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*Sisters Inside Inc. is an independent community organisation which exists to advocate for the human rights of women in the criminal justice system*

23 March 2017

Productivity Commission

***Submitted online only***

Dear Sir/Madam

**Commissioned study – National Disability Insurance Scheme costs**

We are writing to make a submission to the Productivity Commissions current study on the National Disability Insurance Scheme (**NDIS**) costs.

Sisters Inside is an independent community organisation that advocates for the human rights of women and children in prison or affected by the criminal justice system.

Many women in prison have multiple, undiagnosed and untreated cognitive/intellectual and psychosocial/mental health disabilities.

In our view, the unique and “complex” needs of women in prison pose a significant challenge for the current NDIS model. We are concerned that most criminalised women will not be eligible for NDIS services. Even if eligible, many criminalised women can be expected to avoid the application process and services provided by mainstream (institutional charity) organisations.

Current NDIS funding arrangements make it unlikely that community-based specialist services will have the capacity to become NDIS service providers. Defunding of State, Territory and Commonwealth services can be expected to leave many criminalised women without access to the support required to address their needs and remain safe in the community.

We have outlined our concerns about the limitations of the NDIS for criminalised women in the **attached** submission to the Joint Standing Committee on the NDIS.

If you would like to discuss anything or require further information, please contact me

Yours faithfully

Debbie Kilroy

Chief Executive Officer  
**Sisters Inside Inc**

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## Sisters Inside Submission to

### Joint Standing Committee on the National Disability Insurance Scheme

#### Summary of Main Points

- The vast majority of criminalised women have psychosocial needs arising from their history of extreme disadvantage and survival of violence, which are exacerbated by the re-traumatising effects of prison.
- A minority of criminalised women have a diagnosed mental illness.
- Sisters Inside is concerned that most criminalised women will not be eligible for NDIS services.
- Even if eligible, many criminalised women can be expected to avoid the application process and services provided by mainstream (institutional charity) organisations.
- Current NDIS funding arrangements make it unlikely that community-based specialist services will have the capacity to become NDIS service providers.
- Defunding of State, Territory and Commonwealth services can be expected to leave many criminalised women without access to the support required to address their psychosocial needs.
- Failure to revise NDIS frameworks and block-fund community-based specialist services can be expected to lead to increased imprisonment of criminalised women and cause long term harm to their children.
- Funding of community-based specialist services to meet the psychosocial needs of criminalised women can be expected to save \$millions in imprisonment and associated costs to other systems (e.g. policing, child protection, health).

Throughout this submission “women” should be read to include both women and girls. This submission is deliberately not ‘loaded’ with statistics and referencing – Sisters Inside would be happy to provide evidence of any of the claims made.

#### About Sisters Inside

Sisters Inside exists to advocate for the human rights of women in the criminal justice system and of girls in the youth justice system throughout Australia. We also provide services in response to the unmet human rights and needs of criminalised women and girls and their children in Queensland.

The vast majority of Australian women prisoners are convicted of minor, non-violent offences. (This is clearly evidenced by the 2015 average period of imprisonment across all women prisoners in Queensland - less than 5 weeks.) Most criminalised women come from backgrounds of poverty,

homelessness, poor educational/employment outcomes, sexual assault and family and domestic violence. As a result, most criminalised women face physical health, mental health and/or substance abuse issues. All these factors contribute to women's criminalisation and imprisonment – in particular, the appalling rate of imprisonment of women on remand (currently approximately 30% of all women prisoners in Queensland) and for, often minor, breaches of parole typically associated with their disadvantage (currently approximately 25% of women prisoners in Queensland)<sup>1</sup>. Too often, unsentenced women are imprisoned (at great cost to the state) for failures in government services – in particular, a lack of housing, mental health and substance abuse services in the community. The human rights of their children are also regularly breached – both directly and indirectly.

Aboriginal and Torres Strait Islander women are highly disproportionately imprisoned, and are the fastest growing prison population in Australia. Indigenous women face the added challenges of systemic and individual racism, and the continuing multi-generational effects of colonisation (e.g. child removal, cultural destruction, over-policing). Compared with both non-Indigenous women and criminalised men, Indigenous women are more likely to be charged with an offence, less likely to be granted police bail, more likely to be imprisoned on remand, more likely to receive a prison sentence, and less likely to be released on parole. Indigenous women are particularly vulnerable to any loss of community services, particularly services provided by Aboriginal community-controlled organisations and specialist services for criminalised women.

