



Royal Commission
into Violence, Abuse, Neglect and Exploitation
of People with Disability

Public Hearing Report

Public hearing 13

Preventing and responding
to violence, abuse, neglect
and exploitation in disability
services (a case study)

Homebush
24 to 28 May and Sydney
10 September 2021

Commissioners

The Honourable Ronald Sackville AO QC

Dr Rhonda Galbally AC

Mr Alastair McEwin AM

Published 5 April 2022

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Preface

Acknowledgment of Country

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability acknowledge Australia's First Nations peoples as the Traditional Custodians of the lands, seas and waters of Australia, and pay respect to First Nations Elders past, present and emerging. We recognise First Nations peoples' care for people and country, including First Nations men and women whose words and voices led to the establishing of this Royal Commission. We also acknowledge the Traditional Custodians of the lands on which the Royal Commission's offices are based in Brisbane, Canberra and Sydney.

Content warning

This report contains information that may be distressing to readers.

It includes accounts of violence against, and abuse, neglect and exploitation of, people with disability.

If you need support to deal with difficult feelings after reading this report, there are free services available to help you.

Blue Knot Foundation offers specialist counselling support and a referral service for anyone affected by the Disability Royal Commission.

For support please call their national hotline on 1800 421 468 (they are open every day).

In addition to the Blue Knot Foundation, the Australian Government provides support to assist people to engage with the Royal Commission. This support includes:

- free legal advisory services provided by National Legal Aid and the National Aboriginal and Torres Strait Islander Legal Services through the Your Story Disability Legal Service
- advocacy support services provided under the National Disability Advocacy Program.

Further information about these supports, including how to access them, is available on the [counselling and support](#) section of our website.

Contact details for further resources are:

- Lifeline: 13 11 14
- Beyond Blue: 1300 224 636.

Overview and summary

1. The Honourable Ronald Sackville AO QC (Chair), Dr Rhonda Galbally AC and Mr Alastair McEwin AM conducted Public hearing 13 in Sydney from 24 to 28 May and on 10 September 2021 at Homebush, New South Wales. Public hearing 13 was the first in a series of public hearings examining how disability service providers can and should prevent and respond to violence towards and abuse, neglect and exploitation of people with disability. These issues will continue to be explored in Public hearings.
2. Public hearing 13 examined the experiences of a group of people with disability living in disability residential accommodation in western Sydney provided by a non-government disability services provider, Sunnyfield Disability Services (Sunnyfield). We refer to the accommodation as ‘the House’. The hearing examined:
 - The experiences of three people with disability residing in Sunnyfield disability residential accommodation over approximately four years, including how:
 - their National Disability Insurance Scheme (NDIS)-funded services and supports were provided
 - their agreements with Sunnyfield for accommodation and support services were entered into and implemented
 - Sunnyfield communicated with and provided information to the families of the residents
 - Sunnyfield responded when incidents occurred or complaints were made.
 - Sunnyfield’s policies, systems and operations.
 - The effectiveness of external oversight of disability services by the NDIS and the New South Wales Ombudsman (NSW Ombudsman) in preventing violence, abuse, neglect and exploitation of residents, and in responding to complaints or allegations of mistreatment.
3. In particular, the hearing focused on Sunnyfield’s role in and responsibility for preventing and responding to violence and abuse by two Sunnyfield employees (referred to as SP1 and SP2) directed at residents of the House. (The residents are referred to by the pseudonyms Carl, Chen and Melissa and the family members of Carl and Melissa are referred to by the pseudonyms Sophia and Eliza.)
4. The significance of the evidence at Public hearing 13 and at other hearings examining the conduct of particular service providers goes beyond the specific circumstances of the case studies and extends to systemic issues. The evidence shows how the policies and practices of service providers can affect the physical and psychological wellbeing of people with disability, including participants in the NDIS. The evidence also shows the challenges confronting regulatory bodies in protecting and enhancing the human rights of people with disability.¹

1 Transcript, Ronald Sackville AO QC (Chair), Public hearing 13, 24 May 2021, P-4 [45–47] – 5 [1–2].

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5. Throughout this Report, we refer to 'people with disability' and 'people with lived experience of disability'. The expression 'lived experience of disability' is used in this Report to refer only to people with disability, not to family members, friends or supporters of people with disability.

Findings

6. The findings in this Report have been made after careful consideration of the evidence and the submissions of Counsel Assisting and of parties given leave to appear at Public hearing 13.

Finding 1

Ms Piaud, an independent consultant commissioned by Sunnyfield to investigate allegations of violence and abuse, sustained multiple allegations that SP2 had acted violently towards and had abused Carl and Chen. There is no dispute that the allegations sustained by Ms Piaud actually occurred. She also found evidence in support of allegations that SP1 had acted violently towards Chen, although these allegations were ultimately not sustained.

Finding 2

Notwithstanding the dismissal of the criminal charges against SP1 and SP2, it is likely that SP1 and SP2 committed other acts of violence and abuse directed at Carl, Chen and Melissa during the period both were employed at the House.

Finding 3

Ms Piaud's findings about the dysfunction of the House accurately reflect the state of affairs at the House.

Finding 4

Sunnyfield should not have withheld any part of Ms Piaud's reports from the NDIS Commission by relying on client legal privilege. It should have waived any privilege over the contents of the documents and provided the reports in full to the NDIS Commission.

Finding 5

The NSW Ombudsman should have disclosed to Sunnyfield the available information about SP1's employment history, including the allegations that had been made against him. This should have been done, at the latest in December 2018, by sending Sunnyfield the draft letter which contained serious allegations about SP1's conduct.

Finding 6

Sunnyfield presented Eliza with the Service and Residency Agreements for signature in April 2017 on the basis that the terms of the Agreements could not be varied and were therefore not open for negotiation. In fact, contrary to what Eliza was told, there was nothing to prevent her from seeking amendments to the Agreements and negotiating with Sunnyfield to achieve the outcome she sought for Melissa, other than Sunnyfield's position.

Finding 7

Eliza was not given an opportunity to negotiate any terms of the Service and Residency Agreements.

Finding 8

Sunnyfield denied Melissa, through her representative Eliza, the opportunity to exercise choice and control about the terms of the Service and Residency Agreements in April 2017.

Finding 9

Sunnyfield's decision in January 2018 to terminate the Service and Residency Agreements prioritised its own interests over those of Melissa, specifically her right to a secure and safe home.

Finding 10

Sunnyfield's decision was heavily influenced by concern for its own reputation and its desire to take advantage of a 'window of opportunity'. Sunnyfield gave little or no consideration to the effect of its decision on Melissa and her family.

Finding 11

The purported termination of the Residency Agreement was not in conformity with the terms of that Agreement.

Finding 12

Sunnyfield did not have a good reason to delay notifying Eliza for over four months of its intention to evict Melissa, or to avoid discussing alternative options with Eliza before issuing the notices purporting to terminate the Service and Residency Agreements. Sunnyfield's delay was deliberate and designed to protect Sunnyfield's interests and reputation over Melissa's wellbeing and best interests.

Finding 13

Sunnyfield's actions denied Melissa the opportunity for choice and control over her home and supports.

Finding 14

SP1 and SP2 were responsible for misrepresenting or not disclosing their full work histories. However, Sunnyfield did not have in place sufficiently thorough processes to check the accuracy of the information provided by applicants or to identify and investigate gaps in resumes.

Finding 15

During SP1's employment at the House, Sunnyfield did not have appropriately robust systems in place to supervise SP1 and to prevent him intimidating other staff, enabling a toxic workplace culture to pervade the House. Sunnyfield managers were deceived by SP1 and SP2, but they did not act on several red flags which should have resulted in greater scrutiny of the conduct of SP1 and SP2 at an earlier stage.

Finding 16

Senior Managers failed to receive reliable reports and accurate information about what was happening at the House because of the lack of appropriate systems. For two years, Sunnyfield managers accepted SP1's reports about the situation in the House. Their reliance on SP1 influenced their negative perception of Eliza.

Finding 17

Sunnyfield's policies and practices were inadequate to enable senior management to detect and prevent, or at least curtail, the violence and abuse experienced at the House by Melissa, Carl and Chen from SP1 and SP2.

Finding 18

Sunnyfield's responses to feedback from and complaints by Eliza and Sophia were defensive and often hostile. The responses contributed to the feelings of mistrust between Eliza and Sophia, on the one hand, and Sunnyfield's staff external to the House, on the other.

Finding 19

It was entirely inappropriate for Ms Cuddihy, the CEO of Sunnyfield, and other services staff at Sunnyfield to label Eliza as 'querulant'. Labels of this kind negatively influence how a service provider perceives and addresses feedback and complaints, and can compromise the health, safety and wellbeing of residents.

Finding 20

The Board of Sunnyfield, at all relevant times, did not include a person with lived experience of disability.

Finding 21

While it was appropriate for the Board to include Directors with financial, commercial or legal experience, the lack of Directors with lived experience of disability significantly impeded the Board's ability to discharge its responsibilities effectively. Specifically, the lack of Directors with lived experience of disability contributed to the Board not being fully informed about the challenges Sunnyfield faced in ensuring the safety, support and wellbeing of residents in Sunnyfield's disability residential accommodation.

Finding 22

The assumption made by Ms Cuddihy and, presumably, the Board of Sunnyfield that people with cognitive disability are incapable of serving as Directors of an entity such as Sunnyfield is not well-founded.

Finding 23

Directors and Board members of disability service providers should inform themselves of conditions at residential disability accommodation and the experiences, needs and concerns of residents and other clients by meeting with them and their families and supporters. At the time of the public hearing, there were no arrangements for Sunnyfield's Directors to regularly visit Sunnyfield residential disability accommodation, nor were there any arrangements for regular meetings between Directors and residents, their families and supporters. Such arrangements should be implemented as soon as practicable.

Finding 24

The composition of the Senior Leadership Team (SLT) at the time of the public hearing failed to ensure people with disability were appropriately involved in Sunnyfield's decision making processes. This is likely to have reduced the SLT's ability to detect the dysfunction that characterised the House.

Recommendations

7. The Commissioners make the following recommendations:

Recommendation 1

Sunnyfield should clarify in writing that the 4 June 2018 eviction notice sent to Eliza has been withdrawn.

Recommendation 2

Sunnyfield should discuss with Eliza revising its service agreement for Melissa to ensure those agreements are consistent with Melissa's rights and her exercise of choice and control.

Recommendation 3

Ms Cuddihy and appropriate members of the Board should meet with Melissa, Carl and Chen, or their families, to:

- apologise for Sunnyfield's failures to prevent the violence and abuse they endured; and
- discuss what redress and/or additional supports and assistance they require.

Part 1: Introduction and background

The hearing

8. Ms Kate Eastman SC was the Senior Counsel Assisting the Royal Commission at Public hearing 13. She appeared with Ms Elizabeth Bennett. They were instructed by the Office of Solicitor Assisting. A number of parties were given leave to appear at the hearing.
9. During Public hearing 13, the Royal Commission heard evidence from six witnesses:
 - family members of residents of the House (identified by pseudonyms):
 - ‘Eliza’, the sister and guardian of ‘Melissa’
 - ‘Sophia’, the mother of ‘Carl’
 - Ms Jennie Piaud, an independent consultant engaged by Sunnyfield to investigate allegations made in a complaint to the NDIS
 - Ms Caroline Cuddihy (Chief Executive Officer, Sunnyfield Disability Services)
 - Mr Graeme Head AO (NDIS Quality and Safeguards Commissioner)
 - Mr Scott McNaughton (General Manager, National Delivery of the National Disability Insurance Agency (NDIA)).

Appendix A contains a list of witnesses and the dates on which they gave evidence.

10. Ms Cuddihy was the only person nominated by Sunnyfield to give evidence on its behalf at the hearing.
11. Each of these witnesses provided a written statement or statements and gave oral evidence at the hearing. In addition, written statements were received from a seventh witness, the NSW Ombudsman, Mr Paul Miller, who declined to give oral evidence at the hearing. This is addressed further in Part 4 of this Report.
12. Melissa and Carl’s families requested that their identities and the location of their home not be publicly revealed during the hearing. For this reason, a number of the documents put into evidence during or after the hearing have been redacted and pseudonyms used. In addition, it is important to note that Melissa and Carl both still live in the House and still receive services from Sunnyfield. For this reason, the identities of some of the Sunnyfield staff mentioned in the evidence have also not been disclosed.
13. On 18 March and 21 April 2021, the Solicitor Assisting the Royal Commission wrote to two employees of Sunnyfield, SP1 and SP2, to advise them that evidence to be presented at Public hearing 13 might be adverse to their interests. SP1 and SP2 were

also informed that, after the hearing, the Commissioners might make findings about events at the House adverse to their interests. A legal representative of both SP1 and SP2 subsequently informed the Office of the Solicitor Assisting that neither wished to participate in the hearing and that they would not seek leave to appear at the hearing.

14. At the conclusion of the hearing in Sydney, the Chair directed Counsel Assisting the Royal Commission to prepare written submissions to be provided to the parties with leave to appear and to anyone who received a letter warning of possible adverse findings. **Appendix B** lists the parties granted leave to appear and their legal representatives.
15. Counsel Assisting's Submissions were provided on 6 August 2021. The Submissions analysed the evidence presented at the hearing, including the 350 exhibits admitted into evidence during the hearing.
16. Submissions in response were received on 20 August 2021 by Sunnyfield, Eliza, the Australian Government and the NSW Ombudsman. Further submissions were received by the NSW Ombudsman on 26 May 2021 specifically about his competence and compellability to give evidence. Eliza provided additional submissions on 27 May 2021 in response to the NSW Ombudsman's submissions. All written submissions are available on the Royal Commission's website.
17. The Royal Commission reconvened Public hearing 13 on 10 September 2021 for one day of oral submissions. Counsel Assisting and the legal representatives for Sunnyfield, Eliza and New South Wales responded to the issues raised in the written submissions.

Preparation of this Report

18. This Report has been prepared by the three Commissioners who participated in Public hearing 13. Commissioners Barbara Bennett PSM and Andrea Mason OAM read and commented on the draft of the Report.² The Commissioners responsible for the contents of the Report have taken their comments into account.

² Commissioner the Hon John Ryan AM very properly declared a potential conflict of interest in the subject matter of Public hearing 13, at the earliest possible time. He has not been involved in the preparation of the Report or consideration of issues addressed in the Report.

Scope of the Report

19. This Report is organised into six Parts:

- Part 1 provides introductory comments and the background to Public hearing 13.
- Part 2 describes the House and provides details about the circumstances of two people with disability who live there, whom we refer to as Melissa and Carl. Virtually all this material is uncontroversial.
- Part 3 sets out events at or relating to the House from early 2017 to 2019, and contains a number of factual findings. Much of the evidence concerning these events was neither contested at the hearing nor in submissions. Specifically, the fact that Melissa, Carl and a third resident, known as Chen, were subject to significant violence and abuse in their own home was not in dispute.
- Part 4 deals with investigations into the conduct of SP1 and SP2 at the House and Sunnyfield's role in failing to prevent violence and abuse. It explains the outcome of criminal proceedings against SP1 and SP2. Part 4 also addresses the roles of the regulators responsible for the oversight of disability service providers – the NSW Ombudsman, the NDIS Commission and the NDIA – and considers how they responded to events at the House.
- Part 5 addresses themes that emerged during the hearing about how Sunnyfield operated the House and interacted with the residents and their families. The themes relate to:
 - choice and control for residents of Sunnyfield's disability support accommodation, specifically concerning:
 - the Service and Residency Agreements, and
 - termination of the Service and Residency Agreements
 - staff recruitment, supervision and the House culture
 - Sunnyfield's complaints and feedback procedures
 - governance and leadership.
- Part 6 identifies a number of issues that will be further investigated by the Royal Commission. It also includes the Royal Commission's recommendations about Sunnyfield and its response to the violence and abuse which occurred at the House in western Sydney.

Appendix C contains a list of acronyms and abbreviations used throughout this report.

Observations on the evidence

20. Although much of the evidence was not in contest, there were areas of disagreement or differences of perception between certain witnesses. It has not been necessary to resolve all these differences. However, we have made findings on a number of issues on which there was a conflict in the evidence or on which the documentary evidence was inconsistent or difficult to reconcile with the evidence of a particular witness.

Factual findings

21. Sunnyfield's principal submission was that it was inappropriate for the Royal Commission to make any findings adverse to Sunnyfield's interests.³ Sunnyfield advanced these contentions:
- Many findings proposed by Counsel Assisting are specific and 'unlikely to be relevant beyond the participants in this particular Case Study'. Hence, they require adjudication in a manner that is unsuited for the mode and purpose of a Royal Commission.
 - Some proposed findings use language more apt to civil litigation than a Royal Commission, inviting conclusions as to motivation, breach and causation that require determinations of fault or liability.
 - Any adverse findings against Sunnyfield could affect the ongoing relationship with the residents and their families and could cause staff to leave the House.
 - Any findings and recommendations should not address the particular procedures that Sunnyfield should have had in place or that Sunnyfield should implement in the future. Sunnyfield says that it would be more appropriate to 'make general findings' about the issues that arise when service providers respond to violence, abuse and neglect in disability living accommodation and the measures that should be implemented to prevent that from occurring.
22. We consider that it is both appropriate and necessary for the Royal Commission to make findings about the events at the House which involved, as Sunnyfield accepts, violence against and abuse of people with disability in Sunnyfield's care. As we explain later, the violence shows that Sunnyfield failed to protect residents of the House against violence and abuse and was responsible for significant shortcomings in the services provided to residents. It is appropriate to make findings on these matters for at least three reasons.
23. First, our terms of reference explicitly state that it is important that violence against, and abuse, neglect and exploitation of people with disability be exposed and examined, including through the sharing of individual experiences. We are required to investigate and report on what governments, institutions and the community should do to:

³ Submissions of Sunnyfield, Public hearing 13, 20 August 2021, SUBM.0013.0003.0001, [89].

prevent, and better protect, people with disability from experiencing violence, abuse, neglect and exploitation, having regard to the extent of violence, abuse, neglect and exploitation experienced by people with disability in all settings and contexts; and achieve best practice to encourage reporting of, and effective investigations of and responses to, violence against, and abuse, neglect and exploitation of, people with disability, including addressing failures in, and impediments to, reporting, investigating and responding to such conduct.⁴

We are also directed to consider the need to focus our inquiry and recommendations on system issues ‘recognising that [we] will be informed by individual experiences’.⁵

24. Examining and making findings about Melissa and Carl’s experiences of violence and abuse at the House fall squarely within our terms of reference. It is neither feasible nor desirable to examine their individual experiences without discovering how and why they were exposed to violence and abuse, including why the service provider responsible for their safety and wellbeing may have failed to prevent the violence and abuse.
25. Moreover, as the terms of reference acknowledge and accept, individual experiences of violence, abuse, neglect and exploitation can raise systematic issues that can be the subject of recommendations. To determine whether Melissa and Carl’s experiences raise systemic issues it is necessary to make findings about the circumstances that led to the violence and abuse they experienced and the responses of the service provider (in this case Sunnyfield) and regulatory agencies to what occurred.
26. Unless the Royal Commission can identify and address the systemic issues that emerge from case studies, whether considered individually or collectively, it will not be possible to make recommendations that, if implemented, are capable of achieving transformational change. In short, findings about what happened at the House and Sunnyfield’s role in what happened will assist in making recommendations for preventing and responding to violence against and abuse, neglect and exploitation of people with disability.
27. Second, we do not consider that the Royal Commission should decline to make specific findings for fear of disrupting the relationship between the residents and Sunnyfield. Sunnyfield has a responsibility as service provider to ensure that satisfactory relationships between residents, their families and staff are maintained, whatever circumstances arise. It would be quite wrong to refrain from making findings against Sunnyfield, assuming they are warranted by the evidence, on the assumption that the findings may encourage Sunnyfield to act in an unprofessional manner.

4 *Letters Patent* (Cth), 4 April 2019 as amended on 13 September 2019, 13 May 2021, 24 June 2021, (a) –(b), (e) – (h); see also, Transcript, Ronald Sackville AO QC (Chair), Public hearing 13, 24 May 2021, P-3 [14–19], [37–42].

5 *Letters Patent* (Cth), 4 April 2019 as amended on 13 September 2019, 13 May 2021, 24 June 2021, (l).

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28. Third, an investigation commissioned by Sunnyfield itself found that the management of the House was 'dysfunctional'.⁶ It is important to determine how that state of affairs, which exposed residents to violence, abuse and neglect, could have been allowed to occur. The findings assist in identifying additional systemic issues which our Final Report will need to address.

Assessing the evidence

29. Counsel Assisting submitted that, since none of the representatives of the parties with leave to appear challenged the evidence given by Eliza (Melissa's sister and guardian) and Sophia (Carl's mother), there is no basis for the Royal Commission to reject their evidence or to make findings adverse to them. Counsel Assisting also submitted that, to the extent contemporaneous documentation was inconsistent with Ms Cuddihy's evidence, the documentation should be regarded as more reliable. Accordingly, it was further argued, some of Ms Cuddihy's evidence should not be accepted.⁷
30. Sunnyfield made submissions supportive of Ms Cuddihy's evidence, without directly addressing some issues where contemporaneous documentation appeared not to support Ms Cuddihy's account.⁸
31. In our view both Eliza and Sophia gave their evidence honestly and carefully. They each did their best to recall accurately events that were often very painful, if not traumatic. We have no hesitation in accepting their evidence. In any event, as Counsel Assisting's Submissions pointed out, no party challenged their evidence.
32. Ms Cuddihy frequently gave the impression in her oral evidence that she was reluctant to accept that Sunnyfield bore significant responsibility for the abuse and dysfunction that took place at the House while SP1 and SP2 were employed there. She also gave the impression on a number of occasions that she was reconstructing events in a manner designed to lessen Sunnyfield's and, to an extent, her own responsibility for the events at the House.
33. For example, Ms Cuddihy was keen, particularly in the early and middle portions of her oral evidence, to blame the NSW Ombudsman for much of the abuse and dysfunction at the House. Her view was that, if the NSW Ombudsman had revealed what his office knew about SP1, Sunnyfield could have taken remedial action much sooner than it did. This overlooks the difficulty that there can be concurrent causes of particular events. The NSW Ombudsman's failure in December 2018 to reveal what the office knew about SP1's history, a matter we refer to later, does not eliminate or excuse Sunnyfield's own failures which created the situation in the first place.

6 See Report, [169] ff.

7 Submissions of Counsel Assisting, Public hearing 13, 6 August 2021, SUBM.0017.0001.0775, [12].

8 Submissions of Sunnyfield, Public hearing 13, 20 August 2021, SUBM.0013.0003.0001, [12].

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34. Ms Cuddihy expressed regret in her written statements about a number of matters. However, these expressions of regret were carefully worded and appeared designed to lay the blame for the failures to protect the residents on the deceit practised by SP1 and SP2, rather than Sunnyfield's own deficiencies. Ms Cuddihy's expressions of regret and concessions concerning Sunnyfield's failures became more expansive as her evidence progressed. For the most part these expressions of regret and concessions were only made after Counsel Assisting took Ms Cuddihy through contemporaneous documentation and put a series of propositions to her.⁹
35. In her evidence Ms Cuddihy on a number of occasions used the expression 'in hindsight'. This language appeared to suggest that Sunnyfield had acted reasonably at the time the abuse and dysfunction occurred and that it was only when investigations took place did the true picture emerge.
36. Towards the end of her evidence Ms Cuddihy accepted that the failings could and should have been recognised much earlier. One passage of her evidence illustrates the point:

MS EASTMAN: Do you accept that Sunnyfield failed to protect Melissa, Carl and Chen from violence and abuse in their own home?

MS CUDDIHY: Yes, I do accept that.

MS EASTMAN: Do you accept that there were warning signs or red flags about SP1 over a period of two years before his suspension and then termination?

MS CUDDIHY: I think there were warning signs.

MS EASTMAN: ...With respect to the red flags, do you accept that there was a failing throughout the relevant management or supervision lines in Sunnyfield to detect those red flags and act on those red flags?

MS CUDDIHY: I think there were gaps, yes, in our systems and processes that unfortunately --- well, more than unfortunately, but that deceitful people had managed to optimise, and I think having systems and procedures that can't be reliant on one person and that have more verifications and checks is absolutely appropriate.¹⁰

37. On certain issues we have not accepted Ms Cuddihy's evidence. For example, in one of her written statements Ms Cuddihy explained the decision to evict Melissa in this way:

Sunnyfield considered the potential impact on Melissa but formed the view that, on balance, it was concerned for the wellbeing of staff due to the levels of stress that they were reported [sic]. Sunnyfield was also concerned that the issues reported by staff ... had resulted in a situation that was not in Melissa's best interests.¹¹

9 Transcript, Caroline Cuddihy, Public hearing 13, 28 May 2021, P-434-438.

10 Transcript, Caroline Cuddihy, Public hearing 13, 28 May 2021, P-434 [23-41].

11 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [213].

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38. As we discuss later, the evidence demonstrates that Sunnyfield was not motivated by concern for Melissa’s welfare, but was motivated to a significant extent by concern for its own reputation.
39. This does not mean that we have found Ms Cuddihy to be deliberately untruthful. However, we have found that in some significant aspects her evidence was not reliable.

Approach to recommendations

40. Counsel Assisting’s Submissions proposed a limited number of recommendations, all of which are directed to Sunnyfield. The Submissions also identified areas for further investigation by the Royal Commission. We accept that it is premature to make firm recommendations about the broader policy issues about the prevention of and responses to violence against and abuse, neglect and exploitation of people living in residential disability settings. Public hearing 13 was the first hearing to focus on the conduct of a particular service provider and did so by reference to experiences in a single residential disability setting.¹² The Royal Commission has conducted and will conduct an investigation into the conduct of other disability service providers. The findings in this Commissioners’ Report and those arising out of other Public hearings will inform recommendations in the Final Report.

12 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Public hearing 14: Preventing and responding to violence, abuse, neglect and exploitation in disability services (South Australia)*; Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Public hearing 20: Preventing and responding to violence, abuse, neglect and exploitation in disability services (two case studies)*; Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Public hearing 23: Preventing and responding to violence, abuse, neglect and exploitation in disability services*.

Part 2: The residents and their home

41. Counsel Assisting's Submissions included a detailed account of the residents, their experiences and their home. What follows is largely based on Counsel Assisting's Submissions.
42. The House was purpose built in 2016 for five residents with high support needs.¹³ Melissa, Carl, Chen¹⁴ and a fourth resident lived in the House from 2016.¹⁵ The House has been owned at all relevant times by the New South Wales Government. It has been leased or licensed from time to time to disability service providers, in the name of the Minister for Disability Services as the lessor or the licensor.¹⁶ As will be seen, Sunnyfield leased the House from 1 July 2018.

Melissa and her family

[I]t is a constant state of anxiety, worrying about her, because there are limits to what I can physically do for her and it's been a real tough road of having to accept – having to accept a lot of things that I wish were different for her.¹⁷

43. Melissa was 23 years old at the time of the hearing.¹⁸ Her sister and guardian, Eliza, described her as funny, cheeky and bubbly, with a great sense of humour,¹⁹ and said Melissa often makes her laugh.²⁰ They grew up together as the practical jokers of the family.²¹ Eliza knows when Melissa is happy because she beams.²²

13 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [11]; Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [15]; Transcript, Eliza, Public hearing 13, 24 May 2021, P-48 [7–11], P-50 [27–47] – 51 [1–11].

14 These names are pseudonyms.

15 Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [15].

16 Exhibit 13-62, SUN.0001.0060.1701.

17 Transcript, Eliza, Public hearing 13, 24 May 2021, P-31 [6–8].

18 Transcript, Eliza, Public hearing 13, 24 May 2021, P-23 [29–31]; Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [6].

19 Transcript, Eliza, Public hearing 13, 24 May 2021, P-23 [33–36]; Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [6].

20 Transcript, Eliza, Public hearing 13, 24 May 2021, P-24 [8–10]; Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [6].

21 Transcript, Eliza, Public hearing 13, 24 May 2021, P-23 [46–47] – 24 [2].

22 Transcript, Eliza, Public hearing 13, 24 May 2021, P-24 [20–23].

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44. Eliza described Melissa as honest, authentic and affectionate.²³ She loves 1990s ABC shows like Play School, Sesame Street, and the original Wiggles.²⁴ During the public hearing, Eliza showed the Royal Commission a video of Melissa playing with a Cookie Monster toy.²⁵
 45. Melissa also loves patting, feeding, and caring for animals. Eliza said she seems to connect with animals and shows no fear around them.²⁶ Eliza provided the Royal Commission with photographs of Melissa feeding a horse and walking with some ducks.²⁷
 46. When Melissa was born, she was diagnosed with Prader-Willi Syndrome, a chromosomal condition affecting multiple systems in the body.²⁸ The condition has resulted in intellectual disability and impaired physical development for Melissa. She has underdeveloped hormone centres resulting in poor sleep, and osteoporosis.²⁹ She is physically very small.
 47. As a consequence of Prader-Willi Syndrome, Melissa experiences a lack of satiety, meaning she is constantly hungry and never feels 'full'. She can sometimes eat spoiled food or inedible objects.³⁰ Eliza said this requires a lot of environmental and behavioural management to allow Melissa to live a life where the feeling of hunger is not her predominant feeling.³¹
 48. Prader-Willi Syndrome also contributes to behaviours of concern for Melissa, including self-injury.³² Eliza said these behaviours are compounded by trauma from Melissa's childhood experiences which have resulted in high levels of anxiety. Melissa grew up in a home environment where there was a complex family dynamic, conflict and

23 Transcript, Eliza, Public hearing 13, 24 May 2021, P-24 [12–27]; Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [6–7].

24 Transcript, Eliza, Public hearing 13, 24 May 2021, P-24 [37–42]; Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [7].

25 Transcript, Eliza, Public hearing 13, 24 May 2021, P-25 [7–19]; Exhibit 13-11, IND.0080.0003.0013.

26 Transcript, Eliza, Public hearing 13, 24 May 2021, P-24 [29–35], P-25 [31–34]; Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [7].

27 Transcript, Eliza, Public hearing 13, 24 May 2021, P-25 [25–47] – 26 [1]; Exhibit 13-12, IND.0080.0003.0006; Exhibit 13-13, IND.0080.0003.0007; Exhibit 13-14, IND.0080.0003.0011.

28 Transcript, 'Eliza', Public hearing 13, 24 May 2021, P-26 [3–11]; Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [9].

29 Transcript, Eliza, Public hearing 13, 24 May 2021, P-27 [17–21].

30 Transcript, Eliza, Public hearing 13, 24 May 2021, P-26 [20–22]; Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [9].

