



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

Market Readiness for the National Disability Insurance Scheme

Submission by Queensland Advocacy Incorporated

Joint Standing Committee on the National Disability Insurance Scheme

22 February 2018

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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 three individual advocacy services – the Human Rights Legal Service, the Mental Health Legal Service and the Justice Support Program.

In 2017, QAI was funded to provide individual advocacy support for people with disability appealing a decision by the National Disability Insurance Agency (**NDIA**) with respect to the National Disability Insurance Scheme (**NDIS**). Through this work, we have been directly exposed to some of the NDIS issues participants and potential participants are facing.

Our systems advocates have continued to actively work towards law, policy and practice reform in this space and this advocacy is now informed by the individual non-legal advocacy of our NDIS appeals support advocates. This submission is grounded in our work and experience in this regard.

Summary of QAI's recommendations:

1. The Department must ensure that Service Providers do not modify their service costs to align with NDIS packages or to demarcate between those with and without NDIS packages. Significant penalties must be imposed where this occurs.
2. The conflict of interest that presents when service providers manage individual plans is insurmountable and the NDIA must provide seeding for providers to manage the financial aspects of plans, and/or support coordination while not providing direct support services.
3. DSS must invest in appropriate outreach to remote, Indigenous and CALD communities, to engage individuals and families with deeper understanding and knowledge of the Scheme and its access requirements, and to provide supports for people to navigate the system and markets. NDIA must provide access supports to ensure that people are not left at the starting gate without any means of entry.
4. There is significant scope for development of the disability workforce in Australia to support the emerging market. This growing workforce should include a significant representation of people with disability.
5. There are a number of issues with pricing that must be addressed. All policies adopted by the NDIA should be firmly grounded in the NDIS vision of supporting people with disability to exercise choice and control with respect to decisions about their lives.
6. QAI supports the establishment of an independent NDIS pricing agency.
7. Given the interconnectedness of the NDIA and the NDIS, monitoring by the NDIA is not sufficient. The role of market steward should be filled by an independent agency which is sufficiently empowered and resourced to adequately fulfil this role.
8. QAI supports the need for market intervention options to address thin markets, particularly in rural, regional and remote locations and in Indigenous communities. These communities have historically been subject to restrictions on choice and supply, across a range of areas. In the context of the NDIS, QAI is concerned that weak or thin markets for disability supports and services will likely result in poorer outcomes for participants, including decreased choice, higher prices and/or lower quality supports and services.
9. Planning for funding of supports and services, particularly for rural, regional and remote areas, should be linked to participants' goals, not based on the existing disability supports and services in a particular area.
10. All housing options for people with disability should be founded on the principles of the right to a home of one's own; freedom of choice; deinstitutionalisation (with phased steps towards independent living for those presently living in institutional living arrangements); affordability; accessibility; security of tenure; support to own, rent or modify; and separation of housing and support (ie a person should be able to change service providers without losing their tenancy and move house and retain their service provider). The NDIA must reconsider the registration of providers of accommodation as direct support service providers.
11. Supported Independent Living (SIL) must not be used to coerce people into shared care and shared living arrangement with their supports and services in the plan based on a shared model and is only appropriate where participants choose to share and not as a means to alleviate poorly funded Plans.
12. The NDIA must actively seek to engage with people in hostels and boarding houses and

take active steps to understand their support needs and their goals and to ensure they do not experience coercion or intimidation from hostel or boarding house managers to utilise a particular service(s).