Sisters Inside is currently funded to provide mental health support services to criminalised women under the Day-to-Day Living program.

### **“Mental health” needs of criminalised women and girls**

Whilst a minority of criminalised women (approximately 20%) have a diagnosed “mental illness”, the vast majority have psychosocial needs arising from their history of extreme disadvantage and survival of violence, which are exacerbated by the re-traumatising effects of imprisonment.

A significant proportion of criminalised women also have intellectual and/or cognitive disabilities, and some have forensic disabilities. Studies of women prisoners have also found that some have an undiagnosed “mental illness” (including high rates of PTSD amongst Aboriginal and Torres Strait Islander women).

Whilst many women prisoners do not fit narrow definitions of “mental illness” and are not deemed to have a “forensic disability” under the Act, access to community-based mental health services are critical to their capacity to avoid re-criminalisation and live successfully in the community.

### **Eligibility for NDIS**

The NDIS assessment methodology was initially designed for people with a physical and/or developmental disability. Assessment processes for people with a psychosocial disability are unclear. However, indications are that a medically-based eligibility assessment model will be applied.

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<sup>1</sup> All data from Queensland Corrective Services.

Application of a medical model would exclude women with a predictable response to highly traumatising situations (such as childhood imprisonment, domestic violence and sexual assault) and the re-traumatising effects of imprisonment. This response is not a matter of individual pathology or weakness – it is a rational response to traumatic experiences. Nonetheless, without adequate support, criminalised women’s capacity to integrate into the community and develop a decent quality of life is at risk.

Many (particularly Aboriginal and Torres Strait Islander) women will not apply to become eligible for the NDIS, due to their mistrust of welfare service providers. Most criminalised women have a history of statutory intervention in their lives and are understandably cautious about sharing the level of personal details required to establish their eligibility and are unwilling to make use of services which will share their information with other agencies.

Even for the relatively small percentage of criminalised women with a diagnosed psychosocial disability, there is no guarantee that they will be deemed eligible for NDIS services. The Hunter Partners in Recovery trial site has reported that "a higher percentage of people with a severe mental illness than expected are excluded from the NDIS ... approximately 35%"<sup>2</sup>. Hunter PIR has also identified *My Access Checker* as "not a suitable tool for individuals with mental illness due to its strong deficit-focus"<sup>3</sup>. Further, women may well be excluded from the NDIS if they do not want to identify as having a disability for the rest of their life. And, the NDIS requirement of a permanent impairment is at odds with the goal of 'recovery'. It is essential that women have access to intensive support commensurate with their needs when required, and ongoing (preventative) access to a safety net when they regain their independence.

Anecdotal evidence indicates variations in NDIA assessment outcomes for people with psychosocial needs. It is reasonable to expect substantial unmet needs for people currently accessing funded programs such as Day-to-Day Living or Partners in Recovery over both the short and long term. There appears to be an assumption implicit in the current NDIS framework, that a large proportion of current participants in these funded programs can manage their own needs, and therefore will be ineligible for NDIS supports.

And, there appears to be an implicit assumption that organisations which have previously provided (State/Territory and Commonwealth-funded) services to this cohort will have the resources available to provide the 'professional' documentation required as evidence as part of each person’s NDIA submission. With the best will in the world, small unfunded organisations may not have the capacity to provide the necessary documentation in support of applicants’ claims. Thus, the expertise of the non-clinical workers who have worked most closely with people with significant psychosocial needs may not even be considered in the assessment process, leading to inconsistent, poor quality eligibility decisions.

## Transition to NDIS of government-funded services

The services with greatest success in reaching and supporting the most marginalised cohorts with psychosocial needs generally use non-medical models of service. Community-based services, particularly Aboriginal community-controlled organisations, are daily immersed in the evidence

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<sup>2</sup> Hunter Partners in Recovery (2015) *Hunter PIR and the NDIS: Building a stronger partnership* at <https://hunterpir.com.au/pir-and-the-ndis-building-a-stronger-partnership/>, page 6

<sup>3</sup> *ibid* page 11.

about what people/women need. These have guided the development of culturally-appropriate services with a strong element of peer support, and the capacity to respond holistically to participants' complex-interrelated needs. In particular, they are less likely to see psychosocial needs as a matter of individual weakness and more likely to address the trauma-driven underlying causes.