31 Transcript, Eliza, Public hearing 13, 24 May 2021, P-26 [31–33].

32 Transcript, Eliza, Public hearing 13, 24 May 2021, P-27 [10–15]; Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [10].

multiple crisis situations, including domestic violence.³³ Eliza described Melissa's subsequent 'group home life' as traumatic by its very nature.³⁴ Melissa also has autism.³⁵

49. Melissa experiences difficulty in communication.³⁶ Eliza said Melissa has developed a better interpretive ability to understand other people rather than to express herself, so she sometimes displays behaviours of concern to get her message across.³⁷
50. It takes someone who is suitably skilled, who knows Melissa and takes time with her, to understand how to communicate with her.³⁸ Eliza said it can take a long time, even for a professional, to understand Melissa and be across her history.³⁹
51. When Eliza finished high school, she left home and Melissa was living with their mother.⁴⁰ Eliza described her mother becoming overwhelmed, and said a crisis situation developed.⁴¹ Eliza herself had been in the role of parent since she was about 14 and so she tried to find a safe situation for both Melissa and their mother.
52. They approached the NSW Department of Family and Community Services (now the NSW Department of Communities and Justice) for help.⁴² At the time, there was no voluntary outofhome care available for Melissa, so in 2011 the family had to 'legally abandon' her at a respite centre.⁴³ This caused Eliza, her mother and other sister huge distress and ongoing trauma.⁴⁴ Eliza applied for guardianship of Eliza in 2015 and was appointed guardian in February 2016.⁴⁵ At the time of the public hearing, Melissa had lived in residential disability accommodation for 10 years.⁴⁶

33 Transcript, Eliza, Public hearing 13, 24 May 2021, P-27 [3–5]; Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [10].

34 Transcript, Eliza, Public hearing 13, 24 May 2021, P-27 [5–6].

35 Transcript, Eliza, Public hearing 13, 24 May 2021, P-26 [42–45]; Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [10].

36 Transcript, Eliza, Public hearing 13, 24 May 2021, P-27 [10–11].

37 Transcript, Eliza, Public hearing 13, 24 May 2021, P-27 [11–15]; Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [12].

38 Transcript, Eliza, Public hearing 13, 24 May 2021, P-27 [34–40]; Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [11].

39 Transcript, Eliza, Public hearing 13, 24 May 2021, P-27 [38–40].

40 Transcript, Eliza, Public hearing 13, 24 May 2021, P-27 [42–46] – 28 [1–3]; Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [14].

41 Transcript, Eliza, Public hearing 13, 24 May 2021, P-28 [5–8].

42 Transcript, Eliza, Public hearing 13, 24 May 2021, P-28 [36–40].

43 Transcript, Eliza, Public hearing 13, 24 May 2021, P-28 [15–18], P-29 [8–27].

44 Transcript, Eliza, Public hearing 13, 24 May 2021, P-29 [20–22].

45 Transcript, 'Eliza', Public hearing 13, 24 May 2021, P-21 [29–30]; Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [131].

46 Transcript, Eliza, Public hearing 13, 24 May 2021, P-29 [29–31].

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53. As a consequence of all of these experiences, Eliza is very protective of her sister. In addition, she said she wishes to be thorough and professional in discharging her duties as Melissa's guardian.⁴⁷

Carl and his family

I just want Carl to be safe, that's all ... When my phone rings, I look at the phone. If it says it's from Carl's house ... I don't know what I'm going to hear ... It's like a second takes a thousand.⁴⁸

54. Carl was 24 years old at the time of the hearing. Carl's mother, to whom we refer as Sophia, described Carl's love of dancing, music, and being with his family.⁴⁹ He also enjoys the trampoline and likes being outside, going to the park, going on drives, and being in water.⁵⁰
55. Carl's family comes from Lebanon and Carl was born there.⁵¹ Both Carl and his younger sister were born blind.⁵² After Carl's sister was born, Sophia and her husband made the decision to live in Australia.⁵³ Sophia said they do not have a big family in Australia and she, Carl, her daughter and her husband are a tight-knit family.⁵⁴
56. When Carl was four years old, Sophia and her husband began to notice that Carl's cognitive behaviour and motor skills were not developing as quickly as their daughter's.⁵⁵ They took Carl to a specialist for assessment. Carl was diagnosed with autism.⁵⁶ Carl also lives with intellectual disability and he can exhibit some behaviours of concern.⁵⁷

47 Transcript, Eliza, Public hearing 13, 24 May 2021, P-30 [41–44].

48 Transcript, Sophia, Public hearing 13, 25 May 2021, P-136 [38–42].

49 Transcript, Sophia, Public hearing 13, 25 May 2021, P-116 [39–42].

50 Transcript, Sophia, Public hearing 13, 25 May 2021, P-116 [44–46] – 117 [1–8]; Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [6].

51 Transcript, Sophia, Public hearing 13, 25 May 2021, P-115.

52 Transcript, Sophia, Public hearing 13, 25 May 2021, P-117 [10–12]; Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [8].

53 Transcript, Sophia, Public hearing 13, 25 May 2021, P-116 [20–30].

54 Transcript, Sophia, Public hearing 13, 25 May 2021, P-115 [34–36].

55 Transcript, Sophia, Public hearing 13, 25 May 2021, P-117 [14–18]; Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [8].

56 Transcript, Sophia, Public hearing 13, 25 May 2021, P-117 [20–26]; Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [8].

57 Transcript, Sophia, Public hearing 13, 25 May 2021, P-118 [25–39]; Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [8–9].

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57. When Carl was 11 years old, he went to live at a boarding school for children with disability. He stayed at that school from Monday to Friday and spent the weekends with his family.⁵⁸ Sophia said this worked well until the school closed down two years before Carl was due to finish high school.⁵⁹ Carl then went to a special school for Years 11 and 12.⁶⁰
58. After high school, Carl's increased strength and behaviours of concern made it difficult for him to stay at home with his family.⁶¹ Sophia explained that when Carl is distressed or experiencing a behaviour of concern he can harm himself and sometimes accidentally hurt other people.⁶² This is a way for him to communicate.⁶³
59. At this time, Carl's father was working full time and Sophia did not have any other family support in Australia.⁶⁴ Carl moved into a residential property operated by a service provider in New South Wales.⁶⁵ Four years later, Carl moved into the House in western Sydney that was built for him and other young people with disability, including Melissa and Chen.⁶⁶ The House is close to where Sophia, her husband and daughter live, also in western Sydney.⁶⁷
60. Sophia showed the Royal Commission a video of Carl which was prepared for his support workers to get to know him and his day-to-day life, and to understand what he likes, what he does not like, what challenges there might be for him, and what his needs can be.⁶⁸ She explained that support workers play a key role in Carl having a good or bad day. If they spend time with him, interact with him and try to understand what he is saying, Carl will feel heard and that somebody cares. If this does not happen, it is more likely that Carl will experience behaviours of concern.⁶⁹

58 Transcript, Sophia, Public hearing 13, 25 May 2021, P-120 [32–34]; Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [9].

59 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [9].

60 Transcript, Sophia, Public hearing 13, 25 May 2021, P-120 [43– 46] – 121 [1–10].

61 Transcript, Sophia, Public hearing 13, 25 May 2021, P-119 [19–24]; Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [9].

62 Transcript, 'Sophia', Public hearing 13, 25 May 2021, P-136 [45–46]; Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [10].

63 Transcript, Sophia, Public hearing 13, 25 May 2021, P-118 [28–39].

64 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [9].

65 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [11].

66 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [11].

67 Transcript, 'Sophia', Public hearing 13, 25 May 2021, P-119 [40–47]; Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [11].

68 Transcript, 'Sophia', Public hearing 13, 25 May 2021, P-118 [1–26]; Exhibit 13-44, IND.0082.0003.0006.

69 Transcript, Sophia, Public hearing 13, 25 May 2021, P-118 [22–26].

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61. Sophia said Carl will always require a lot of support to be safe and looked after properly. She hopes he can get funding to allow him to live on his own one day and will be able to build strong relationships with the people who assist him in his daily life.⁷⁰

Sunnyfield

62. Sunnyfield has been in operation for approximately 70 years.⁷¹ It was founded by a group of parents of children with disability as the 'Sunnyfield Association' in response to a lack of supports and services for people with disability.⁷² When Sunnyfield was founded, it operated as a charity. Ms Cuddihy stated that the organisation has evolved to 'strongly uphold the human rights, dignity and [to] respect ... people's choice and control'.⁷³
63. Sunnyfield is a member based, not-for-profit registered charity governed by its Constitution.⁷⁴ Membership is open to the immediate families, close relatives, or guardians of people with disability who have received at least three months 'mutually satisfactory service from Sunnyfield'.⁷⁵ There is no provision or requirement in the Constitution for membership to include people with disability or people to whom Sunnyfield provides or has provided services.⁷⁶ According to Ms Cuddihy, at the time of the hearing Sunnyfield had over 500 members.⁷⁷ Members are entitled to attend General Meetings, which must be held at least once a year.⁷⁸ Members can propose and vote on motions and on the election of Board directors.⁷⁹
64. As a not-for-profit enterprise, any earnings for the organisation are not distributed to shareholders and instead are reinvested to continue future services for the benefit of people with disability.⁸⁰

70 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [61–62].

71 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [11].

72 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-178 [19–24].

73 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-193 [33–36].

74 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [8]; Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-178 [31– 44], P-179 [1–15].

75 Exhibit 13-213, DRC.2000.0007.0001, cl 7.3(a)–(c).

76 Exhibit 13-213, DRC.2000.0007.0001.

77 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-178 [35]. We note that Ms Cuddihy said Sunnyfield had over 600 members in her witness statement; Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [454].

78 Exhibit 13-213, DRC.2000.0007.0001, cl 13.1.

79 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [456].

80 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-179 [33–38].

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65. At the time of the hearing, Sunnyfield provided support services for over 1,200 people living with disability in New South Wales and the Australian Capital Territory.⁸¹ Ms Cuddihy told the Royal Commission that Sunnyfield's client base is primarily people with cognitive or intellectual disability.⁸² It has a staff of 1,174.⁸³
66. Sunnyfield provides employment services for 195 supported employees with a disability at three Australian Disability Enterprises.⁸⁴ Ms Cuddihy said these 195 supported employees are additional to the 1,174 Sunnyfield employees.⁸⁵
67. Ms Cuddihy described Sunnyfield's 'core services' as shared independent living, community services, employment services, and support coordination and implementation of NDIS plans.⁸⁶ At the time of the public hearing, Sunnyfield operated 48 shared independent living homes with a total of 215 residents.⁸⁷ These operations constitute about 9 per cent of Sunnyfield's total services and almost half its overall income.⁸⁸
68. Ms Cuddihy said:
- Sunnyfield's service model broadly involves receipt of funds from clients to pay for the services that Sunnyfield provides. In respect of supported independent living, this generally means that clients use their NDIS funding to pay Sunnyfield to provide support services that the clients require, and as allocated and approved by the NDIS.⁸⁹
69. In addition to providing NDIS-funded support services, Sunnyfield also provides accommodation to its clients. Residency agreements set out the terms and conditions, including the rent to be paid by the resident. The rent is calculated as a percentage of the client's disability support pension and other relevant government entitlements. For those houses registered as specialist disability accommodation (SDA), the NDIA prescribes SDA reasonable rent contribution.⁹⁰ On 1 July 2018, the House in western Sydney was registered as SDA.⁹¹

81 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [8].

82 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-190 [3-6], P-192 [46-47].

83 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [10].

84 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [9(c)].

85 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-197 [45-46] – 198 [1-23].

86 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [9(a)-(d)].

87 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [9(a)]; Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-180 [4-7].

88 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-184 [5-15]; Exhibit 13-214, DRC.2000.0006.0077, p 15.

89 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [58].

90 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [62(b)].

91 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [62(b)].

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70. Sunnyfield generates very large revenues. In the 2019-2020 financial year, Sunnyfield derived revenue of \$110.4 million and reported an operating surplus of \$6.2 million and an overall surplus of \$28.3 million.⁹² Sunnyfield's revenue in 2019-2020 included \$8.6 million in JobKeeper wage subsidy payments and \$12.8 million by way of land transfers from the New South Wales Government.⁹³ Sunnyfield did not obtain these properties through cash consideration but 'in return for certain undertakings' which are not detailed in its Annual Financial Report.⁹⁴
71. Sunnyfield has increased its activities in recent years. The 2019-2020 Annual Report states that the clients served by Sunnyfield increased by 15 per cent from the previous year.⁹⁵ Sunnyfield's revenue increased by 22.8 per cent in 2019-2020, which followed an increase of 10.3 per cent in 2018-2019.⁹⁶ Sunnyfield's recent growth has coincided with the introduction of the NDIS. In 2019-2020, Sunnyfield derived 78.8 per cent of its total revenue (about \$87 million out of \$110.4 million) from the NDIS.⁹⁷

92 Exhibit 13-215, DRC.2000.0006.0377, pp 2, 12.

93 Exhibit 13-215, DRC.2000.0006.0377, pp 2, 29.

94 Exhibit 13-215, DRC.2000.0006.0377, p 2.

95 Exhibit 13-214, DRC.2000.0006.0077, p 5.

96 Exhibit 13-215, DRC.2000.0006.0377, p 2.

97 Exhibit 13-215, DRC.2000.0006.0377, pp 12, 15.

Part 3: Life at the House between 2016 – 2019

72. The following account of life at the House and the events occurring between 2017 and 2019 is largely non-contentious and is also based on Counsel Assisting's Submissions.

Transition of services at the House

73. In early 2016, Melissa, Carl, Chen and a fourth resident, all of whom have high support needs, began living together in the House.⁹⁸ The House was specifically built for them, taking their needs into account.⁹⁹ Prior to 1 May 2017, the House was managed by a disability service provider who provided support services to the residents. The House was and remains owned by the New South Wales Government.¹⁰⁰
74. The NDIS was rolled out in certain parts of New South Wales, including western Sydney, on 1 July 2016.¹⁰¹ Carl's NDIS Plan was approved on 30 September 2016¹⁰² and Melissa's NDIS Plan was approved on 25 November 2016.¹⁰³
75. In late 2016, the families of the residents decided to engage a new service provider to take over operation of the House and support their family members.¹⁰⁴ They engaged in discussions with Sunnyfield via the NSW Department of Family and Community Services (FACS), as they thought Sunnyfield would be better able to meet the residents' needs.¹⁰⁵ Sunnyfield provided them with brochures about its services and what it could offer the residents. Among these documents, Eliza received a copy of Sunnyfield's Shared Living Operations Manual.¹⁰⁶
76. Ms Cuddihy called the process of transitioning the House to a new service provider 're-auspicing', saying that in the pre-NDIS environment there was no standard process to follow.¹⁰⁷

98 Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [15]; Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [102–103].

99 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [11]; Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [15]; Transcript, Eliza, Public hearing 13, 24 May 2021, P-48 [7–11], P-50 [27–47] – 51 [1–11].

100 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [48–53].

101 National Disability Insurance Agency, *NDIA Annual Report 2016-2017*, October 2017, p 25.

102 Exhibit 13-275, CTD.8000.0009.5244.

103 Exhibit 13-238, CTD.8000.0009.6736.

104 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [13]; Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [17].

105 Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [18]; Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [24], [27–29]; Transcript, Eliza, Public hearing 13, 24 May 2021, P-33–34.

106 Transcript, Eliza, Public hearing 13, 24 May 2021, P-33 [30–34]; Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [19].

107 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [26], [35(a)].

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77. Between February and April 2017, Sunnyfield created rosters of care for each of the four residents and one for the House. Ms Cuddihy said that by mid-February 2017 it was evident the residents' NDIS plans were not adequate to cover the services desired by their families.¹⁰⁸ Sunnyfield then engaged with the NDIA in support of an increase of NDIS funding levels.¹⁰⁹
78. Due to the timing of the rollout of the NDIS, Eliza said the families were told by FACS that they had to make a decision about changing service provider, even though they were not ready.¹¹⁰ At the beginning of April 2017, the previous service provider indicated its intention to cease providing services to the residents of the House on 1 May 2017.¹¹¹
79. On 6 April 2017, Sunnyfield sent a Shared Living Residency Agreement (Residency Agreement) and a Service Supports Agreement (Service Agreement) to each of the four families for signature.¹¹² The terms of these Agreements are discussed in Part 5.¹¹³ Eliza also received a 'Quote for Service' for her signature.¹¹⁴ She understood this document to be a guide to Sunnyfield's charges.¹¹⁵
80. After receiving the Agreements signed on behalf of the four residents, Sunnyfield assumed responsibility for the provision of services at the House from 1 May 2017.¹¹⁶
81. On 2 May 2017, Sunnyfield's Company Secretary and Ms Cuddihy signed a deed of licence with FACS in respect of the House.¹¹⁷ The deed licensed Sunnyfield to use the House for the provision of accommodation and support services.¹¹⁸ The deed was later replaced by a lease agreement entered into between Gateway 2015 Properties Limited, a subsidiary of Sunnyfield which manages Sunnyfield's community service properties, and the Minister for Disability Services for the NSW Department of Communities and Justice.¹¹⁹

108 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [31].

109 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [32].

110 Transcript, Eliza, Public hearing 13, 24 May 2021, P-39 [18–20].

111 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [18]; Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [21].

112 Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [22]; Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [35(b)].

113 See Report, [284] ff.

114 Exhibit 13-18, IND.0080.0001.0292.

115 Transcript, Eliza, Public hearing 13, 24 May 2021, P-51.

116 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [24], [48]; Exhibit 13-61, SUN.0001.0060.1690.

117 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [49–50].

118 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [49]; Exhibit 13-61, SUN.0001.0060.1690, cl 1 (definition of 'Service'), 2.1, 3.1(a).

119 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [51]; Exhibit 13-62, SUN.0001.0060.1701.

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82. Sunnyfield's immediate priority was the recruitment of support workers for the House and it held a recruitment day on 18 April 2017.¹²⁰ The community support workers who were employed by Sunnyfield were a 'multicultural team', including people of African or Indian heritage.¹²¹ The community support workers were primarily responsible for the provision of direct support services to the residents. Some of these community support workers were allocated as key workers for particular residents.¹²²
83. In addition, Sunnyfield employed a service coordinator (also referred to as a house manager) who was responsible for the running of the House and who had a range of administrative and supervisory duties.¹²³ Until December 2019, the service coordinator set the staff roster for the House.¹²⁴ The service coordinator was subordinate to the Regional Manager who was responsible for managing services provided by Sunnyfield in a defined region.¹²⁵ The Regional Manager was not based at the House.
84. According to Ms Cuddihy, an adequate transition plan was not put in place due to the short notice given by the previous service provider.¹²⁶ Ms Cuddihy also said there were minimal records left at the House by the previous service provider. The behaviour support plans for some of the residents were made available but were outdated. There was no organised handover to the new staff and when Sunnyfield staff arrived at the House on 1 May 2017, the previous service provider's staff were already packing. They had left by mid-day.¹²⁷
85. Sophia said the previous service provider staff 'handed over' and 'identified who the different clients were' and 'then pretty much by the end of the day, those staff walked out and the Sunnyfield staff stayed in'.¹²⁸
86. Shortly after Sunnyfield began providing services at the House, it arranged for repairs and for some new furniture to be bought.¹²⁹ Ms Cuddihy said this was because inspections of the House before Sunnyfield assumed responsibility for provision of services showed it was not in good condition, with some pre-existing property damage creating 'serious risk'.¹³⁰

120 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [37].

121 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-372 [3–10].

122 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [138(b)(i)–(ii)].

123 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [138(d)(i)–(iii)], [147].

124 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [142].

125 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [138(e)(i)].

126 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-308 [26–28].

127 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [41–42].

128 Transcript, Sophia, Public hearing 13, 25 May 2021, P-121 [36–39].

129 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [47].

130 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [38–39].

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87. Eliza recalled that, in the first few weeks and months after Sunnyfield assumed responsibility for operation of the House, things appeared 'chaotic'.¹³¹ While she was not able to be at the House very often, her mother visited regularly and would telephone and write notes for Eliza about what she observed. Eliza also received reports from the various clinicians who provided support to Melissa. She read all the written information she received so she could understand what was happening in the House.¹³²
88. Eliza also said she provided Sunnyfield with all of Melissa's documentation so they did not need to rely on the previous service provider for it.¹³³ Similarly, Sophia said when she discovered that the previous service provider had not left much documentation on how to support Carl, she assisted as much as she could in providing information to Sunnyfield.¹³⁴
89. Sophia described the transition of the House to Sunnyfield as 'not easy'.¹³⁵ Ms Cuddihy said that the abruptness of the transition caused an escalation of behaviours of concern by the residents in the period immediately following.
90. An email exchange at the end of June 2017 between the Regional Manager responsible for the House at the time and the Client Engagement Manager indicates that Sunnyfield was still struggling with the transition and with the need to support the residents of the House.¹³⁶ The Client Engagement Manager wrote, 'I am so sorry to hear this house is so challenging – we could never have known.' In her response, the Regional Manager discussed Carl's behaviours of concern, commenting, 'I live every minute in fear of another call to advise that a staff member has been badly hurt, it really is only a matter of time'.¹³⁷
91. The transition of the House to Sunnyfield was very difficult for the residents, staff and for Sunnyfield. Because of how the transition took place, neither Sunnyfield nor its staff adequately understood the support needs of the residents, and accordingly could not meet those needs satisfactorily.

131 Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [30].

132 Transcript, Eliza, Public hearing 13, 24 May 2021, P-56 [43–46], P-57 [9–15]; Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [32].

133 Transcript, Eliza, Public hearing 13, 24 May 2021, P-57 [25–29].

134 Transcript, Sophia, Public hearing 13, 25 May 2021, P-121 [39–40]; Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [16].

135 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [15].

136 Exhibit 13-300, SUN.0001.0042.0961. According to Ms Cuddihy, the Client Engagement Manager was jointly responsible creating rosters of care for Sunnyfield's accommodation settings like the House. Their function also includes business development and communicating with clients' families by answering queries and proposing solutions to issues. See, Exhibit 13-6, Statement of Caroline Cuddihy, 4 May 2021, at [68]; Transcript, Public hearing 13, 26 May 2021, P-256 [7–13].

137 Exhibit 13-300, SUN.0001.0042.0961, p 1.

Concerns about SP1

92. Eliza quickly began to have concerns about the support services being provided to Melissa at the House, and about the impact this could have on her.¹³⁸ A number of Eliza's concerns related to the actions of SP1, the service coordinator. SP1 had been employed by Sunnyfield to manage the House and started working there in June 2017.
93. Eliza said when she first met SP1 he came across as 'very charming, caring and down to earth'. She got the impression he would use common sense rather than let technical rules dictate what would happen in the House.¹³⁹
94. Sophia said she and her husband thought SP1 was working out well initially and he looked like he would be able to manage if Carl had behaviours of concern.¹⁴⁰ SP1 seemed like a 'can-do sort of a person', which they were pleased about.¹⁴¹ SP1 told them he was the first port of call if they had any issues or questions. However, Sophia soon began to feel SP1 was brushing them off when she and her husband raised issues with him about Carl's care or his behaviour.¹⁴² SP1 would make promises to do things, but the promises were not kept.¹⁴³ Sophia began copying his supervisor, the Regional Manager, into her emails to SP1 but said she rarely, if ever, heard back from either of them.¹⁴⁴
95. Eliza described similar experiences with SP1, saying in the early weeks he often could not answer her questions, or would tell her he would get back to her but then would not.¹⁴⁵
96. It was not disputed that Eliza made numerous complaints, both formal and informal, to Sunnyfield. These included complaints about SP1's responses to Melissa's needs and support.¹⁴⁶ For example, Eliza complained about SP1 not attending appointments with Melissa's psychiatrist, which was something recommended by the psychiatrist.¹⁴⁷ She also raised concerns about SP1's unwillingness to attend meetings to discuss

138 Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [32].

139 Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [37].

140 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [18–19].

141 Transcript, Sophia, Public hearing 13, 25 May 2021, P-122 [5–6].

142 Transcript, Sophia, Public hearing 13, 25 May 2021, P-122 [17–23]; Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [19].

143 Transcript, Sophia, Public hearing 13, 25 May 2021, P-122 [36–38].

144 Transcript, Sophia, Public hearing 13, 25 May 2021, P-122 [44–47] – 123 [2 –12]; Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [20].

145 Transcript, Eliza, Public hearing 13, 24 May 2021, P-60 [37–40].

146 Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [38].

147 Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [39].

Melissa's Behaviour Intervention Support plan.¹⁴⁸¹⁴⁹ She discussed these matters with the Sunnyfield Company Secretary, Mr Jonathan Swain, as well as Ms Cuddihy in a telephone conference at the end of September 2017.¹⁵⁰ Ms Cuddihy said she recalled having the telephone conference but could not remember what was discussed.¹⁵¹

97. In October 2017, Eliza complained to Mr Swain about SP1 picking up Melissa while she was agitated.¹⁵² Eliza was increasingly concerned Melissa may have been physically restrained from time to time. She recalled being told by a support worker in November 2017 that staff were using physical restraint and not reporting it due to fear of getting into trouble.¹⁵³
98. Eliza also conveyed her concerns about SP1 to the NSW Ombudsman. On 8 December 2017, she listed those concerns in an email, saying she had raised them with the Sunnyfield management.¹⁵⁴ On 14 December 2017, Eliza made an additional complaint to the NSW Ombudsman.¹⁵⁵
99. In March 2018, the NSW Ombudsman offered to conciliate between Sunnyfield and Eliza, but Sunnyfield refused. Ms Cuddihy agreed in her evidence that the decision not to engage in conciliation was because Sunnyfield had already decided to evict Melissa.¹⁵⁶ This decision is discussed further in Part 5.¹⁵⁷
100. Eliza complained to the Sunnyfield General Manager Shared Living, Ms Jennifer Luff, that SP1 was not following instructions from Melissa's GP or acting in accordance with her medication management form.¹⁵⁸ On 23 January 2018, Ms Luff wrote to Eliza about that complaint, saying:

[i]t is understandable that you have a high level of concern for [Melissa] and I have empathy for the amount of energy from you that goes into supporting her

148 Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [40].

149 A Behaviour Intervention Support Plan, also known as a Behaviour Support Plan or Positive Behaviour Support Plan, is a document that identifies why a person displays certain types of behaviour and provides advice on how to prevent or minimise that behaviour from occurring. See Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Report on Public hearing 6: Psychotropic medication, behaviour support and behaviours of concern*, June 2021, [42].

150 Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [41].

151 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [186(c)].

152 Transcript, Eliza, Public hearing 13, 25 May 2021, P-91 [23–47] – 92 [1–16]; Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [43].

153 Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [43], [45].

154 Exhibit 13-27, IND.0080.0005.0063.

155 Exhibit 13-223, NOM.0001.0389.0001.

156 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-346 [19–27].

157 See Report, at [315] ff.

158 Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [44]; Transcript, 'Eliza', Public hearing 13, 25 May 2021, P-87 [30–47] – 88 [1–6].

well-being. We are endeavouring to ensure we address the concerns you have raised in the past to make changes to provide the best possible environment for [Melissa] and a positive working relationship with you.¹⁵⁹

101. Eliza replied the same day, noting Ms Luff had not commented on SP1's conduct and asking if Sunnyfield stood by him in relation to the issues she had raised. Ms Luff responded on 22 March 2018.

With reference to your first concern I reiterate [SP1] and I have discussed your complaints and addressed the steps that need to be followed. We do not consider it necessary or appropriate to be engaging any further regarding staff performance and management. If you have further complaints that need to be addressed please contact either myself or the feedback line.¹⁶⁰

Breakdown of communication and termination of Melissa's services

102. By this stage, communication between Eliza and Sunnyfield had substantially broken down. In July 2017, efforts were made by both of them to resolve the communication difficulties they were experiencing. In response to an email from Eliza, Ms Luff sent a letter to her on 17 July 2017 that included details about how communication should proceed. Ms Luff said 'all operational and administrative communications in the first instance are to be directed to the Service Coordinator', namely SP1. Complaints and disputes were also to be directed to SP1 in the first instance.¹⁶¹
103. A draft communications protocol and action plan were developed in October 2017 and sent to Eliza.¹⁶² Eliza said she was broadly supportive of the plan and provided comments on the draft, but it was never finalised.¹⁶³ Ms Cuddihy said 'a great deal of effort' had gone into trying to finalise the protocol, but this was ultimately not possible.¹⁶⁴
104. By January 2018, Sunnyfield decided to cease providing services to Melissa and to require her to leave the House. Despite making its decision to evict Melissa in January 2018, Sunnyfield did not inform Eliza until 4 June 2018, when Ms Luff stated in a letter that 'Sunnyfield has decided it is unable to continue to provide support for your sister, [Melissa].' We return in Part 5 to the circumstances surrounding Sunnyfield's decision to evict Melissa.¹⁶⁵

159 Exhibit 13-28, IND.0080.0006.0001, p 3.

160 Exhibit 13-28, IND.0080.0006.0001, p 1.

161 Exhibit 13-31, IND.0080.0006.0018, p 1; Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-335–336 [23–30].

162 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-336 [1–4].

163 Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [35–36].

164 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-338 [45–46] – 339 [1–9].

165 See Report, [315] ff.

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105. The NDIS Quality and Safeguards Commissioner, Mr Graeme Head AO, provided a detailed account of the action taken by the NDIS Commission in relation to Eliza's complaint.¹⁶⁶ He said it was one of the earliest complaints received by the NDIS Commission in New South Wales.¹⁶⁷ On 9 August 2018, the NDIS Commission received assurances from Ms Luff by telephone that Sunnyfield would not evict Melissa before other accommodation and support services were in place. The NDIS Commission requested that Sunnyfield provide a written undertaking not to evict Melissa until alternative arrangements for her accommodation were made.¹⁶⁸ On 15 August 2018, Sunnyfield wrote to the Commission agreeing not to evict Melissa while mediation was proceeding.¹⁶⁹ Following further correspondence between the NDIS Commission, Eliza and Sunnyfield, Sunnyfield sent the NDIS Commission a written undertaking to defer the termination of Melissa's Service and Residency Agreements pending the outcome of mediation.¹⁷⁰
106. By June 2018, staff in the NSW Ombudsman's office were already engaged in extensive discussions with Eliza and Sunnyfield concerning Eliza's complaints. They also gathered large quantities of documentation. On 18 December 2018, the Director of Disability in the NSW Ombudsman's office wrote to Eliza to finalise those complaints, noting the NDIS Commission 'now has primary responsibility for the oversight of NDIS providers'.¹⁷¹ On the same date, the Director of Disability also sent a letter to Ms Cuddihy.¹⁷²
107. The two letters were identical, saying 'despite having developed a comprehensive communication protocol and action plan, Sunnyfield did not take adequate further steps to discuss and resolve the communication issues'.¹⁷³ The letters continued as follows:

... we consider that Sunnyfield has not taken all reasonable steps to address the issues and to find a more constructive way forward with [Melissa's] family prior to making the decision to exit [Melissa] from her accommodation. In addition, in our view, Sunnyfield has failed to adequately consider the likely impact on [Melissa] of having to leave a residence that has been designed to meet her needs, and where she is settled and familiar with the other residents and staff.¹⁷⁴

166 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [23-57].

167 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [26]; Transcript, Graeme Head, Public hearing 13, 28 May 2021, P-498 [36-39].

