



Queensland Advocacy Incorporated

Our mission is to promote, protect and defend, through advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland.

Systems and Legal Advocacy for vulnerable people with Disability

General Issues around the Implementation and Performance of the NATIONAL DISABILITY INSURANCE SCHEME

**Supplementary Submission by Queensland
Advocacy Incorporated**

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

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QAI endorses the objectives, and promotes the principles, of the Convention on the Rights of Persons with Disabilities.

Patron: His Excellency The Honorable Paul de Jersey AC

About Queensland Advocacy Incorporated

Queensland Advocacy Incorporated (QAI) is an independent, community-based systems and individual advocacy organisation and a community legal service for people with disability. Our mission is to promote, protect and defend, through systems and individual advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland.

QAI has an exemplary track record of effective systems advocacy, with thirty years' experience advocating for systems change, through campaigns directed to attitudinal, law and policy reform and by supporting the development of a range of advocacy initiatives in this state. We have provided, for almost a decade, highly in-demand individual advocacy through our four individual advocacy services – the Human Rights Legal Service, the Mental Health Legal Service, the Justice Support Program and the National Disability Insurance Scheme Appeals Support Program.

QAI deems that all humans are equally important, unique and of intrinsic value and that all people should be seen and valued, first and foremost, as a whole person. Further, QAI believes that all communities should embrace difference and diversity, rather than aspiring to an ideal of uniformity of appearance and behaviour. Central to this, and consistent with our core values and beliefs, QAI will not perpetuate use of language that stereotypes or makes projections based on a particular feature or attribute of a person or detracts from the worth and status of a person with disability. We consider that the use of appropriate language and discourse is fundamental to protecting the rights and dignity, and elevating the status, of people with disability.

Background

Further to our initial submission regarding the issues surrounding the implementation of the National Disability Insurance Scheme (NDIS) QAI has researched and obtained additional first-hand knowledge and experience of many inconsistencies and inaccurate interpretations and delivery of aspects of the rights-based approach to support that is intrinsic to the intended purpose of the NDIS.

QAI is funded by the Department of Social Services to deliver NDIS Appeals Support and therefore much of the information and experiences for participants and our advocates are at a grassroots level. QAI's other individual legal and non-legal advocacy services are other reference points to the barriers and problems confronting participants and applicants to the NDIS.

Further to this, QAI's expertise as systems and law reform advocates is a natural drawcard to referral from individuals and their families, other agencies, services, and allies as a means to seek redress and reform to practices and policies that are often incongruent to legislation.

It is deeply disturbing that despite the advent of what should be now a revolutionary approach to personal autonomy in supports, services and lifestyle, many participants and applicants are becoming casualties of chaos, confusion and increasingly adversarial responses from NDIA staffers. This is also evident for advocates supporting participants through reviews and appeals both internally with the NDIA and also externally through the AAT.

RECOMMENDATIONS

1. LAC's and Planners must have intensive training to understand the social and other impact of disability and what makes people with disability vulnerable.
2. The recruitment and training of NDIA staff (including access team) must ensure that staff has proficient skills in administration to eliminate mistakes with regard to information about access and eligibility requirements. Communication and information must be provided in ways that are accessible to participants and applicants, in a range of formats including Braille and non-pdf emails for vision impaired participants. Commission Vision Australia to undertake an audit of the NDIS website.
3. Invest in appropriate Pre-Planning (with independence from direct service provision organisations) so that there are fewer Plan Reviews and Appeals, and to enable LAC's to return to their intended functions of linking and connecting people with generic and specialist services.
4. Reinstate personnel to the Translating and Interpreting Service (TIS National) to ensure that people are not issued with prompts in English. This defeats the purpose of a national interpreting service when the very instructions are in inaccessible language.
5. Implement the recommendation of the Productivity Commission to establish an independent NDIS pricing agency.
6. The NDIA and state governments must finalise interface issues regarding transport and the health jurisdiction questions. Transport costs for people in regional and remote areas with a lack of access to local services must be compensated with adequate transport allocation in Plans to ensure service delivery and avoid price gouging. When a participant with health care needs is deemed eligible for NDIS supports, their state funded services must not cease. Instead there must be a mechanism to ensure that the two jurisdictions ensure that one or the other continues that support.
7. Where appropriate that people with cultural and complex support needs prefer to have their supports provided by a family member, then this must be honoured.
8. There is a dire need for improved holistic wrap-around supports and services for people with psychosocial impairments. Mental health services should reside in state services, but where a person requires ongoing and intermittent supports or services to function in society or in their homes, this must be an NDIS funded initiative which currently is not equitably accessible for many applicants or participants.
9. *There must be a separation of support from housing and or tenancy. Boarding houses and hostels are ostensibly housing providers as support is often provided by other residents. De-register hostels and boarding houses as support providers; instead allow Participants' choice of support services to enter premises of residence. This should be replicated with all group homes and residential arrangements to ensure separation of