#### Case Study

Mary (age 27) has a long history of statutory intervention in her life, including being under the care of the state as a child. 12 months ago, she was imprisoned for 2 months for a minor offence and, in the absence of family to care for them, her children were taken into care. Despite a complete lack of evidence of abuse or neglect and not having returned to prison, she is still battling to regain custody of her children. She also lost her public housing due to her sudden and unexpected imprisonment and the debts that accrued whilst she was in prison.

Every time there's a knock at the door, Mary is afraid it's the police, or child protection, or probation and parole 'coming to take her away', or her violent ex-husband 'coming to get her'. She won't answer the door and hides away whenever anyone approaches the house. She's also anxious about leaving the house in case someone 'takes it away', is continually missing appointments, and hasn't done a grocery shop for several weeks. A month ago, Mary failed to attend a Centrelink appointment and her benefits have been cut off. With no income, she recently stole food delivered to a neighbour's doorstep during the day. She is increasingly using prescription drugs to mask her anxiety and hasn't cleaned the house for some time.

As a result, Mary is at risk of eviction, re-imprisonment, substance abuse and permanent loss of her children.

Mary would never consider voluntarily using a mainstream service to respond to her needs: the 'home' she lived (and was abused in) as a child was run by a well-known charity organisation; a similar organisation ran the "offender program" she was required to attend when first released on parole; and she experienced discrimination on the basis of her criminal record when she approached another institutional charity organisation for emergency financial assistance when first released from prison.

Mainstream services are generally not equipped to respond appropriately to the psychosocial needs of this cohort. Most work within the narrow outcomes-based criteria of funding bodies which results in *siloed* services – for example, treating psychosocial needs as a matter of individual pathology and failing to address the past trauma and wider issues (such as housing and income support) which impact criminalised women's behaviour. Further, guidelines often preclude women from eligibility for services – in particular, if they have a dual diagnosis of both mental health and substance abuse issues. Women with a dual diagnosis are frequently excluded from both types of services, and many have been *red flagged* by services due to past trauma-driven behaviour.

## Referral of women ineligible for NDIS

There is a great danger that there will be nowhere to 'link' or refer ineligible women to! State, Territory and Commonwealth funding for preventative and responsive services for people with psychosocial needs which fall outside a medical diagnosis is already highly inadequate. We know that the main Commonwealth-funded programs with the flexibility to respond to some of the needs of women with wider psychosocial needs (particularly Partners in Recovery and Day-to-Day Living) are being wound up as part of the transition to NDIS. Further, the few available State/Territory-funded services also appear to be under threat with the introduction of the NDIS.

The guidelines for these existing funding programs are already highly prescribed and often fail to enable service providers to respond to the complex and varied needs of criminalised women. All the indications are that responding to women's *real* needs may be even more difficult under the NDIS.

The NDIS planning process is complex and based on a prescribed model which is unlikely to be appropriate to the circumstances and needs of most criminalised women. Sisters Inside has consistently found that linear planning models (such as in conventional case management) do not have the capacity to accommodate the complex, interrelated needs of criminalised women, and their constantly changing circumstances, priorities and crises<sup>4</sup>. Accordingly, within conventional planning models, service provision goals must be constantly adjusted – often on a daily, weekly or monthly basis. The NDIS requirement to submit amended plans each time a woman's goals change would be unduly onerous for both the woman and her coordinating agency. With most criminalised women having limited education (and some being functionally illiterate) many can be expected to need a support person present throughout the application processes – a time-intensive process which appears to be unfunded (per the *2016-17 NDIS Price Guide*).

Since most criminalised women do not have a diagnosed mental illness, any from this cohort who manage to achieve eligibility for NDIS services are likely to be subject to annual assessment through an approved medical professional. Given the entrenched, often multi-generational, trauma that most criminalised women have experienced, it can be expected that most will require support for several years. Even if women were deemed eligible for NDIS services and chose to make use of those services, the requirement for an annual review process would be a serious barrier to their participation. Given that these women's needs are not medically-driven, assessment by a medical professional is inappropriate. And, the apparent time, evidence and energy required to achieve a successful assessment would be unduly onerous and potentially counter-productive.