168 Exhibit 13-4, Statement of Graeme Head, 30 April 2021, at [29].

169 Exhibit 13-4, Statement of Graeme Head, 30 April 2021, at [31].

170 Exhibit 13-4, Statement of Graeme Head, 30 April 2021, at [34].

171 Exhibit 13-37, IND.0080.0001.0001, p 11.

172 Exhibit 13-307, SUN.0001.0044.6406.

173 Exhibit 13-37, IND.0080.0001.0001, p 3; Exhibit 13307, SUN.0001.0044.6406, p 3.

174 Exhibit 13-37, IND.0080.0001.0001, pp 9-10; Exhibit 13307, SUN.0001.0044.6406, p 10.

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108. The letter to Eliza said ‘Sunnyfield did not express a real desire to participate in the conciliation that we offered to conduct to attempt to resolve the issues between the parties’.¹⁷⁵
109. On 20 January 2019, Ms Cuddihy responded to the NSW Ombudsman’s Director of Disability, partially disagreeing with her assessment and recommendations. She wrote ‘[y]ou are not privy to the impact that [Eliza’s] communication has on staff through the volume of emails and phone calls and requests made’.¹⁷⁶ She specifically disagreed with the assessment that Sunnyfield had taken insufficient steps to resolve the communication issues with Eliza.¹⁷⁷ She also disagreed that Sunnyfield had failed to adequately consider the likely impact on Melissa of having to leave her house.¹⁷⁸ She wrote ‘[w]e have also considered the *actual* impact on Sunnyfield staff members of continuing to provide services to [Melissa]’.¹⁷⁹
110. By the time of these letters, mediation between Sunnyfield and Eliza had been arranged and conducted.¹⁸⁰ Ms Cuddihy did not participate in the mediation herself and said in her evidence that she was not aware Sunnyfield had requested that any agreement be subject to a requirement of confidentiality.¹⁸¹ Although the mediation was confidential,¹⁸² one outcome of the mediation was that Sunnyfield agreed not to press the eviction notice until suitable alternative accommodation was found for Melissa.¹⁸³
111. The eviction notice was not revoked.¹⁸⁴ On 25 January 2019, Ms Luff emailed Eliza, asking that she keep Sunnyfield updated on her search for new accommodation for Melissa. She said:

We have maintained residency to this point to ensure [Melissa’s] safety and security are not impacted whilst [sic] you seek alternative accommodation. Given it has now been over six months since this was issued and over three months since [Melissa] was due to leave Sunnyfield we would like to remind you that our decision to terminate our services remains as per Sunnyfield’s letter dated 4 June 2018.¹⁸⁵

175 Exhibit 13-37, IND.0080.0001.0001, p 10.

176 Exhibit 13-306, SUN.0001.0044.6358, p 1.

177 Exhibit 13-306, SUN.0001.0044.6358, p 2; Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-338 [31–40].

178 Exhibit 13-306, SUN.0001.0044.6358, p 3.

179 Exhibit 13-306, SUN.0001.0044.6358, p 3.

180 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-359 [9–11]; Exhibit 13-2, ‘Statement of Eliza’, 29 April 2021, at [72].

181 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-359 [37– 46] – 360 [1–2].

182 Transcript, Eliza, Public hearing 13, 24 May 2021, P-78 [4–8].

183 Exhibit 13-2, ‘Statement of Eliza’, 29 April 2021, at [72].

184 Exhibit 13-2, ‘Statement of Eliza’, 29 April 2021, at [78]; Exhibit 13-6, ‘Statement of Caroline Cuddihy’, 4 May 2021, at [215(d)]; Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-360 [11–38].

185 Exhibit 13-30, IND.0080.0005.0076, p 3.

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112. In her statement, Ms Cuddihy said ‘it is not clear to me whether [Melissa’s] guardian is still seeking to find alternative accommodation’.¹⁸⁶ In her oral evidence Ms Cuddihy said it was ‘a difficult state of limbo’ and an ‘unacceptable state of affairs’. She accepted that the ‘unacceptable state of affairs’ could possibly have been resolved by someone from Sunnyfield talking to Eliza.¹⁸⁷
113. With assistance from Melissa’s advocate and service coordinator, Eliza looked for a new service provider and accommodation. She described their search as ‘intense and persistent’.¹⁸⁸ They put Melissa on every waitlist they could. It was very difficult to find accommodation that met Melissa’s particular needs and was close to Eliza or their mother. By 9 July 2018, they had approached more than 18 providers, none of which had suitable accommodation they could offer.¹⁸⁹ Eliza also viewed other accommodation options, but the landlords she spoke to would not make the necessary modifications.¹⁹⁰ Eliza explained that when COVID-19 struck in March 2020, she stopped looking.¹⁹¹
114. While she thought it may not be enforceable after the passage of so much time, Eliza said in her statement that the fact the eviction notice had not been withdrawn still worried her.¹⁹² Ms Cuddihy said she had not given consideration to withdrawing the eviction notice before the public hearing, but that she would do so after the hearing.¹⁹³

Other events at the House to early 2019

115. At the same time as the communication between Eliza and Sunnyfield broke down and Sunnyfield was making plans to evict Melissa, a range of other issues arose at the House. Some of these were referred to in Eliza and Ms Cuddihy’s statements, but were not explored in detail during the public hearing.
116. On one occasion in September 2017, Melissa’s occupational therapist discovered some discarded batteries on the grass at the back of the House. The matter was reported to SP1 and the Regional Manager. Eliza said this was because if Melissa had found the batteries she could have tried to swallow them, which would have been very dangerous.¹⁹⁴ The Regional Manager responded ‘as we side and back on to public space unfortunately we are prone to having items thrown into the yard.’ She said staff would be reminded to check the garden area.¹⁹⁵ Eliza expressed the

186 Exhibit 13-6, ‘Statement of Caroline Cuddihy’, 4 May 2021, at [215(h)].

187 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-361 [35–42].

188 Exhibit 13-2, ‘Statement of Eliza’, 29 April 2021, at [66].

189 Exhibit 13-2, ‘Statement of Eliza’, 29 April 2021, at [67].

190 Exhibit 13-2, ‘Statement of Eliza’, 29 April 2021, at [68].

191 Exhibit 13-2, ‘Statement of Eliza’, 29 April 2021, at [77].

192 Exhibit 13-2, ‘Statement of Eliza’, 29 April 2021, at [78].

193 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-364 [35–36].

194 Exhibit 13-2, ‘Statement of Eliza’, 29 April 2021, at [42].

195 Exhibit 13-26, IND.0080.0005.0044, p 1.

view that this response illustrated ‘a real culture of blame’ as well as the tension developing at the time between her and Sunnyfield.¹⁹⁶

117. Ms Cuddihy summarised actions taken by the Sunnyfield Response Team to a number of incidents reported to have occurred at the House in this period.¹⁹⁷ For example, the Response Team looked into the cause of an injury to Melissa detected by her mother in early October 2017. The Response Team found the likely cause of the injury (a broken finger) was Melissa’s behaviour.¹⁹⁸
118. In January 2018, an anonymous complaint was made to the STOPline whistle-blower service, alleging assault of Melissa by Sunnyfield staff and also that staff were being instructed by SP1 not to correctly document any manual handling of Melissa.¹⁹⁹ The Response Team investigated the complaint and reported to the police and the NSW Ombudsman. The Response Team found the allegations not to be sustained.²⁰⁰
119. Around the same time, Eliza received an anonymous phone call alleging Melissa had been abused by SP1 and another support worker at the House. The Response Team also investigated this complaint and reported to the police and the NSW Ombudsman.²⁰¹ The Response Team concluded the call was likely a vexatious complaint from a former employee.
120. In mid-July 2018, a large bruise was discovered on Chen’s leg and thigh. This too was referred to the Response Team, which could not determine how the bruise was caused. The Response Team recorded the bruise *may* have been caused by self-injury when Chen was lifting and throwing furniture during escalated behaviours.²⁰² This injury was later investigated by an independent consultant engaged by Sunnyfield in 2019, and is discussed in Part 4 below.²⁰³
121. Another significant event which occurred in January 2018 was the hiring of the community support worker referred to during the hearing as SP2. Eliza was later told that SP2 would be one of Melissa’s key workers. She said SP1 told her she should be happy, because she always wanted a lot of communication with the key workers and SP2 could speak English. Eliza did not have particular concerns about SP2, but said she would have chosen someone else for Melissa’s key worker if she had been given the choice.²⁰⁴

196 Transcript, Eliza, Public hearing 13, 24 May 2021, P-63 [44–46] – 64 [1–4].

197 Exhibit 13-6, ‘Statement of Caroline Cuddihy’, 4 May 2021, at [171–184].

198 Exhibit 13-6, ‘Statement of Caroline Cuddihy’, 4 May 2021, at [172(c)].

199 Exhibit 13-6, ‘Statement of Caroline Cuddihy’, 4 May 2021, at [174(a)].

200 Exhibit 13-79, SUN.0001.0050.7884, p 3.

201 Exhibit 13-6, ‘Statement of Caroline Cuddihy’, 4 May 2021, at [175(c)].

202 Exhibit 13-6, ‘Statement of Caroline Cuddihy’, 4 May 2021, [178(b)]; Exhibit 13-86, SUN.0001.0050.1607, p 7.

203 See Report, [192].

204 Exhibit 13-2, ‘Statement of Eliza’, 29 April 2021, at [46].

122. Sophia also had no particular concerns about SP2 at the beginning, but she did not think he really connected with Carl and sometimes felt Carl was shying away from him. She said it was ‘a little bit uncomfortable’ but she had nothing concrete to complain about.²⁰⁵ At one point, she asked SP1 not to roster SP2 to work with Carl but when she turned up at the House, she often found that SP2 was rostered to work with Carl.²⁰⁶ When she was visiting the House, she observed SP2 seemed to be acting as a ‘right hand man’ for SP1.²⁰⁷

Events from early 2019

123. After the experience of the eviction notice and the mediation with Sunnyfield, Eliza said she felt ‘burned’ and so she backed away from raising as many complaints about the House.²⁰⁸ By early 2019, however, Sophia was having increasing concerns about the care and support being provided to Carl.
124. Sophia explained that she was at the House frequently and got to know some of the support workers. At the same time, she tried to maintain a professional relationship with them and not ask too many questions.²⁰⁹ However, in early 2019, one of Carl’s support workers informed her he was leaving Sunnyfield. She asked him if it was because of Carl, as she had been told previously some support workers did not wish to work with him. The support worker responded that it was not due to Carl, but that he was having some issues with SP1 and SP2. He told Sophia that he had tried to complain about SP2 not doing his work at the House and said SP1 ‘laughed it off’.²¹⁰
125. Sophia said when she asked SP1 about the departure of this support worker, he told her it was because of Carl’s behaviour. Sophia knew this was an ‘outright lie’ and she really began to question her trust in SP1.²¹¹
126. Sophia heard from another support worker that SP1 would occasionally leave the House to go fishing.²¹² She was also told SP2 would often work in the office rather than provide direct support to the residents ‘on the floor’. Sophia was concerned about a potential shortage of staff providing direct support to Carl in these circumstances. She explained that Carl requires 2:1 support to access the community by being taken on drives in a vehicle.²¹³

205 Transcript, Sophia, Public hearing 13, 25 May 2021, P-123 [25–32].

206 Transcript, Sophia, Public hearing 13, 25 May 2021, P-125 [17–20].

207 Exhibit 13-3, ‘Statement of Sophia’, 29 April 2021, at [22].

208 Exhibit 13-2, ‘Statement of Eliza’, 29 April 2021, at [79].

209 Exhibit 13-3, ‘Statement of Sophia’, 29 April 2021, at [23].

210 Exhibit 13-3, ‘Statement of Sophia’, 29 April 2021, at [24].

211 Transcript, Sophia, Public hearing 13, 25 May 2021, P-124 [30–38]; Exhibit 13-3, ‘Statement of Sophia’, 29 April 2021, at [25].

212 Exhibit 13-3, ‘Statement of Sophia’, 29 April 2021, at [28].

213 Exhibit 13-3, ‘Statement of Sophia’, 29 April 2021, at [26]; Transcript, ‘Sophia’, Public hearing 13, 25 May 2021, P-127 [6–9].

127. About this time, Sophia also began to notice how anxious Carl was when he was around SP2.²¹⁴

June 2019

128. Sophia said around mid-June 2019 a support worker whom she knew well told her about an occasion when SP1 had instructed her and another support worker to take Carl on an outing. They were to take a photograph, bring Carl home, and send the photograph to Sophia as proof they had left the House. The support worker took Carl on the outing and Carl was settled during the outing.²¹⁵ However, the support worker said she was told to inform Sophia that Carl was unsettled and exhibited behaviours of concern during the outing, even if he was perfectly calm.²¹⁶
129. The same support worker told Sophia she had concerns about SP1 and SP2 and was keeping a list. She was worried for Carl's safety and would not forgive herself if something happened to him and she had not told anyone. This conversation caused Sophia significant concern.²¹⁷
130. Also around mid-June 2019, a support worker told Sophia about comments SP1 had made at the time of the Christchurch mosque shootings, which happened in March that year. The support worker said when a segment about the shootings was on the news in the House, SP1 had said words to the effect of, 'If it was up to me, I would have shot them all', and made a comment about the victims being Middle Eastern. The support worker told Sophia they responded with words to the effect of, 'How can you say that? Carl is Middle Eastern,' to which SP1 replied, 'I don't care'.²¹⁸ Sophia said this was absolutely shocking to her. It resulted in her feeling very insecure and removed all her remaining trust in SP1.²¹⁹
131. Sophia explained at the hearing she did not report what the support worker had said about SP1 at that time. She felt helpless because she did not have the facilities to care for Carl at her home.²²⁰

214 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [29].

215 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [31]; Exhibit 13-138, SUN.0001.0032.0829, pp 2, 37.

216 Transcript, Sophia, Public hearing 13, 25 May 2021, P-128 [21–24]; Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [31].

217 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [32].

218 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [33].

219 Transcript, Sophia, Public hearing 13, 25 May 2021, P-125 [47] – 126 [1–14].

220 Transcript, Sophia, Public hearing 13, 25 May 2021, P-126 [10–14].

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132. Sophia recalled receiving a telephone call on 20 June 2019 from SP1, who informed her Carl had experienced a behaviour of concern during an outing in the van with him and SP2.²²¹ He said Carl's behaviour must have occurred because he did not like it when they stopped at a red traffic light. During the call, Sophia asked SP1 what Carl had been given to eat, because certain foods, especially sugar, can trigger his behaviours.²²² SP1 said Carl had eaten McDonalds and had a fizzy drink.
133. This concerned Sophia as the food and drink were contrary to Carl's behaviour support plan.²²³ In addition, Sophia was concerned SP1 was again not telling her the truth. He said the fizzy drink was a Diet Coke, but when Sophia later checked the petty cash receipt for the meal, it said 'Coke'. Sophia believed SP1 chose to mislead her because he knew sugary drinks were particularly problematic for Carl.²²⁴
134. Sophia also spoke to other support workers after the incident. They told her they had been present when SP1 and SP2 returned to the House with Carl in the van. They said they saw Carl in his harness in the back of the van, with the 'back seat covered in blood' and Carl 'bleeding heavily'.²²⁵ Sophia said these support workers told her they were upset by what they saw and worried about what might have happened.²²⁶ The support workers also told Sophia about another incident where they had seen SP2 sign off that he had administered Carl's medication but tipped the medication down the toilet.²²⁷
135. Sophia was scheduled to travel to Lebanon with her husband and daughter in July 2019, but by this stage was very worried about doing so because she would not be able to check up on Carl.²²⁸ She said:

because after hearing --- after knowing what he had said about Middle Eastern people, after knowing that he had specifically asked staff to take Carl out and come back and say he had a behaviour, and then for him to actually have a behaviour while he was on an outing with SP1 and SP2, I felt like I couldn't trust him with those two any longer. And I was fearful for his life. I was fearful that I didn't know what is going to come next.²²⁹

136. Sophia decided to make a complaint directly to the NDIS Commission.²³⁰

221 Transcript, Sophia, Public hearing 13, 25 May 2021, P-127 [11–16]; see also, Exhibit 13-138, SUN.0001.0032.0829, p 2, 37.

222 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [34–35].

223 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [35]; Exhibit 13-91, SUN.0001.0032.4422, p 13.

224 Transcript, Sophia, Public hearing 13, 25 May 2021, P-127 [34–47] – 128 [1–25].

225 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [37].

226 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [37].

227 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [38].

228 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [39].

229 Transcript, Sophia, Public hearing 13, 25 May 2021, P-128 [20–25].

230 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [39].

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137. On 21 June 2019, an anonymous complaint was made to the NDIS Commission concerning actions by SP1 and SP2 towards Carl and Chen. These included allegations of physical and racial abuse.²³¹ A complaints officer from the NDIS Commission called Sunnyfield to check on the safety of Carl and Chen. Sunnyfield managers later confirmed they were safe and requested further details of the complaint in writing.²³²
138. On 24 June 2019, according to Mr Head, the complaints officer emailed the Complaints Director proposing to escalate the complaint on the basis that the participants appeared to be at immediate risk. However, the Complaints Director said that there was not sufficient information to state that the participants were at 'immediate risk'.²³³
139. On the morning of 24 June 2019, Sophia called the NDIS Commission to make her complaint.²³⁴ Mr Head gave evidence that Sophia's complaint contained allegations that SP1 and SP2 were not treating Carl well, and were causing him distress.²³⁵ The complaint included allegations of racist comments made by SP1 and communication issues with Sunnyfield staff.²³⁶
140. Later that day, Carl injured himself and was taken to hospital.²³⁷ Sophia recalled receiving a phone call from a support worker in the House who told her Carl had a 'major behaviour' and had split his eyelid open.²³⁸ When she arrived at the House, Sophia saw the injury to his eyelid which was bleeding and 'looked terrible'.²³⁹ Sophia went with Carl in the ambulance to the hospital, during which she received a call from a complaints officer from the NDIS Commission following up on her complaint. Sophia provided them with details of the events that had occurred in the previous week.²⁴⁰ The complaints officer undertook to contact her the following day.²⁴¹
141. On 25 June 2019, Sophia contacted the General Manager of Shared Living at Sunnyfield, Ms Luff, about the incidents on 20 and 24 June 2019 and her concerns about Carl's wellbeing in the House.²⁴²

231 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [80(a)].

232 Exhibit 13-95, SUN.0001.0032.4074, p 2.

233 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [86(a)].

234 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [40].

235 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [80(b)], [89].

236 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [89].

237 Exhibit 13-138, SUN.0001.0032.0829, pp 2, 9.

238 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [40]; Exhibit 13-90, SUN.0001.0032.4412.

239 Transcript, Sophia, Public hearing 13, 25 May 2021, P-128 [39–43]; Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [40].

240 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [41].

241 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [91].

242 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [42].

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142. Also on 25 June, Sunnyfield suspended SP1 and SP2 with pay.²⁴³
143. The same day, the NDIS complaints officer called Sophia. According to the NDIS Commission's records, Sophia told the complaints officer that she had raised all the issues with Ms Luff and had a further meeting with Sunnyfield to clarify her concerns. She said she felt assured and comfortable having Carl back at the House.²⁴⁴
144. Also on that day, Sunnyfield received written notification from the NDIS Commission of the anonymous complaint concerning the quality and safety of services provided by Sunnyfield to Carl and Chen.²⁴⁵ The NDIS Commission requested reportable incident notifications be lodged in respect of the allegations of physical and verbal abuse by SP1 and SP2.²⁴⁶
145. Also on 26 June 2019, Sunnyfield was advised of Sophia's complaint to the NDIS Commission.

Sunnyfield's actions

146. Ms Cuddihy said she notified the Chair of the Sunnyfield Board soon after the June 2019 complaints about the House were made to the NDIS Commission, and provided regular briefings to the Chair of the Board.²⁴⁷ After Ms Cuddihy briefed the Chair of the Board on 24 July 2019, Sunnyfield engaged a media management company called Repute Communications and the law firm Clayton Utz. A 'stakeholder communique' was also developed.²⁴⁸
147. Sunnyfield also engaged Ms Piaud, an independent consultant, to investigate allegations made in the complaints to the NDIS. During the hearing, Ms Cuddihy was asked about a draft report dated 28 July 2019, evidently written in light of Ms Piaud's first report. Ms Cuddihy said she was the author of the 28 July draft report and had sent it to Ms Luff for input. Ms Luff made some minor amendments, and sent it back to Ms Cuddihy on 29 July 2019.²⁴⁹ However, the report that was provided to

243 Exhibit 13-147, SUN.0001.0044.7451, p 1; Exhibit 13-148, SUN.0001.0044.7453, p 1; Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [226].

244 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [92].

245 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [225].

246 Exhibit 13-146, SUN.0001.0031.2378.

247 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-382 [17–19].

248 Exhibit 13-291, SUN.0001.0033.3781, p 1; Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-383 [30–33].

249 Exhibit 13-290, 'SUN.0001.0033.3780; Exhibit 13-291, SUN.0001.0033.3781; Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-385–387.

the Sunnyfield Board for the next Board meeting in August 2019 was quite different.²⁵⁰ Ms Cuddihy said she ‘had advice that this shouldn’t be reported in this format to the Board’.²⁵¹ She said she could not recall who gave her that advice.²⁵²

148. In the 28 July draft report, Ms Cuddihy referred to the ‘independent investigation’ conducted by Ms Piaud. She also mentioned criminal charges being brought against SP1 and SP2. She noted that Ms Piaud’s first report showed:

a pattern since about March 2018 by the Service Co-Ordinator of staff bullying, racism, intimidation, deceit, absconding from duties to undertake personal activities, not adhering to client schedules, and cover-up and condonement [sic] of laziness by [Community Support Worker SP2] and falsifying records, and misrepresentation of the facts, in addition to the alleged assault of one male client [Chen].²⁵³

149. She further recorded that Ms Piaud’s investigations had found SP2 ‘did not properly perform his duties, was lazy, taunted and alleged physically assaulted one male client [Carl] and despite the full knowledge by his SCO, his poor performance was not addressed’.²⁵⁴

150. After describing the immediate actions taken by Sunnyfield when these matters were brought to light, Ms Cuddihy set out the difficulties at the House since it took over operations there. She then wrote a section titled ‘How could this of [sic] happened?’, which said:

A boiling frog scenario appears to have occurred at [the House].

Due to the **querulant complaints of one guardian** a protectionist approach has occurred towards staff. Also due to the high level of client disability and behaviours it has masked a **potential causation**.

Several Response Team investigations did not substantiate previous allegations raised.

Regional Managers have been naive and distracted by seemingly endless, NDIS driven administration, along with Sunnyfield’s need to re-roster to ensure SCHADS Award compliance.

250 Exhibit 13-190, SUN.0001.0048.3047, pp 7–9.

251 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-386 [21–22]; P-391 [36–47] – 392 [1–14].

252 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-386 [21–27], P-391 [41– 46] – 392 [1–14], P-394 [1 –7].

253 Exhibit 13-291, SUN.0001.0033.3781, p 1.

254 Exhibit 13-291, SUN.0001.0033.3781, p 1.

[SP1] has been good at covering up and deceitful in his behaviour that has gone on undetected.

The staff have been intimidated, racially vilified and frightened of this gun owning [support coordinator / SP1] and knowing the protected [SP2] and their vital need for their jobs.

Sunnyfield QA Audits have not involved staff other than [SP1].

HR did not follow-up on complaints and exit interview negative feedback regarding [SP1].²⁵⁵

(Emphasis added.)

151. When asked what she meant by ‘potential causation’, Ms Cuddihy said the ‘high level of client disability and behaviours’ at the House masked the behaviour of SP1 and SP2.²⁵⁶ Ms Cuddihy agreed that this was her frank assessment of the state at the House and partly agreed that the purpose of the report was to internally assess what had happened and identify what had allowed the events to occur.²⁵⁷
152. Ms Cuddihy was questioned about the differences between the 28 July draft report and the 13 August 2019 report provided to the Sunnyfield Board for its meeting on 22 August 2019. This was headed ‘Agenda Item 6.1 – CEO Report’.²⁵⁸ She said the 28 July version was more ‘subjective’ whereas the 13 August report was more ‘factual’.²⁵⁹ She said that in the 13 August report she was using Ms Piaud’s ‘independent established allegations as the basis for the reporting to the Board’.²⁶⁰
153. The 13 August report described Ms Piaud’s investigation as ‘a limited desktop review’ in addition to interviews with parents and staff.²⁶¹ During the hearing, Ms Cuddihy said Ms Piaud conducted a ‘broad-ranging review’.²⁶²
154. Ms Cuddihy rejected the suggestion she tried to downplay Ms Piaud’s report to the Sunnyfield Board. She said the members of the Board were not given copies of the 29 July or subsequent reports prepared by Ms Piaud, but were ‘briefed fully’ at the 22 August 2019 meeting.²⁶³ Ms Cuddihy did not accept that she held anything back from the Board, nor that she presented a sanitised version of events to them.²⁶⁴

255 Exhibit 13-291, SUN.0001.0033.3781, p 2.

256 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-386 [45–47] – 387 [1–8].

257 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-387 [21–30].

258 Exhibit 13-190, SUN.0001.0048.3047, p 7.

259 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-393 [38–41].

260 Transcript, Caroline Cuddihy, Public hearing 13, 28 May 2021, P-450 [42–46].

261 Exhibit 13-190, SUN.0001.0048.3047, p 7.

262 Transcript, Caroline Cuddihy, Public hearing 13, 28 May 2021, P-407 [20].

263 Transcript, Caroline Cuddihy, Public hearing 13, 28 May 2021, P-409 [13–19].

264 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-393 [38–46] – 394.

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155. Ms Cuddihy maintained there would have been ‘fulsome’ discussions about what had occurred at the House during the 22 August 2019 Board meeting.²⁶⁵ Minutes of the meeting were not provided to the Royal Commission before the commencement of the public hearing. Ms Cuddihy produced those minutes, through her legal representatives, after the hearing adjourned on 27 May 2021.²⁶⁶
156. These Board minutes make reference to the 13 August report, recording that the report was noted and taken as read, with the only description in the minutes about Ms Cuddihy speaking to the report as ‘Drawing the board’s attention in particular to the disability sector market overview and to the NDIS revised 1 July 2019 pricing’.²⁶⁷ Ms Cuddihy said, however, that there was a ‘fulsome’ discussion about her report.²⁶⁸ She did not accept her report to the Board was toned down or that she wished to shield the Board from bad news or criticisms of Sunnyfield’s role in the circumstances.²⁶⁹
157. When the allegations against SP1 and SP2 were first made in late June 2019, Sunnyfield’s main action to protect the residents of the House was to suspend SP1 and SP2 and report them to the police.
158. Five months later, following Ms Piaud’s investigations, Sunnyfield sent SP1 a letter requesting he show cause as to why his employment should not be terminated.²⁷⁰ After receiving his response on 2 December, SP1’s employment was terminated by Sunnyfield on 9 December 2019 on the basis of ‘adverse findings’ made against him constituting serious misconduct. Those adverse findings were said to be a breach of duty to comply with Sunnyfield’s policies, including its Code of Conduct; breach of duty of good faith and fidelity to Sunnyfield; and breach of duty to exercise reasonable care and skill.²⁷¹
159. On 6 January 2020, SP2 was also sent a show cause letter.²⁷² He responded on 17 January 2020. On 21 January 2020, Sunnyfield terminated SP2’s employment again on the basis of ‘adverse findings’ against him constituting serious misconduct. The letter outlined the adverse findings, which mirrored those set out in the letter to SP1. It also noted SP2’s failure to participate in an interview with Ms Piaud, and that he was on a final warning because he had made racist remarks.²⁷³

265 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-394 [31].

266 Exhibit 13-310, SUN.9999.0002.0001; Transcript, Caroline Cuddihy, Public hearing 13, 28 May 2021, P-398-399.

267 Exhibit 13-310, SUN.9999.0002.0001, p 3.

268 Transcript, Caroline Cuddihy, Public hearing 13, 28 May 2021, P-402 [15–20].

269 Transcript, Caroline Cuddihy, Public hearing 13, 28 May 2021, P-402 [26].

270 Exhibit 13-153, SUN.0001.0053.1359, p 1; see also, Exhibit 13-347, SUN.0001.0053.1344.

271 Exhibit 13-153, SUN.0001.0053.1359, p 2.

272 Exhibit 13-348, SUN.0001.0053.1400.

273 Exhibit 13-155, SUN.0001.0053.1502, pp 1–2.

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160. Ms Cuddihy said Sunnyfield did provide additional support to the residents, their families, and staff at the House. She said Sunnyfield focused on promoting the welfare of the clients by providing ‘active, person-centred supports, promoting cultural improvements and better and more transparent communication with the families’.²⁷⁴ She also referenced ‘provision of substantive direct and indirect unfunded supports to the clients’ and support from Sunnyfield’s behaviour support advisor and its health co-ordinator.²⁷⁵ Primarily, however, her evidence about support provided to the residents in the wake of the revelations about what had occurred at the House concerned the replacement of the service co-ordinator who had been suspended, namely SP1, with a more experienced person.²⁷⁶
161. Ms Cuddihy also said Sunnyfield engaged in ‘substantive and extensive’ consultation with the families of the residents and their circles of support, including meetings and teleconferences and direct involvement from the General Manager of Shared Living.²⁷⁷
162. Eliza said she did not hear from Sunnyfield about the allegations of misconduct, including physical abuse, at the House until 19 August 2019, when she received a letter addressed to ‘parents and staff’.²⁷⁸ It said there had been ‘allegations of misconduct including physical abuse by two male staff towards two male residents’ of the House. It did not say who the staff were, but Eliza said it was easy to work out, because SP1 and SP2 had suddenly gone on leave.²⁷⁹

Situation in the House at the time of the public hearing

163. Sophia and Eliza gave evidence of their views and experiences about the situation at the House at the time of Public hearing 13. It is appropriate for the Royal Commission to acknowledge this evidence without making factual findings adverse to Sunnyfield, in circumstances where Sunnyfield did not have the opportunity to address them in evidence.
164. As at the date of Public hearing 13, Melissa, Carl, and Chen continued to reside in and receive services at the House in western Sydney.²⁸⁰

274 Exhibit 13-6, ‘Statement of Caroline Cuddihy’, 4 May 2021, at [302].

275 Exhibit 13-6, ‘Statement of Caroline Cuddihy’, 4 May 2021, at [21(a)], [297(b)].

276 Exhibit 13-6, ‘Statement of Caroline Cuddihy’, 4 May 2021, at [255], [258], [262], [297(a)], [361(a)(i)].

277 Exhibit 13-6, ‘Statement of Caroline Cuddihy’, 4 May 2021, at [21(g)].

278 Exhibit 13-38, IND.0080.0001.0262, p 1; Exhibit 13-2, ‘Statement of Eliza’, 29 April 2021, at [82].

279 Transcript, Eliza, Public hearing 13, 25 May 2021, P-96 [31–43].

280 Exhibit 13-6, ‘Statement of Caroline Cuddihy’, 4 May 2021, at [17]; Exhibit 13-2, ‘Statement of Eliza’, 29 April 2021, at [16].