13. Funding should be made available for people with disability to obtain free information and legal advice about their housing options.
14. The power imbalance that routinely exists between people with disability and their service provider must be redressed by ensuring that people with disabilities are empowered with free independent legal advice to draft their own service agreements, and more access to free, independent advocacy to redress service issue complaints.
15. QAI submits that all complaints handling systems must be accessible, fair, customer focussed, efficient, accessible, and proactive and must improve systems.
16. People with disability living under Restrictive Practices should be entitled to self-manage their NDIS funding. There should be no legislative prohibition on people within the NDIS who live with Restrictive Practices self-managing their funding.
17. The requirement that a person living with Restrictive Practices can only receive services from a service provider registered as a provider of 'behaviour supports' should be abolished. QAI submits that this registration requirement may create an incentive for service providers to retain the use of Restrictive Practices.
18. QAI submits that there should be provision for people with disability, with assistance from families or formal supports, to continue to purchase services from behavioural support specialists to develop and review positive behaviour support plans (PBSPs) under the NDIS. The behaviour support specialists could also provide training for the staff and family members in implementing the PBSP and the safe use of Restrictive Practices with the aim of reducing and eliminating them altogether. People with disability and their families should retain the right to choose to employ their own staff, without the need for staff to be employed by a registered service.
19. Where a provider of last resort is truly needed, it is imperative that the providers chosen are subjected to stringent scrutiny to ensure the supports and services provided are of appropriate quality, that there is not any potential for 'over servicing' to extort funds from the person's Plan, and there must be strong incentives for providers to reduce and eliminate any forms of Restrictive Practice use. There must be a safety net of providers of last resort available for all participants, and a clear separation of direct support provision from accommodation services.
20. QAI recommends that clear information about NDIS eligibility is made available to general practitioners including a relevant questionnaire to guide the conversations with their patients.

Background

The Joint Standing Committee on the National Disability Insurance Scheme (**NDIS**) is inquiring into and reporting on Market Readiness for the NDIS, with particular reference to:

- a. the transition to a market based system for service providers;
- b. participant readiness to navigate new markets;
- c. the development of the disability workforce to support the emerging market;

- d. the impact of pricing on the development of the market;
- e. the role of the NDIA as a market steward;
- f. market intervention options to address thin markets, including in remote Indigenous communities;
- g. the provision of housing options for people with disability, with particular reference to the impact of Specialist Disability Accommodation (SDA) supports on the disability housing market;
- h. the impact of the Quality and Safeguarding Framework on the development of the market;
- i. provider of last resort arrangements, including for crisis accommodation; and
- j. any other related matters.

QAI's response to key issues of inquiry:

A: Transition to a market based system for service providers

QAI is concerned that some service providers have taken the approach of requesting participants to send their plans to the service provider before the service provider provides the participant with a quote for assessments. In some cases, the service provider will refuse to provide a quote until the amount of funding for assessments within the plan has been cited.

We are also concerned by reports that some service providers are only accepting NDIS clients and refusing services to people who cannot access the NDIS. This is a major issue in regional areas that already have such limited services. Some service providers that continue to provide services for clients who have not been given access to the NDIS have reportedly been charging NDIS participants at a higher rate.

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.

B: Participant readiness to navigate new markets

QAI is concerned that there are significant cohorts of many potential NDIS participants that who are not being properly equipped to navigate new markets, or indeed the NDIS. We have been made aware that knowledge of the NDIS itself and the roll-out is poor among Aboriginal and Torres Strait Islander people and in remote indigenous communities. Disability has no equivalent term in many Aboriginal languages, and the notion that support can come from someone outside one's family or kinship group is foreign to many Aboriginal people, contributing to a cultural disconnect on disability issues. There has been a lack of outreach to rural, remote and regional locations in Queensland to give all potential participants accessible information and advice about the NDIS, including basic advice on what the NDIS is, how it can assist a person, eligibility, and how they can apply to access the NDIS.

QAI is also aware that participants from CALD backgrounds have been informed by the NDIA that they should talk to their support coordinators, in circumstances where the NDIA will not

fund interpreter services. A lack of interpreter services makes it an impossible task for these participants to negotiate the system, and there are often significant gaps and omissions in the resulting plan. This is exacerbated by an automated Translating and Interpreting Service (TIS National) which issues verbal prompts in English.

The NDIA correspondence is not accessible for many of the people addressed. QAI submits that the NDIA must use easy to read language and ensure the accessibility of the correspondence and information provided for all people. For vision-impaired participants, hard copy letters are not accessible. The NDIS portal is also not compliant with web accessibility guidelines. These are fundamental issues that must be fixed as a priority.

Services for people with psychosocial disabilities are often unsuitable such as sending around a support worker to someone experiencing severe agoraphobia. This can result in some people spending little or none of their funding and lead to the NDIA reducing or removing their funding. This is a fundamental mismatch between the Recovery model utilised through QLD Mental Health services and the NDIA application process. This is causing major issues around engagement and disengagement.

