

Inquiry into the National Disability Insurance Scheme market in Queensland

**Submission by
Queensland Advocacy Incorporated**

Queensland Productivity Commission

12 August 2020

About Queensland Advocacy Incorporated

Queensland Advocacy Incorporated (QAI) is a member-driven and non-profit advocacy organisation for people with disability and a specialist community legal centre. Our mission is to promote, protect and defend, through advocacy, the fundamental needs, rights, and lives of the most vulnerable people with disability in Queensland. QAI is an association of persons with concern for the needs of people with disabilities with a constitutionally designated committee comprising a majority of people with disability; their wisdom and lived experience of disability is our foundation and guide.

QAI undertakes systems advocacy aimed at changing policies, laws and attitudes in ways that will benefit groups of people with disability rather than individuals alone.

QAI strives to maintain its complete independence as an organisation and to restrict its function solely to advocacy.

QAI has an exemplary track record of effective systems advocacy, with over 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 over a decade, highly in-demand individual advocacy through our individual advocacy services – the Human Rights Legal Service, the Mental Health Legal Service, the Justice Support Program, the National Disability Insurance Scheme Appeals Support Program and Decision Support Pilot Program and most recently the Disability Royal Commission Advocacy Program and the Education Advocacy Service.

Our Human Rights and Mental Health services offer legal advice and representation on guardianship, administration, and mental health matters. Our Justice Support provide non-legal advice and support to people with disability engaged with the criminal justice system. QAI's NDIS Appeals and Decision Support Pilot Programs provide advocacy and support to

individuals and families to engage with and access the NDIS. QAI is also a member of the Combined Advocacy Groups of Queensland. QAI's individual advocacy work assists us to understand the challenges, needs and concerns of people with disability and informs our campaigns at state and federal levels for changes in attitudes, laws and policies.

QAI's constitution holds that every person is unique and valuable, and that diversity is intrinsic to community.

NDIS market development in Queensland

The Queensland Productivity Commission (QPC) is conducting an inquiry into NDIS transition and market development in Queensland. This includes investigating and reporting on market conditions and prospects to determine whether governance, regulation and policy settings support the operation of the NDIS market and promote participant outcomes.

The QPC is tasked with reviewing the performance of the NDIS market during transition in Queensland, including:

1. the degree to which the NDIS market has met the needs of participants, including whether thin markets or supply issues are contributing to the underutilisation of NDIS Plans;
2. consideration of any impediments to supply, including in relation to the preparedness of the private and non-government sectors to enter the market;
3. the productivity impacts of Queensland's investment in the NDIS, including enabling people with disability and carers to obtain employment, undertake education and training and ability to participate in the community;
4. the effectiveness of provider markets, both in the private and non-government sectors; and a review of participant transition rates and factors, including identification of any cohorts that have not transitioned and why transition has not occurred.

In reviewing the performance of the NDIS market during transition, the QPC should give regard to the likely effectiveness of the actions or interventions by Queensland and the Commonwealth as part of transition, or as part of other inquiries including the Department of Social Services Inquiry into Thin Markets¹ and Joint Standing Committee reports about NDIS markets and readiness. This includes actions taken to address thin market issues, particularly in regional and remote settings.

The QPC is also required to investigate and report on NDIS market conditions and prospects, including:

5. the efficiency and effectiveness of the NDIS market across Queensland including the availability of market information and data, and price settings and review mechanisms;
6. the appropriateness of market governance and management;
7. the anticipated NDIS participant population and the ability of the market to meet their expected level and type of service requirements;

¹ Queensland Advocacy Incorporated, Submission to Department of Social Services, *NDIS Thin Markets Project*, 23 August 2019.

8. any structural, regulatory or other impediments that might inhibit the efficient operation of the NDIS market including: impediments under State jurisdiction, under Federal jurisdiction and outside of government control;
9. any factors affecting specific markets or market segments, including in rural and remote areas; and
10. any issues relating to the interaction between the NDIS market and related markets and schemes.