tenancy from supports. It is deeply disturbing that this recommendation is even necessary in the discussion around the Implementation and Performance of the NDIS.

10. The costings used for Plans must not be based on or exploit the willingness and love of family members beyond what is reasonable support. Plans must be funded to support the individual participant to have a life of their own in accordance with the opportunities and expectations of peers as is the intended purpose of the NDIS.
11. *Plans must incorporate funding for people to move from shared accommodation and shared support arrangements as a matter of urgency. **This is one of the main reasons for the advent of the NDIS yet the current implementation has reneged on all promise of this to a most vulnerable group of people with disabilities. Unless this is urgently addressed it will make a mockery of the NDIS.**
12. There is generally a higher level of scrutiny of participants, yet it appears that little or no oversight of the many infractions by service providers on the rights of Participants and of the rules of the NDIS. The NDIA must apply higher scrutiny to service providers and not seek recompense from Participants for the mistakes or omissions of providers.
13. The requirement for new assessments to prove eligibility for Participants who were already 'defined' by support and service provision under the state system must be removed or funded by the NDIA. Reconsider the deficit approach to supports and instead consider strength-based approach that aligns with goals and aspirations. This is best articulated by self-assessments where appropriate, and supported decision-making, which is central to the advent of the NDIS 'choice and control' concept.
14. Prisoners with disability must be assessed while in prison or other places of detention including forensic and authorised mental health facilities, and long stay health facilities, with Plans finalised 6 weeks minimum before people are released or discharged. Many people with high and or complex support needs must have pre-planning conversations to ensure adequate understanding of the potential for change and progress with NDIS supports.
15. *Supported Independent Living and its concept must be revoked as any form of funding mechanism unless the Participant has freely chosen to share their home and wishes to combine supports and services. This may be appropriate for people with close relationships (often based on former living arrangements and shared experiences).
16. Conflict of Interest for Service Providers was identified as a major concern by the NDIA. It is sorely inadequate to merely hope that service providers will self-regulate in this space, and people with disability should not be exposed to risk of this conflict. Instead the Conflict must not present itself. Therefore the NDIA must reconsider the separation of functions and service provision by ensuring that direct support services are disallowed from also providing pre-planning, plan management and or support coordination.
17. Ensure that people with high and complex support needs have equitable rights to self-manage and employ their own supports and services under the NDIS. This is especially relevant for people who live with the application of Restrictive Practices, as respect and control over their lives is imperative to the reduction and elimination of those practices.

18. The NDIA must reinvigorate the SDA and the funds to ensure eligible Participants have approval and support to access their chosen appropriate and affordable housing options that do not return to outmoded and proven failures of shared accommodation and or supports. Home modifications to support people with disability to live where, how and with whom they choose must be applied as reasonable and necessary.
19. The Department of Social Services must consider funding NDIS Appeals Support organisations with in-house legal representation (or to source external Legal Aid preferred suppliers) to bridge the capacity gaps for urgent and timely legal representation in AAT matters for Participants.

Introduction

The National Disability Insurance Scheme (NDIS) was designed to redress societal and historical neglect of the rights and needs of people with disability, as a rights-based approach to support. “Choice and Control” became the slogan for the NDIS and now seems to be something attainable only to those who have either been rolled into the Scheme at an early stage (via trail sites) or who have strong advocacy on side.

The implementation of the NDIS has devolved into an attempt to usurp the Scheme’s original purpose and change it to a ‘welfare model’ from which savings can be made, and in the process, excluding the very people for whom it was intended. Some of the issues have been as a result of broadening the Scheme to include a wider section of the disability population, and with well-intended ideals to support people as, how and when required. QAI agrees that all people should have their reasonable and necessary disability support needs addressed by services and supports that the people (and their families) choose, direct, manage and employ as and when they wish.