C: The development of the disability workforce to support the emerging market

QAI submits that there is significant scope for development of the disability workforce in Australia to support the emerging market. We emphasise the importance of ensuring, consistent with the NDIS vision of enabling choice and control, support for a wide diversity of supports and services.

A competitive and robust market for disability supports and services will be fostered by the removal of inequitable and unjustifiable limitations on people with disability – such as the restriction on people living under Restrictive Practices from self-managing their supports and services and the requirement that Restrictive Practices are only administered by an accredited service provider. There should be no legislative prohibition on people within the NDIS who live with Restrictive Practices self-managing their funding and the requirement that a person living with Restrictive Practices can only receive services from a service provider registered as a provider of 'behaviour supports' should be abolished. This prohibition is prima facie discriminatory, in breach of the human rights of the person, and is also directly counter to the vision of the NDIS of creating greater choice and control for people with disability over their supports and services. It demarcates between those who live with Restrictive Practices and those who do not, and affords less favourable treatment to those who already experience heightened vulnerability as a result.

We have been made aware of some subtle coercive tactics by government staff to certain of these individuals and their families, who are told that they must return to a traditional service model in order to participate in the NDIS, and relinquish the control and autonomy they have attained. This is cause for significant concern, not only about the future of these individuals but for all people with disability living with Restrictive Practices, should this approach become entrenched policy within the NDIS.

We also hold grave concerns that the registration requirement may create an incentive for service providers wishing to gain an edge in a competitive market environment, overriding the appropriate legislative and policy focus on the reduction or elimination of the use of Restrictive Practices. Further to this, we are concerned that the pricing guide for the NDIS is an incentive to retain the use of Restrictive Practices rather than reducing them as eventually, the funding attributed to the person will be reduced. We are aware of some service providers who are actively seeking to only work in this domain.

We recognise that only permitting service providers who are registered to provide 'behaviour support' as stated in the draft Quality and Safeguard Bill to provide supports or services to people living with Restrictive Practices does provide oversight and accountability regarding the use of Restrictive Practices. However, there are other ways of achieving this accountability that do not infringe the human rights of the people involved. Indeed, the measures necessary to ensure that there will be appropriate reporting and scrutiny of the use of Restrictive Practices by all service providers will help to open up practices that are currently predominantly closed in nature. In fact, several individuals with their families have been complying with the reporting and data collection for the past eight years since the instigation of Your Life Your Choice in Queensland. The results of self-management and the hiring of stable and well-trained person-centred employees has been the reduction of the uses of Restrictive Practices and in some instances total elimination.

We suggest that people with disability, with assistance from families or formal supports could still purchase services from behavioural support specialists to develop and review positive behaviour support plans (PBSPs). The behaviour support specialists could also provide training for the staff and family members in implementing the PBSP and the safe use of Restrictive Practices with the aim of reducing and eliminating them altogether. Although the behavioural support specialists would still be obliged to be registered under the NDIS, people with disability and their families should still be able to retain the right to choose to employ their own staff, without the need for staff to be employed by a registered service. As specialist behaviour intervention and support is quite costly and requires extensive consultation, the costs for this should be appropriately reflected into NDIS participant management plans, so as to not compromise direct support hours.

The commonwealth government should ensure seeding grants and other funding opportunities are awarded to a diversity of organisations, including small businesses and those with a track record of supporting people with disability to live good, ordinary lives in the community.

We also note the importance of ensuring the wide reach of services, with the disability workforce engaged in a way that reaches all the different cohorts of NDIS participants. Some of the most vulnerable people with disability are incarcerated in prisons, forensic detention units and authorised mental health services.

QAI submits that people with disability should form a significant part of this growing disability workforce. Employment discrimination for people with disability is a significant issue in Australia and is reflected in the low rates of workforce participation of people with disability. Employment discrimination makes it significantly harder for Australians with disability to gain employment, particularly meaningful employment that is commensurate with their skills, abilities and interests and is part of a career trajectory chosen by them. Australia's employment of people with disability is lower than the OECD average. Indeed, Australia has one of the lowest employment participation rates for people with a disability, ranking 21st out of 29 OECD countries, with an employment rate of 39.8% for people with a disability compared to 79.4% for people without a disability. QAI considers this highly unsatisfactory.