Finally, the QPC is required to investigate and report on the Queensland Government's role in the NDIS, in relation to the authorisation of restrictive practices, preparation and implementation of Positive Behaviour Support Plans, monitoring of data collection and reporting on the types and frequency of their uses, and plans and strategies to eliminate and reduce their use.

QAI's recommendations

QAI recommends:

1. The Queensland Government develop a provider of last resort.
2. The Queensland Government provide additional advocacy funding for those who are vulnerable and hard to reach.
3. The Queensland Government extend the scope of the Assessment and Referral Team.
4. The Queensland Government work with positive behaviour support practitioners to develop least restrictive positive behaviour support plans, monitor their implementation and collect data and reporting from registered service providers.
5. The Queensland Government provide oversight to the NDIS Quality and Safeguards Commission to ensure that registered providers have benchmarks to reduce and eliminate the use of Restrictive Practices.
6. The Queensland Government invest in small responsive niche service provision with particular emphasis on regional and rural areas where larger providers may have a monopoly on the market.
7. The Queensland Government and the NDIA produce a user-friendly website that outlines accurate and clearly stated truthful information for participants to dispel misinformation and myths about their rights and opportunities under the NDIS. This should include supports and information about the benefits of self-management, the alternatives to SIL arrangements, and the extent of decision-making authority of NDIA staff in relation to who what and how NDIS funds may be spent.

Introduction

This submission is informed by QAI's experience in delivering non-legal advocacy for people engaging with the NDIS, through its National Disability Insurance Scheme Appeals Support Program and Decision Support Program, as well as our systems advocacy. It is also informed by insights gained through collaboration with our allies in advocacy, and the lived experiences of members and staff.

The degree to which the NDIS market has met the needs of participants, including whether thin markets or supply issues are contributing to the underutilisation of NDIS Plans

As of quarter 3 (2019-2020) there were 68,925 Queenslanders accessing reasonable and necessary supports under the National Disability Insurance Scheme (NDIS).² The low utilisation rates of participants' plans has been well documented by the Council of Australian Governments (COAG) and the National Disability Insurance Agency (NDIA). This trend is continuing in Queensland with 43% of Queenslanders only utilising 0-50% of their approved plan.³ Although the number of people receiving funding for disability support in Queensland has increased exponentially, 61% of all payments from NDIS participants' plans go to the ten largest service providers.⁴ Despite that the major portion of the market is taken up by larger providers, NDIS participants regularly report difficulty finding ongoing integral support such as support workers, domestic assistance and support coordinators who have the knowledge and skillset required.

Case Example:

- Participant's mother K stated that they are having ongoing issues with support workers: cancelling on short notice (only 24 hours).
- Admin staff at the service provider treating her with no respect.
- Participant daughter was noted as Category 2 on the paperwork in order to get more money from her NDIS plan.
- Has made a complaint to the NDIS Q&SC.
- Feels the service providers are defrauding the scheme.
- Stated the NDIS planners have been very good, but the service providers are only in it for the money and make you feel like they are doing you a favour.

It should be noted that other participants report that workers frequently don't turn up for shifts with either insufficient or no notice, organise meet and greets, undertake paid buddy shifts often for several days or weeks and then abdicate from the position.

² COAG Disability Reform Council, *Quarterly Report Q3 2019-2020*, 31 March 2020, NDIA 214.

³ Ibid 245.

⁴ National Disability Insurance Agency, *The NDIS Market*, 31 December 2019, NDIA 9.

The change from block funding to individual funding arrangements has been well received by most people with disability. However, many participants who require support workers and services with a higher skill set are experiencing significant barriers in a market that has not responded as initially anticipated. As there are now more people with funding to purchase disability services, service providers can afford to be 'picky' with whom they choose to provide support. Often service providers are more willing to assist people with simpler needs. Frequently people with very high physical and health needs, behaviours of concern or have multifaceted medical requirements require consistency in staff, who have access to continuous training and are willing to work regular and ongoing shifts that are more either physically demanding or require continuous engagement with the participant. There is a gap in the market for participants who want or need support workers with whom to have an ongoing relationship, and who can provide high calibre or intensive support and there is a risk those people will 'fall through the gaps'. QAI recommends the Queensland Government invest in the start-up of smaller niche services who will provide highly personalised and person-centred supports. QAI also recommends the Queensland Government develop a provider of last resort to ensure those who have high and complex needs are appropriately and adequately supported.

