

Submission to the Australian Productivity Commission: *NDIS Costs: Issues Paper*

Background

This is a submission from a group of individuals who have a shared interest in, and concern for, the welfare and rights of people with disability in NSW:

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Melinda Paterson is a person with physical disability, a sector support worker in aged care and disability, Chair of Information on Disability Education and Awareness Services (IDEAS) and a member of the Justice Disability Council of NSW (JDAC).

Mike Sprange is the parent of a person with an intellectual disability, a volunteer with the Criminal Justice Support Network arm of the Intellectual Disability Rights Service (IDRS) [of which he is also the Chair of the Board] and a member of the Justice Disability Council of NSW (JDAC).

This submission focuses on the interface between the funded support system for people with disability and 'mainstream services' specifically in the area of justice. The focus of this submission is therefore on the following questions from page 16 of the *NDIS Costs: Issues Paper*:

Is the current split between the services agreed to be provided by the NDIS and those provided by mainstream services efficient and sufficiently clear? If not, how can arrangements be improved?

Is there any evidence of cost-shifting, duplication of services or service gaps between the NDIS and mainstream services or scope creep in relation to services provided within the NDIS? If so, how should these be resolved?

How has the interface between the NDIS and mainstream services been working? Can the way the NDIS interacts with mainstream services be improved?

With the scheduled withdrawal of Ageing, Disability, and Home Care (ADHC) in the Department of Family and Community Services (FACS) from the administrative and service

landscape in NSW by June 2018, there is significant concern now arising regarding the future of supports currently provided to people with intellectual disability in contact with the criminal justice system (CJS). These services historically arose in response to the need for specialised CJS supports for this group, and in the absence of accommodations and specialist supports in the CJS itself, have received funding through the disability budget administered via ADHC. In the new NDIS funding framework, these support services now fall into those broadly described as the "mainstream" services excluded from the remit of NDIS services in the interface principles document dated 27 November 2015.

In the absence of clarity regarding future disability funding for these services, people with intellectual disability who come into the contact with the CJS in NSW now face an uncertain future; this is likely to see them exposed to higher risks of injustice and incarceration. The genesis of these issues is to be found in the articulation of the NDIS Interface Principles.

Our submission

Sadly, involvement in the Justice system is a life experience for many people with disability, as victims and offenders. Approximately one in five people who come in contact with the Justice system in NSW have a disability. Generalist justice supports in NSW are currently provided by components of the NSW Justice Cluster, with planning and response to the needs of people with disability according to strategic documents such as the *Justice Department Strategic Plan*, *Justice Disability Inclusion Action Plan 2015-2018* and taking advice from the Justice Disability Council of NSW (JDAC).

Clearly, the Justice Department is committed to creating a culture of disability inclusion and some departmental structures have been resourced to reflect the overrepresentation of people within its systems:

There are certain areas of the Department that have large numbers of clients with disability (NSW Trustee & Guardian and Public Guardian), or that have specialist support available for people with disability (Corrective Services and Juvenile Justice).

However, the system also relies on objective disability advice and justice support of individuals from specialist advocacy providers located outside the jurisdiction; those services are currently funded by Ageing, Disability and Home Care, (ADHC) in the NSW Department of Family and Community Services (FACS). ADHC and all its funding responsibilities end on 30 June 2018, in accordance with the NSW transition to the NDIS; the Bilateral Agreement between the NSW and Australian Governments acknowledges that, going forward, Justice is a mainstream service impacting people with disability.

We are concerned about the loss of advocacy services in NSW, and particularly the Intellectual Disability Rights Service (IDRS), which fall outside the scope of the NDIS and are apparently not the target of the NSW Government's vision either. We fear that the

impacts on individuals with disability will be extreme and this will ultimately undermine the ground-breaking social change sought by the NDIS.

We strongly believe that the services of the NDIS and those to be provided by the mainstream agencies must be considered as two parts of a whole; they are critically dependent on each other in supporting the life of an individual with disability. If mainstream services are incomplete, underfunded or misdirected, there will be a negative impact on the outcomes of the NDIS - despite its good intentions - but most of all on the vision, aspirations and outcomes for the disability community of Australia as a whole. As stated in the issues paper:

The ability of the NDIS to effectively interface with mainstream services is critical to ensuring both good outcomes for participants and the long-term financial sustainability of the scheme.

The relevance of this to the costs of implementing the NDIS are very real. Unless services from both the NDIS and mainstream side are properly implemented and coordinated, many of the benefits of moving to the NDIS, as well as the ability to achieve cost savings, will be lost.