However, assessments that are deficit models rather than strength-based and linked to personal goals are still entrenched in the old mindset. Plans that should be aspirational and used by individuals, families and supports/services to guide the choices of supports and service activities, are being used as funding and acquittal tools, with “performance indicators’ attached to Participants. Plans and funds are reduced if a Participant has not achieved their goals without regard to any barriers they may face in doing so that are not otherwise address in their Plan! This is untenable and not in keeping with the notion of autonomy or any control whatsoever.

Inaccurate Information

NDIS Appeals advocates have reported across Queensland the inconsistencies and inaccurate information being relayed to participants and applicants via the 1800 number. Examples are that participants are told they cannot submit a new access request until they have been through an internal review ; that participants do not need to seek specialist assessments on one hand and others are told that assessments and reports from general practitioners will not be acceptable. (The rationale for the latter was that GP’s scribe information provided by participants and were therefore not reliable).

Other experiences include huge barriers for people with communication/speech impairments who ask advocates for assistance to undertake phone calls on their behalf and the advocate is refused any assistance without consent eg. where the advocate merely sought to obtain a new Access Request Form.

The NDIS website provides misleading information or at least the reality for many Participants is not congruent with the promotion of the Scheme. For example the inclusion of Support Coordination in Plans is not readily available to many Participants and for some people who self-manage. In many instances, it is relayed that Support Coordination is only for complex cases meant to build capacity to be phased out in first few years.

In the absence of this, the LAC is meant to fulfil this role, however (and is often the case) relationship breakdown with the LAC can have dire consequences. Many Plan Reviews are instigated due to the breakdown of the relationship with the LAC and the misunderstandings that stem from this. In these circumstances, QAI NDIS Appeals advocates contact the LAC to attempt to

resolve the matter before going to Appeal. Some of these LACs are inexperienced and struggle in situations that are clearly outside of their knowledge and skill base which is disappointing for everyone.

This denotes great distrust and suspicion of participants, families and professionals. Further to this many people are experiencing extreme distress and anxiety as a result.

Administrative Issues

- Verbal confirmation of decisions without also providing written (removes the ability to appeal) causing great delays when trying to access material for reviews and appeals
- Accidentally issuing activation letter after person has been refused access to the NDIS; raising expectations and then deep disappointment and disengagement
- LAC roles have changed so they no longer provide support to participants. The LAC role is intended to offer a role similar to a support coordinator however now they are spending 4 days out of 5 simply for case reviews and appeals.
- Internal reviews are being dealt with and rejected either instantly or following delays of up to 9 months plus.
- In several instances Internal Reviews are being triggered by the NDIA without the knowledge of the Participant. This denies Participants natural justice to submit further evidence to address the reasons why they were denied access or Plans were reduced in funding. It appears that the NDIA is extremely litigious and seeks appeals at the Administrative Appeals Tribunal where Participants are at a distinct disadvantage with the NDIA represented by lawyers and barristers. It is extremely unfair for Participants to be undergoing a review of a decision that affects them without knowledge that it is even occurring.

Service Access. Service Provider Conflict of Interest and Pricing issues

Services are reportedly unable to provide supports for the prices indicated in the NDIS price guide. There is a need for ongoing independent pricing reviews which consider whether payments for NDIS-related services are able to meet Social, Community, Home Care and Disability Services Industry Award (SCHACDS) wage levels and training, management and development needs of organizations. Implement the recommendation of the Productivity Commission to establish an independent NDIS pricing agency.

- Regional areas have a major lack of services available and individual providers are only being funded for 20 minutes of travel time which means they are refusing to travel to clients as it is not cost effective. Those that do travel are charging hourly rates for travel time – eg: one participant was charged \$175 each way for one hour of support and the travel distance was 48 kilometres for each journey.
- Some service providers are only accepting NDIS funded clients and refusing services to people that cannot access the NDIS. This is a major issue in regional areas that already have such limited services.
- Service Providers that still provide supports to non-NDIS clients are charging NDIS participants at a higher rate.
- People with vision impairment have denied equitable access to the NDIS when written communication from the NDIA is sent as printed hard copy letters.