People with disability are proven to be loyal and hardworking employees who generally demonstrate greater reliability, have higher attendance records with fewer sick days, have better retention rates, exhibit greater than average flexibility and productivity and do not incur greater workplace risk or compensation claims when compared with employees without a disability. Workplaces that offer a supportive environment for people with disability often report better working relationships and higher staff morale and customer loyalty. Yet despite these documented benefits of employing people with disability, there remain significant

barriers to employment for people with disability. The NDIA must prioritise employing workers with disability to deliver NDIS supports and services. It is an opportunity for the NDIA to demonstrate this commitment by employing skilled people with disability as a significant portion of its staff, and training and developing the skills of other potential candidates with disability.

D: The impact of pricing on the development of the market

QAI is aware that there have been many issues with NDIS pricing that are adversely impacting the market.

Some participants who have received services and supports in the state system that recognised the need for more specialist supports have had plans approved for the same number of hours (eg respite) but are being told to seek less expensive services. In some instances the services do not have the staff with requisite skills to adequately meet the needs of the individuals.

Some larger service providers who may be able to deliver services less expensively (but often also services that are less personalised and of a lower quality) are flourishing at the expense of boutique providers.

QAI also holds significant concerns that the approach to pricing is weighing planning towards congregate style care and accommodation arrangements – this reduces the cost of plans and is important to the government in light of feedback that the cost of the NDIS has exceeded expectations, notwithstanding that the scheme has not yet completed rollout.

Ongoing independent pricing reviews have established that services are unable to provide supports for the prices indicated in the NDIS price guide. We note the 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 (SCHDS) wage levels and training, management and development needs of organizations.

QAI supports the recommendation of the Productivity Commission to establish an independent NDIS pricing agency.

E: The role of the NDIA as a market steward

The introduction of the NDIS represents a significant development from previous approaches to the provision of disability support and services. Attentive oversight by the NDIA is essential in supporting the translation of the NDIS vision of vesting choice and control in the hands of people with disability and ensuring people with disability have access to a full range of quality services and supports. This is to be done by monitoring, facilitating and commissioning by the NDIA. However, given the interconnectedness of the NDIA and the NDIS, monitoring by the NDIA is not sufficient. The role of market steward should be filled by an independent agency which is sufficiently empowered and resourced to adequately fulfil this role.

To date, there are numerous indications that the NDIA is not effectively filling its role as market steward. For example, Commonwealth and state governments have not resolved issues regarding smooth transitions when participants are accepted into the Scheme with state services discontinued. QAI recommends that the NDIA and the State departments confer regarding participants who receive state services from sources other than disability services (for example, health and transport services) to ensure that services are not ceased upon the approval of a Plan that may not cover those services. Further, even where there is awareness of the support and service needs of a participant, there can be a dispute as to whether the state or federal government is responsible for providing the support or service.

This is particularly apparent at the disability/health interface, where participants requiring health care as well as disability supports and services are experiencing 'cost shifting' as the state and the commonwealth disagree about the responsibility for funding certain supports.

While we have received a letter assuring that the Department of Health and the state government will work to ensure that people do not lose access to health related services there is still some degree of abdication of responsibility to supporting the person's needs. It appears that some of this in particular relates to nursing care, and some specialised therapies, as well as a lack of recognition on the part of the NDIS that some people with very complex support needs require specialist supports which may cost more than what is stipulated in the price guide.

This tension can be highly stressful for participants, and is leaving many participants in limbo, with no certainty of their future, whilst they await the protracted consideration and hopeful resolution of their individual case. QAI submits that these are systemic issues that need to be resolved at a high level, with no individual life put on hold to have the matter determined on a case-by-case basis.

F: Market intervention options to address thin markets, including in remote Indigenous communities

QAI supports the need for market intervention options to address thin markets, particularly in rural, regional and remote locations and in Indigenous communities. These communities have historically been subject to restrictions on choice and supply, across a range of areas. In the context of the NDIS, QAI is concerned that weak or thin markets for disability supports and services will likely result in poorer outcomes for participants, including decreased choice, higher prices and/or lower quality supports and services.