In particular unsupported interactions with the police and courts for people with intellectual disability are very likely to increase the chances of their further enmeshment in the CJS, leading to increased costly CJS interventions in the community and in the prisons. While State governments will bear the brunt of this potential escalation in costs associated with the management of people with intellectual disability in contact with the CJS, its overall effect is to increase economic, social and human costs to Australia more broadly. Cost benefit analysis research in NSW shows that robust, holistic, targeted disability support and intervention would see that for every dollar spent on early and effective support, between \$1.40 and \$2.40 in government cost is saved in the longer term (McCausland R, Baldry E, Johnson S & Cohen A., 2013 *People with mental health disorders and cognitive impairment in the criminal justice system: Cost-benefit analysis of early support and diversion*, Sydney: University of New South Wales).

We therefore urge the Australian Productivity Commission to make recommendations from this study of NDIS Costs:

Recommendation 1: That COAG regularly review and update the list of mainstream services and their individual definitions with reference to each State and Territory to ensure implementation across jurisdictions.

Recommendation 2: That COAG regularly interrogate the delivery of mainstream services to people with disability in each State and Territory jurisdiction to ensure no gaps exist as a result of the NDIS.

Recommendation 3: That COAG regularly consults with people with disability and their supporters around the interface between the NDIS and mainstream services.

These recommendations are directly related to the three questions asked in the *NDIS Costs: Issues Paper*, and are related to issues of continued support for people with intellectual disability in contact with the CJS and are particularly directed toward the "mainstream" services of Justice in NSW.

Is the current split between the services agreed to be provided by the NDIS and those provided by mainstream services efficient and sufficiently clear? If not, how can arrangements be improved?

As the NDIS evolves, the split between the services agreed to be provided by the NDIS and mainstream services may require some adjustment at the margins, but it has a logic, which will help avoid or resolve demarcation and cost shifting issues.

We support the focus of the NDIS on 'reasonable and necessary' supports specifically related to an individual's permanent disability, as stated in the issues paper:

The NDIS is intended to meet people's disability support needs, not to replace other mainstream services (including, for example, health care, aged care, education and transport).

We are entirely supportive of the view that a split needs to exist between NDIS and the eleven 'mainstream services' identified by COAG for many reasons. These include:

- § the NDIS is about investing in the future through the supports that are unique to disability and represent personal costs to that individual; the insurance scheme aims to provide for these items and thereby assist the individual to achieve his or her potential as an Australian citizen and participant in the economy;
- § mainstream services are designed to benefit the community as a whole [which naturally includes people with disability] and managed by specialists with resource allocations tailored for each jurisdiction (a Ministerial Department, capital, funding, bureaucracies etc); and
- § it is right that people with disability are regarded as citizens with equal access to mainstream services and the expertise they each provide.

Furthermore, we believe there is a strong argument for separating NDIS costs from mainstream service costs, because it allows the greatest likelihood of achieving success for the NDIS as a whole, and in the most cost efficient way. It seems quite clear that:

- § with the exception of ILC [to be discussed further below], the NDIS is based on an individualised funding model;
- § mainstream services are delivered, to a large extent, to groups and it is difficult to establish a cost for individual units of service; and
- § cost management within the Scheme can be less easily achieved when certain services cannot be planned for and can be unpredictable, of varying complexity and scale, such as Justice supports.

We are concerned, however, that the NDIS rollout is based on the continuing assumption that each State and Territory adheres to the split, and provides appropriate supports to people with disability for their specific needs within those defined mainstream services. The impending closure of the NSW department that administers funding to disability advocacy and Justice supports appears to be a departure from community expectations in the initial agreement, and different from the thinking of other States, some of whom are apparently maintaining a specialist disability system.

We believe that the split between the services agreed to be provided by the NDIS and those provided by mainstream services can best be managed and improved by regular consideration of the service descriptions in the interface principles document at a COAG level. Progressive and regular updating will ensure clarity, identify any gaps in service for people with disability and ensure integration between the NDIS and the mainstream jurisdictions across Australia.

As already mentioned, whilst in our view the interface principles document includes specifics in the list of NDIS responsibilities, this seems not to be the case in the list of services expected to be provided by the "other" mainstream agencies. We would recommend that some expansion or redefinition of these services be done and the Interface principles document updated on an ongoing basis. There would be several benefits of this. It would enable each state provider of a "mainstream" service to share in the thinking of other states, and to focus attention on "mainstream" needs as the implementation of the NDIS evolves. This will be helpful in making the totality of the NDIS and "mainstream" services better integrated and complete, across the states of Australia.