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165. In her written statement, Sophia said the situation in the House had improved and that the staff seem happier, which had an impact on Carl as he has a great sense of intuition and can tell when something is wrong.²⁸¹ Sophia remained concerned, however, that the situation was fragile and things could change for the worse again. She said she did not have a lot of confidence that there were systems in place to prevent the same kind of abuse from occurring again in the future.²⁸²
166. During the public hearing, Sophia expressed concerns that there continued to be incidents involving Carl that could have been prevented. She commented that, while a lot of resources were spent on Carl's behaviour support plans, she sometimes wondered if they have been read or not. When asked if she has trust in Sunnyfield, she said:
- I feel it's a culture of cover-up, I'm sorry to say, because we get told stories that are smoothed over so that we won't react as badly. I think we don't really know the truth and that's the thing that concerns me.²⁸³
167. At the time of the public hearing it was Sophia's understanding that Sunnyfield had not been able to hire a house manager on a long-term basis. She said that without a permanent house manager some of the support workers seemed overworked to her, and she was worried they would quit and Carl would need to familiarise himself with new people again. Sophia said it was emotionally draining for her, wondering if Carl would be safe every day in his own home.²⁸⁴
168. Like Sophia, Eliza said she did not know when support staff may leave the House or Sunnyfield, and she worried that the situation remained fragile.²⁸⁵ Eliza felt that Melissa was being better supported than before. At the time of the hearing, Eliza was working with key people in Sunnyfield to resolve issues as they arose, and attended weekly meetings with the Regional Manager. She expressed the view that this Regional Manager was doing an extraordinary job and was building relationships, being collaborative, and acknowledging mistakes when they occurred.²⁸⁶

281 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [53].

282 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [54].

283 Transcript, Sophia, Public hearing 13, 25 May 2021, P-135 [38–40].

284 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [56].

285 Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [97].

286 Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [95–96].

Part 4: Investigations and prosecutions

Ms Piaud's investigations

169. On 2 July 2019, Sunnyfield commissioned Ms Jennie Piaud, an independent consultant with over 35 years of work experience in the human resources sector, to investigate the allegations made in the complaints to the NDIS Commission.²⁸⁷ Ms Piaud had previously been engaged by Sunnyfield to undertake investigations into workplace bullying or harassment, as well as human resources and pay reviews.²⁸⁸ None of these investigations related to the House.
170. Ms Piaud prepared a number of reports arising out of the complaints. She was later asked to investigate an additional allegation against SP2 that came to light in October 2019,²⁸⁹ as well as unexplained injuries sustained by Melissa.²⁹⁰
171. Ms Piaud gave evidence about the usual approach to an investigation.²⁹¹ She explained that an allegation could be found to be 'sustained', 'sustained with mitigating circumstances', 'partially sustained' or 'not sustained'.²⁹² A not sustained finding did not necessarily mean that the alleged event did not occur, but that Ms Piaud could not gather sufficient evidence to sustain it.²⁹³
172. Ms Piaud sustained a number of allegations against SP1 and SP2.²⁹⁴ Ms Cuddihy did not dispute that these findings should be accepted as fact. Indeed, Sunnyfield relied on some of Ms Piaud's findings to terminate the employment of SP1 and SP2.²⁹⁵
173. Ms Piaud sent a draft report on her first investigation to the Sunnyfield Client Safeguarding Manager on 22 July 2019. Ms Cuddihy confirmed the report was also provided to her and to other senior staff at Sunnyfield.²⁹⁶ The evidence establishes that she received the draft report by 24 July 2019, on which day she briefed the Chair of the Sunnyfield Board.²⁹⁷ Ms Piaud provided a second version of the draft report on 29 July 2019.

287 Exhibit 13-1, 'Statement of Jennie Piaud', 6 April 2021, at [1(c)], [2(a)].

288 Exhibit 13-1, 'Statement of Jennie Piaud', 6 April 2021, at [1(g)].

289 Transcript, Jennie Piaud, Public hearing 13, 25 May 2021, P-150 [16–22].

290 Exhibit 13-1, 'Statement of Jennie Piaud', 6 April 2021, at [2.3].

291 Transcript, Jennie Piaud, Public hearing 13, 25 May 2021, P-142–149.

292 Transcript, Jennie Piaud, Public hearing 13, 25 May 2021, P-148 [23–30].

293 Exhibit 13-140, SUN.0001.0045.3295, p 4.

294 Exhibit 13-139, SUB.0001.0045.0593, pp 41–42; Exhibit 13-140, SUN.0001.0045.3295, pp 32–33.

295 Transcript, Caroline Cuddihy, Public hearing 13, 28 May 2021, P-423 [33–5].

296 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [250(a)].

297 Transcript, Jennie Piaud, Public hearing 13, 27 May 2021, P-381–382.

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174. On 6 August 2019, Ms Piaud was told by Sunnyfield to put her investigation on hold to ensure the police investigation of SP1 and SP2 was not compromised.²⁹⁸ On 9 August, she was asked to provide a final version of her report, so that Sunnyfield could 'reply to the NDIS Quality and Safeguards Commission'.²⁹⁹
175. Ms Piaud sent the Sunnyfield Client Safeguarding Manager the final version of her first report on 13 August 2019, although it was still dated 29 July.³⁰⁰ This was the version of Ms Piaud's first report provided in evidence. We refer to it as the First Report.
176. In the course of preparing the First Report, Ms Piaud had access to documents provided by Sunnyfield, such as progress notes and reports of incidents.³⁰¹ She interviewed a number of support workers at the House, as well as Carl's mother, Sophia and Chen's mother, Jane.³⁰² She did not interview or attempt to interview Melissa, Carl, or Chen in connection with this or any of her subsequent investigations.³⁰³
177. Ms Piaud did not interview SP1 or SP2 before completing the First Report because the police had informed Sunnyfield that charges against them were being pursued and advised Sunnyfield not to interview either man until the police had done so themselves.³⁰⁴ As a consequence, the focus of Ms Piaud's investigation was not on the allegations of physical assault but on other allegations emerging from interviews with Sophia, Jane and the Sunnyfield staff.³⁰⁵
178. The First Report set out eleven separate allegations of violence and abuse by SP1, SP2 or both, directed at Melissa, Carl and Chen.³⁰⁶ The allegations included incidents of kicking, pulling Carl's hair, dragging Carl by his car harness and forcefully pulling or pushing Carl.
179. Ms Piaud described these allegations in the First Report as 'established'. By that she appears to have meant that each of the allegations had been the subject of 'verification' by statements made in interviews with the parents of residents, staff and the Regional Manager.³⁰⁷
180. The Final Report recorded numerous other allegations against SP1 and SP2, including allegations of verbal abuse, mismanagement of medications and client funding, unauthorised absences and breaches of the Sunnyfield Code of Conduct.

298 Exhibit 13-1, 'Statement of Jennie Piaud', 6 April 2021, p 3.

299 Exhibit 13-1, 'Statement of Jennie Piaud', 6 April 2021, p 3.

300 Exhibit 13-138, SUN.0001.0032.0839.

301 Exhibit 13-1, 'Statement of Jennie Piaud', 6 April 2021, pp 6–7.

302 Exhibit 13-138, SUN.0001.0032.0839, p 1.

303 Exhibit 13-1, 'Statement of Jennie Piaud', 6 April 2021, p 14 [7].

304 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [230–231].

305 Transcript, Jennie Piaud, Public hearing 13, 25 May 2021, PP-151–152.

306 Exhibit 13-138, SUN.0001.0032.0839, pp 5–19.

307 Exhibit 13-138, SUN.0001.0032.0839, p 5.

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181. Ms Piaud did not make findings about the allegations of violence and abuse, apparently because some of the allegations had been referred to the police and she had been unable to put the allegations to SP1 and SP2. However, the First Report included Ms Piaud's 'insights/observations/recommendations', based on her investigations. Ms Piaud said the culture at the House had become 'disjointed and distrusting' with the team 'segregated based on ethnicity'.³⁰⁸ SP1 had made racial comments and staff reported feeling bullied by him. They felt they could not report incidents for fear of reprisal such as loss of shifts or even loss of their jobs.³⁰⁹
182. Ms Piaud observed that staff had been pressured or bullied to 'carry out tasks they know to be wrong', such as taking Carl in the van with only one support worker or writing up fictitious incident reports concerning him.³¹⁰ At least three staff said they had reported poor conduct of SP2 (such as not participating in house duties or client personal care) to SP1, who had not acted on the reports.³¹¹
183. The same day the First Report was given to Sunnyfield, its lawyers provided Ms Piaud with a brief to investigate additional matters. She was told this brief was subject to Legal Professional Privilege. The remainder of the work Ms Piaud did for Sunnyfield about the House was carried out on the same basis.³¹²
184. The Sunnyfield lawyers requested Ms Piaud look into a complaint by a support worker at the time of his resignation about the conduct of SP1 and SP2. This was the same support worker Sophia had spoken to about his departure from Sunnyfield. Ms Piaud was also asked to look into the pre-employment checks conducted by Sunnyfield when SP1 and SP2 were recruited.³¹³
185. Ms Piaud prepared two separate reports on these matters and provided them to Sunnyfield's lawyers on 2 September 2019.³¹⁴ We refer to these reports together as the 'Second Report'.
186. Ms Piaud observed that SP1's resume showed 'several significant breaks in employment continuity, which did not appear to have been followed up in the recruitment phase'.³¹⁵ Ms Piaud had attempted to clarify whether SP1 previously worked for one particular service provider but SP1 did not respond to the inquiry.³¹⁶

308 Exhibit 13-138, SUN.0001.0032.0839, p 27.

309 Exhibit 13-138, SUN.0001.0032.0839, p 27.

310 Exhibit 13-138, SUN.0001.0032.0839, p 27.

311 Exhibit 13-138, SUN.0001.0032.0839, pp 27–28.

312 Exhibit 13-1, 'Statement of Jennie Piaud', 6 April 2021, pp 3–4.

313 Exhibit 13-1, 'Statement of Jennie Piaud', 6 April 2021, pp 3–4; Transcript, Jennie Piaud, Public hearing 13, 25 May 2021, P-150 [16–22]; Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [238].

314 Exhibit 13-1, 'Statement of Jennie Piaud', 6 April 2021, p 10 [4.2].

315 Transcript, Jennie Piaud, Public hearing 13, 25 May 2021, P-159 [15–18]; Exhibit 13-139, SUN.0001.0045.0593, p 44 [6.3]; Exhibit 13-142, SUN.0001.0031.1378, p 4.

316 Transcript, Jennie Piaud, Public hearing 13, 25 May 2021, P-160[3-4]; Exhibit 13-139, SUN.0001.0045.0593, p 44 [6.3].

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187. Ms Piaud also noted that SP2 had a significant gap in employment that was unaccounted for³¹⁷ and that his Working with Children Check had not been verified by Sunnyfield prior to the commencement of his employment.³¹⁸
188. On 22 August 2019, Sunnyfield’s lawyers again engaged Ms Piaud to investigate a very recent unexplained injury to Melissa.³¹⁹ Ms Piaud interviewed Eliza and Sunnyfield staff about this matter between 23 and 29 August.³²⁰ In her report dated 13 September 2019, Ms Piaud said the cause of the injury was inconclusive, but there was no evidence to suggest any staff members or other persons were responsible.³²¹
189. On 17 September 2019, the police gave Sunnyfield permission to continue its investigation into the allegations raised against SP1 and SP2.³²² Sunnyfield’s lawyers then sent Ms Piaud a written brief to resume her investigations and make factual determinations so that the lawyers could provide Sunnyfield with legal advice. In particular, Ms Piaud was asked to make factual findings on matters which could amount to a breach of SP1 or SP2’s employment duties. She was also asked to provide ‘insights and observations’ on the culture of the House, the working relationship of staff and families, and systemic issues.³²³ Ms Piaud was not explicitly asked to ascertain whether any of the residents of the House had been subject to violence or abuse by SP1 or SP2.
190. Ms Piaud proceeded to interview SP1 and attempted to interview SP2, following which she prepared two reports.³²⁴ She provided SP1 with the allegations against him and interviewed him on 4 October 2019. He gave her written and oral responses to her questions. Ms Piaud gave evidence that SP1 denied any misconduct and provided an alternative account of what occurred at the House.³²⁵
191. Ms Piaud prepared a report in relation to SP1, the final version of which she provided to Sunnyfield’s lawyers on 1 November 2019 (Third Report). She found that a number of allegations against SP1 had been sustained. SP1 had:
- directed an employee to drive him and Carl to a fishing shop when he was supposed to be taking Carl on an appropriate outing³²⁶

317 Exhibit 13-141, SUN.0001.0031.1355, p 8.

318 Exhibit 13-141, SUN.0001.0031.1355, p 8; Exhibit 13-142, SUN.0001.0031.1378, p 6.

319 Exhibit 13-1, ‘Statement of Jennie Piaud’, 6 April 2021, [2.3]; Transcript, Jennie Piaud, Public hearing 13, 25 May 2021, P-150 [10–14]; Exhibit 13-6, ‘Statement of Caroline Cuddihy’, 4 May 2021, [241–244].

320 Exhibit 13-143, SUN.0001.0050.7274, p 1.

321 Exhibit 13-143, SUN.0001.0050.7274, p 9 [5.1].

322 Exhibit 13-139, SUN.0001.0045.0593, p 2; Exhibit 13-140, SUN.0001.0045.3295, p 2.

323 Exhibit 13-1, ‘Statement of Jennie Piaud’, 6 April 2021, p 3.

324 Exhibit 13-139, SUN.0001.0045.0593; Exhibit 13-140, SUN.0001.0045.3295.

325 Transcript, Jennie Piaud, Public hearing 13, 25 May 2021, P-156 [22–26].

326 Exhibit 13-139, SUN.0001.0045.0593, pp 19–20.

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- rostered a new support worker on alone when it was the worker's very first shift at the House, thereby putting the residents at risk³²⁷
 - told Sophia that a support worker had resigned due to Carl's behaviours, when the worker's resignation letter gave different reasons³²⁸
 - made racially inappropriate comments at the time of the Christchurch mosque shootings³²⁹
 - spoken disrespectfully about family members of clients, including Sophia, Jane, and Eliza³³⁰
 - directed a support worker to take Carl in the van without additional support, in contravention of his Behaviour Support Plan.³³¹
192. Ms Piaud did not sustain an allegation from a support worker that SP1 had caused a large bruise to Chen's thigh in July 2018 because she could not determine the events that led up to and caused the bruise. Ms Piaud said it was the word of the support worker who made the allegation that SP1's foot had caused the bruise, against that of SP1 himself.³³²
193. Ms Piaud commented in the Third Report on systemic issues, including a culture of fear; a lack of trust; the staff's fear of repercussions should anything happen on their shift; a lack of trust by the parents in the management; and a lack of respect by SP1 towards the parents.³³³
194. SP2 declined to be interviewed by Ms Piaud and, through his legal representative, SP2 denied all allegations of misconduct.³³⁴
195. Ms Piaud prepared a further report, dated 19 December 2019 (Fourth Report). She sustained seven allegations of verbal abuse by SP2, including findings that SP2 used a rough tone of voice with Carl and Chen,³³⁵ swore at clients,³³⁶ and was verbally abusive towards Chen³³⁷ and Carl.³³⁸

327 Exhibit 13-139, SUN.0001.0045.0593, pp 39–40.

328 Exhibit 13-139, SUN.0001.0045.0593, p 38.

329 Exhibit 13-139, SUN.0001.0045.0593, pp 28–29.

330 Exhibit 13-139, SUN.0001.0045.0593, p 30.

331 Exhibit 13-139, SUN.0001.0045.0593, pp 23–25.

332 Exhibit 13-139, SUN.0001.0045.0593, p 7.

333 Exhibit 13-139, SUN.0001.0045.0593, p 43.

334 Exhibit 13-140, SUN.0001.0045.3295, pp 2–4, 9[1].

335 Exhibit 13-140, SUN.0001.0045.3295, pp 22–23.

336 Exhibit 13-140, SUN.0001.0045.3295, p 25.

337 Exhibit 13-140, SUN.0001.0045.3295, pp 22, 23–24.

338 Exhibit 13-140, SUN.0001.0045.3295, pp 21–22, 24–26.

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196. Ms Piaud's Fourth Report sustained seven allegations of physical abuse by SP2, including the following:
- on or about 24 June 2019 SP2 pulled Carl's hair while attempting to administer medication to him³³⁹
 - on or about 24 June 2019 SP2 tipped Carl out of a lounge chair and pushed him³⁴⁰
 - on or about 20 June 2019 SP2 dragged Carl by the long strap on his vehicle harness following an outing in the van when Carl exhibited behaviours of concern³⁴¹
 - SP2 kicked a lounge chair that Carl was sitting on for the purpose of scaring him³⁴² and
 - SP2 pushed and kicked Carl on at least two occasions in late May 2019.³⁴³
197. Ms Piaud also sustained allegations that SP2 mismanaged Carl's medication,³⁴⁴ did not assist staff to support clients³⁴⁵ and threw pillows at Carl, causing Carl to become agitated.³⁴⁶
198. A further allegation against SP2 was made on 25 October 2019. A community support worker telephoned Sunnyfield's Response Team and said she had witnessed SP2 drag Melissa by the wrists from the kitchen to her bedroom while naked, on or about 29 May 2019 or 3 June 2019.³⁴⁷ On 28 October 2019, Sunnyfield made a reportable incident notification to the NDIS Commission and reported the allegation to the police.³⁴⁸
199. While the matter was with the police, Ms Piaud was not asked to investigate the allegation. On 14 May 2020, after SP2 had been charged, Sunnyfield's lawyers engaged Ms Piaud to investigate and provide a report. She was asked to:
- assess the information gained through all interviews and make a finding as to whether the alleged conduct occurred, for the purpose of enabling Sunnyfield's legal representatives to provide it with advice about its compliance from probity and NDIS compliance perspectives.³⁴⁹

339 Exhibit 13-139, SUN.001.0045.0593, pp 9-10.

340 Exhibit 13-139, SUN.001.0045.0593, p 11.

341 Exhibit 13-139, SUN.001.0045.0593, pp 12-14.

342 Exhibit 13-145, SUN.0001.0050.7176, p 17.

343 Exhibit 13-145, SUN. 0001.0050.7176, pp 19-20.

344 Exhibit 13-140, SUN.0001.0045.3295, pp 26-27.

345 Exhibit 13-140, SUN.0001.0045.3295, pp 30-31.

346 Exhibit 13-140, SUN.0001.0045.3295, p 31.

347 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [247]; Exhibit 13-145, SUN.0001.0050.7176, pp 2-3.

348 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [80(d)]; Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [248].

349 Exhibit 13-145, SUN.0001.0050.7176, p 2.

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200. In her report dated 27 May 2020 (Fifth Report), Ms Piaud stated that ‘having weighed up the evidence available to me, my finding on the balance of probabilities is that the incident did occur.’³⁵⁰
201. Ms Piaud again addressed systemic issues in this report, including the culture of blame and fear of reporting among staff in the House; a visible lack of trust in the House management; and an environment where staff were wary of management and each other.³⁵¹ Ms Piaud’s recommendations included improvements in staff training to ensure staff understood the requirement to report incidents.³⁵²
202. Ms Piaud also noted in the report that, since SP1’s employment was terminated on 9 December 2019 by Sunnyfield, there appeared to be more trust and confidence in the House.³⁵³

Finding 1

Ms Piaud, an independent consultant commissioned by Sunnyfield to investigate allegations of violence and abuse, sustained multiple allegations that SP2 had acted violently towards and had abused Carl and Chen. There is no dispute that the allegations sustained by Ms Piaud actually occurred. She also found evidence in support of allegations that SP1 had acted violently towards Chen, although these allegations were ultimately not sustained.

Finding 2

Notwithstanding the dismissal of the criminal charges against SP1 and SP2, it is likely that SP1 and SP2 committed other acts of violence and abuse directed at Carl, Chen and Melissa during the period both were employed at the House.

Finding 3

Ms Piaud’s findings about the dysfunction of the House accurately reflect the state of affairs at the House.

350 Exhibit 13-145, SUN.0001.0050.7176, p 7.

351 Transcript, Jennie Piaud, Public hearing 13, 25 May 2021, P-164 [38–46]; Exhibit 13-145, SUN.0001.0050.7176, pp 8–9.

352 Transcript, Jennie Piaud, Public hearing 13, 25 May 2021, P-164 [42–46]; Exhibit 13-145, SUN.0001.0050.7176, p 9.

353 Exhibit 13-145, SUN.0001.0050.7176, p 9.

Sunnyfield's claim of client legal privilege

203. As has been noted, in May 2020, Ms Piaud was engaged by Sunnyfield's lawyer to prepare a report on the allegations that SP2 had acted violently towards Melissa. Sunnyfield claimed this report was subject to client legal privilege, along with all of Ms Piaud's other reports for Sunnyfield, except the First Report.³⁵⁴ Sunnyfield provided a summary of this First Report – Ms Piaud's report on the complaints made to the NDIS Commission – in August 2020.³⁵⁵
204. Counsel Assisting submitted that Sunnyfield should not have asserted client legal privilege and that all Ms Piaud's reports should have been provided in full to the NDIS Commission. The Australian Government supported this submission.
205. Sunnyfield resisted the finding. It contended that Ms Piaud's reports attracted client legal privilege because the reports had been commissioned to enable Sunnyfield to obtain legal advice in relation to anticipated litigation against SP1 and SP2 and to issues of regulatory compliance. Sunnyfield also contended that the NDIS Commission had not expressed concern about its response to the alleged incidents.
206. We accept that Sunnyfield was entitled to claim client legal privilege over the contents of most if not all of Ms Piaud's reports. However, it was open to Sunnyfield to waive privilege over the contents of the documents.
207. In our view, if Sunnyfield's primary concern was the safety, health and wellbeing of the residents of the House, it should have provided all Ms Piaud's reports in full to the NDIS Commission. It is plainly important that the NDIS Commission have all relevant information concerning any complaint or notification made to it. This is particularly the case where a service provider has advised the NDIS Commission that it is undertaking an investigation into alleged misconduct and is aware that the NDIS Commission is relying on the service provider to furnish information relevant to a complaint or notification relating to the alleged misconduct.
208. It is true, as Sunnyfield contended, that Mr Head indicated in a statement that Sunnyfield's response to the alleged incidents was adequate. But the NDIS Commission did not have Ms Piaud's reports in full and so was not aware of their contents. Disclosure of the reports in full would have assisted the NDIS Commission in discharging its statutory functions, which include safeguarding the health and wellbeing of NDIS Participants.

354 Exhibit 13-1, 'Statement of Jennie Piaud', 6 April 2021, pp 2–9.

355 Exhibit 13-322, CTD.07200.0013.3638.

Finding 4

Sunnyfield should not have withheld any part of Ms Piaud's reports from the NDIS Commission by relying on client legal privilege. It should have waived any privilege over the contents of the documents and provided the reports in full to the NDIS Commission.

Criminal proceedings

209. After Sunnyfield reported the allegations concerning SP1 and SP2 to NSW Police on 27 June and 28 October 2019, the police conducted their own investigations. Ms Cuddihy said Sunnyfield worked with the police to provide access to the House in a manner that minimised disruption to the residents; responded to ten 'separate and copious' document requests; attended multiple hearings in criminal proceedings against SP1 and SP2; and supported Sunnyfield staff to provide witness statements and attend proceedings as witnesses.³⁵⁶
210. Sophia said she was aware of the police investigations, but she was not formally interviewed by the police.³⁵⁷ The police did not ask her whether or how to attempt to communicate with Carl.³⁵⁸ Eliza also said that the police did not seek a statement from her in relation to the alleged assault of Melissa by SP2, nor ask her how best to communicate with Melissa.³⁵⁹ Ms Cuddihy stated that it was her understanding Chen, Carl, and Melissa were 'not required to participate in the investigations or the proceedings'.³⁶⁰
211. On 24 July 2019, SP2 was charged with seven offences involving common assault and intimidation of Carl and Chen arising out of incidents alleged to have occurred in March, April, and June 2019. Four assault charges and the two intimidation charges involved Carl, and one assault charge involved Chen.³⁶¹
212. The charges were heard in the Local Court in October 2020. SP2 gave evidence and denied the allegations. The Magistrate dismissed the charges.

356 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [21(b)], [300].

357 Transcript, Sophia, Public hearing 13, 25 May 2021, P-131 [7-8].

358 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [45].

359 Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [85].

360 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [298].

361 Exhibit 13-315, NSW.9999.0019.0408_E.

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213. The Magistrate in her reasons observed that in relation to each charge there was only one witness for the prosecution and no independent evidence such as injuries or video evidence. The Magistrate also noted that there was no evidence from the alleged victims, both of whom had intellectual disabilities and were ‘mostly non-verbal’. Accordingly the case was essentially ‘word against word’ and she could not be satisfied beyond reasonable doubt that the offence occurred.³⁶²
214. On 29 August 2019, SP1 was placed under arrest and charged with assault occasioning actual bodily harm (domestic violence related) and common assault (domestic violence related) against Chen.³⁶³ These charges related to an incident said to have occurred in July 2018.
215. The matter was heard in the Local Court in March 2020. At the conclusion of the prosecution case, the Police Prosecutor conceded that the charges should be dismissed. The Prosecutor accepted that the principal witness for the prosecutor, a support worker at the House, had ‘some credibility issues’.³⁶⁴
216. On 22 January 2020, SP2 was also charged with common assault (domestic violence related) of Melissa in late May or early June 2019.³⁶⁵ This charge was dismissed by a Local Court magistrate on 17 August 2020. The Failed Prosecution Report notes this was due to issues with a lack of detail from witnesses. It also states SP2’s supervisor, SP1, did not provide a statement in the case.³⁶⁶

Regulators

217. As discussed in Part 3, between 2017 and 2020, various agencies external to Sunnyfield responded to complaints concerning incidents that occurred at the House. Each Agency is subject to its governing legislation and rules. During the events examined at Public hearing 13, a predominantly statebased system of disability services and oversight transitioned to the national system of funding services through the NDIS and national oversight of NDIS providers.
218. Such transitions are inevitably complex. They can also create risks for individual people with disability and frustration for them and their families when they seek external action. Eliza described her experience of making complaints about Sunnyfield’s efforts to evict Melissa as a ‘giant game of handball’, where she felt each external body she approached did not consider the matter to be their problem.³⁶⁷

362 Transcript of proceedings, *R v [SP2]*, Local Court of New South Wales, Magistrate Schurr, 65.

363 Exhibit 13-313, NSW.9999.0019.0129_E.

364 Transcript of proceedings, *R v [SP1]*, Local Court of New South Wales, Magistrate McGlynn, 39 (Prosecutor).

365 Exhibit 13-314, NSW.9999.0019.0403_E.

366 Exhibit 13-312, NSW.0044.0047.0001.

367 Transcript, Eliza, Public hearing 13, 24 May 2021, P-77 [31].

NSW Ombudsman

Functions and powers

219. Before the NDIS commenced in NSW on 1 July 2018, the NSW Ombudsman had three key functions in relation to the oversight of disability services.
220. First, the NSW Ombudsman had functions regarding the reportable conduct scheme for children pursuant to Part 3A of the *Ombudsman Act 1974* (NSW) (*Ombudsman Act*). Part 3A was in force from 1998 until 29 February 2020.³⁶⁸ This required government and non-government agencies providing services to children to have processes for dealing with allegations of employee misconduct towards or in the presence of children. Agencies were required to notify the NSW Ombudsman of reportable conduct.³⁶⁹ While the relevant agency generally remained responsible for handling the allegations, the NSW Ombudsman had powers to monitor the agency's investigation or to investigate a reportable allegation or conviction.³⁷⁰
221. Second, the NSW Ombudsman had responsibility for a reportable incident scheme for people with disability living in supported group accommodation under Part 3C of the *Ombudsman Act*. This required certain government and non-government agencies providing supported group accommodation to have processes for dealing with allegations of reportable incidents against, towards, between or in the presence of residents in that accommodation.³⁷¹ 'Reportable incidents' included assault, ill-treatment or neglect of a resident, or fraud or related offences committed against a resident.³⁷² The NSW Ombudsman could monitor the agency's investigation or itself investigate a reportable allegation or conviction.³⁷³
222. Part 3 of the *Ombudsman Act* remains in force but it is now of little practical consequence. When the NDIS commenced in NSW on 1 July 2018, the NSW Ombudsman's responsibilities were limited to reportable incidents involving supported group accommodation operated or funded by the NSW Department of Communities and Justice. The Department ceased to provide supported group accommodation in December 2020.³⁷⁴

368 Exhibit 13-9, 'Statement of Paul Richard Miller', 10 May 2021, at [9], [31].

369 *Ombudsman Act 1974* (NSW) s 25C(1).

370 Exhibit 13-9, 'Statement of Paul Richard Miller', 10 May 2021, at [15].

371 *Ombudsman Act 1974* (NSW) s 25R.

372 *Ombudsman Act 1974* (NSW) s 25P.

373 *Ombudsman Act 1974* (NSW) ss 25U, 25W; Exhibit 13-9, 'Statement of Paul Richard Miller', 10 May 2021, at [19–24].

374 Exhibit 13-9, 'Statement of Paul Richard Miller', 10 May 2021, at [9], [32–33].

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223. Third, the NSW Ombudsman had functions pursuant to the *Community Services (Complaints Review and Monitoring) Act 1993* (NSW) (*CRM Act*). The NSW Ombudsman retains some of these functions, but only in respect of assisted boarding houses.³⁷⁵ Pursuant to Part 4 of this Act, the Ombudsman could receive complaints about the provision, failure to provide, withdrawal, variation or administration of community services by providers. The NSW Ombudsman had powers under the *Ombudsman Act* to investigate conduct of funded providers in response to complaints or on an 'own motion' basis. Under section 11(1)(e) of the *CRM Act* the NSW Ombudsman could also inquire, on his or her own initiative, into matters affecting services providers and persons receiving, or eligible to receive, community services.³⁷⁶
224. The NSW Ombudsman was prohibited by section 34(1) of the *Ombudsman Act* from disclosing any information obtained in the course of the Ombudsman's Office. The prohibition was subject to a number of exceptions. Relevantly for present purposes, a disclosure was permitted if made:
- (b2) to any person if the Ombudsman believes on reasonable grounds that disclosure to that person is necessary to prevent or lessen the likelihood of harm being done to any person (but only if the Ombudsman also believes on reasonable grounds that there is a risk of harm (including self-harm) being done to any person).³⁷⁷

Role in Public hearing 13

225. The NSW Ombudsman voluntarily complied with a request from the Royal Commission prior to Public hearing 13 to provide certain documents. A review of the documents indicated that the NSW Ombudsman's Office had become aware of serious allegations concerning SP1's conduct in the years prior to his employment by Sunnyfield in April 2017.
226. Among the documents which came to the Royal Commission's attention was a draft letter from the Ombudsman dated 12 December 2018.³⁷⁸ The draft letter contained details of numerous allegations that had been made against SP1.
227. The Royal Commission sought further information from the NSW Ombudsman in the form of a written statement. Two statements were subsequently provided by Mr Paul Miller,³⁷⁹ who had been appointed as Acting NSW Ombudsman in August 2020 and as the Ombudsman from 1 May 2021.³⁸⁰

375 Exhibit 13-9, 'Statement of Paul Richard Miller', 10 May 2021, at [34].

376 Exhibit 13-9, 'Statement of Paul Richard Miller', 10 May 2021, at [27–30].

377 *Ombudsman Act 1974* (NSW) s 34(1)(b2).