- The NDIS portal does not meet web accessibility guidelines. The portal does not function with JAWS, which is the software that a large number of people with vision impairment need to use. e.g. 'Search' has no label – The NDIA should commission Vision Australia to audit the website.
- Major Service providers for people with psychosocial impairments appear to accept only NDIS participants. The results of this are that the majority of their clientele are being denied access to their services even if they have been engaged with them for decades. This has occurred with services such as MIFQ and has affected all Partners in Recovery programs. This is having a devastating effect on people particularly those in regional areas where there is no alternative.
- As mentioned in QAI's submission to the Quality and Safeguards Bill (28.07.2017)ⁱ "Under the current arrangements, a person or entity may apply to be a registered provider of supports to manage the funding for supports under plans and/or provide supports (ss.9 and 69(1) of the NDIS Act). The registration process is based on the NDIA being satisfied that a provider has undergone relevant quality and assurance checks through existing State and Territory safeguarding systems.
QAI perceives this to be a conflict of interest. To offer real choice and control, providers of support should not manage the funding. Further, many advocacy organisations including QAI are aware of some service providers that have been 'compliant' with state quality assurance measures yet have perpetrated abuse without recrimination or recourse for the person. Therefore, the quality and safeguards systems should not be covered by the State or Territory system as it potentially perpetuates embedded systemic issues for individuals and families. Further, it is inconsistent with the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector and there must be a National Standard for Positive Behaviour Support Plans which have to date been notoriously of a poor quality."

ATSI

- The fundamental mismatch with interpretation of health, disability and services for Aboriginal and Torres Strait Islander people and people from cultural and linguistic diverse backgrounds.
- While there is provision for the employment of family members as supports for cultural and/or remote and complex support needs this is rarely granted.

CALD

The Translating and Interpreting Service (TIS National) has recently become an automated service with voice prompts instructions in English. This anomaly is further confused by the system unable to accurately understand various accents and callers are frequently put in touch with interpreters who do not speak the caller's language.

Local Area Coordinators do not understand the service and do not know how to access interpreters.

Mental health

Access to the Scheme for people with psychosocial disabilities is limited with 1:4 refused as opposed to 1:9 for other disabilities (data from the trial sites from 2014). It is highly likely that denial of access is even more prevalent with further rollout. The reasons underlying this is inconsistency between states around interpretation of the legislation around Section 24 (disabilities requirements) in relation to how to define permanency, and how to clarify severity and episodic conditions as well as section 34 (Reasonable and Necessary supports). The issue with proving permanency (Section 24(1)(b)) is affected by Section 5.4 in the National Disability Insurance Scheme (Becoming a Participant) Rules 2016 which states that an impairment is, or is likely to be, permanent only if there are no known, available and appropriate evidence-based clinical, medical or other treatments that would be likely to remedy the impairment. This requires a potential participant to have to prove their history of medications, interventions and therapy which often needs to be backed up by a professional advising why these have been unsuccessful.

Another access issue is Section 24 (1)(c) which states that impairment results in substantially reduced functional capacity in one or more of the following areas; communication, social interaction, learning, mobility, self-care and self-management. Proving this is really tough and requires a lot more than a supporting letter from the psychologist or psychiatrist. It generally requires a functional assessment completed by an allied health professional such as an Occupational Therapist, social worker or psychologist or even better a neuropsychologist assessment which can be costly to the potential participant. The imposition of such a strict definition about what constitutes sustainably reduced functional capacity implies that to be successful in applying for the NDIS the person is actually too unwell to participate in the sorts of services the funding can cover.

Plan items for supports for some participants with psychosocial disabilities may be unsuitable. For example community access is not always appropriate for someone experiencing severe agoraphobia. The results of this type of planning anomaly results in some people spending little or none of their funding, and the response from the NDIA is to revoke the funding altogether.

While the NDIS recognises the Recovery model utilised through QLD Mental Health services, it only does so in the promotion of 'choice and control' of goals and plans. This does not extend to the application process and often the onerous and hugely invasive application process is re-traumatising and results in even more disengagement with mental health services.

***People Detained in Prisons, Mental Health Facilities and Long Stay Health Facilities**

Currently the NDIS has been inaccessible for many people who have been overlooked, or left until last, as the priority has been the rolling out of the general population.