Consideration of any impediments to supply, including in relation to the preparedness of the private and non-government sectors to enter the market

QAI welcomes the protection and safeguarding of people with disability. Although other states experienced the benefit of trial sites, current issues with supply not meeting demand was not felt during the trials. The vast and less centralised geography of Queensland is not matched in any other jurisdictions, and therefore Queensland participants experience greater hardships in accessing the supports and services they need.

For many participants the transition from the previous state model to the current federal model has been somewhat rushed and it appears that the provider market has not responded swiftly. Some service providers have either declined to register with the NDIS Quality and Safeguards Commission (Q&S Commission) or have deregistered after being registered for some time. This appears to be due to the reporting processes and financial investment required.⁵ Although the responsibility of provider registration and education is a responsibility of the Q&S Commission, the Queensland Government could work with new, smaller, local and person-centred service providers to develop innovative ways to deliver disability supports in a financially sustainable manner.

The productivity impacts of Queensland's investment in the NDIS, including enabling people with disability and carers to obtain employment, undertake education and training and ability to participate in the community

⁵ 'Disability services balk at high costs', *SBS News* (online) 10 October 2019 <<https://www.sbs.com.au/news/disability-services-balk-at-high-costs>>.

Queensland is expected to contribute \$4.3 billion per annum towards the NDIS.⁶ This contribution assists with delivering services to NDIS participants and their informal supports. Unfortunately, the NDIA has not taken an innovative approach to assisting people with disability to seek and retain employment, undertake education, or training.

The NDIA is willing to fund 'supported employment' (also known as sheltered workshops) over individual training and support for a person to enter the open employment market or to retain any workplace position. There is also an unreasonable expectation that parents will provide high levels of care to their children up to and sometimes beyond the age of 18 years, inhibiting parents' return to the workforce. The NDIA exacerbates the congregation and segregation of people with disability by funding archaic group day programs that are loosely termed 'educational' even when that may not provide the reasonable outcomes. The Queensland Government must work with the NDIA to develop new and innovate ways for people with disability to be part of the economic workforce that is both empowering and meaningful. Meaningful roles in society are important for all and yield positive social outcomes.⁷

The effectiveness of provider markets, both in the private and non-government sectors; and a review of participant transition rates and factors, including identification of any cohorts that have not transitioned and why transition has not occurred

One of the objectives of NDIS is to enable people with disability to exercise choice and control in relation to planning and delivery of their supports.⁸ However one of the issues QAI has raised with the NDIA, the NDIS Quality and Safeguards Commission,⁹ the Joint Standing Committee,^{10,11} and the Disability Reform Council is the lack of oversight of service providers who provide 'wrap around' services such as accommodation, support workers, support coordinators and therapists. Service providers who have traditionally been funded under block funding arrangements have simply transitioned their existing clients over to services they deliver, often without offering alternatives. The provider market must respect that a person with disability has the right to dignity of risk and must be free to access supports via multiple parties.

Further to this, providers must be held to an obligation to provide complete and honest information about alternatives and opportunities for participants to exercise their rights to 'choice and control'. Unfortunately, many service providers only offer restricted information to participants in order to retain their exclusive position as major provider to these people.

⁶ National Disability Insurance Agency, *Market Position Statement*, May 2016, NDIA 1.

⁷ International Social Role Valorization Association, *SRV Theory*, 2019 <<https://socialrolevalorization.com/srv-theory/>>.

⁸ *National Disability Insurance Scheme Act 2013* (Cth) s 3.

⁹ Queensland Advocacy Incorporated, meetings with NDIS Quality and Safeguards Commission, 10 July 2019 & 27 February 2020.

¹⁰ Queensland Advocacy Incorporated, Submission to the Joint Standing Committee, *Inquiry into the National Disability Insurance Scheme Quality and Safeguards Commission*, 31 July 2020 8.

¹¹ Queensland Advocacy Incorporated, Submission to the Joint Standing Committee, *National Disability Insurance Scheme Workforce Inquiry*, 16 April 2020 4.