It is our view that the currently expressed split between services agreed to be provided by the NDIS and those provided by mainstream services are both efficient and sufficiently clear, although in the case of "mainstream" services we believe they are indicative, and exemplary, but not necessarily complete. To us, the logic of splitting the services in this way has the greatest likelihood of achieving success for the NDIS as a whole, and in the most cost efficient way. Clearly as the NDIS evolves, the split may require some adjustment at the margins, but to our view it has a logic, which will help avoid or resolve demarcation and cost shifting issues.

We believe in summary, that the split between the services agreed to be provided by the NDIS and those provided by "mainstream" services can best be managed and improved by regular consideration of the services in each column of the interface principles document at a COAG level, and its progressive and regular updating will provide many benefits both to the NDIS and the "mainstream" agencies.

Recommendation 1: That COAG regularly review and update the list of mainstream services and their individual definitions with reference to each State and Territory to ensure implementation across jurisdictions.

Is there any evidence of cost-shifting, duplication of services or service gaps between the NDIS and mainstream services or scope creep in relation to services provided within the NDIS? If so, how should these be resolved?

In the area of Justice at this time, there are no new gaps that have been made apparent in NSW in relation to NDIS. NDIS implementation is only partially complete in NSW and the existing arrangements for funding of specialist supports to assist people with disability in mainstream services are continuing via Ageing, Disability, and Home Care, (ADHC) until the end of June 2018.

However, we can easily project service gaps that will exist for people with disability in the Justice system if mainstream Justice services continued unchanged and the Justice supports which are currently funded by ADHC are not replaced, either elsewhere in the NSW Government budget or in the NDIS via Information Linkages and Capacity (ILC).

For example, were IDRS to cease to be funded for its ADHC funded services, supports for almost 600 individuals with an intellectual disability would not be provided. In all, IDRS supported individuals with intellectual disability on nearly 2000 occasions in the last year see(footnote IDRS annual report 2016 p21)

We strongly agree that there must be action based on Principle 4 of the Bilateral Agreement developed through COAG:

*There should be a nationally consistent approach to the supports funded by the NDIS and the basis on which NDIS engages with other systems, noting that **because there will be variation in non-NDIS supports funded within jurisdictions there will need to be flexibility and innovation in the way the NDIS funds and/or delivers these activities***

Unfortunately, there is widespread concern in the community that advocacy supports for people are disappearing with the advent of the NDIS. ADHC is known to be an 'exiting department' on 30 June 2018, having apparently delegated all specialist disability funding to the NDIA and service provision it previously delivered directly to non-government organisations. It has not been transparent nor clearly communicated how NSW

Government and Treasury plan to respond to the Bilateral Agreement and make changes in each of the eleven mainstream service jurisdictions, as we implement the NDIS. At the same time, it is clear that the non-government providers of essential services such as the Intellectual Disability Rights Service (IDRS) will not be re-funded under ILC, because their services are outside the current ILC definition.

We, therefore, regard as essential some clarification at a COAG level that the States and Territory Governments continue to ensure that the specific needs of people disability are supported by mainstream services. This is essential if the vision of the NDIS as a whole is to be achieved.

Recommendation 2: That COAG regularly interrogate the delivery of mainstream services to people with disability in each State and Territory jurisdiction to ensure no gaps exist as a result of the NDIS.

How has the interface between the NDIS and mainstream services been working? Can the way the NDIS interacts with mainstream services be improved?

Again, as the NDIS implementation is only partially complete in NSW, it is hard to comment on how the interface between the NDIS and mainstream services has been working. What is clear has come from areas where trial implementations of the NDIS have occurred, such as in the Hunter region.

In the area of Justice, there are some reports that the transition out of custodial sentences for people with disability who may be eligible for the NDIS, or even already in it, is problematic. It is likely that in relation to the mainstream area of Justice, many complex issues will arise in the interface. This will be likely to be due to the necessarily tighter restrictions and controls often surrounding people involved in the criminal justice system, such as conditions of court orders, bonds, bail, remand, parole and release conditions.

Whilst some of these issues will be foreseeable, it is likely that many will not. In such circumstances, it may be necessary to adjust some of the NDIS procedures at the margin, and to make corresponding adjustments within the mainstream agency. Of critical significance in the Justice area, will be the ability to be agile in responding to these issues that may otherwise restrict the ability for an offender to be released into the community for example.

Recommendation 3: That COAG regularly consults with people with disability and their supporters around the interface between the NDIS and mainstream services.