## Funding allocation to psychosocial disabilities

Sisters Inside is unaware of the financial allocations for services for people with a psychosocial disability, accordingly we cannot comment on whether spending on services in this area would be in line with projections. However, we do know that many Commonwealth and State/ Territory-funded programs are being defunded and 'rolled' into the NDIS. There is a risk that people

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<sup>4</sup> As a result, Sisters Inside has developed an alternative model of service delivery with criminalised women, *Inclusive Support*, which is available at [www.sistersinside.com.au/reports.htm](http://www.sistersinside.com.au/reports.htm).

previously using these services will no longer receive supports and/or that this will increase demand on NDIS services beyond projected levels.

Following the NDIS transition stage many block-funded (particularly small, community-based) organisations will not have the financial capacity to continue to provide essential supports for people with psychosocial needs. Few will be able to continue to provide services to ineligible people without dedicated funding. Most have limited financial reserves and will be unable to take the risks associated with becoming an NDIS service provider - retrospective payment, spending non-reimbursed time on unsuccessful NDIA submissions, and purchasing the IT systems required to participate in the NDIS. It is unclear whether the arduous administrative, infrastructural and reporting requirements of the NDIS will be funded.

Further, the *2016-17 NDIS Price Guide* provides hourly rates for provision of various services, but no clarity about the number of hours which can be claimed against each Unit. It is reasonable to assume that this is not open-ended. It is also reasonable to assume that the number of hours allocated will be insufficient to cover services to people with complex psychosocial needs.

#### **Example**

The time needed to prepare 'customer assessment material' and support for submission to the NDIA can be expected to be significant. The Hunter Region Partners in Recovery has reported that their Support Facilitators spent an average of 21 hours per person compiling evidence for an NDIA application<sup>5</sup> (and even then, 35% were assessed as ineligible). The time required for an initial NDIA submission is expected to be even greater for criminalised women, given their typically complex situations. (For example, many women lost all personal documentation as a result of their imprisonment.) This cost can be expected to rise exponentially if an amended plan is required each time a woman's needs or goals change.

It is critical that information about the number of hours which can be claimed against each Unit is made publicly available, to enable organisations to accurately calculate risk and their capacity to become an NDIS service provider.

On the other hand, we are also concerned about the risk of standardised costing-by-goals. Similar goals are not equally able to be attained by different people. Criminalised women often start 'far behind the 8 ball' when seeking to achieve goals. Most women's starting point is highly disadvantaged in terms of their environment, expertise, capacity, education, traumatic history, physical health ... and a range of other health and social indicators.

There is a serious danger of loss of consumer choice under the current NDIS framework (to the extent that it is clear). The current framework appears to make a mockery of the notion of "consumer-driven care". It appears likely that the main (or only) organisations which will be able to carry the risk of NDIS service provision (and be willing to operate within its constraints) are large, corporatised for-profit and not-for-profit bodies. It is reasonable to expect that these bodies will develop models of service which optimise profit and protect against loss – ultimately resulting in many similar services and providing only the illusion of 'choice'. It is logical to expect that innovation in service delivery will be adversely impacted due to the risk-aversion implicit in

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<sup>5</sup> Op cit, page 9

the current framework. And, that this will be further impacted by limits on forward planning at the local level due to financial uncertainty.

Ultimately, Sisters Inside is concerned that criminalised women (and other highly marginalised groups) will 'fall through the net'. This will impose a significant cost on society at a social and economic level. According to the Productivity Commission, in 2014-15 imprisonment in Australia cost almost \$4 billion – and an average of approximately \$300 per prisoner per day<sup>6</sup>. The collateral and multi-generational costs associated with the imprisonment of women (the majority of whom are mothers of dependent children) are impossible to accurately determine, and include costs to the child protection, health, education, policing, housing, community-based corrections and many other systems.

### Capacity to identify potential NDIS participants

The greatest threat to the NDIS's capacity to identify potential participants with a psychosocial disability is the forced closure of community-based, specialist services such as those provided by Sisters Inside and Indigenous community-controlled organisations. These are services which rely on voluntary participation, and therefore their very survival indicates a unique capacity to engage and build trust with otherwise disenfranchised groups.

Relying on the NDIS to comprehensively meet the needs of marginalised groups is a false economy which can be expected to have long term, even multi-generational, repercussions. Ultimately, defunding of community-based services will result in increased economic costs in the attempt to redress the further damage done to our most vulnerable community members and their children.

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<sup>6</sup> Productivity Commission (2016) *Report on Government Services 2016* (Volume C, Chapter 8 – Corrective Services), Australian Government at <http://www.pc.gov.au/research/ongoing/report-on-government-services/2016/justice/corrective-services>, Tables 8A.6 and 8A.7.