378 Exhibit 13-231, NOM.00001.0452.0001.

379 Exhibit 13-9, 'Statement of Paul Richard Miller', 10 May 2021; Exhibit 13-10, 'Supplementary statement of Paul Miller', 19 May 2021.

380 Exhibit 13-9, 'Statement of Paul Richard Miller', 10 May 2021, at [4].

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228. The Royal Commission requested Mr Miller to give oral evidence at Public hearing 13. Through the NSW's Ombudsman's legal representative, Mr Miller declined to do so on the grounds that under NSW law the NSW Ombudsman is neither competent nor compellable to give evidence before the Royal Commission.³⁸¹
229. There was debate at Public hearing 13 whether the NSW Ombudsman's claim to be neither competent nor compellable as a witness was well-founded. However, Counsel Assisting the Royal Commission did not press the point and Mr Miller did not give evidence.
230. Whether the NSW Ombudsman should have disclosed the information concerning SP1 to Sunnyfield must be addressed on the available evidence. In assessing the evidence we do not draw any adverse inference against the NSW Ombudsman because Mr Miller did not give oral evidence at Public hearing 13.

Knowledge of allegations against SP1

231. In 2017 and 2018, the NSW Ombudsman's office was conducting an own motion inquiry into probity checks and recruitment practices of accommodation service providers when obtaining staff from labour hire agencies.³⁸² In October 2017, staff prepared a briefing memorandum for the then Community and Disability Services Commissioner and Deputy Ombudsman. The memorandum referred to SP1 (among others) as an example of probity checking issues, as he had been dismissed by his previous employer and then gained employment through an employment agency. The memorandum outlined notifications made to the NSW Ombudsman concerning SP1's conduct by his previous employers.³⁸³
232. On 2 February 2018, Sunnyfield notified the NSW Ombudsman that Melissa had 'bruising and marks on her body'.³⁸⁴ SP1 was recorded as the service coordinator. Sunnyfield submitted a further notification on 23 April 2018, following an anonymous allegation received concerning the conduct of SP1 and another Sunnyfield employee towards Melissa.³⁸⁵ In response to these notifications, the NSW Ombudsman's office conducted a file review of notifications concerning SP1 and prepared a briefing note dated 7 August 2018 outlining the notifications they identified.³⁸⁶

381 *Ombudsman Act 1974* (NSW) ss 32, 35. See also, *Royal Commissions Act 1902* (Cth) ss 1B, 3; *Royal Commissions Act 1923* (NSW) ss 4, 11(2)(b).

382 Exhibit 13-9, 'Statement of Paul Richard Miller', 10 May 2021, at [44].

383 Exhibit 13-9, 'Statement of Paul Richard Miller', 10 May 2021, at [44–47]; Exhibit 13-229, NOM.0001.0443.0023_E.

384 Exhibit 13-9, 'Statement of Paul Richard Miller', 10 May 2021, at [43]; Exhibit 13-225; NOM.0001.0583.0001.

385 Exhibit 13-224, NOM.0001.0523.0001.

386 Exhibit 13-321, NOM.0001.0461.0001.

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233. These notifications were also outlined in a further briefing note dated 5 September 2018, titled 'Notifications to the NSWOO concerning allegations against [SP1] - in chronological order (view to release information to [SP1's] current employers pursuant to s.11 [of the *CRM Act*])'.³⁸⁷ It is not clear from the documents provided by the NSW Ombudsman exactly when or by whom it was first proposed to disclose this information to Sunnyfield.
234. On 11 September 2018, the staff member who prepared these briefing notes requested a meeting with the then Deputy Ombudsman to 'discuss a case concerning [SP1], employee SOA in disability, where we are proposing to utilise a s.11 inquiry'.³⁸⁸ The proposed meeting did not take place until November 2018.
235. What is clear is that staff within the NSW Ombudsman's office prepared a draft letter to Ms Cuddihy from the then Deputy Ombudsman regarding SP1, dated 13 September 2018 (September draft).³⁸⁹
236. The September draft referred to the NSW Ombudsman's power under section 11(1) (e) of the *CRM Act* to make inquiries of its own initiative. It said the NSW Ombudsman was conducting an 'inquiry into the effectiveness of the legal, policy and practice framework relating to the exchange of information, by disability service providers and other relevant agencies'. The September draft outlined allegations against SP1 notified to the NSW Ombudsman's office by SP1's previous employer, including supervisory neglect of a person with disability and falsifying documents including timesheets and medical charts. The September draft advised Sunnyfield that SP1's previous employment had been terminated. It sought information about the recruitment of SP1 by Sunnyfield and Sunnyfield's recruitment and probity policies in general.³⁹⁰
237. By October 2018, staff within the NSW Ombudsman's office were discussing sending a version of the September draft to the Office of the Children's Guardian, under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (*CYP Act*).³⁹¹ Chapter 16A permits 'prescribed bodies' to disclose information to each other in certain circumstances relating to the safety, welfare, or wellbeing of a child or young person or class of children or young persons. The staff noted that advice received about SP1's Working with Children Check status and verification history 'indicates that [the Office of the Children's Guardian] are only aware of one of the six matters that we are aware of'.³⁹²

387 Exhibit 13-320, NOM.0001.0457.0001, pp 5, 7–12.

388 Exhibit 13-320, NOM.0001.0457.0001, pp 13–14.

389 Exhibit 13-9, 'Statement of Paul Richard Miller', 10 May 2021, at [46–48]; Exhibit 13-228, NOM.0001.0456.0001.

390 Exhibit 13-228, NOM.0001.0456.0001.

391 Exhibit 13-320, NOM.0001.0457.0001, p 5.

392 *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245C.

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238. On 7 November 2018 the then Deputy Ombudsman and staff of the NSW Ombudsman's office met to discuss SP1. A file note of that meeting refers to the September draft prepared under section 11 of the *CRM Act*. The note records '[a]dvice provided by Steve', an apparent reference to the then Deputy Ombudsman:³⁹³
- specifically in relation to [SP1] and the release of information, Steve advised:
i) We release info. to Sunnyfield (current employer) and to all agencies he is currently verified for – WWCC. We can do this under section 34(1)(b2) of the Ombudsman Act.³⁹⁴
239. Updated versions of the September draft letter to Ms Cuddihy were prepared by staff in the NSW Ombudsman's office following the meeting with the then Deputy Ombudsman in November 2018.³⁹⁵ A further version was drafted and dated 12 December 2018 (December draft).³⁹⁶ The subject line of the December draft is 'Disclosure of information obtained by the Ombudsman pursuant to Section 34(1)(b2) of the *Ombudsman Act 1974* to Sunnyfield Disability Services'.³⁹⁷ It does not refer to section 11(1)(e) of the *CRM Act*.
240. The December draft outlines a number of notifications and serious allegations concerning SP1's conduct during his employment with various disability and children's service providers from 2003 to 2018, including Sunnyfield. The majority of the allegations had been found not to be sustained by the previous employers, but they had taken various actions against SP1. One of the previous employers dismissed SP1 in November 2016, after finding that some allegations of misconduct by him were sustained. He was also dismissed from a second employer shortly afterwards, but the December draft does not provide the reasons for that dismissal.³⁹⁸
241. A handwritten note on the copy of the December draft provided to the Royal Commission says '12/12/18: P/C from Steve 2pm - release to OCG under 16A – liaise with [NSW Ombudsman employee] re this'.³⁹⁹
242. On 7 January 2019, the NSW Ombudsman wrote to the Office of the Children's Guardian, disclosing the allegations concerning SP1.⁴⁰⁰ The disclosure was made

393 Exhibit 13-319, NOM.0001.0455.0001, p 3.

394 Exhibit 13-319, NOM.0001.0455.0001, p 3. The legislation referred to in the file note provides that the Ombudsman may disclose information in limited circumstances, including 'to any person if the Ombudsman believes on reasonable grounds that disclosure to that person is necessary to prevent or lessen the likelihood of harm being done to any person (but only if the Ombudsman also believes on reasonable grounds that there is a risk of harm (including self-harm) being done to any person)'.

395 Exhibit 13-318, NOM.0001.0454.0001.

396 Exhibit 13-10, 'Supplementary statement of Paul Richard Miller', 19 May 2021, at [4]; Exhibit 13-231, NOM.0001.0452.0001.

397 Exhibit 13-231, NOM.0001.0452.0001, p 3.

398 Exhibit 13-231, NOM.0001.0452.0001.

399 Exhibit 13-231, NOM.0001.0452.0001, p 3.

400 Exhibit 13-230, NOM.0001.0474.0001.

pursuant to Chapter 16A of the *CYP Act*.⁴⁰¹ Mr Miller said in a written statement that, in his opinion, the disclosure of the information to the Office of the Children's Guardian was 'an appropriate disclosure concerning [SP1]'.⁴⁰²

243. The NSW Ombudsman's office did not send the September draft, the December draft or any other letter to Sunnyfield outlining the allegations against SP1.⁴⁰³ Ms Cuddihy said 'such a disclosure would have been highly relevant to a risk assessment of SP1 working in [the House]'⁴⁰⁴ and had she 'been aware of those matters [she] would have taken steps to suspend and terminate the employment of SP1'.⁴⁰⁵ Her evidence on this point is inherently plausible.
244. Mr Miller was not involved in the decision not to send the letter, nor did his statements explain who was. He did not indicate in either of his written statements whether he discussed this issue with anyone in the NSW Ombudsman's office who had direct involvement with that decision. Instead, he set out in his 19 May statement what he inferred to be the 'most probable reason' for the draft September and December letters not being sent.⁴⁰⁶

Paragraph 34(1)(b2) [of the *Ombudsman Act*] would apply to the information only if there were reasonable grounds to believe disclosure of the information was necessary to prevent or lessen the likelihood of harm being done to any person. [SP1's previous employer] 'made findings of not sustained, due to insufficient evidence in relation to the allegations of supervisory neglect'. [Provider 2] made findings of not sustained due to insufficient evidence. [Provider 5] reported a finding of false [sic]. There may have been doubt as to whether disclosure of any of that information to Sunnyfield was 'necessary' to prevent or lessen the likelihood of future harm to any person.⁴⁰⁷

245. Mr Millers' explanation for the NSW Ombudsman not sending the December draft to Sunnyfield is expressed, understandably, in somewhat speculative terms. The NSW Ombudsman has not produced any contemporaneous documents which shed light on the explanation (if any) for not sending the December draft to Sunnyfield. Neither of Mr Miller's statements refers to any such documents.
246. If an officer of the NSW Ombudsman's Office formed the view that the requirements of section 34(1)(b2) of the *Ombudsman Act* were not satisfied, which resulted in the

401 Exhibit 13-9, 'Statement of Paul Richard Miller', 10 May 2021, at [49]; Exhibit 13-230, NOM.0001.0474.0001, p 1.

402 Exhibit 13-9, 'Statement of Paul Richard Miller', 10 May 2021, at [67].

403 Exhibit 13-9, 'Statement of Paul Richard Miller', 10 May 2021, at [48], [58]; Exhibit 13-10, 'Supplementary statement of Paul Richard Miller', 19 May 2021, at [5].

404 Exhibit 13-7, 'Supplementary Statement of Caroline Cuddihy', 24 May 2021, at [19].

405 Exhibit 13-7, 'Supplementary Statement of Caroline Cuddihy', 24 May 2021, at [22].

406 Exhibit 13-10, 'Supplementary statement of Paul Richard Miller', 19 May 2021, at [6].

407 Exhibit 13-10, 'Supplementary statement of Paul Richard Miller', 19 May 2021, at [7-14].

December draft not being sent, it would be surprising if that view was not put in writing or recorded digitally. This is particularly so given the reference to section 34(1)(b2) by the then Deputy Ombudsman on 7 November 2018, as well as the content and subject-line of the December draft itself.

247. Mr Miller also said ‘nothing in the ... CRM Act authorised disclosure of the information concerning [SP1] to Sunnyfield’.⁴⁰⁸ Noting that the information was disclosed to the Office of the Children’s Guardian pursuant to Chapter 16A of the *CYP Act*, Mr Miller ‘assume[d] the decision maker did not consider that this provision would authorise a disclosure to Sunnyfield, most likely because they did not consider Sunnyfield to be a “prescribed body”’.⁴⁰⁹
248. Counsel Assisting submitted that the NSW Ombudsman’s office could and should have disclosed to Sunnyfield the information gathered by its staff concerning the previous allegations against SP1.
249. The NSW Ombudsman submitted that the historical information provided in the notifications was insufficient for his predecessor to have formed the view on reasonable grounds that there was a risk of harm for the purposes of section 34(1) (b2). The submissions made plain that the assessment of Mr Miller above was based on his reading of the legislation and the correspondence, not on any material that would explain the reasons (if any) why the letter was not sent.⁴¹⁰
250. In assessing the NSW Ombudsman’s submissions, it is necessary to take account of the allegations against SP1 of which the NSW Ombudsman was aware. In summary, they were as follows:
- Allegations in 2003 that SP1 engaged in conduct towards a 14 year old with disabilities including using restrictive practices and a seclusion room without reporting the events, pushing the child until he was unconscious and falling asleep while the child was in the bath for 2 hours. The complaint was found to be not substantiated but concerns about the honesty of SP1’s responses caused him to be stood down from the unit. Other allegations concerning the child included that he presented with unexplained injuries, poor hygiene, and medication not given at the correct time, which caused SP1 to be placed on restricted duties. The Ombudsman’s staff took the view that the provider’s investigation was unsatisfactory and the evidence insufficiently tested.
 - Allegations in 2004 that while a youth worker, he made sexualised comments and approaches to clients, which were found to be not substantiated or misconceived. Nonetheless SP1 was given training in child protection and the applicable code of conduct.

408 Exhibit 13-10, ‘Supplementary statement of Paul Richard Miller’, 19 May 2021, at [15].

409 Exhibit 13-10, ‘Supplementary statement of Paul Richard Miller’, 19 May 2021, at [17].

410 Submissions of NSW Ombudsman, Public hearing 13, 20 August 2021, SUBM.0013.0002.0013, [40–56].

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- Allegations in 2005 about sexual misconduct towards a 17 year old client after she left the placement. The allegations were found to be not substantiated but the investigator noted that the accounts of the complainant and other witnesses were consistent in significant respects. SP1 was permitted to resign from the service.
 - Allegations in 2016 from SP1's previous employer that he left a client in a vehicle without supervision and engaged in workplace misconduct. The misconduct found to be sustained included using including false signatures for the administration of medication. In addition, SP1 was found to have acted fraudulently regarding claims for shifts not worked. SP1 was dismissed as a result of the misconduct.
 - Allegations in 2017 in relation to a number of care workers engaging in sexual misconduct with children. These allegations were found to be unsubstantiated.
 - Notifications in relation to Melissa, the first in February 2018 about an unexplained serious injury while SP1 was service co-ordinator. The second was an allegation in April 2018 from a former worker at the House that SP1 and SP2 abused Melissa.
251. Section 34(1)(b2) of the *Ombudsman Act* prohibited the NSW Ombudsman from disclosing to Sunnyfield the information contained in the December draft, unless two conditions were satisfied. The NSW Ombudsman had to believe on reasonable grounds that:
- disclosure of the information to Sunnyfield was necessary to prevent or lessen the likelihood of harm being done to any of the residents of the House; and
 - there was a risk of harm (including self-harm) being done to any of the residents of the House.
252. The information available to the NSW Ombudsman concerning SP1's employment history constituted reasonable grounds for the relevant decision-maker within the Ombudsman's office to form the belief that disclosure would at least lessen the likelihood of harm being done to the residents. Contrary to the NSW Ombudsman's submissions, the historical allegations of misconduct against SP1 were sufficient in themselves to constitute reasonable grounds for the necessary belief.
253. When the two reports of SP1's abuse of Melissa at the House are taken into account, it is difficult to see how any decision-maker could reach any conclusion other than that there were reasonable grounds for believing that disclosure of the information to Sunnyfield was necessary to lessen the likelihood of harm to the residents at the hands of SP1.
254. For much the same reasons it is difficult to see how the decision-maker could reach any conclusion other than that there was a risk of harm being done to the residents if Sunnyfield was not informed of SP1's extremely problematic employment history.

In the absence of that information, the NSW Ombudsman had no particular reason to think that Sunnyfield would take the measures necessary to eliminate or substantially reduce the risk of harm to residents.

255. The fact that the decision-maker within the NSW Ombudsman's office had reasonable grounds for the beliefs referred to in section 34(1)(b2) of the *Ombudsman Act* does not necessarily mean that the decision-maker was then bound to convey the information concerning SP1 to Sunnyfield. In a particular case there might be other considerations that have to be taken into account, although it might be thought they would have to be compelling to outweigh the risk of harm to people with cognitive disability in a closed environment.
256. On the available evidence, there is no plausible explanation for the apparent failure of the relevant decision-maker to form the belief required by section 34(1)(b2) of the *Ombudsman Act*. There is no evidence to support Mr Miller's speculation about a possible basis for the decision-maker to determine that the December letter should not be sent to Sunnyfield. Indeed, there is no evidence that anyone in the NSW Ombudsman's office actually turned their mind to whether the statutory criteria had been satisfied.

Finding 5

The NSW Ombudsman should have disclosed to Sunnyfield the available information about SP1's employment history, including the allegations that had been made against him. This should have been done, at the latest in December 2018, by sending Sunnyfield the draft letter which contained serious allegations about SP1's conduct.⁴¹¹

NDIS Commission investigation

257. As well as the Sunnyfield investigations conducted by Ms Piaud and the police investigations of allegations of criminal conduct by SP1 and SP2, the NDIS Commission also had a role in investigating what had occurred at the House. Mr Head said the NDIS Commission's immediate actions were focused on ensuring the safety and well-being of Carl and Chen, informing Sunnyfield of the allegations raised in the complaints it had received, and requiring Sunnyfield to submit reportable incident notifications.⁴¹²

411 Some individual officers of the NSW Ombudsman's Office were named in evidence and are identified in the account given in this Report. However, Finding 5 relates only to the institutional responsibility of the NSW Ombudsman's Office. The evidence concerning the role of any individual officer or officers in the decision-making process within the NSW Ombudsman's Office was incomplete. We therefore make no finding adverse to any individual officer or officers within the NSW Ombudsman's Office at the material times.

412 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [81].

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258. Although a site visit was initially considered by the NDIS Commission,⁴¹³ there is no evidence that the NDIS Commission conducted a site visit to the House or spoke to Carl or Chen at any time. In late June 2019, the Sunnyfield Quality, Risk and Compliance Manager advised the assigned complaints officer from the NDIS Commission that ‘the participants may be able to engage with the NDIS Commission, but it would need to be face to face, for a very short period of time and with support from their families ... due to their limited verbal communication, the participants would not be able to speak with the complaints officer by telephone’.⁴¹⁴
259. Section 16(5) of the *Complaints Management and Resolution Rules* requires the Commissioner to ‘consider the views of any person with disability affected by the complaint, if the Commissioner considers it reasonable and appropriate to do so’.
260. The Australian Government submits that a site visit was not pursued because, after communicating with Sophia and Jane on 25 and 29 June 20019 respectively, the NDIS Commission was told that both parents were comfortable with Sunnyfield.⁴¹⁵ The Australian Government also submits that Mr Head was not asked whether or why the NDIS Commission did not attempt to speak with Carl, Chen or Melissa about the incidents which were the subject of the complaints. It pointed out that it had communicated with Eliza, Sophia and Jane about the incidents affecting Melissa, Carl and Chen. It also noted that Eliza and Sophia had given evidence about the limitations Melissa, Carl and Chen experience in speaking for themselves when considering whether closed circuit television (CCTV) should be installed at the House.⁴¹⁶
261. The Australian Government’s submissions can be accepted so far as they go. But the fact remains that there is no evidence of the NDIS Commission taking any steps to seek to consider the views of Melissa, Carl or Chen about the incidents under investigation (whether they were spoken to or not), or documenting the reasons why the Commissioner considered it was or was not reasonable or appropriate to do so.
262. As outlined above, the NDIS Commission complaints officer wrote to Sunnyfield on 25 June 2019 about the allegations in the complaints. Among other things, they asked Sunnyfield to lodge reportable incident notifications and to outline in writing what actions it had taken in response to the matters raised in the complaints.⁴¹⁷
263. On 28 June 2019, Ms Luff emailed the complaints officer outlining the actions taken to date, which included Sunnyfield arranging an independent investigation and reporting the allegations to the police.⁴¹⁸ On 2 August 2019, Ms Luff provided an update to the

413 Exhibit 13-4, ‘Statement of Graeme Head’, 30 April 2021, at [91].

414 Exhibit 13-4, ‘Statement of Graeme Head’, 30 April 2021, at [87(c)].

415 Submissions of the Australian Government, Public hearing 13, 20 August 2021, SUBM.0013.0002.0001, [24].

416 Submissions of the Australian Government, Public hearing 13, 20 August 2021, SUBM.0013.0002.0001, [25].

417 Exhibit 13-4, ‘Statement of Graeme Head’, 30 April 2021, at [93–94].

418 Exhibit 13-4, ‘Statement of Graeme Head’, 30 April 2021, at [97].

NDIS Commission, stating that Sunnyfield's internal investigation could not be finalised because of the police investigation and because they had been unable to interview SP1 and SP2.⁴¹⁹

264. From August 2019, the NDIS Commission's involvement in these matters was through its reportable incidents officers and investigators (rather than the complaints officer or team, who closed the complaints on 9 December 2019 given these matters were being dealt with by other teams).⁴²⁰ Mr Head explained that, as the immediate safety and well-being of Carl and Chen had been addressed, the NDIS Commission's actions in relation to the reportable incidents were focused on assessing the adequacy of Sunnyfield's responses, taking account of the police investigation and charges.⁴²¹
265. Between September and November 2019, the NDIS Commission sought from and were provided with updates by Sunnyfield regarding the police investigation and its internal investigation and other actions.⁴²² There is no evidence, however, that Sunnyfield provided the NDIS Commission with copies of Ms Piaud's reports of 29 July or 2 September 2019.
266. Mr Head said that, during November 2019, the NDIS Commission considered whether a compliance or investigation matter should be opened in relation to the reportable incidents.⁴²³ On 19 November 2019, the reportable incidents were referred to the compliance team and on 21 November a senior investigator was assigned.⁴²⁴ Mr Head said that the investigation was established to consider whether the NDIS Commission should take regulatory action in relation to SP1, SP2 or Sunnyfield.⁴²⁵ The referral noted potential breaches of the NDIS Code of Conduct by SP1, SP2 and Sunnyfield, and of the NDIS Practice Standards by Sunnyfield.⁴²⁶
267. In November and December 2019, the senior investigator engaged in correspondence with Sunnyfield and NSW Police. The police declined to provide the investigator with witness statements and other documents from the police investigation. This was in part because the matters were before the courts and there was no memorandum of understanding between the NDIS Commission and NSW Police for information sharing at that time.⁴²⁷

419 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [102].

420 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [104], [106].

421 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [108], [124].

422 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [114–115].

423 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [116].

424 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [117].

425 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [108].

426 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [116].

427 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [120].

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268. On 13 December 2019, Sunnyfield advised the senior investigator that the 1 November 2019 investigation report prepared by Ms Piaud about SP1 had been lodged with the NDIS Commission and SP1's employment had been terminated.⁴²⁸ The senior investigator then reviewed Ms Piaud's report and prepared an investigation plan. The purpose and proposed outcomes of the investigation were to determine if Sunnyfield had been providing safe and appropriate supports and services to Carl and Chen and sufficient training to their staff in the use of, and compliance with, the incident management system.⁴²⁹
269. In December 2019 and January 2020, there were further communications between the senior investigator and Sunnyfield. On 31 January Sunnyfield advised that SP2's employment had been terminated on 21 January 2020.⁴³⁰ There is no evidence that Sunnyfield sent the NDIS Commission a copy of Ms Piaud's 19 December 2019 report and findings concerning SP2's actions.
270. During 2020, the NDIS Commission's investigations team also followed up with the NSW Police about the criminal proceedings against SP1 and SP2. They were advised that both matters had been dismissed by a magistrate.⁴³¹
271. Mr Head said the reportable incidents were closed in September 2020 after 'concluding assessments' were approved. The concluding assessments for the reportable incidents noted, among other things, the police charges; details of Sunnyfield's investigations; and the termination of SP1 and SP2's employment. They also identified the screening of employees as a systemic issue. Other outcomes related to behaviour support and increased support for Carl and Chan, and training and education for Sunnyfield.⁴³²
272. On 26 November 2020, a report on the NDIS Commission's investigation was finalised.⁴³³ There was no mention of regulatory action being considered against Sunnyfield. The report also did not include any determination as to whether Sunnyfield had been providing safe and appropriate supports and services to Carl and Chen and sufficient training to their staff in the use of, and compliance with, the incident management system. The report did not recommend further action. It noted:

Worker screening will consider a person's national criminal history information, including spent, quashed and unspent convictions; findings of guilt that did not result in a conviction being recorded; and criminal charges.⁴³⁴

428 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [121].

429 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [121–122].

430 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [125].

431 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [126].

432 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [127].

433 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [128].

434 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [128].

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273. The NDIS Commission conducted a separate investigation relating to the allegation that SP2 had dragged Melissa by the wrists during an episode of behaviour. The Australian Government submitted that the matter was investigated by a reportable incidents officer and was not investigated by the NDIS Commission's compliance and investigations team.⁴³⁵ Sunnyfield notified the NDIS Commission of this reportable incident on 28 October 2019, and explained it had been reported to the NSW Police. SP2 had already been stood down and was not working with any Sunnyfield clients.⁴³⁶
274. There is no evidence that the NDIS Commission conducted a site visit or spoke to Melissa about the reportable incident.
275. In November 2019, the NDIS Commission sought and was provided by Sunnyfield with further information about the incident. The request included a 'copy of report and/or findings from your investigations into this incident, including details of staff interviews conducted as part of the investigation process'.⁴³⁷
276. As set out above, Ms Piaud's report of her investigation of the incident was dated 27 May 2020. A summary of the report was provided on 20 August 2020, after a reportable incidents officer emailed Sunnyfield for an update.⁴³⁸ The summary indicates that the full report is subject to Client Professional Privilege.⁴³⁹ There is no evidence that the full report was provided to the NDIS Commission.
277. The NDIS Commission closed the reportable incident on 20 October 2020, after the assigned reportable incidents officer submitted a closing assessment. The assessment indicated that:
- [a]lthough the incident raised concerns regarding the failure of workers to adhere to the NDIS Code of Conduct, other matters involving the same subject of allegation, [SP2], had already been escalated to the compliance and investigation teams and escalating this matter would provide no further benefit to the current oversight by the NDIS Commission's compliance and investigation teams.⁴⁴⁰
278. The NDIS Commission wrote to Sunnyfield to close the reportable incident and to recommend Sunnyfield consider reviewing its 'Orientation training component covering reporting of incidents'.⁴⁴¹

435 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [133]; Submissions of the Australian Government, Public hearing 13, 20 August 2021, SUBM.0013.0002.0001, [27].

436 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [132].

437 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [134].

438 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [136–137].

439 Exhibit 13-322, CTD.7200.0013.3638, p 1.

440 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [138].

441 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [139].

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279. The Royal Commission has heard evidence at several Public hearings about the NDIS Commission's role in overseeing NDIS service providers and in investigating complaints and reportable incidents. It is likely that further evidence on these topics will be given at later Public hearings.
280. We have described in this Report the response of the NDIS Commission to the complaints and reportable incidents about events and conditions at the House. We do not propose to make findings about the adequacy or otherwise of the NDIS Commission's responses. The broader issues will be addressed in the Royal Commission's Final Report.
281. We note that Counsel Assisting's Submissions address the legislation and rules governing the NDIS Commission. They also outline the evidence given by Mr Head explaining how the NDIS Commission deals with complaints and reportable incidents.⁴⁴²

⁴⁴² Submissions of Counsel Assisting, Public hearing 13, 6 August 2021, SUBM.0017.0001.0775, [456–496].

Part 5: Key themes and findings

282. As has been seen in Parts 3 and 4, Public hearing 13 received considerable evidence about the events directly affecting the safety and wellbeing of Melissa, Carl and Chen. The evidence raised issues about Sunnyfield’s policies, systems and practices in force at disability support accommodation for which it was responsible. The principal themes that emerged from the evidence related to:
- choice and control for residents of Sunnyfield’s disability support accommodation, specifically concerning:
 - the Service and Residency Agreements, and
 - termination of the Service and Residency Agreements
 - staff recruitment, supervision and the House culture
 - Sunnyfield’s complaints and feedback procedures
 - governance and leadership.

Choice and control

The Service and Residency Agreements

283. In our Interim Report we addressed the theme of choice and control, being the right of people with disability to autonomy and independence so that they can control their own lives, make their own decisions and exercise choice.⁴⁴³ The experiences of Melissa and Eliza in dealing with Sunnyfield highlight the importance of giving primacy to choice and control within the framework of the NDIS and the provision of disability support services.
284. Ms Cuddihy said Sunnyfield is a big supporter of ‘choice and control’ for people with disability. She explained her understanding of choice and control as:

[c]hoice and control means that each resident and their guardian or family member who may be assisting and working with them has the choice of whether they want to live in that home or not and they have the control over whether they want to live in that home or not.⁴⁴⁴

She also said ‘at the same time, that works within our contractual arrangements’.⁴⁴⁵

443 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Interim Report*, October 2020, pp 13, 181–182, 251–257, 366–367. See also, *National Disability Insurance Scheme Act 2013* (Cth) ss 4(8)-(9).

444 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-185 [27–30].

445 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-185 [30–31].

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285. With the introduction of the NDIS, Melissa, Carl, Chen and the fourth resident's families sought to exercise choice and control over their disability services by engaging a new provider for accommodation and support services. It was for this reason that they began discussions with Sunnyfield in late 2016.⁴⁴⁶
286. As we have noted,⁴⁴⁷ on 6 April 2017, Sunnyfield sent two Agreements to the four families for signature.⁴⁴⁸ The Agreements were based on a model contract provided by the NDIA.⁴⁴⁹ They were prepared by Mr Jonathan Swain, who was then the Company Secretary and a practising lawyer.⁴⁵⁰
287. The Residency Agreement gave the residents rights with respect to occupancy of the House, meals and utilities in exchange for rent and fees. The amounts payable were calculated by reference to their disability support pensions and other government entitlements.⁴⁵¹ The Service Agreement set out the NDIS-funded shared living supports, including personal care, domestic support and transport Sunnyfield was to provide to the residents.⁴⁵²
288. Eliza said the exchange of the agreements in April 2017 was a rushed process, as she was only given two and a half business days to sign them and did not have time to get legal advice.⁴⁵³ She said Sunnyfield told her they could not start organising the transition of the House until the agreements were signed and if families did not 'fast track the transition' the residents would have no staff in the House as of 1 May 2017.⁴⁵⁴
289. The Service Agreement, which was substantially identical for each resident,⁴⁵⁵ set out Sunnyfield's responsibilities. These included:
- treating the resident and the resident's representative with courtesy and respect and communicate openly and honestly in a timely manner; and

446 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [13]; Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [18].