QAI asserts that prisoners must have access to the health system whilst they are incarcerated to get their diagnoses and assessments undertaken (as many prisoners have never had any formal diagnosis) so that this will then assist with their applications for access to the NDIS. Once accepted Plans should be finalised at least 6 weeks prior to release. The same should ostensibly apply for people residing in long stay health and mental health facilities.

Hostel and rooming residentsⁱⁱ

The conflict of interest surrounding the registration of rooming house providers as support providers is monumental. QAI cannot understand why the NDIA would sanction the registration of any service as both the providers of support and tenancy/housing. A resident's fear of eviction and homelessness is apparent when raising the most minimal complaint about a tenancy or support issue. This has been an ongoing and serious complaint in group living arrangements across the entire sector but is more hidden and covert in boarding houses and hostels where residents are less aware of complaints mechanisms and often have fewer informal supporters.

QAI is aware of numerous complaints where residents of boarding houses and hostels have been deterred from confidential conversations with NDIA Planners. Owners and or managers hold meetings instead with the Planners and answer on behalf of the residents, controlling the conversation. Many residents have their mail opened by the Managers and this includes NDIS Plans which are then not given to the residents. One participant did not see her plan until a Support Coordinator arrived to speak about an active plan she was not even aware of which had been active for some months. This has since happened with several other residents, who were unaware that they had Plans, yet staff had opened the mail and uploaded the plans onto the person's file. Two of these were Partner in Recovery participants.

Managers in some instances have banned support coordinators from attending premises unless they are included in the meetings. The overall control and coercion of hostel and boarding house owners and managers extends to complaints that health professionals are not complicit with the hostel owner/manager's wishes. For example – Manager attempted to manipulate the choice of mental health service for a resident so that all the residents attended the same location because “information is shared” with the manager.

Coercion and blackmail is routinely used to leverage power over residents. For example a participant may be told that if they did not choose a particular service they could no longer live on the premises. The service was managed by the Hostel owner's son (who also often works at the hostel).

Control and manipulation of residents is widespread including withholding medication for coming in late, and withholding money from residents even when allowances from Public Trustee exceeds charges for board. Supports are often provided by other residents and not by hostel staff – for example some residents who have high skills may cook for other residents rather than hostel staff who do not cook at all.

Hostels and boarding houses (and any places of accommodation services) should not be registered providers of supports.

Jurisdictional Discord

The antagonism between the NDIA and state governments' responsibility over health related supports and services and transport is at a critical point, and causing major duress to participants. In some instances participants require life-sustaining supports and services. The haggling over which system will pay for drop-in registered nursing service for items such as catheter changes, skin integrity checks are extremely distressing with some people losing services that require advocacy to

have those supports reinstated when they should never be lost in the first instance. For others, the escalation to the AAT for disputes between two systems, have reduced participants to pawns in political wrangling.

As mentioned above in service access and pricing issues, the inadequate allocation of transport not only for participants to access service points, but for services to outreach to participants in out-of-town locations is a torment for people who bear witness to the possibilities of a Scheme that is unattainable for them.

Assessments

- The NDIA is requesting multiple and duplicate assessments for access, planning, reviews and appeals. During external appeals this is escalated with rejection of successive professional assessments (at the cost to the participant) until the report is aligned to the NDIA's means.
- Many Participants have little need for high level contact with medical professionals or therapists, particularly for people with physical health and wellbeing. Many find their adolescent health professionals have retired and are required to seek out new contacts that have little knowledge of the person or their support needs. This requirement also reinforces outdated medical model of disability.
- GP's, health and allied health professionals are still unsure of what the reports, supporting letters and assessments need to address. They are still providing evidence through the lens of the biomedical model.
- Service providers are requesting participants to send their plans before quoting for assessments and refusing to give a quote until the amount of funding for assessments within the plan has been cited.

*** Use of SIL in Plan Costings**

Supported Independent Living (SIL) is not only a misnomer; it is being used as a means of plan funding – even if the person lives alone or with family. Forced co-tenancy is perpetuated under this model and people are **not being allowed to self-direct** if they live in a shared arrangement or in some instance only core support. Essentially this is a return to the block funded model, just packaged differently.

An example – A woman is living in a group home run by a Service Provider. (*see previously mentioned issues regarding separation of supports from tenancy). This person had an individual funding package but somehow it had become part of the core funding for the group home which will not be viable if this funding is removed. The person was hospitalised due to injuries that no one 'witnessed'. She has lots of unexplained bruising on her body and the family is concerned about sending her back into the group home as they suspect abuse by another resident.