Understanding and accessing the NDIS is bureaucratic and complex at the best of times. However, people whose ability to perform self-management functions is impaired are being left behind. The transition rates of people with psychosocial disability are impacted by the lack of support to access the NDIS. Despite the NDIA funding the local area coordinator (LAC) partner in the community (PITC) program, which has functions designed to assist people through the access process, the LAC's focus has shifted to churning out NDIS plans.¹² This subsequently limits the time LAC's have to spend with people who are not participants of the NDIS. This results in people with psychosocial impairments especially, depending on support from community services which may not have the experience and expertise to help. This can be mitigated by the Queensland Government providing additional funding to advocacy organisations to work with vulnerable people through a supported decision-making framework.

QAI welcomes the introduction of the Assessment and Referral Team (ART), as people with disability trying to access the NDIS often face financial barriers to having assessments completed. However, QAI also holds concerns regarding the effectiveness of the program. There are significant concerns regarding the appropriateness of clinical assessments being completed by certain allied health practitioners. For example, QAI is aware of ART speech therapists completing NDIS access assessments for people with psychosocial impairment (where a psychologist or mental health occupational therapist would be considered best practice). There are major problems associated with the limited time that the teams are prepared to invest in engagement with individuals and, the strict criteria to access support.

QAI recommends that the Queensland Government collaborates with the NDIA to develop a participant website and other materials that provide clear and accessible information that dispels misinformation and myths about the opportunities and rights for participants under the NDIS. For example:

- A large number of 'hard to reach' persons with disability living in boarding houses and hostels are 'captured' by the owners and managers. Many of these people are coerced into exclusive wrap around arrangements as are other participants who are locked into Supported Independent Living (SIL) situations.¹³ QAI is acutely aware that not all participants who are deemed to require 24/7 support require or actually receive that level of care, and for those who do there are alternatives that most participants are not informed about, and much of this information appears to be either invisible or deliberately withheld
- Participants are rarely encouraged or supported to self-manage and there is a dearth of information to explain how this might benefit participants in thin markets or where there may be a monopoly in the participants' location and the participant has an unhappy prior experience with that or any other services in the area.
- Our organisation has received requests for assistance from participants who have sought to engage a family member as a paid provider of their supports. These participants have either been told by their plan manager or support

¹² Safeguarding Task Force, *Report*, 31 July 2020, Government of South Australia 10.

¹³ Queensland Advocacy Incorporated, *Position Paper, Supported Independent Living*, July 2020.

coordinator that this is 'not permitted' or they have been advised in writing in an internal review decision letter from a delegate of the NDIA CEO that their request to pay a family member to provide supports has been 'refused'. Our **attached letter** to the Minister for the NDIS Mr Stuart Robert outlines the issues arising from the provision of misinformation and overstepping of extent of authority of NDIA staff.

It is vital that Queensland Government invest in building rapport with people with disability in communities and spending time on best practice assessments to ensure that vulnerable Queenslanders with disability are supported to access the NDIS.

The efficiency and effectiveness of the NDIS market across Queensland including the availability of market information and data, and price settings and review mechanisms

As mentioned, the vastness of the Queensland geography and the less-centralised population is unique to all other jurisdictions. Regardless of the lack of market information and data, it is unlikely that any improvement in the thin market will be evident without dramatic changes by service providers themselves. The Queensland Government has a role in encouraging larger providers to decentralise, create local more responsive niche roles, and divest themselves of the multiple functions that can monopolise participants in rural and regional locations.

The Queensland Government should encourage providers to provide competitive rates that the NDIS market was supposed to deliver for participants – not be the market for sole traders as it is currently trending.

The appropriateness of market governance and management

The Queensland Government should work with the NDIA and the Australian Tax Office to regulate the rates charged by sole traders and contractors who are providing direct supports to participants for personal care, in home support, and community access. Currently sole traders are abusing the NDIS Price Guide to charge top of the guide to individuals in their own homes.