447 See Report, at [79].

448 Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [22]; Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [35].

449 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-258 [34–47].

450 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-259 [35–46] – P-260 [1–2]; Exhibit 13-323, SUN.9999.0003.0001.

451 Exhibit 13-17, IND.0080.0001.0280, pp 1, 3–4.

452 Exhibit 13-16, IND.0080.0001.0263, sch 2.

453 Transcript, Eliza, Public hearing 13, 24 May 2021, P-39 [10–25].

454 Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [25].

455 Exhibit 13-51, SUN.0001.0046.1923; Exhibit 13-53, SUN.0001.0046.1950; Exhibit 13-55, SUN.0001.0046.2294; Exhibit 13-57, SUN.0001.0048.7462.

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- consulting the resident and the resident’s representative where practical on decisions about how supports are provided, and, once agreed, providing supports that meet the participant needs at the participant’s preferred times.⁴⁵⁶
290. Eliza said she was keen to better understand what was meant by a ‘timely manner’ so she could set her expectations accordingly.⁴⁵⁷ She was particularly interested in what Sunnyfield would do and also how it would deliver services to Melissa. This included how they would involve Eliza in decision-making and make sure she knew what was going on, given that she lived far away from the House. For this reason, she wanted to tie the general principles set out in the Service Agreement to the specifics contained in other documents provided to her by Sunnyfield, such as the Shared Living Operations Manual. She thought this would minimise arguments in the future about what services were or were not to be given.⁴⁵⁸
291. Ms Cuddihy agreed that the list of Sunnyfield’s responsibilities in the Service Agreement did not include any reference to it being bound by its own policies. She said ‘[t]hat’s a commitment that we make within the organisation and those policies change from time to time.’ She said the Shared Living Operations Manual was an internal document and she was not aware of it being provided to the families of residents.⁴⁵⁹
292. The Service Agreement also set out the responsibilities of the participants (the residents) or the participants’ representatives (typically, their families). These included:
- treating Sunnyfield with courtesy and respect
 - telling Sunnyfield how they wish the supports to be delivered to meet the participant’s needs, including any limits to the funding that is available
 - talking to Sunnyfield if they had any concerns about the supports being provided.⁴⁶⁰
293. Eliza agreed that knowing she could and should raise with Sunnyfield any concerns she had gave her comfort.⁴⁶¹ The Service Agreement also had a section on ‘Feedback, complaints and disputes’, saying ‘Sunnyfield welcomes, values, and responds to all feedback’ and providing some information about how it could be provided.⁴⁶²
294. The Service Agreement had a provision permitting either party to end the Agreement by giving at least three months’ notice in writing at any time, or, if the other party

456 See e.g., Exhibit 13-16, IND.0080.0001.0263, p 3.

457 Transcript, Eliza, Public hearing 13, 24 May 2021, P-36 [29–34].

458 Transcript, ‘Eliza’, Public hearing 13, 24 May 2021, P-36 [36–46] – P-37 [1–28].

459 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-268 [38–41].

460 See e.g., Exhibit 13-16, IND.0080.0001.0263, p 4.

461 Transcript, Eliza, Public hearing 13, 24 May 2021, P-38 [4–7].

462 Exhibit 13-16, IND.0080.0001.0263, p 6.

‘seriously breache[d]’ the Agreement, 14 days’ notice in writing.⁴⁶³ The provision also stated that the Agreement would end automatically if the resident stopped living in the accommodation.

295. Ms Cuddihy said she understood that the three months’ notice clause was intended to apply when there was a view that it [was] ‘no longer in the mutual interests of both parties to be involved in the contract’.⁴⁶⁴ Eliza said the possibility of Sunnyfield terminating its services to Melissa simply by giving her three months’ notice never crossed her mind at the time that she executed the Service Agreement.⁴⁶⁵
296. Under the Residency Agreement the residents (and their representatives) acknowledged that Sunnyfield ‘in its capacity as accommodation provider, may require that there be a single service support provider engaged by all residents of the House to provide them with shared living supports.’ The Agreement also stated Sunnyfield itself would be the single provider of those shared living supports.⁴⁶⁶ Eliza said she did not think too deeply about this clause at the time of receiving the agreements as it was inconceivable to her that Sunnyfield might try to evict Melissa.⁴⁶⁷
297. The Residency Agreement provided that Sunnyfield could end the agreement:
- by giving the Resident and the Resident’s Representative at least 3 months’ notice in writing if the Resident stops being funded for services and supports in shared living accommodation for any reason (including if the Resident’s NDIS plan is suspended or the Resident stops being a participant in the NDIS) and does not choose to continue to pay for those supports under a fee-for-service arrangement agreed with Sunnyfield;
- as provided in section 4 [by giving 3 months’ notice] if the Resident fails to pay all rental contributions and fees due to Sunnyfield; or
- if the Resident’s support needs change, or the Resident persistently behaves in a way that creates an unsafe or intimidating environment for other residents in the House and Sunnyfield, in consultation with the Resident or the Resident’s Representative, decides that Sunnyfield can no longer support the Resident in the House or in any alternative house operated by Sunnyfield. In this case, Sunnyfield will assist the Resident to transition to a higher support needs environment (such as a nursing home, aged care facility or dementia unit). Once the transition has been effected, this agreement is at an end. All outstanding rental contributions and fees accrued until the date that this agreement ends must be paid on that date.⁴⁶⁸

463 Exhibit 13-16, IND.0080.0001.0263, cl 11.

464 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-272 [41–43].

465 Transcript, Eliza, Public hearing 13, 24 May 2021, P-38 [24–26].

466 Exhibit 13-17, IND.0080.0001.0280, cl 6.

467 Transcript, Eliza, Public hearing 13, 24 May 2021, P-47 [24–31].

468 Exhibit 13-17, IND.0080.0001.0280, cl 8.2.

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298. The Agreement also contained a ‘charter of residents’ rights and responsibilities’, which included the rights ‘to complain and to take action to resolve disputes’; ‘to have access to advocates and other avenues of redress’; and ‘to be free from reprisal or a well-founded fear of reprisal, in any form, for taking action to enforce his or her rights’.⁴⁶⁹
299. Under the Service Agreement, the total payable to Sunnyfield by Melissa was \$358,888.08 for the period until her NDIS Plan review date, plus an amount for SDA, funded by the NDIS.⁴⁷⁰ The Service Agreement also stated ‘if the price or amount of funding for any support is increased during the term of this agreement then Sunnyfield will be entitled to charge the increased price or amount for that support’.⁴⁷¹ In addition, under the Residency Agreement, Melissa was to pay Sunnyfield a total of \$562.95 per fortnight for rent, meals and utilities.⁴⁷² This amount was payable as a percentage of her disability support pension and other government entitlements.⁴⁷³
300. Eliza had a number of concerns about the two Agreements. One related to what she considered to be a potential conflict of interest if Sunnyfield were both the accommodation and the support services provider. She said this was based on the families’ experiences when removing the previous service provider. She recalled being told they could not decide to use a new support service provider because the previous provider also ‘owned’ the house itself. For this reason, it was important to the families of the residents that provision of the House be separated from service provision.⁴⁷⁴
301. Another concern related to the installation of CCTV. On 10 April 2017, Eliza raised the subject in an email to the Client Engagement Manager, noting it had been a ‘big ticket item’ in the families’ earlier discussions with Sunnyfield.⁴⁷⁵ The following day, she received an email from Sunnyfield’s General Manager Shared Living advising her he supported the use of CCTV ‘in principle’, but there were a range of issues which needed to be carefully considered.⁴⁷⁶ The issue of CCTV is discussed further below.
302. Eliza also requested changes to the agreements as she was concerned they did not reflect some of her earlier discussions with Sunnyfield.⁴⁷⁷ On 12 April 2017 the Sunnyfield Client Engagement Manager forwarded her an email from the General Manager Business Development saying that the agreements could not be modified as they were ‘legal documents that are standardised to ensure consistency in service delivery and expectations across Sunnyfield’.⁴⁷⁸ The email also said:

469 Exhibit 13-17, IND.0080.0001.0280, sch 2.

470 Exhibit 13-16, IND.0080.0001.0263, sch 2 item 1.

471 Exhibit 13-16, IND.0080.0001.0263, cl 2.

472 Exhibit 13-17, IND.0080.0001.0280, sch 3.

473 Exhibit 13-17, IND.0080.0001.0280, cl 2.2, 3.2.

474 Transcript, Eliza, Public hearing 13, 24 May 2021, P-47 [33–42], P-48 [4–37].

475 Exhibit 13-2, ‘Statement of Eliza’, 29 April 2021, at [26]; Exhibit 13-299, SUN.0001.0042.0182, p 3.

476 Exhibit 13-21, IND.0080.0001.0293.

477 Exhibit 13-2, ‘Statement of Eliza’, 29 April 2021, at [27].

478 Exhibit 13-22, IND.0080.0001.0252, p 1.

Sunnyfield does understand [Eliza's] issues and we are open to discussing possible solutions to them. I would suggest that our priority should be to get staff into the house and get the service running ... We will separately work with [Eliza] over the next 8 weeks to ensure that we resolve all of her concerns.⁴⁷⁹

303. Eliza said it was a shock to be told the agreements could not be modified.⁴⁸⁰ However, she returned the signed agreements to Sunnyfield, noting she had requested written confirmation that services would be provided in accordance with the operations manual and there was an intent to organise CCTV installation.⁴⁸¹

304. Ms Cuddihy's statement included the following passage:

... the standard terms concern provisions outlining the legal terms of Sunnyfield and a client's arrangement. Those terms concern matters which are not readily susceptible to negotiation or customisation, and which cannot reasonably be expected to be qualified or removed, such as the rights and responsibilities of each of Sunnyfield and a client, termination rights, and payment arrangements.⁴⁸²

305. After receiving a range of complaints from Eliza, the Director of Disability at the NSW Ombudsman's office wrote to Ms Cuddihy on 18 December 2018 as follows:

... information communicated by the NDIA makes it clear that participants can change model service agreements to suit their own needs. To give effect to the tenets of choice and control of people with disability that underpins the NDIS, it is vital that participants (and their representatives) are able to work with prospective providers to discuss and reach agreement on the provision of supports to them, to most appropriately meet their needs.

... we do not accept that presenting standard service agreements that are unable to be modified is consistent with the NDIA Terms of Business, or the expectations of practice under the NDIS ... **Sunnyfield should review its position that its service agreements cannot be amended, to ensure that its practice is in line with the NDIA Terms of Business and the NDIS Practice Standards.**⁴⁸³
[Emphasis in original]

306. Ms Cuddihy was asked in her oral evidence about the meaning of this statement. She stated:

479 Exhibit 13-22, IND.0080.0001.0252, p 1.

480 Transcript, Eliza, Public hearing 13, 24 May 2021, P-41 [14–18].

481 Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [29].

482 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [87].

483 Exhibit 13-307, SUN.0001.0044.6406, p 2.

MS CUDDIHY: It means that certain parts of the contract are standard and there are areas in the contract which can be tailor-made. A very important area of all of the supports agreements is the schedule 1, which respects the individual person's NDIS plan and their NDIS goals. But there are other areas of the contract which are standard and, as I had mentioned in specific [sic], were from the model agreement from the NDIA.

MS EASTMAN: But why couldn't, for example, the clauses dealing with termination rights be the subject of negotiation? Surely you could negotiate whether you were to give 14 days' notice or a month's notice, three months' notice or six months' notice? They're susceptible to negotiation, aren't they?

...

MS EASTMAN: I'm trying to understand your evidence where you say that it cannot reasonably be expected to be qualified or removed, and these include rights and responsibilities for Sunnyfield and the client's termination rights and payment arrangements. So termination rights, I'm asking you why couldn't that be the subject of negotiation?

MS CUDDIHY: At the time, this was a very new --- NDIS was a very new system, a very new service. We very much wanted to follow the model benchmark agreements. I think now, in hindsight, with the NDIS being some years progressed, it is appropriate for us as an organisation and for our clients to consider the review of the contracts.

MS EASTMAN: But you haven't said that in this part of your statement, have you?

MS CUDDIHY: No, I haven't. It was in reference to those.⁴⁸⁴

307. Ms Cuddihy's written statement was consistent with the position she adopted in correspondence with the NSW Ombudsman in late 2018 and early 2019.
308. On 10 January 2019, Ms Cuddihy responded to the NSW Ombudsman. She stated '[i]n relation to Sunnyfield's position that we will not alter our standard service agreement, you have suggested this position is inconsistent with the NDIA Terms of Business. We do not accept this finding'.⁴⁸⁵ Despite the clear words of her letter, during the hearing Ms Cuddihy disagreed with the suggestion that a fair reading of her response was she had rejected the Ombudsman's advice about the Agreements.⁴⁸⁶ We do not accept Ms Cuddihy's evidence on this point. Her written response speaks for itself.

484 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-292 [38–47] – 293 [1], [9–23].

485 Exhibit 13-306, SUN.0001.0044.6358, p 2.

486 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-296 [9–43].

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309. The NSW Department of Communities and Justice subsequently asked Sunnyfield to change its agreement form, and Ms Cuddihy thought the House residents would then have had their contracts renewed or revised.⁴⁸⁷ Indeed, as set out in Part 3, that was a requirement of the Lease between Sunnyfield and the Department that commenced on 1 July 2018. However, after the public hearing, Ms Cuddihy's legal representatives confirmed that no agreements had been entered into between Eliza and Sunnyfield other than those signed on 12 April 2017.⁴⁸⁸
310. The Australian Government's submission pointed out that, contrary to Ms Cuddihy's evidence, the standard form agreements drafted by the NDIA could be varied by the parties if they wished to do so. The standard form agreements were prepared during the NDIS rollout as a template. The NDIA explained at the time that entering into service agreements should be a collaborative process between NDIS participants (or their representatives) and the service providers concerned. In short, the standard form agreements were merely templates that could be varied.⁴⁸⁹
311. Sunnyfield in its submissions did not dispute that the residents and their representatives were entitled in 2017 to request changes in the Service and Residency Agreements presented to them for signature. Nor did Sunnyfield dispute that it is consistent with the principle of choice and control that residents and their representatives should have the opportunity to negotiate the precise terms of the Service and Residency Agreements to ensure, so far as possible, that the care and support they receive will reflect their needs and their wishes.
312. That was not the position taken by Sunnyfield when it presented Eliza with the Service and Residency Agreements for signature. Nor was it the stance taken by Sunnyfield in its communications with the NSW Ombudsman. Sunnyfield's insistence that the Agreements in the form presented to Eliza could not be varied led Eliza to feel that she had no option but to sign the Agreements in that form. She felt pressured to take this course despite voicing concerns about some aspects of the proposed arrangements and seeking assurance about how the Agreements would work in practice.
313. Sunnyfield's written submissions conceded that 'Melissa's ability to negotiate the terms of Sunnyfield's standard Supports Agreement was limited'.⁴⁹⁰ If 'effectively non-existent' is substituted for 'limited', that statement is accurate.

487 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-261 [37–43].

488 Exhibit 13-324, SUN.9999.0004.0001.

489 Submissions of the Australian Government, Public hearing 13, 20 August 2021, SUBM.0013.0002.0001, [42].

490 Submissions of Sunnyfield, Public hearing 13, 20 August 2021, SUBM.0013.0003.0001, [132].

Finding 6

Sunnyfield presented Eliza with the Service and Residency Agreements for signature in April 2017 on the basis that the terms of the Agreements could not be varied and were therefore not open for negotiation. In fact, contrary to what Eliza was told, there was nothing to prevent her from seeking amendments to the Agreements and negotiating with Sunnyfield to achieve the outcome she sought for Melissa, other than Sunnyfield's position.

Finding 7

Eliza was not given an opportunity to negotiate any terms of the Service and Residency Agreements.

Finding 8

Sunnyfield denied Melissa, through her representative Eliza, the opportunity to exercise choice and control about the terms of the Service and Residency Agreements in April 2017.

Termination of the Service and Residency Agreements

314. As we noted in Part 3, Sunnyfield decided in January 2018 to terminate the Service and Residency Agreements and to evict Melissa. However, it did not notify Eliza of the decision until 4 June 2018 when Ms Luff stated in a letter that 'Sunnyfield has decided it is unable to continue to provide support for your sister, [Melissa].'
315. On 29 January 2018, Sunnyfield informed the NSW Ombudsman of that decision, stating that the reasons for the decision were (in the NSW Ombudsman's words) that 'the organisation was unable to meet the overwhelming demands of her mother and Guardian under Melissa's NDIS funding'.⁴⁹¹
316. On 21 February 2018, Ms Luff and Mr Swain met to discuss an 'exit strategy' for Melissa. In an email sent to Ms Cuddihy later that day, Ms Luff observed '[a]s you noted yesterday, the lease agreement is due to be signed [with FACS or another NSW

491 Exhibit 13-307, SUN.0001.0044.6406, p 10.

Department] on [1 July 2018] which gives us a window of opportunity to act.’ She then discussed FACS as a ‘key stakeholder’ and said ‘we reviewed the reputational and relationship risk in proceeding’ and ‘felt this could be mitigated by meeting them and briefing them on the situation’.⁴⁹²

317. Correspondence from the Ombudsman to Sunnyfield records that:

On 29 January 2018, you indicated to our Disability Reportable Incidents team that, once the existing reportable incidents were finalised, Sunnyfield would proceed to exit Melissa ...⁴⁹³

318. When asked about the email dated 21 February 2018, Ms Cuddihy said it could refer to the new lease agreement which Sunnyfield later executed with the NSW Department of Communities and Justice. She said it was possible Sunnyfield was concerned about the reputational risk and the risk to its relationship with the NSW Government from evicting Melissa.⁴⁹⁴ She agreed that the import of the email was that Ms Luff was looking to work out a way of removing Melissa with minimal reputational and relationship risk.⁴⁹⁵

319. The following exchange with Counsel Assisting then occurred:

MS EASTMAN: I want to put to you that the reference to the window of opportunity is this: you knew, with respect to the lease agreements that were due to be signed on 1 July, the effect of those lease agreements would make it difficult, if not impossible, for you to evict Melissa after those agreements had been signed. That’s right, isn’t it?

MS CUDDIHY: I don’t recall, as I said.

MS EASTMAN: But what did you understand with respect to the lease agreements and any changes that would be brought about by those lease agreements in relation to evicting residents?

MS CUDDIHY: I didn’t have an understanding specifically about that.⁴⁹⁶

320. Ms Cuddihy was then shown an email exchange from June 2018 between Sunnyfield and a representative of FACS.⁴⁹⁷ This indicated the representative’s view that the eviction of Melissa would be a breach of the new lease with Sunnyfield. In an email dated 6 June 2018 the representative said:

492 Exhibit 13-294, SUN.0001.0033.3712.

493 Exhibit 13-307, SUN.0001.0044.6406, p 10.

494 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-341 [33–47] – 342 [1–10].

495 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-343 [35–45].

496 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-344 [1–14].

497 Exhibit 13-295, SUN.0001.0034.1589.

We have a related issue to raise. It appears that you have issued a notice of eviction for a resident [of the House]. I understand that this property was built as part of the LRC redevelopment and the resident moved in then. We do not agree with this eviction this close to signing a lease for that property which has some conditions with respect to terminations. The date of eviction will be after the lease is in place and would be in breach of the lease. We would ask that you reconsider this eviction notice please.⁴⁹⁸

321. In a further email dated 13 June 2018 the representative said:

We will issue the leases with conditions and adjustments to the leases shortly but terminations like this will be in breach of the lease ... and which you have written to and met with the Minister about previously.

The NDIA also has quite clear directions regarding evictions/terminations and the work that needs to be done to source alternative accommodation before a resident can be evicted. Those processes are reflected in our leases and accommodation agreements with residents.⁴⁹⁹

Ms Cuddihy said she could not recall this email.⁵⁰⁰

322. The new Lease between Sunnyfield and the NSW Department of Communities and Justice appears to have been executed on about August 2020 but specified a commencement date of 1 July 2018.⁵⁰¹ Clause 8.18 of the Lease required Sunnyfield to offer an accommodation agreement to each resident on substantially the same terms and conditions and in substantially the same form as contained in Exhibit 1 to the Lease and to at all times act in accordance with those terms and conditions.

323. The accommodation agreement exhibited to the lease agreement provided that Sunnyfield could only end the accommodation agreement for four reasons: if the property was used for an illegal purpose; if the accommodation payments and other payments due under the agreement remained unpaid 14 days from receipt of an overdue notice; if the resident ceased to have SDA as a reasonable and necessary support in their NDIS plan; or if the resident 'cannot be supported at the property without serious risk of harm to [the resident], staff or other occupants'.⁵⁰² The accommodation agreement also provided that 'regardless of the reason for ending the Accommodation Agreement, the Accommodation Provider will immediately notify the NDIA and will work with the NDIA to find you alternative accommodation'.⁵⁰³

498 Exhibit 13-295, SUN.0001.0034.1589, p 4.

499 Exhibit 13-295, SUN.0001.0034.1589, p 3.

500 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-345 [27–28].

501 Exhibit 13-62, SUN.0001.0060.1701.

502 Exhibit 13-62, SUN.0001.0060.1701, pp 62–63.

503 Exhibit 13-62, SUN.0001.0060.1701, p 63.

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324. In the letter of 4 June 2018 advising Eliza of Sunnyfield's decision to terminate the Service and Residency Agreements, Ms Jennifer Luff stated that Melissa would be required to leave the House by no later than 5pm on 5 September 2018. The letter stated that the notice was 'as per Sunnyfield's Service Agreement with Melissa' but did not otherwise give any reason for the termination. The letter also said Sunnyfield was able to assist Eliza to approach other service providers 'if required' but if Eliza could not find another service provider by 5 September then she, as Melissa's guardian, would need to assume responsibility for Melissa's accommodation and support.⁵⁰⁴
325. Eliza said this letter 'came out of the blue' and she was shocked and terrified about the impact it would have on Melissa. She also knew how hard it would be to find another service provider and suitable accommodation.⁵⁰⁵ She thought the reason for Sunnyfield's decision was because of the complaints she had raised, including about SP1.⁵⁰⁶ She emphasised that she had not had a conversation, or a suggestion made to her, about needing to consider the possibility of an alternative service provider for Melissa before receipt of the 4 June letter.⁵⁰⁷ We accept that evidence.
326. Ms Cuddihy said in her evidence the letter did not include reasons because 'it was very difficult to explain the situation.' She expressed regret for this omission and for the distress caused to Eliza by the letter.⁵⁰⁸
327. Eliza responded to the 4 June letter by asking Sunnyfield for the reasons for its decision. Ms Luff replied on 13 June 2018, asserting that the decision to terminate the agreements:

... does not need to be mutually agreed and nor does Sunnyfield need to provide any reasons for exercising its option to terminate the agreement. This approach is consistent with the underlying ethos of the NDIS where flexibility of choice and control is conferred on both the participant and the service provider.

...

Sunnyfield has made the decision to cease providing services because following a period of over 12 months service delivery, and despite our best endeavours, we have concluded it is not in Sunnyfield's overall best interests to continue to provide services in an environment where you so clearly lack trust in Sunnyfield, our staff and our policies.⁵⁰⁹

504 Exhibit 13-32, IND.0080.0001.0255.

505 Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [61].

506 Transcript, Eliza, Public hearing 13, 24 May 2021, P-70 [1-9].

507 Transcript, Eliza, Public hearing 13, 24 May 2021, P-71 [1-6].

508 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-349 [12-40].

509 Exhibit 13-33, IND.0080.0001.0257.

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328. Eliza said this letter made her furious.⁵¹⁰ She and Ms Luff engaged in further correspondence on 14 June and 20 June 2018, but the eviction notice was not withdrawn.⁵¹¹ Eliza immediately sought assistance both to prevent the eviction and to find alternative accommodation for Melissa.⁵¹²
329. According to Ms Cuddihy, the decision to issue the notice to Eliza was ‘not a decision made lightly by Sunnyfield’ and it ‘considered the potential impacts on Melissa’.⁵¹³ In her statement, she said the decision was reached because Sunnyfield was concerned for the wellbeing of its staff due to the levels of stress they were reporting as a consequence of Eliza’s actions. It also was concerned that a situation had arisen ‘that was not in [Melissa’s] best interests’.⁵¹⁴ However, in listing various issues which she said raised concerns about staff wellbeing, Ms Cuddihy included an event which occurred in July 2018, well after the decision to evict Melissa had been taken and a month after Eliza had been sent the eviction notice.⁵¹⁵
330. In addition, before the letter was sent, Sunnyfield did not seek to ascertain from either Melissa or Eliza what Melissa’s best interests were.⁵¹⁶ When asked why there was no discussion with Eliza about evicting Melissa between the beginning of February and the beginning of June 2018, Ms Cuddihy said it was because the relationship between Eliza and Sunnyfield had broken down. She said this, too, was an omission which she regretted.⁵¹⁷
331. Ms Cuddihy also gave evidence that she regretted the wording of Ms Luff’s letter to Eliza of 13 June 2018, agreeing it did not take a person-centred approach and did not reflect the ‘Sunnyfield way’.⁵¹⁸ She could not recall whether she had reviewed the letter before it was sent.⁵¹⁹ She also agreed the reference to Sunnyfield having ‘choice and control’ was inappropriate since under the NDIS choice and control is meant to rest with the person with disability.⁵²⁰

510 Transcript, Eliza, Public hearing 13, 24 May 2021, P-73 [22–25].

511 Exhibit 13-2, ‘Statement of Eliza’, 29 April 2021, at [63–64]; Exhibit 13-34, IND.0080.0001.0258; Exhibit 13-35, IND.0080.0001.0260.

512 Exhibit 13-2, ‘Statement of Eliza’, 29 April 2021, at [65–69].

513 Exhibit 13-6, ‘Statement of Caroline Cuddihy’, 4 May 2021, at [213].

514 Exhibit 13-6, ‘Statement of Caroline Cuddihy’, 4 May 2021, at [213].

515 Exhibit 13-6, ‘Statement of Caroline Cuddihy’, 4 May 2021, at [212(f)].

516 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-348 [7–14].

517 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-348 [36–41].

518 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-354 [15–23].

519 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-188 [29–36].

520 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-188 [38–47].

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332. Eliza complained to both the NSW Ombudsman and the NDIS Commission about Sunnyfield's eviction notice.⁵²¹ She also wrote to the NSW Minister for Disability Services, who contacted the NDIA.⁵²² She said she was 'urgently looking for any enforcement body to stop the eviction' until she could find new accommodation and a service provider for Melissa.⁵²³
333. The NDIS Commission informed Eliza on 13 July 2018 that it would not take action about the complaint as it was being investigated by the NSW Ombudsman.⁵²⁴ After further discussions with Eliza, a formal complaint was registered by the NDIS Commission on or around 20 July 2018.⁵²⁵ However, the NDIS Commission advised that, due to the transitional arrangements between the NSW Ombudsman and the NDIS Commission, aspects of Eliza's complaint were not within the jurisdiction of the NDIS Commission.⁵²⁶
334. Ms Cuddihy conceded in her evidence:
- that Ms Luff's letter of 13 June 2018 to Eliza did not take a person-centred approach and that the reference to Sunnyfield having choice and control was inappropriate⁵²⁷
 - that the email from Ms Luff to Ms Cuddihy of 21 February 2018 could have been referring to the reputational risk for Sunnyfield of proceeding with the eviction of Melissa⁵²⁸
 - (reluctantly) that reputational and relationship risk was of concern to Sunnyfield, although Ms Cuddihy qualified the concession by stating that it was not Sunnyfield's 'primary concern'.⁵²⁹
335. Sunnyfield's concern about the reputational risk is evident in Ms Luff's email of 21 February 2018. It is also evident in a document included in a paper for a Board meeting of 15 May 2019. The document was entitled 'Client Extreme and High Risk Management Plan' and described Melissa as a 'Reputational' risk on the basis of 'WH&S [Work, Health and Safety] and sister quarrulent [sic] complainant'.

521 Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [70]; Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [215(b)], Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [12–18].

522 Exhibit 13-233. CTD.8000.0012.1797, p 2.

523 Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [69].

524 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [17].

525 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [18].

526 Exhibit 13-4, 'Statement of Graeme Head', 30 April 2021, at [21].

527 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-341 [15–18], P-355 [24–34].

528 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-341–342.

529 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-342 [7–19].

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336. The decision to terminate the Residency of Agreement was not in accordance with Sunnyfield’s contractual obligations. The Residency Agreement limited Sunnyfield to specific grounds for termination, none of which Sunnyfield invoked.
337. Moreover the Residency Agreement obliged Sunnyfield to assist Melissa to transfer to a higher support needs environment, if Melissa’s behaviour was such that Sunnyfield could no longer support her.⁵³⁰ At no stage did Sunnyfield offer assistance to Eliza to secure alternative accommodation for Melissa. Rather, Eliza was told that if she was unable to find alternative accommodation within the time specified by Sunnyfield, she would have to take responsibility herself for Melissa’s care.
338. Sunnyfield’s submissions acknowledged that the process for issuing the termination notices ‘could certainly have been handled better’. However, it resisted Counsel Assisting’s invitation to the Royal Commission to find that Sunnyfield deliberately prioritised its own interests over Melissa’s right to a safe and secure home.
339. Sunnyfield submitted that by January 2018 the relationship with Eliza had broken down and that the fraught relationship justified Sunnyfield terminating the Service and Residency Agreements. Sunnyfield also argued that Eliza wished to end the relationship with Sunnyfield, provided satisfactory accommodation could be found for Melissa.⁵³¹
340. Sunnyfield submitted that the delay in notifying Eliza of the eviction decision was due to the need to allow the Ombudsman to finalise his investigation of a reportable incident which occurred on 14 December 2017.⁵³²
341. The evidence amply supports a finding that Sunnyfield’s decision to terminate the Service and Residency Agreements was the result of Sunnyfield prioritising its own interests over those of Melissa.
342. Sunnyfield saw Eliza as ‘querulous’ in her advocacy on behalf of Melissa, notwithstanding that Eliza’s concerns and complaints were not only genuine, but for the most part objectively well-founded. Sunnyfield was also motivated by the reputational damage it feared might result from Melissa’s presence in the House and Eliza’s continuing vigorous advocacy on Melissa’s behalf. Sunnyfield paid little regard to Melissa’s safety and well-being, to the point where it was prepared to breach its contractual obligations to remove her.