***Home Modifications and Specialist Disability Accommodation**

As both providers of NDIS Appeals support and a systems advocacy organisation, QAI is aware that many Participants are being denied home modifications within their Plans, prompting external reviews to the AAT. In fact, it appears that despite several years of promotion of the Specialist Disability Accommodation (SDA), QAI is concerned that requests for the construction or modification of buildings for the purpose of 'granny flat' style housing for Participants within the grounds of the family home is now not only denied but perhaps something the NDIA is renegeing.

Attributing small amounts of funding to Participant Plans for accommodation rather than delivering on the promised and promoted SDA, is not only deeply disappointing but confounding and instils further distrust in the Scheme and its implementation.

SDA is yet another component of the NDIS that is being marketed to service providers first and foremost and again reinforces the congregation of people with disability in enclaves.

The advent of SDA was extolled with \$700million allocated to the construction of housing for participants deemed as suitable for SDA. QAI submission "A Home of One's Own" to the Joint Standing Parliamentary Committee on the National Disability Insurance Scheme (NDIS) on accommodation for people with disability and submission to the "Specialist Disability Accommodation (SDA) Pricing and Payments Framework (PPF)" outlines the position and hope that people with disability have held for many years to address the historic and ongoing dearth of appropriate housing. The NDIA must be transparent and honest about the future and direction it intends to take on this matter.

Support/support coordinator

The assessment of informal supports is a major flaw in the implementation of the Scheme. This is most evident for participants who have children using the NDIS. Any family living within 30 minutes of a Participant is often the determining factor that a family is perceived to have informal support. This results in a plan with dramatically reduced funding. There is little consideration that grandparents may not be willing or able to provide that support. If a family has no or very little informal support this is ignored and not addressed within the plan.

Team Leaders with Access teams confirmed that this is an issue. QAI was also advised that if there are multiple children accessing the NDIS they must be linked on the system and this would usually result in higher support within the plans. However in several instances this is not being followed and some participant families have disengaged eligible members from the Scheme in order to ensure adequate support for the most vulnerable family member.

- Support coordinators are rarely available in regional areas therefore Participants are unaware of local knowledge to effectively utilise the plans.
- *Group homes/service providers are registering as support coordinators and some are misusing funds. In one case a service provider used a large proportion of the participant's funding to support the mother, and in another case the provider charged \$2000 of unfunded supports for another participant who was then billed for this amount by the NDIA.

Equity in Autonomy in the NDIS

QAI has made many submissions on the right for people who live with Restrictive Practices to enjoy the same opportunities and freedoms as any other Participants in the Scheme.

QAI is gravely concerned and appalled that people with disability (and who live with Restrictive Practices) who have until now been self-directing under Queensland's Your Life Your Choice are now being bullied into accepting the traditional service provider response, losing the right to choice and control that is afforded other Participants.

Until now, several individuals (with support from family members) have self-managed their supports and services. They have attained a higher quality of life, reduced the uses and frequency of application of Restrictive Practices because their supports had services have been highly skilled, stable and secure – immeasurably improved circumstances than ever possible with traditional support services.

If Providers delivering positive behaviour supports and implementing positive behaviour support plans are restricted to traditional service providers, the Quality and Safeguards Bill will consign many people with disability to a lifetime of cruel, inhuman and degrading treatment especially if they live in a rural or remote area where there may be only the one service.

QAI has campaigned for over 3 years that people who have more power and control in their lives are less forced to exhibit behaviours of concern.

Power imbalance: NDIS appeals

Currently significant conflicts exist which impact negatively on Participants and Applicants to the NDIS and where disputes arise prompting applications for conciliation within the AAT. The Department of Social Services (DSS) provides funding for the NDIA, the NDIA legal representation, the National Disability Advocacy Program organisations and their NDIS Appeals support advocates.

The NDIS Appeals advocate may assist in understanding the AAT process, attend case conferences and hearings with applicants, or assist applicants to put their own case before the AAT.