The anticipated NDIS participant population and the ability of the market to meet their expected level and type of service requirements

There is an expectation that 91,200 Queenslanders will access NDIS supports.¹⁴ The market is already struggling to meet the demand for services of the current 68,925 Queenslanders which receive NDIS funding. Availability of services for people with complex disability needs to be addressed as a matter of priority to ensure fundamental human rights are met.

Any factors affecting specific markets or market segments, including in rural and remote areas

¹⁴ National Disability Insurance Agency, *Market Position Statement*, May 2016, NDIA 9.

There is no doubt that people living in urban areas have access to a wider range of service providers, even though many providers are struggling with the recruitment and retention of a workforce that is increasingly selective about what work they will provide and to whom.

There is a disconnect between NDIA policy (regarding the employment of informal supports) and the cultural aspect of being supported by family and community in Aboriginal and Torres Strait Islander communities. With the knowledge the Queensland Government has regarding collaboration and cultural aspects of service provision, the Queensland Government could work with the NDIA to develop these models of service provision.

Any issues relating to the interaction between the NDIS market and related markets and schemes

QAI is aware, through the individual advocacy of our Mental Health Legal Service and Human Rights Legal Service, of difficulties that the interaction between the NDIS and other schemes creates for people incarcerated at the Forensic Disability Service (FDS) and other Authorised Mental Health Services, in receipt of NDIS funding.

Part of this funding allocation includes the provision of support coordination/specialist support coordination. Specialist and generalist support coordinators are responsible for helping participants to understand and implement their plan, whilst also connecting participants to community and mainstream supports. A significant role of a support coordinator may be to source appropriate housing, create safety plans and act as a liaison between different governmental departments.

Unfortunately, due to structural and systemic issues with the facilities and the limited training provided to support coordinators (by both the NDIA and Queensland Government), support coordinators often do not have the knowledge or skillset to assist. These interface issues are a contributing factor to people with complex disability or complex circumstances 'falling through the cracks'. The Queensland Government has been made aware of the shortfalls related to FDS,¹⁵ however the inability for the market to respond and provide support to people with complex needs exacerbates ongoing systemic failures.

The Queensland Government's role in the NDIS, in relation to the authorisation of restrictive practices and preparation of Positive Behaviour Support Plans

The Queensland Government is still responsible for providing authorisation for the use of Restrictive Practices in Queensland. In accordance with the *Guardianship and Administration Act 2000* (Qld), a positive behaviour support plan (PBSP) is to be developed and implemented in order for Restrictive Practices to be approved. Since the introduction of the NDIS, the Queensland Government has not had the responsibility of providing funding for nor developing PBSPs.

¹⁵ Queensland Ombudsman, *The Forensic Disability Service report*, August 2019.

QAI maintains that the quality of a PBSP is essential to not only the reduction and elimination of the use of Restrictive Practices but is critical in ensuring the quality of supports and services provided to the participant. While the quality of PBSPs were rarely of an acceptable standard under the former state system, QAI has seen a decline in the quality of PBSPs since the introduction of the NDIS. This is extremely disturbing considering the Q&S Commission is charged with the responsibility of 'safeguarding' people with disability and ensuring an acceptable level of quality in the supports and services provided.

QAI has recommended on several occasions that the Queensland Government has the knowledge and expertise with relation to the development and implementation of PBSPs, and the collection and monitoring of data in relation to the use of Restrictive Practices.¹⁶ QAI recommends the Queensland Government work with PBSP practitioners to develop best practice and set benchmarks towards the elimination of the use of Restrictive Practices.

Conclusion

QAI understands that the Queensland Government has and will invest billions of dollars into the NDIS and its associated programs. The NDIS is due to finalise its roll out by the conclusion of 2020, however there is still plenty of work to be done. Approximately 25,000 Queenslanders are yet to access the NDIS and we recommend the Assessment and Referral Team's scope of practice is broadened to assist with this. Queensland has a wealth of knowledge that can be passed on to participants, providers and community and collaboration between different jurisdictions is something we believe will benefit all stakeholders.

¹⁶ Queensland Advocacy Incorporated, Submission to the Department of Communities, Disability Services and Seniors, *Reshaping the Disability Services Act 2006*, 14 November 2018.