530 Exhibit 13-17, IND.0080.0001.0280, cl 8.2(c).

531 Submissions of Sunnyfield, Public hearing 13, 6 August 2021, SUBM0013.0003.0011, [51].

532 Submissions of Sunnyfield, Public hearing 13, 6 August 2021, SUBM,0013.0003.0011, [75].

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343. Sunnyfield appreciated that it had a 'window of opportunity' to evict Melissa before the date the new Lease was schedule to be executed and to take effect (1 July 2018).⁵³³ It took advantage of that opportunity, but deliberately refrained from informing Eliza of its decision to issue termination notices for a period of over four months.
344. Sunnyfield's contention that the eviction decision can be explained, at least in part, by Eliza's contemporaneous desire to end the relationship must be rejected. Eliza's response to Sunnyfield's notification of the decision shows that she strongly objected to the proposed eviction and belies Sunnyfield's contention.
345. Sunnyfield has advanced no plausible reason to justify the deliberate delay in notifying Eliza of the decision to terminate the Service and Residency Agreements. It is difficult to understand Sunnyfield's reliance on advice to the NSW Ombudsman that it would 'exit Melissa' once the Ombudsman completed his investigation of an incident reported by Eliza on 14 December 2017. Eliza's complaint was not finalised until December 2018, which was after the eviction decision was communicated in uncompromising terms to Eliza. In any event, even if Sunnyfield wished to defer 'exiting Melissa', that does not explain why it was appropriate to withhold information about a critical decision affecting Melissa and her family.
346. Sunnyfield's submissions expressed concern that, if adverse findings were made, service providers might conclude that it is virtually impossible to terminate agreements over the opposition of residents or their representatives. None of the findings we have made imply that a service provider cannot or should not terminate service or residency agreements. The principal lesson to be derived from Melissa's story is the importance of open and sustained communication and consultation when difficulties arise, as they sometimes will, in the relationship between a service provider and residents and their representatives. This is the key to promoting choice and control for residents.

533 In fact the Lease was not executed until much later, but it took effect from 1 July 2018; Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [51].

Finding 9

Sunnyfield's decision in January 2018 to terminate the Service and Residency Agreements prioritised its own interests over those of Melissa, specifically her right to a secure and safe home.

Finding 10

Sunnyfield's decision was heavily influenced by concern for its own reputation and its desire to take advantage of a 'window of opportunity'. Sunnyfield gave little or no consideration to the effect of its decision on Melissa and her family.

Finding 11

The purported termination of the Residency Agreement was not in conformity with the terms of that Agreement.

Finding 12

Sunnyfield did not have a good reason to delay notifying Eliza for over four months of its intention to evict Melissa, or to avoid discussing alternative options with Eliza before issuing the notices purporting to terminate the Service and Residency Agreements. Sunnyfield's delay was deliberate and designed to protect Sunnyfield's interests and reputation over Melissa's wellbeing and best interests.

Finding 13

Sunnyfield's actions denied Melissa the opportunity for choice and control over her home and supports.

Staff recruitment, supervision and the House culture

Recruitment of SP1 and SP2

347. SP1 was recruited by Sunnyfield in June 2017 as a service coordinator. At the time, Sunnyfield required a police check and a Working with Children check to be conducted, both of which were clear.⁵³⁴ SP1 had indicated in his application to Sunnyfield that he had not been the subject of any prior employment related investigations.⁵³⁵
348. SP2 was engaged by Sunnyfield as a community support worker in January 2018.
349. Ms Cuddihy accepted that when Sunnyfield employed SP1 it did not have a complete picture of his entire work history.⁵³⁶ She emphasised that, although serious allegations had been made against SP1 in the course of his previous employment, they were completely unknown to her and to Sunnyfield.⁵³⁷
350. In August 2019, after incidents at the House involving SP1 and SP2 came to light, Sunnyfield's lawyers engaged Ms Piaud to investigate its compliance with reference and background checking procedures when hiring them. In her report dated 2 September 2019, Ms Piaud identified several areas of noncompliance.
351. Most significantly, Ms Piaud noted that SP1's '[r]esume provides very patchy dates of employment history, and there is no evidence of notes to cover questioning those gaps'.⁵³⁸ She also found a gap in SP2's employment history between October 2012 and June 2014, with no explanation provided on his application form.⁵³⁹
352. In the 'Learnings' section of her report, Ms Piaud said 'a thorough examination of the resume/application form should be made by the recruitment team, and questions should be asked of the applicant when unexplained gaps/dates in the employment history are noted'.⁵⁴⁰
353. During the public hearing, Ms Cuddihy said that the 'patchy dates' identified by Ms Piaud in relation to SP1 seemed to refer to particular months within years and that SP1 had falsified parts of his CV.⁵⁴¹

534 Exhibit 13-7, 'Supplementary Statement of Caroline Cuddihy', 24 May 2021, at [20].

535 Exhibit 13-7, 'Supplementary Statement of Caroline Cuddihy', 24 May 2021, at [21], Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-318 [5–18].

536 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-312 [45-46] – P-313 [1].

537 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-318 [41–46].

538 Exhibit 13-142, SUN.0001.0031.1378, p 4.

539 Exhibit 13-142, SUN.0001.0031.1378, p 6.

540 Exhibit 13-142, SUN.0001.0031.1378, p 8.

541 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-314 [33– 36], P-316 [16–17].

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354. Rather curiously Ms Cuddihy conceded ‘there could have been omissions in what [the Sunnyfield recruitment staff] did’, but she refused to accept that they must therefore have failed to follow appropriate procedures.⁵⁴² With the benefit of hindsight, Ms Cuddihy accepted that SP1 was totally unsuitable to hold the role that he did in the House and to work in the disability sector.⁵⁴³
355. According to Ms Cuddihy, Sunnyfield has since made changes to its recruitment processes with a ‘whole raft of initiatives’.⁵⁴⁴

Supervision of staff and culture of the House

356. Regardless of any failures in the recruitment of SP1 and SP2, once they started working at the House in western Sydney it was Sunnyfield’s responsibility to ensure they were properly supervised and any issues with their performance were addressed. As support coordinator, SP1 was responsible for day-to-day supervision of SP2 and the other community support workers working at the House.⁵⁴⁵ This should have included monitoring their performance, and responding to any complaints or concerns raised about them by other staff, the residents of the House, or the residents’ families. SP1 was supervised by the Regional Manager, who was not present in the House most of the time but who is said to have communicated with him and visited the House frequently.⁵⁴⁶
357. Ms Cuddihy referred to ‘internal complaints’ from staff as part of the complaints and feedback system. She said staff members could raise complaints or concerns in a number of ways, including to their supervisors and managers, to the Response Team, through the Complaints and Feedback mechanism, or anonymously to the STOPline whistle-blower service.⁵⁴⁷ The internal report to the Sunnyfield Board in August 2019 noted that Sunnyfield’s external auditor identified a gap in compliance with NDIS practice standards about staff training in complaint handling procedures. This was to be rectified with an online refresher training module ‘to address this gap and ensure all staff are aware of their role in responding to feedback and what should be lodged through the Sunnyfield feedback and complaints system’.⁵⁴⁸
358. Despite these avenues, staff working at the House did not escalate complaints about the conduct of SP1 and SP2 or report concerns about what was going on inside the House until matters came to a head in late June 2019. By that time SP1 had been employed by Sunnyfield for over two years and SP2 had been employed for nearly 18 months.

542 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-316 [19–24].

543 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-319 [33–37].

544 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-317 [4–5]; see also, Exhibit 13-6, ‘Statement of Caroline Cuddihy’, 4 May 2021, at [409–413].

545 Exhibit 13-6, ‘Statement of Caroline Cuddihy’, 4 May 2021, at [138(d)(i)], [147].

546 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-320 [34–46]; Exhibit 13-6, ‘Statement of Caroline Cuddihy’, 4 May 2021, at [149(a)].

547 Exhibit 13-6, ‘Statement of Caroline Cuddihy’, 4 May 2021, at [162–163].

548 Exhibit 13-288, SUN.0001.0008.7116, p 3.

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359. Following receipt of Ms Piaud's First Report, Ms Cuddihy prepared an assessment of what had gone wrong at the House in the light of the report. The July 2019 assessment noted 'HR did not follow-up on complaints and exit interview negative feedback regarding the SCO.' Among the 'Learnings' for Sunnyfield she said '[People Learning and Culture] to investigate staff specific negative feedback from performance and exit interviews'.⁵⁴⁹
360. In August 2019, Ms Piaud was engaged to inquire into a complaint allegedly made about SP1 and SP2 by a support worker who had resigned earlier in the year. In her report, Ms Piaud said she could find no record of a formal complaint from this support worker, but a general concern raised at his exit interview about 'favouritism' from SP1 towards certain staff and a need for other staff to 'pick up the slack'.⁵⁵⁰ In Ms Piaud's view the absence of staff complaints was due to a culture of fear and intimidation, as well as a sense among staff that they would not be listened to.
361. It is evident from Ms Piaud's reports that SP1 and SP2 were to some extent able to shield one another from their misconduct being detected by Sunnyfield's management. Staff at the House observed incidents or issues of serious concern to them, but the culture of the House discouraged reporting to more senior managers, the Response Team or external bodies, at least until mid-June 2019.
362. Ms Piaud wrote in her first report to Sunnyfield that the culture at the House was 'disjointed and distrusting', with the team 'segregated based on ethnicity'.⁵⁵¹ Staff told her that SP1 did not respond to their complaints to him about SP2's conduct.⁵⁵² She also said most staff felt intimidated by SP1 and were concerned for their job security.⁵⁵³ This is consistent with Eliza's recollection of a support worker saying to her words to the effect of 'if we upset [SP1], he will cut our shifts'.⁵⁵⁴
363. Ms Piaud made no suggestion that the toxic culture at the House was in any way a consequence of Eliza's advocacy or actions. In her draft report of 28 July 2019, Ms Cuddihy observed 'the staff have been intimidated, racially vilified and frightened of this gun owning [Service Co-ordinator] and knowing he protected [SP2] and their vital need for their jobs'.⁵⁵⁵

549 Exhibit 13-291, SUN.0001.0033.3781, p 2.

550 Exhibit 13-141, SUN.0001.0031.1355, pp 4–5, 13; see also, Exhibit 13-138, SUN.0001.0032.0829, pp 27–28.

551 Exhibit 13-138, SUN.0001.0032.0829, p 27.

552 Exhibit 13-138, SUN.0001.0032.0829, pp 27–28.

553 Exhibit 13-138, SUN.0001.0032.0829, p 29.

554 Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [50].

555 Exhibit 13-291, SUN.0001.0033.3781, p 2.

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364. In her reports dated 1 November 2019 and 19 December 2019, Ms Piaud commented that Sophia and Chen’s mother lacked trust in the management of the House, causing them to check up constantly on staff and processes.⁵⁵⁶ This lack of trust was apparent to the staff and placed additional stress on them.⁵⁵⁷ This finding is consistent with Sophia’s evidence that she noticed the staff were often stressed when she visited the House.⁵⁵⁸ Eliza also said she sensed a lot of fear among staff when she was there.⁵⁵⁹
365. Ms Piaud said in her evidence the House was one of the more dysfunctional workplaces she had come across.⁵⁶⁰ She agreed it was in crisis, from a cultural perspective, a characterisation which Ms Cuddihy accepted was fair. Ms Cuddihy also accepted responsibility for the House being able to get to this crisis point.⁵⁶¹
366. While Ms Cuddihy accepted that Sunnyfield had failed to prevent the violence against and abuse of Melissa, Carl and Chen by SP1 and SP2, she also emphasised SP1’s capacity for deceit. She said she had not had much to do with him, but understood from other staff that SP1 was ‘very persuasive’ and ‘quite charming’. She said he could be characterised as a ‘con artist’, and she deeply regretted employing him.⁵⁶²
367. Counsel Assisting put to Ms Cuddihy that there were a number of warnings, or ‘red flags’, about SP1 in the period he worked at the House. These included the numerous complaints about his conduct raised by Eliza, as well as comments made by SP1 about his level of stress and the inappropriate language he used to describe Eliza.⁵⁶³
368. Ms Cuddihy maintained these comments were due to Eliza’s behaviour and said Sunnyfield managers worked to support SP1, even offering him a transfer to another house.⁵⁶⁴ However, she said the relevant managers, including herself, have ‘reflected deeply’ in order to try to understand how they could have been so deceived by SP1.⁵⁶⁵ While accepting there were warning signs about SP1, Ms Cuddihy said:

556 Exhibit 13-139, SUN.0001.0045.0593, p 43; Exhibit 13-140, SUN.0001.0045.3295, p 34.

557 Exhibit 13-139, SUN.0001.0045.0593, p 43.

558 Exhibit 13-3, ‘Statement of Sophia’, 29 April 2021, at [23].

559 Exhibit 13-2, ‘Statement of Eliza’, 29 April 2021, at [49].

560 Transcript, Jennie Piaud, Public hearing 13, 25 May 2021, P-158 [35].

561 Transcript, Caroline Cuddihy, Public hearing 13, 28 May 2021, P-420 [13–21].

562 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-320 [1–8]; see also, Transcript, Caroline Cuddihy, Public hearing 13, 28 May 2021, P-435 [1–5].

563 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-319 [39–47], P-320 [40–46] – 321 [1–10], P-323 [32–41], P-324–327; Exhibit 13-302, SUN.0001.0042.2224, p 1; Exhibit 13-128, SUN.0001.0044.0108.

564 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-320 [25–27].

565 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-321 [16–20].

I think there were gaps, yes, in our systems and processes that unfortunately – well more than unfortunately, but that deceitful people had managed to optimise, and I think having systems and processes that can't be reliant on one person and that have more verifications and checks is absolutely appropriate.⁵⁶⁶

369. Ms Cuddihy accepted the breakdown in the relationship between Sunnyfield and Eliza may have contributed to its failure to recognise SP1's misconduct.⁵⁶⁷ However, she did not go so far as to acknowledge that her own perceptions of Eliza, and those of other managers within Sunnyfield, could have been fundamentally distorted due to dishonest or deceitful reporting by SP1 about Eliza's conduct.
370. We accept that, if Sunnyfield had been fully informed about the employment history of SP1 and SP2 earlier, it would not have employed them or would have ascertained much earlier that neither was suitable for the positions they occupied. However, Sunnyfield did not dispute that it was open to Ms Piaud to find, as she did, that Sunnyfield's recruitment team should have done more to scrutinise the employment information provided by SP1 and SP2 when they applied for positions. Indeed, Sunnyfield says that since Ms Piaud's report on its recruitment practices it has introduced changes to address the deficiencies identified in the report.
371. Ms Piaud's findings made it clear that staff observed serious incidents involving SP1 and SP2 but were intimidated to such an extent that they felt unable to escalate the complaints. Ms Piaud found that this state of affairs was because of the dysfunctional culture at the House.
372. It is also clear that Eliza raised 'red flags' on numerous occasions that should have alerted Sunnyfield's management to the culture of fear and intimidation at the House. These red flags were ignored because management too readily accepted SP1's false narrative that Eliza was essentially a troublemaker.
373. Sunnyfield's submissions identify organisational changes it has implemented since the conduct of SP1 and SP2 came to light. These include changes to recruitment practices and procedures, including support worker screening checks; rostering practices; training; exit interviews; and the visibility of regional managers.⁵⁶⁸ We are not in a position to evaluate the effectiveness of these changes but we have no reason to doubt that the changes are intended to address cultural issues of the kind exposed at the House. However, the fact that Sunnyfield has initiated changes does not eliminate the need to make findings about institutional failures at the House that contributed to violence and abuse inflicted on residents at the hands of employees.

566 Transcript, Caroline Cuddihy, Public hearing 13, 28 May 2021, P-434 [38–41].

567 Transcript, Caroline Cuddihy, Public hearing 13, 28 May 2021, P-435 [1–6].

568 Submissions of Sunnyfield, Public hearing 13, 20 August 2021, SUBM.0013.0003.0001, [122(a)–(e)]; Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [402–450].

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374. For example, Sunnyfield has now amended the policies governing house visits by regional managers to encourage closer scrutiny of the practices and culture of the House. Sunnyfield has not explained why it did not introduce this policy change much earlier. Had it done so, the regional managers would have had the opportunity to speak independently with staff, residents and support persons and to make their own observations about the conduct of the House. In these circumstances it is likely that the red flags would have been noticed (or verified) and remedial action taken swiftly.

Finding 14

SP1 and SP2 were responsible for misrepresenting or not disclosing their full work histories. However, Sunnyfield did not have in place sufficiently thorough processes to check the accuracy of the information provided by applicants or to identify and investigate gaps in resumes.

Finding 15

During SP1's employment at the House, Sunnyfield did not have appropriately robust systems in place to supervise SP1 and to prevent him intimidating other staff, enabling a toxic workplace culture to pervade the House. Sunnyfield managers were deceived by SP1 and SP2, but they did not act on several red flags which should have resulted in greater scrutiny of the conduct of SP1 and SP2 at an earlier stage.

Finding 16

Senior managers failed to receive reliable reports and accurate information about what was happening at the House because of the lack of appropriate systems. For two years, Sunnyfield managers accepted SP1's reports about the situation in the House. Their reliance on SP1 influenced their negative perception of Eliza.⁵⁶⁹

569 Submissions of Counsel Assisting, Public hearing 13, 6 August 2021, SUBM.0017.0001.0775, [373(c)].

Sunnyfield's complaints and feedback procedures

375. Ms Cuddihy gave evidence about Sunnyfield's complaints and feedback procedures in force at the relevant times. She referred in particular to Sunnyfield's 'Complaints and Feedback Guide' which confirmed that clients had a 'right' to provide feedback and encouraged them to do so at the earliest opportunity. The Guide assured residents that they would not be treated differently or be deprived of services for saying what they thought. The Guide explained that residents' families, friends, guardians and advocates could also provide feedback to Sunnyfield on any issue they thought to be important.⁵⁷⁰
376. Eliza said she read the Guide carefully when Sunnyfield took over operation of the House and understood it to mean she should speak up and tell Sunnyfield if she had a concern.⁵⁷¹ Ms Cuddihy agreed that the Guide was given to families and was the document which explained to them what to do if they wanted to raise an issue.⁵⁷²
377. It was not disputed that, after Sunnyfield took over operation of the House, Eliza raised numerous issues with Sunnyfield and asked many questions about Melissa's treatment. She also made a number of complaints and raised concerns specifically about the conduct of SP1, as set out in Part 3.⁵⁷³
378. Despite the clear wording of the Guide, Eliza and Sophia gave evidence they felt 'brushed off' or ignored when they raised matters about what was happening at the House with SP1 and others more senior within Sunnyfield.⁵⁷⁴ This led to a sense of frustration and distrust as well as fear about the safety of Melissa and Carl.⁵⁷⁵
379. Eliza said she felt like 'a nuisance' for raising questions.⁵⁷⁶ She also said that when Sunnyfield managers responded to her, this was done in a defensive way focusing on blame rather than on attempting to deal with the matters she wished to have addressed.⁵⁷⁷ She contrasted her experiences of this defensiveness to the more positive approach Sunnyfield adopted at the time of the public hearing.⁵⁷⁸ She

570 Exhibit 13-20, IND.0080.0004.0001, p 2.

571 Transcript, Eliza, Public hearing 13, 24 May 2021, P-58 [43–46] – 59 [1–25]; Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [33].

572 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-330 [18–32].

573 See Report, [96–101]; Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [38–45].

574 Transcript, Sophia, Public hearing 13, 25 May 2021, P-122 [25–46] – 123 [1–12]; Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [19–20]; Transcript, Eliza, Public hearing 13, 24 May 2021, P-60 [1–8].

575 Transcript, Sophia, Public hearing 13, 25 May 2021, P-123 [6–12].

576 Transcript, Eliza, Public hearing 13, 24 May 2021, P-60 [1].

577 Transcript, Eliza, Public hearing 13, 24 May 2021, P-64 [1–4].

578 Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [96].

described feeling a sense of relief and trust when the Regional Manager responsible for the House sought to collaborate with her to resolve issues that arise in the course of Melissa's day-to-day life.⁵⁷⁹

380. Eliza accepted that her style of communication could be direct and that she can find it hard to pick up when people are offended by her.⁵⁸⁰ She tried to address this and told Sunnyfield she was open to changing her way of operating, provided they listened to her concerns.⁵⁸¹
381. Ms Cuddihy said the volume of questions and concerns raised by Eliza was difficult for Sunnyfield staff to deal with. She also referred to the 'tone' of correspondence from Eliza and the 'frequent and heavy volume of telephone calls'.⁵⁸² She said staff felt bullied by Eliza and complained about stress.⁵⁸³ Ms Cuddihy said it was not just the number of complaints but also 'the manner in which things were raised consistently over a period of time' which had an impact on staff and their ability to deliver services.⁵⁸⁴ She maintained that 'a lot of effort was put into looking genuinely at the complaints that were raised' by Eliza.⁵⁸⁵
382. During the hearing, Ms Cuddihy referred several times to Ms Piaud's reports mentioning Eliza bullying staff and contributing to the toxic culture that she found at the House in the relevant period.⁵⁸⁶ Ms Cuddihy did not identify any parts of the reports containing comments to this effect. A close reading of those reports does not reveal any mention of Eliza bullying or harassing staff or being in any way responsible for the dysfunctional culture at the House.
383. Ms Cuddihy's knowledge of the situation in the House was based on what was reported to her by other Sunnyfield staff. For the most part, during the period June 2017 to June 2019, the information originated with SP1. At the hearing, Ms Cuddihy referred to SP1 as a 'con artist', who could be 'very persuasive' and was 'a very deflecting individual'.⁵⁸⁷

579 Transcript, Eliza, Public hearing 13, 25 May 2021, P-104 [36–47] – 105 [1].

580 Transcript, Eliza, Public hearing 13, 24 May 2021, P-67 [22–25].

581 Transcript, Eliza, Public hearing 13, 24 May 2021, P-67 [40–42].

582 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [193].

583 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [212–213], [217]; Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-331 [44–47] – 332 [1–5].

584 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-332 [36–39].

585 Transcript, Caroline Cuddihy, Public hearing 13, 28 May 2021, P-435 [12–14].

586 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-332 [41–46]; Transcript, Caroline Cuddihy, Public hearing 13, 28 May 2021, P-417 [34–40].

587 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-320 [1–8].

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384. Despite Ms Cuddihy's contention that she was not aware of a situation where Sunnyfield would have called a particular family member 'querulent',⁵⁸⁸ Eliza was described as such in a document provided to the Sunnyfield Board in May 2019.⁵⁸⁹ Ms Cuddihy herself described Eliza as 'a highly demanding and querulant complainer' in the draft report she prepared in July 2019 on what had gone wrong at the House. She observed that 'due to the querulant [sic] complaints of [Eliza] a protectionist approach has occurred towards staff'.⁵⁹⁰
385. It is evident from internal Sunnyfield correspondence that various Sunnyfield managers and staff viewed and spoke of Eliza as difficult or unreasonable.⁵⁹¹ SP1 went further, calling her 'unhinged' and 'a bitch'.⁵⁹²
386. Ms Cuddihy accepted in her evidence that labelling a person as 'querulent', vexatious, high conflict, or high maintenance can negatively influence how others might perceive them and deal with their complaints.⁵⁹³ Yet she did not accept that Eliza's feedback and complaints would have been better handled if she had not been labelled in that way.⁵⁹⁴ Ms Cuddihy acknowledged Sunnyfield had never conducted an independent review of the merits of the complaints and feedback it had received from Eliza.⁵⁹⁵ Ms Cuddihy also said 'I am aware that [valuing feedback] wasn't always the case, in particular to this house... I do apologise that our organisation hasn't always lived in reality what we hold dear to our hearts'.⁵⁹⁶
387. As Counsel Assisting submitted, disability service providers must have robust systems and processes for addressing feedback.⁵⁹⁷ These must take into account the great variety of ways in which feedback can be presented, different styles of communication and, most importantly, the traumatic experiences of many residents and their families. Persistent efforts on the part of people with disability or their supporters to provide feedback and make complaints should be valued as positive contributions towards ensuring that services are of the highest possible quality and tailored to meet the individual needs of each client.
388. A significant volume of questions or complaints from people with disability or their support persons should be viewed by the service provider as a signal that there may be problems with the manner in which services, or communications about those

588 Transcript, Caroline Cuddihy, Public hearing 13, 28 May 2021, P-436 [19–21].

589 Exhibit 13-287, SUN.0001.0008.5676, p 2.

590 Exhibit 13-291, SUN.0001.0033.3781, p 2.

591 Exhibit 13-289, SUN.0001.0033.3916, p 2; Exhibit 13-300, SUN.0001.0042.0961, p 1.

592 Exhibit 13-302, SUN.0001.0042.2224, p 1; Exhibit 13-139, SUN.0001.0045.0593, p 30.

593 Transcript, Caroline Cuddihy, Public hearing 13, 28 May 2021, P-436 [9–13].

594 Transcript, Caroline Cuddihy, Public hearing 13, 28 May 2021, P-435 [12–17].

595 Transcript, Caroline Cuddihy, Public hearing 13, 28 May 2021, P-418 [42–47].

596 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-273 [24–27].

597 Submissions of Counsel Assisting, Public hearing 13, 6 August 2021, SUBM.0017.0001.0775, [345].

services, are delivered. They should be treated by disability service providers as an opportunity to explore and discover any underlying issues, and not as a problem caused by the client or their support person.

389. The evidence establishes that Sunnyfield's practices were deficient in a number of respects:

- Sunnyfield's Quality, Risk and Compliance Team conducted audits of Sunnyfield's services, but as at July 2019 the audits did not involve any staff at the House other than SP1, nor did they seek input from clients or their families or support persons.
- A review of Sunnyfield's processes by the Client Safeguarding Manager, the Quality, Risk & Compliance Manager, and the Risk & Compliance Manager revealed that the Response Team process did not indicate any provision for involvement of people with disability or their supporters, other than notifying them of the outcome of investigations.⁵⁹⁸
- Ms Piaud reported that staff at the House showed a mixed understanding of their obligations about reporting of abuse, assault and neglect and a marked reluctance to report concerns about SP1. Ms Piaud also found that staff believed that their concerns would not be addressed if they did report.
- Since residents, their families and supporters were not involved in reviews of the House, the burden of reporting misconduct by SP1 and SP2 was cast on more junior staff. They lacked the training to be able to discharge that burden and, as has been seen, feared reprisals if they did so.

390. Ms Cuddihy conceded in her evidence that there were gaps in Sunnyfield's policies and practices that enabled SP1's behaviour to remain undetected. This concession, together with other evidence to which we have referred, supports a finding that the shortcomings in Sunnyfield's policies and practices contributed to the harm experienced by Melissa, Carl and Chen at the House between 2017 and 2019.

Finding 17

Sunnyfield's policies and practices were inadequate to enable senior management to detect and prevent, or at least curtail, the violence and abuse experienced at the House by Melissa, Carl and Chen from SP1 and SP2.

598 The Response Team Procedures as at April 2019 left it to the discretion of the CEO as to how and when the family or guardian of clients who lack capacity are notified of a serious allegation of abuse, assault or neglect; Exhibit 13-170, SUN.0001.0060.1355, p 10.

Finding 18

Sunnyfield's responses to feedback from and complaints by Eliza and Sophia were defensive and often hostile. The responses contributed to the feelings of mistrust between Eliza and Sophia, on the one hand, and Sunnyfield's staff external to the House, on the other.

Finding 19

It was entirely inappropriate for Ms Cuddihy, the CEO of Sunnyfield, and other services staff at Sunnyfield to label Eliza as 'querulant'. Labels of this kind negatively influence how a service provider perceives and addresses feedback and complaints, and can compromise the health, safety and wellbeing of residents.

Governance and leadership

391. Another theme that emerged at the hearing relates to the governance structures and processes of disability service providers.
392. The motto 'Nothing About Us Without Us' is frequently used to highlight the importance of including people with disability in every aspect of political, social, economic and cultural life, but specifically in when and how decisions are made affecting a person's day to day life. It reflects the practical effect of the human rights of people with disability affirmed in the *Convention on the Rights of Persons with Disabilities* (CRPD).
393. It is important, therefore, that disability support providers implement governance structures and management processes that are representative and inclusive of the people who receive their services. That ensures that people with disability are involved in decisions about their care and support which protect and promote their interests.

Composition of Sunnyfield's Board

394. At the time of Public hearing 13, people with disability were not represented at the highest level of governance in Sunnyfield, namely the Board of directors.
395. The Sunnyfield Constitution states that 'the business and affairs of Sunnyfield shall be under the management of and conducted by the Board.' The Board is to consist of at least six and no more than ten directors. No paid employee of Sunnyfield can be on the Board. At least three of the directors are required to be members of the organisation.⁵⁹⁹ Sunnyfield does not pay the Board directors for their service.

⁵⁹⁹ Exhibit 13-213, DRC.2000.0007.0001, cl 17.1, 17.2.

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396. The Chair of the Board at the time of the hearing was Ms Karen Ingram, a partner in the law firm Clayton Utz.⁶⁰⁰ That firm has provided legal services to Sunnyfield on both commercial and pro bono terms.⁶⁰¹
397. None of the nine Directors appears to identify as a person with disability and none is a person with intellectual disability. Ms Cuddihy said one of the Directors had previously worked in disability services, but none had worked as a disability support worker. None could be regarded as an advocate for people with disability.
398. According to the Sunnyfield financial report for the year ending 30 June 2020, the Board directors who served during that year had professional experience in the following areas:
- finance (5)
 - real estate (2)
 - health (3)
 - law (1)
 - media and sports (1).⁶⁰²
399. It was put to Ms Cuddihy at the hearing that the professional backgrounds of the Directors gave the impression that the composition of the Board was what would be expected of a commercial organisation. She responded that professional qualifications do not give a complete picture of people's personal interests or experiences. She expressed the view that there is great diversity on the Board, which is of a 'very high calibre' and has a strong commitment to Sunnyfield's Code of Conduct and the philosophy of the NDIS.⁶⁰³
400. Ms Cuddihy said that she was not aware of any consideration being given to amending the Constitution to provide for representation of people with disability, or people who receive services from Sunnyfield, on the Board. She suggested that this could be because nearly all of Sunnyfield's 'clients' are people with intellectual disability, raising 'legal matters to do with consent and capacity in terms of governance roles'.⁶⁰⁴
401. Ms Cuddihy said the Board directors receive training about the CRPD, as well as the National Standards for Disability Services, and various Sunnyfield policies and systems, as well as the NDIS worker orientation.⁶⁰⁵

600 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-202 [11–27].

601 Exhibit 13-215, DRC.20000.0006.0377, p 40.

602 Exhibit 13-215, DRC.2000.0006.0377, pp 3–5.

603 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-209 [42–47] – 210 [1–2].

604 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-203 [40–43]; see also, Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [461].

605 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [397–398].

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402. Counsel Assisting submits that training about the CRPD is but a first step. Any commitment to the rights articulated in the CRPD requires action and, relevantly, changes in the way an organisation delivers services to people with disability.⁶⁰⁶
403. From about 2010, Sunnyfield adopted amendments to its constitution to provide for fewer member directors (that is, reduced from six to three member directors), to be consistent with Principle 2 of the ASX Corporate Governance Council Principles and Recommendations on good corporate governance, which recommends a majority of independent directors.⁶⁰⁷
404. Contrary to submissions made on behalf of Sunnyfield, we consider it appropriate to make findings in relation to the composition of the Sunnyfield board. We accept that we cannot be certain whether the presence of one or more people with disability on the Board would have altered Sunnyfield's approach to people to whom it provided support services and accommodation. More specifically, we cannot be certain that the presence of people with disability on the Board would have ensured better protection for Melissa and Carl from violence and abuse and a more constructive and less hostile response to the legitimate complaints made on their behalf. But the very point of involving people with lived experience of disability in the decision-making process affecting them or other people with disability is to bring insights, understanding and perspectives that will not otherwise be available to the decision-making body.
405. The risks created by having a Board heavily weighted towards directors with commercial or legal experience, but without people with lived experience of disability, are obvious. Even with the best of intentions, the focus of the Board is more likely to be on the perceived operational requirements for Sunnyfield (including reputational risks), rather than on ensuring that the needs of clients are being met to the highest standards. It is one thing for an organisation to state that it aspires to giving the highest priority to the needs of people with disability; it is another to translate that aspiration into reality. If the Board does not have the benefit of the experiences and insights of people with disability, the directors are less likely to receive all the information they require to discharge their responsibilities effectively.
406. Had people with disability been directors of Sunnyfield (perhaps including people with cognitive disability) there is every prospect that Sunnyfield's approach to its 'clients' would have been better informed and more supportive. There is also every prospect that Sunnyfield would have been better equipped to prevent the violence against and abuse of Melissa and Carl and to respond to the complaints in a way that was more supportive and less fraught with conflict.

