

## Terms of Reference

Ms Ann-Marie Smith (formerly of Bradman Court, Kensington Gardens, SA), an NDIS participant, died on 6 April 2020 in appalling circumstances.

The death of Ms Smith is the subject of active investigation by the NDIS Quality and Safeguards Commission (NDIS Commission) and by South Australia Police.

The death of Ms Smith also raises questions about the adequacy of the regulation of the supports and services provided to Ms Smith, including regulation in relation to quality and safeguarding pursuant to the functions and powers of the Commissioner of the NDIS Commission.

The NDIS Commission is engaging The Hon. Mr Alan Robertson SC (the Independent Reviewer) to conduct an independent review of this matter for the Commissioner in accordance with the following terms of reference. In conducting the review the Independent Reviewer will not be subject to any direction by the Commissioner or any officers of the NDIS Commission and will be provided with all reasonable facilities, resources and other assistance required for the effective conduct of the review.

The Independent Reviewer is to:

1. Identify and describe, for each of the periods specified below:
  - (a) the nature and level of the supports and services provided to Ms Smith as a person with disability;
  - (b) the extent to which any mechanisms that might have guarded against the particular vulnerability of Ms Smith, such as guardianship in relation to any lack of capacity, were available and were accessed by or on behalf of Ms Smith or applied or sought to be applied in relation to Ms Smith; and
  - (c) the points, if any, at which concerns about Ms Smith's safety could or should have been identified and responded to by service providers, government agencies or regulators,recognising that Ms Smith may have been living in relative isolation since around 2009 following the death of her parents, and recognising the particular vulnerability of people with disability living in isolation.

### Periods

*Period 1:* from the death of Ms Smith's last surviving parent, until when Ms Smith became an NDIS participant

*Period 2:* from when Ms Smith became an NDIS participant, until Ms Smith's death on 6 April 2020.

2. Examine how the NDIS Commission carried out its functions:
  - (a) in relation to Integrity Care (SA) Limited (Integrity Care) prior to the Commission being notified of Ms Smith's death; and
  - (b) in response to the notification of Ms Smith's death, including the taking of any action to identify and address risks to the safety or well-being of NDIS participants who might be in circumstances of vulnerability similar to, or approaching, those in which Ms Smith was living before her death.
3. Identify any failings in how the NDIS Commission carried out its functions as examined under paragraph 2.
4. Recommend any changes to the NDIS Commission's processes or systems, or the legal framework governing the NDIS Commission's functions, that the Independent Reviewer considers appropriate in light of his findings under paragraph 3.
5. By 31 August 2020 provide to the Commissioner of the NDIS Commission his report in relation to these matters, noting that, during the course of his work, the Independent Reviewer is to raise in writing with the Commissioner any issues or concerns he identifies that he considers require more urgent attention.

The review is to be conducted in a manner that avoids prejudice to any pending or current criminal or civil proceedings.

The disclosure of information for the purposes of the review is to be governed by the provisions of the *National Disability Insurance Scheme Act 2013*.

The recommendations of the Independent Reviewer are to be consistent with the general principles set out in section 4 of the *National Disability Insurance Scheme Act 2013*, which guide action under the Act.

The Commissioner of the NDIS Commission intends to publish the report of the review, subject only to any redactions necessary to avoid prejudice to any criminal, regulatory or civil proceedings and any redactions identified as appropriate by the Independent Reviewer to protect the privacy of any individual.