The AAT process is intended to be informal but this is now belied as the NDIA routinely hires solicitors for AAT conciliation, and barristers for Tribunal matters. Participants are supported by NDIS Appeals support non-legal advocates except where the Participants qualify for 'CAP' funding, the determination of which is also made by the Department of Social Services as being complex or novel and meeting specific eligibility guidelines. (This is decision is mooted to move to the Legal Aid Commissions in each state but has not yet been activated.) The issues arising from this situation is listed below:-

- Symbolic aggression and violence of the NDIA by lawyering up from very first case conference
- Formalising the AAT process even at the first 'informal' case conference (this may be due to the hiring of government and external solicitors that may not be aware of the protocol).
- CAP funding application is totally inaccessible and requires a lawyer to complete requiring the provision of legal justification for appealing, and presentation of evidence of relevant past cases to prove the matter is both complex and novel.

- The NDIA is prepared to expend vast sums of money engaging Barristers to represent the NDIA at hearings when the majority of participants cannot afford legal representation.
- The NDIA has demonstrated the means and will to change the subject of dispute or discussion without warning as the AAT process progresses. An AAT member noted that this is unethical but that the NDIA is legally within their right to do this.
- Internal reviews are being triggered by the NDIA unbeknown to the client. This denies the Participant natural justice to submit further evidence to address the reasons why they were denied access or refused funding. It appears that the NDIA is seeking appeals to the AAT to delay decision making and to deter Participants from proceeding. It is extremely unethical and incongruent for any Participant to undergo a review of a decision that affects them without their knowledge or preparation.
- This is further complicated when several different NDIA employees are conveying disparate information, and decision letters are not in accord.
- The Legal Aid Commissions and the purpose of 'complex and novel' criteria for CAPS funding is being utilised as a vehicle of systemic change and QAI is concerned that the rights and supports for individuals may be lost in the many competing interests in this process.
- Regardless of whether the decision to approve the allocation of CAPS funding rests with DSS or the Legal Aid Commissions, Legal Aid can determine whether or not to take on the case. Often delays are created due to a lack of capacity, or for other reasons. QAI recommends that all NDAP funded advocacy organisations that are currently provided NDIS Appeals Support are funded to host in-house legal representation or to source external legal representation in the occasion that Legal Aid does not have capacity to respond to the need for representation especially in cases that are fast-tracked for timely decisions.
- We submit a precis of a letter sent to the Minister for DSS Dan Tehan yesterday:-
Frequently, Legal Aid Queensland (LAQ) is not involved at the first instance as there is an expectation that the matter will resolve matters in preliminary case conferences and legal representation will not be necessary.
LAQ, as funded provider of legal advocacy in circumstances where CAP funding is approved, has stretched human resources to provide this legal advocacy and these resources will be further stretched with the continuing roll-out of the NDIS throughout Queensland. It can also be a difficult task, for the individual, the advocate and the lawyer, to communicate relevant information and be properly abreast of all relevant issues, particularly having regard to the tightly controlled amount of CAP funding available for each individual case. This is particularly so in circumstances where there are delays in obtaining CAP funding and LAQ retains carriage of the matter at an advanced stage in the proceedings. These delays cause extreme duress and hardship for participants who depend on decisions in order to leave hospitals, to obtain supports and services or to get on with life with some measure of 'choice and control'.

As both a disability advocacy organisation and a community legal centre, I consider that QAI is ideally placed to deliver both non-legal NDIS appeals support advocacy and also individual legal advocacy in circumstances where a matter receives CAP funding. Given that in many instances we are involved from an early stage in providing non-legal individual advocacy for a matter that progresses to requiring individual legal advocacy, and have a deep understanding of the relevant issues for each particular matter, this would constitute good continuity of service for our clients."

Further to this however, QAI is aware that as a Legal Aid preferred supplier, there are other suppliers who would be willing to work with existing NDIS Appeals support organisations would equally be well placed (if resourced to do so) to bridge any gaps in capacity.

We sincerely hope that our recommendations are accepted in the spirit of improving the implementation of the NDIS so that it is in accord with the intent of the Productivity Commission's and PwC reports from the early advent of the Scheme. It is important that the NDIS does not devolve to an expensive exercise of the outdated model that was meant to be left behind.

ⁱ QAI Submission to Senate Economics Legislation Committee Inquiry into the National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017

ⁱⁱ "A Home of One's Own" QAI submission to the Joint Standing Committee on the NDIS March 2016