606 Submissions of Counsel Assisting, Public hearing 13, 6 August 2021, SUBM.0017.0001.0775, [239].

607 Submissions of Sunnyfield, Public hearing 13, 20 August 2021, SUBM.0013.0003.0001, [43].

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407. The significance of Sunnyfield's Board not including anyone with lived experience of disability is not confined to Sunnyfield. Governance is particularly important for all large disability service providers that support people with disability, particularly people with complex needs. The issue is also important for smaller service providers supporting people with disability.
408. Counsel Assisting's submissions proposed several findings about the composition of and role played by Sunnyfield's Board during the period Melissa and Carl experienced violence and abuse at the House. Several matters support these submissions.
409. First, while it is appropriate for Sunnyfield's Board to include directors who have commercial and corporate experience or have skills relevant to the management of disability services, it does not follow that the Board consist exclusively of such people. For the reasons we have given, people with lived experience of disability can make contributions to the deliberations of the Board that people without disability, no matter how well intentioned, are unlikely to be able to replicate. In other words, the inclusion of people with disability as directors is likely to expand the range of experience, skills and knowledge available to the Board and to improve the quality of services provided to the people with disability Sunnyfield is meant to support.
410. This does not suggest that directors who are not themselves people with disability cannot have a sound understanding of the challenges presented by providing disability support services to people with complex needs. Nor does it suggest that there are not people with disability who have extensive commercial or corporate experience. The point is that the life experiences of people without disability cannot be a substitute for the life experiences of people with disability.
411. Second, Sunnyfield's submission that the Board is structured so as to ensure a majority of independent directors is not a reason why the Board cannot include people with disability. A person with disability is perfectly capable of acting as an independent director.
412. Reference was made in argument to the ASX Corporate Governance Council Principles and Recommendations (Principles). The most recent edition of the Principles counsels flexibility in the size and skill set of a board appropriate to the management of the particular entity:⁶⁰⁸

The board of a listed entity should be of an appropriate size and collectively have the skills, commitment and knowledge of the entity and the industry in which it operates, to enable it to discharge its duties effectively and to add value.

608 ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations*, 4 ed, February 2019, pp 12–15.

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413. This advice, if adapted to the circumstance of a non-listed entity, suggests that a board should include directors with the knowledge, skills and commitment to enable the entity to discharge its duties. In the case of Sunnyfield those duties include preventing violence against and abuse of people with disability to whom it provides services and ensuring that those people receive the support appropriate to their complex needs.
414. Third, contrary to Ms Cuddihy's apparent view, we do not accept that people with disability, including people with cognitive disability, are incapable of filling the role of a director. It is true that, just as with non-disabled people, there are people with cognitive disability who would not be suitable for appointment as a director of an entity such as Sunnyfield. It is also true that many people without disability would not be suitable for appointment as a director.
415. In fact, many people with cognitive disability are able to manage their own affairs and to participate in professional activities including corporate governance. The question of whether a particular person with disability can serve as a director has to be considered in the light of the supports that can and should be provided to that person.
416. Sunnyfield's submissions refer to the Australian Law Reform Commission's report into Equality, Capacity and Disability in Commonwealth Law (ALRC Report).⁶⁰⁹ The ALRC Report explored the issue of under-representation of persons with disability on corporate boards, in the context of provisions for removal of directors due to intellectual disability or mental illness.⁶¹⁰ The ALRC made recommendations to assess a director's decision-making ability in the context of supported decision making, stating as follows:

[11.71]. The existing tests of a person's capacity to act in roles regulated by the Corporations Act are inconsistent with the principles of supported decision making. In particular, they are status based - referring to concepts such as 'mental infirmity' and 'mental incapacity'. Further, the functional aspect of some of the tests refers broadly to a person's ability to manage their affairs rather than to make particular categories of decision or perform particular duties.

[11.72]. Such tests, to the extent they are necessary, should be based on a person's decision-making ability in the context of a particular role or duties. In the ALRC's view, the Corporations Act should be amended to introduce provisions based on the National Decision Making Principles and Guidelines.⁶¹¹

609 Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*, Final Report, ALRC Report 124, August 2014.

610 Submissions of Sunnyfield, Public hearing 13, 20 August 2021, SUBM.0013.0003.0001, [26–36]. Provisions identified include section 35 of the *Associations Incorporation Act 2009* (NSW) and particular provisions in the *Corporations Act 2001* (Cth), such as sections 201F(2)(b), 915B(1)(d) and 1292(7)(b), each of which make reference to concepts of 'mental incapacity' or 'mental infirmity'.

611 Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*, Final Report, ALRC Report 124, August 2014, pp 64–69, 92–99.

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417. The ALRC recommendation concerning board representation for persons with disability was as follows:

[T]he *Corporations Act 2001* (Cth) should be amended to remove references to ‘mental incapacity’, ‘being incapable, because of mental infirmity’ and ‘mental or physical incapacity’. Instead, the provisions should state that a person is not eligible to act in the roles of director, auditor or liquidator, or a financial services licence holder, if they cannot be supported to:

- (a) Understand the information relevant to the decisions that they will have to make in performing the role;
- (b) Retain that information to the extent necessary to make those decisions;
- (c) Use or weigh that information as part of the process of making decisions; or
- (d) Communicate the decisions in some way.

418. The Australian Parliament has not yet adopted this recommendation and the Corporations Act remains unchanged. Sunnyfield submitted that, until reforms of the Corporations Act and cognate legislation are enacted, provisions of this nature pose a legal obstacle to appointment of persons with intellectual disabilities to corporate roles, for reasons that include risks to insurance cover for directors and officers.⁶¹²
419. We shall give consideration in our Final Report to the ALRC’s recommendation. However, the failure of Parliament to implement the ALRC’s recommendation does not present a barrier to a disability service provider ensuring that its board includes people with disability. None of the provisions in the Corporations Act with which the ALRC was concerned affects an entity such as Sunnyfield. Accordingly, there is no legal impediment to Sunnyfield and service providers in a similar position having people with disability on their boards and providing them with the support necessary to enable them to discharge their duties.
420. We consider it highly unlikely that Sunnyfield could not locate suitable people with disability to serve on the Board, such as people with experience in community leadership or advocacy. Even if no such people could be identified, Sunnyfield and similar entities have other avenues open to them to ensure that the experiences of people with disability inform their deliberations and decision. For example, Sunnyfield could establish an advisory group consisting primarily of people with disability (including people with cognitive disability) to provide advice to the Board and senior management about the provision of services and support to Sunnyfield’s clients. Members of the advisory group should receive the necessary supports to perform their role and to ensure that their views are fairly and accurately conveyed to the Board or senior management.

612 Submissions of Sunnyfield, Public hearing 13, 20 August 2021, SUBM.0013.0003.0001, [26–36].

Finding 20

The Board of Sunnyfield, at all relevant times, did not include any person with lived experience of disability.

Finding 21

While it was appropriate for the Board to include Directors with financial, commercial or legal experience, the lack of Directors with lived experience of disability significantly impeded the Board's ability to discharge its responsibilities effectively. Specifically, the lack of Directors with lived experience of disability contributed to the Board not being fully informed about the challenges Sunnyfield faced in ensuring the safety, support and wellbeing of residents in Sunnyfield's disability residential accommodation.

Finding 22

The assumption made by Ms Cuddihy and, presumably, the Board of Sunnyfield that people with cognitive disability are incapable of serving as Directors of an entity such as Sunnyfield is not well-founded.

Board's responsibilities

421. The Sunnyfield Board operates in accordance with a Board Charter. The Board Charter was not provided to the Royal Commission, but excerpts were included in Ms Cuddihy's written statement.⁶¹³ Ms Cuddihy explained that an independent consultant has been engaged to assist in developing a new Charter 'to better align the governance requirements of the Board', including consideration of implementing a Client Care and Safeguarding Board Committee.⁶¹⁴
422. According to Ms Cuddihy, the Sunnyfield Board is responsible for 'overseeing and monitoring the direction' of the organisation.⁶¹⁵ This includes approval of key policies relating to, and oversight of reporting about, preventing, identifying, reporting, investigating and responding to violence against and/or abuse, neglect and/or

613 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [369].

614 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [446].

615 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [336].

exploitation of disability service users.⁶¹⁶ In response to a question from Counsel Assisting about whether any of the directors had firsthand experience in addressing violence, abuse, neglect or exploitation of people with disability in the course of their professional roles, Ms Cuddihy said that she did not know.⁶¹⁷

423. When asked how she could be confident that the Board could discharge its responsibilities with respect to policies concerning violence, abuse, neglect and exploitation, given that none of them had direct experience in this area, Ms Cuddihy responded that all directors had completed the NDIS worker orientation module and she thought some had attended 'NDIS forums, various other educational programs and also listened very closely to our director, Melissa Hammel, who has quite a depth of experience in these matters...'⁶¹⁸ She expressed the view that the Board 'have a very professional approach, they are very strong in their governance, they are also very strong in their commitment to learning'.⁶¹⁹
424. There are three Board Committees to 'assist the Board in managing its governance and oversight role'.⁶²⁰ Most relevant to the subject-matter of the hearing is the Audit, Finance and Risk Committee, which Ms Cuddihy said 'is directly responsible for the oversight of the Quality, Risk and Compliance function', including the Response Team and complaints and feedback functions. She said that it 'aims to support the achievement of Sunnyfield's organisational objectives and sustained viability within the established limits of risk management'.⁶²¹ Sunnyfield's approach to risk management is discussed above in the section titled 'Termination of the Service and Residency Agreements'.⁶²²
425. Ms Cuddihy said all new Sunnyfield Board directors are given an orientation to Sunnyfield, during which they would visit disability residential accommodation and a community hub.⁶²³
426. Ms Cuddihy did not know of any process for Board directors to set up meetings with residents of Sunnyfield's disability residential accommodation. A proposal was approved in 2019 for directors to visit Sunnyfield's houses. Ms Cuddihy said this proposal could not be implemented due to COVID-19.⁶²⁴

616 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [337].

617 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-205 [26–32].

618 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-207 [42–44].

619 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-208 [23–25].

620 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [332].

621 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [333].

622 See Report, [315] ff.

623 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-206 [10–12].

624 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-206 [31–36].

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427. Ms Cuddihy said that there were opportunities at the Sunnyfield annual general meeting for meetings between residents' families and the Board. Beyond this, the Directors also have opportunities to meet Sunnyfield clients at functions.⁶²⁵
428. From the beginning of May 2017, when Sunnyfield took over responsibility for the House in western Sydney, to the beginning of April 2021, none of the Board directors visited the House.⁶²⁶
429. The proposal for Directors' visits to Sunnyfield's disability residential accommodations was contained in a report to a meeting of the Board held on 27 November 2019.⁶²⁷ The report stated that Directors had requested visits to Sunnyfield services 'for the purpose of organisational familiarisation, gaining knowledge and undertaking workplace health and safety inspections'. The report noted that group tours may be difficult to organise and imposing for clients and staff. Alternatively, it was proposed that Directors individually book with the Chief Executive Officer (CEO) individual visits to a Sunnyfield client service, accompanied by a General Manager and service member so as to achieve minimal service interruption. It was proposed that Directors would have a one half day service visit within a 6 month period, and a form was provided for the Director to record their observations for the Chair and the CEO.
430. The proposal for individual client services visits appears to strike a balance between the need for the Board to properly inform themselves of the conditions and operations of Sunnyfield's service locations and the need to ensure that client privacy and continuity of service provision is not compromised. Similar arrangements could easily be devised to give Directors an opportunity to meet with clients and their families and support persons, at the request of either the Board or the clients and their representatives.

Finding 23

Directors and Board members of disability service providers should inform themselves of conditions at residential disability accommodation and the experiences, needs and concerns of residents and other clients by meeting with them and their families and supporters. At the time of the public hearing, there were no arrangements for Sunnyfield's Directors to regularly visit Sunnyfield residential disability accommodation, nor were there any arrangements for regular meetings between Directors and residents, their families and supporters. Such arrangements should be implemented as soon as practicable.

625 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-206 [18 –23], [44–46].

626 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [161].

627 Submissions of Sunnyfield Submission, Public hearing 13, 20 August 2021, SUBM.0013.0003.0001, p 59.

CEO and Senior Leadership Team

431. Ms Cuddihy has been the Chief Executive Officer (CEO) of Sunnyfield since November 2010, but has been employed by Sunnyfield since February 2008. Previously, she was employed as a manager in a food services company and an executive director in an aged care provider.⁶²⁸
432. Ms Cuddihy explained that she has been classified by a behavioural optometrist as being legally blind.⁶²⁹ Her condition leaves her with 10 per cent of functional vision without glasses, and presents her with problems completing sustained near visual tasks, such as reviewing documents on a computer screen. She also has poor spatial judgment that can affect co-ordination tasks, including driving.
433. Ms Cuddihy described the CEO of Sunnyfield as the most senior member of the Sunnyfield senior leadership team (SLT), with responsibility for oversight of the functioning of the organisation and for being a conduit to the Board. She said this includes developing strategic plans, business plans and budgets and providing fair and appropriate reporting to the Board. The Board is involved in a performance appraisal process for the CEO, and there are key performance indicators relating to the business plan, the budget and the quality of services provided to 'clients'.⁶³⁰ Members of the SLT are selected through a process involving a Board Committee.⁶³¹
434. Ms Cuddihy said she visits various sites where Sunnyfield provides services roughly once a quarter.⁶³² However, in 2020 the COVID-19 pandemic had an impact on those visits. She has not spent an entire day in any one of the shared independent living homes, but said she might visit various sites in a day and has spent up to half a day in one site.⁶³³ During visits, Ms Cuddihy speaks with residents but there are not organised forums for residents of shared independent living houses to get together with her as a group.⁶³⁴
435. Ms Cuddihy visited the House during the relevant period in May 2017, shortly after Sunnyfield took over, and in December 2019.⁶³⁵ Ms Cuddihy agreed that her knowledge of what happened at the House in that period was based solely on what

628 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [4]; Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-175 [35–47] – 176 [1–10].

629 Submissions of Sunnyfield Submission, Public hearing 13, 20 August 2021, SUBM.0013.0003.0001, pp 17, 58.

630 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-211 [2–4].

631 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-216 [3–8].

632 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-211 [16–20].

633 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-211 [33–34]; Transcript, Caroline Cuddihy, Public hearing 13, 28 May 2021, P-455 [43–46], P-456 [23–34].

634 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-212 [12–17].

635 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [159].

was reported to her, including through a process starting from the House service coordinator (SP1), to the relevant Regional Manager, then to the SLT.⁶³⁶

436. Ms Cuddihy acknowledged that she had had no formal or specialised training in communicating with people with intellectual disability, nor in traumainformed approaches. Other than Sunnyfield's organisational training, she has not undertaken specific training with respect to violence, abuse, neglect and exploitation of people with disability.⁶³⁷
437. In addition to Ms Cuddihy, the members of the Sunnyfield SLT with responsibilities relevant to the issues examined at the public hearing are:
- the General Manager Quality, Risk and Compliance
 - the General Manager Shared Living
 - the General Manager of People, Learning and Culture, and
 - the General Manager Business Development.⁶³⁸
438. The position of General Manager Quality, Risk and Compliance did not exist before January 2021. During the relevant events at the House, the General Manager Corporate and Company Secretary was in charge of Sunnyfield's Quality, Risk and Compliance team. For at least part of that period, the Company Secretary was Mr Swain, who Ms Cuddihy described as a lawyer with prior experience as a company secretary.⁶³⁹ It does not appear from Ms Cuddihy's statement that Mr Swain or others holding that position visited the House at any relevant time.
439. The General Manager Shared Living is responsible for approving policies, procedures and work instructions for Sunnyfield's shared living services. The position is also responsible for the appointment of regional managers and service coordinators; the supervision of regional managers; the closure of Response Team matters; actioning complaints and feedback matters that are not Response Team matters; and coordinating with People, Learning and Culture on staff performance issues.⁶⁴⁰ Ms Cuddihy said that she 'has a very strong focus around the quality of service delivery'.⁶⁴¹
440. At the time of the hearing and during much of the relevant period Ms Jennifer Luff was the General Manager Shared Living. Ms Cuddihy said the General Manger Shared Living would be the principal point of contact on the SLT for residents of

636 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-322 [5–39].

637 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-212 [29–28].

638 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [306].

639 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-214 [35–47] – 215 [1–6].

640 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, as [306(b)].

641 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-216 [35–38].

shared independent living homes and their families.⁶⁴² Ms Luff visited the House in December 2017, August 2019 and March 2020.⁶⁴³

441. Ms Cuddihy described the General Manager of People, Learning and Culture as managing Sunnyfield's workforce and said they would need to have extensive experience and a background in human resources.⁶⁴⁴ It does not appear from Ms Cuddihy's statement that the person or persons holding this position visited the House during the period relevant to the hearing.
442. The General Manager Business Development is responsible for Sunnyfield's commercial team, who can assist its clients with their NDIS plans and liaise directly with the NDIA on matters related to their NDIS supports. This includes liaising with the NDIS about the roster of care for a person in shared independent living. They also have a client engagement team and a fundraising team.⁶⁴⁵ Ms Cuddihy said the General Manager Business Development has oversight of drawing up contractual documents for clients entering shared independent living.⁶⁴⁶
443. According to Ms Cuddihy, none of the members of the current SLT have lived experience of disability. However, she said that the members of the SLT are experienced in the care of people with disability or other vulnerable people, such as relatives in aged care. In addition, all of the SLT have completed the NDIS worker orientation module and online training modules. As part of their orientation, members of the SLT are taken through the CRPD.⁶⁴⁷ Ms Cuddihy was not aware that any of the SLT had undertaken specific training in preventing, detecting or responding to violence, abuse, neglect or exploitation of people with disability.⁶⁴⁸
444. In our view, just as the Board of Sunnyfield did not have the benefit of the insights of people with disability as Directors, the SLT lacks people with lived experience of disability. In Sunnyfield's Submissions, it stated that Ms Cuddihy herself has a vision impairment and did not include herself when giving evidence about the SLT.⁶⁴⁹ We accept that Ms Cuddihy has the disability she described. However, she did not suggest that it inhibited the discharge of her responsibilities in any significant way. She also did not suggest that her particular disability, of itself, gives her insights into the experiences of people with cognitive disability in Sunnyfield's residential disability accommodation.

642 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-217 [36–46].

643 Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [160(a)].

644 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-218 [16–41].

645 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-219 [24–26].

646 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-219 [5–23].

647 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-221 [33–44].

648 Transcript, Caroline Cuddihy, Public hearing 13, 26 May 2021, P-213 [41–47] – 214 [1–10].

649 Submissions of Sunnyfield, Public hearing 13, 20 August 2021, SUBM.0013.0003.0001, [11].

Finding 24

The composition of the Senior Leadership Team (SLT) at the time of the public hearing failed to ensure people with disability were appropriately involved in Sunnyfield's decision making processes. This is likely to have reduced the SLT's ability to detect the dysfunction that characterised the House.

CCTV

445. As we have noted, before Eliza signed the Residence Agreement and Service Agreement for Melissa in April 2017, she raised the issue of installation of closed circuit television (CCTV) in the House.⁶⁵⁰ The installation and use of CCTV assumed significance at the hearing because of Sunnyfield's failure to detect SP1 and SP2's misconduct until late June 2019 and the subsequent dismissal of the criminal charges against them.
446. Eliza said in her evidence that, if CCTV had been installed in the House, Melissa and Carl would have been safer. If Melissa and Carl had been subject to violence and abuse, the CCTV footage would have provided powerful evidence in any criminal prosecutions.
447. Eliza explained that she had very strong views on the subject because Melissa, Carl and other residents at the House cannot 'speak for themselves in a way that ... would be taken seriously by a court or tribunal'.⁶⁵¹ Sophia expressed similar views.⁶⁵²
448. Ms Cuddihy acknowledged that CCTV had not been installed at the House.⁶⁵³ She explained that the issue was complex because of legal issues concerning workplace surveillance and staff privacy, as well as difficult practical issues that had to be resolved.⁶⁵⁴ Sunnyfield had not made a final decision about the matter when she gave evidence, and she did not know when the matter would be resolved.⁶⁵⁵

650 Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [26].

651 Transcript, Eliza, Public hearing 13, 24 May 2021, P-52 [40–41].

652 Exhibit 13-3, 'Statement of Sophia', 29 April 2021, at [60].

653 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-299 [7–8], P-303 [42–45].

654 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-302 [38–47] – 303 [1–2].

655 Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-303 [34–47] – 304 [2].

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449. Mr Head agreed that the use of CCTV in residential disability accommodation raises significant issues. He emphasised the importance of privacy rights for people with disability and the sensitivity of potential surveillance inside people’s homes. He said:

I think there are circumstances probably where there is agreement between people who are entitled to make decisions on behalf of their family members where they would all have the same view, and I think if that’s the case, then there are a set of issues for the provider in that circumstance about how they respond to that request without failing to uphold people’s rights to privacy.⁶⁵⁶

450. Counsel Assisting did not seek a specific finding concerning the installation and use of CCTV at the House. However, their submissions supported the view that this is an important policy issue that warrants attention in the Royal Commission’s Final Report.
451. We agree with Counsel Assisting and propose to consider the issue further in our Final Report.

656 Transcript, Graeme Head, Public hearing 13, 28 May 2021, P-500 [39–43].

Part 6: Future directions

Further investigations

452. Since Public hearing 13 was the first to focus on the conduct of a particular service provider, Counsel Assisting did not propose that the Royal Commission should make recommendations about the provision of disability services generally.
453. Counsel Assisting submitted that the following matters should be subject to further investigation by the Royal Commission:
- The potential use of CCTV as a safeguarding measure in residential disability accommodation.
 - The role of the NDIS Commission and other external regulators in the oversight of disability service providers, including:
 - the extent to which the NDIS Commission can or should rely on information from and investigations by those service providers when responding to complaints or reportable incidents, and
 - whether the NDIS Commission should actively monitor the investigation of allegations or complaints of violence, abuse, neglect or exploitation by service providers, obtain the full versions of any resulting reports and ensure service providers act on the findings of such reports.
 - The operation of the national Worker Screening Check system, including the extent to which Worker Screening Units are able to access information about allegations of previous misconduct on the part of workers employed to support people with disability.
 - The extent to which people with disability who have high support needs have appropriate choice and control over where and with whom they live and are not left vulnerable to violence and abuse as a result of homelessness.

None of the interested parties sought to argue against these proposals for further investigations.

454. In addition to the matters as outlined in paragraph 453, a number of other issues warrant further investigation by the Royal Commission.

Separation of accommodation from support services

455. As noted above, Sunnyfield's 'core services' include shared independent living, community services, employment services, and support coordination and implementation of NDIS plans.⁶⁵⁷ Melissa received accommodation services

⁶⁵⁷ See Report, [67].

under a Shared Living Residency Agreement with Sunnyfield, which included accommodation, meals and utilities.⁶⁵⁸ She also received supports under the Service Agreement with Sunnyfield, including assistance with self-care activities and individual assistance to access the community.⁶⁵⁹

456. In response to the eviction notice (which terminated both the Residency Agreement and the Service Agreement), Eliza engaged the Intellectual Disability Rights Service (IDRS), an advocacy service located in New South Wales. On 30 July 2018, IDRS wrote to Sunnyfield on behalf of Eliza and Melissa, stating that as Melissa wanted to remain in her home and Sunnyfield felt unable to provide independent living services to Melissa, it should allow a separate provider to enter the home to provide those services to Melissa.⁶⁶⁰ If this arrangement were implemented, Melissa's Residency Agreement with Sunnyfield would remain in place but the Service Agreement would be terminated.
457. Ms Cuddihy expressed the view that, while it was possible for a resident to have a different accommodation provider to their service provider, it would be 'very difficult' for multiple service providers to support different residents in the same home.⁶⁶¹ The Royal Commission will consider whether there are benefits in separating accommodation from support services (including individualised supports) and whether such a separation is feasible.

Support co-ordination

458. While Melissa received both her accommodation and support services from Sunnyfield, she received support coordination services from a different organisation.⁶⁶² Eliza gave evidence that the support coordinator assisted her with liaising with the NDIA and Sunnyfield following the eviction notice and that the support coordinator assisted Eliza in searching for suitable alternative accommodation for Melissa.⁶⁶³ Although Sunnyfield provides support coordination services to clients,⁶⁶⁴ Melissa and Eliza appear to have benefitted from having an independent support coordinator who could assist in Eliza's communications with the NDIA and Sunnyfield.⁶⁶⁵ We will consider further the role of support coordinators in finding options for homes and living, communications (devices and capacity building) and community engagement.

658 Exhibit 13-17, IND.0080.0001.0280, cl 2.1, 3.1.

659 Exhibit 13-16, IND.0080.0001.0263, sch 2; Exhibit 13-18, IND.0080.0001.0292.

660 Exhibit 13-2, 'Statement of Eliza', 29 April 2021, at [71].

661 Transcript, Caroline Cuddihy, Public hearing 13, 28 May 2021, P-441 [38–42].

662 Transcript, Kate Eastman SC (Counsel Assisting), Public hearing 13, 24 May 2021, P-74 [45–47] – 75 [1].

663 Transcript, Kate Eastman SC (Counsel Assisting), Public hearing 13, 24 May 2021, P-74 [45–47] – 75 [1]; Transcript, Eliza, Public hearing 13, 24 May 2021, P-78 [20–30].

664 Exhibit 13-214, DRC.2000.0006.0077, pp 2, 12, 15.

665 Transcript, Eliza, Public hearing 13, 24 May 2021, P-80 [15–19].

Advocacy

459. Several Public hearings have addressed the potential for individual and systemic advocacy in preventing and/or reporting violence, abuse, neglect and exploitation of people with disability in group homes.⁶⁶⁶ The Royal Commission will further investigate this area.

Supported Independent Living

460. As noted above, Ms Cuddihy said that Sunnyfield's service model broadly involves receipt of funds from clients to pay for the services that Sunnyfield provides for supported independent living.⁶⁶⁷ The Royal Commission will further investigate how service providers use funding from clients and the degree to which the funding arrangements enable residents to exercise genuine choice and control in homes and living arrangements.

Recommendations

461. Counsel Assisting also submitted that a number of recommendations should be made by the Royal Commission about Sunnyfield and its response to the violence and abuse which occurred at the House in western Sydney.

462. Sunnyfield indicated that it does not resist the proposed recommendations. It also confirmed that:

- On 19 August 2021 Sunnyfield wrote to Eliza to confirm that the exit notice is no longer current.⁶⁶⁸
- On 3 June 2021 Sunnyfield wrote to the families of each of the residents at the House to express regret for the distress suffered, and to assure the families that there would be no retribution from Sunnyfield in relation to their complaints, and invited them to participate in an independent mediation attended by Ms Cuddihy and the Chair of the Board. Participation in the mediation was being negotiated at the time of Sunnyfield's submissions.⁶⁶⁹

666 Transcript, Scott McNaughton, Public hearing 13, 28 May 2021, P-480 [38 – 43]; Transcript, Eliza, Public hearing 13, 25 May 2021, P-111 [9–16].

667 See Report, [68]; Exhibit 13-6, 'Statement of Caroline Cuddihy', 4 May 2021, at [58].

668 Submissions of Sunnyfield, Public hearing 13, 20 August 2021, SUBM.0013.0003.0001, [153].

669 Submissions of Sunnyfield, Public hearing 13, 20 August 2021, SUBM.0013.0003.0001, [149].

463. Accordingly, the Royal Commission considers it appropriate to make the following recommendations, noting that some have been fulfilled in whole or part.

Recommendation 1

Sunnyfield should clarify in writing that the 4 June 2018 eviction notice sent to Eliza has been withdrawn.

Recommendation 2

Sunnyfield should discuss with Eliza revising its service agreement for Melissa to ensure those agreements are consistent with Melissa's rights and her exercise of choice and control.

Recommendation 3

Ms Cuddihy and appropriate members of the Board should meet with Melissa, Carl and Chen, or their families, to:

- apologise for Sunnyfield's failures to prevent the violence and abuse they endured; and
- discuss what redress and/or additional supports and assistance they require.

Appendices

Appendix A: List of witnesses

Witness	Date of appearance
'Eliza'	24 May 2021
'Sophia'	25 May 2021
Jennie Piaud	25 May 2021
Caroline Cuddihy (Chief Executive Officer, Sunnyfield Disability Services)	26 – 28 May 2021
Graeme Head AO (National Disability Insurance Scheme Quality and Safeguards Commissioner)	28 May 2021
Scott McNaughton (General Manager, National Delivery of the National Disability Insurance Agency)	28 May 2021
Paul Richard Miller PSM (NSW Ombudsman)	N/A

Appendix B: Parties with leave to appear and legal representatives

Party	Legal representatives
Australian Government	K Downes QC with B Dighton, instructed by Gilbert + Tobin
State of New South Wales NSW Ombudsman	G Furness SC with T Glover, instructed by the Crown Solicitor's Office
'Eliza'	P O'Brien
'Sophia'	C Hunter
Sunnyfield Disability Services	S Duggan, instructed by Clayton Utz
Jennie Piaud	D Leamey

Appendix C: Acronyms and abbreviations

Acronym / Abbreviation	Definition
CCTV	Closed circuit television
CEO	Chief Executive Officer
Complaints Management and Resolution Rules	<i>National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018 (Cth)</i>
CRPD	Convention on the Rights of Persons with Disabilities
CRM Act	<i>Community Services (Complaints Review and Monitoring) Act 1993 (NSW)</i>
CYP Act	<i>Children and Young Persons (Care and Protection) Act 1998 (NSW)</i>
FACS	NSW Department of Family and Community Services
Incident Management and Reportable Incident Rules	<i>National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018 (Cth)</i>
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
NDIS Act	<i>National Disability Insurance Scheme Act 2013 (Cth)</i>
NDIS Commission	National Disability Insurance Scheme Quality and Safeguards Commission
NSW	New South Wales
Ombudsman Act	<i>Ombudsman Act 1974 (NSW)</i>
Royal Commission	Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability
SDA	Specialist Disability Accommodation
SLT	Senior Leadership Team



Royal Commission
into Violence, Abuse, Neglect and
Exploitation of People with Disability