As Victoria Legal Aid notes:¹

The NDIS model relies on the disability services market ensuring that every person who receives funding from the NDIA for services actually gets those services. The NDIS and State governments are aware that there is a risk that there will be 'thin' or 'weak' markets, where service providers may not necessarily wish to do business with NDIS participants. It was predicted this could occur where a person has complex disabilities and difficult behaviours. Multiple government inquiries have now confirmed that the risk is real. Under the former regime of State-based disability systems these 'unattractive buyers' of services were all but guaranteed to still receive disability supports because it was the State who provided or arranged for those services to be provided. However, under current arrangements, after people are transitioned to the NDIS that safety net disappears.

This important issue is discussed further, below in the context of a 'provider of last resort'.

The difficulties for people with disabilities in rural, regional and remote locations are compounded by the fact that support coordinators may visit regional areas less frequently and therefore lack the local knowledge to help NDIS participants to fully and effectively utilise their plans. QAI submits that planning for funding of supports and services, particularly for rural, regional and remote areas, should be linked to participants' goals, not based on the existing disability supports and services in a particular area. We note that it is important that the provision of block funded supports and services is not perceived as the solution to bolstering

¹ See: <https://www.legalaid.vic.gov.au/about-us/news/explainer-ndis-and-need-for-provider-of-last-resort>.

thin markets. National Disability Services (NDS) have expressed the view that, notwithstanding that the overarching aim of the NDIS is to support individualised funding, block funding is still appropriate in certain situations, such as where markets would not otherwise support key services.² QAI vehemently disagrees – block funding is counter to the NDIS vision and to force some NDIS participants to accept such arrangements is inappropriate and inequitable.

In the instances of people living in rural, regional or remote communities, and especially for people with cultural or complex support needs, it is imperative that they are supported in their choices of employing family members (where appropriate) to provide those supports. The NDIA is investing in sector development of existing service providers when this funding could be better directed to support the development of innovative outreach services particularly in the realm of therapies.

G: The provision of housing options for people with disability, with particular reference to the impact of Specialist Disability Accommodation (SDA) supports on the disability housing market

QAI submits that all housing options for people with disability should be founded on the following principles:

- the right to a home of one's own;
- freedom of choice;
- deinstitutionalisation (with phased steps towards independent living for those presently living in institutional living arrangements);
- affordability;
- accessibility;
- security of tenure;
- support to own, rent or modify; and
- separation of housing and support (ie a person should be able to change service providers without losing their tenancy and move house and retain their service provider).

The stated NDIS vision for housing has been to create a user-driven market which empowers people with disability to decide where and with whom to live. Key features purport to include a consumer-driven focus, diverse range of quality housing in the community, an informed, responsive and innovative market and empowered, informed and supported consumers.

QAI agrees that these are valuable and appropriate aspirations for the NDIS. However, we are concerned that some of the policy decisions made under the NDIS are undermining these aspirations.

QAI holds grave concerns that supported independent living (**SIL**) is being used as a means of plan funding – even in circumstances where a person with disability is living alone or with family. Forced co-tenancy is continuing and people are not prevented from self-directing

² National Disability Services (NDS). *Policy Paper: The Case for Some Block Funding in the NDIS*. June 2014.

(either their core supports or complete package) if they live in a shared arrangement. QAI considers that this is essentially the block funded model, albeit differently branded. For example – if the NDIA and the participant identify a reasonable and necessary support in the plan for assistance in shared or group living, the participant or the NDIA will request a registered provider to provide a quote for this arrangement. Participants who have been living in their own homes without sharing are without consultation receiving plans with SIL on the plan, with the plan priced according to reflect this. The SIL is being used to coerce people into shared care and shared living arrangement with their supports and services in the plan based on a shared model.

QAI has also been made aware that group homes/service providers are registering as support coordinators and misusing funds. In one case, the provider used \$30,000 of the son's funding for the mother and in another case the provider charged \$2000 of unfunded supports for another woman who has now been sent this bill from the NDIA. QAI submits that the NDIA should endorse and promote alternatives to group homes and other forms of congregate living, with a view to supporting people to live in living arrangements chosen by them in the community rather than in congregate or cluster models, and to encourage informal supports.

People with disability in hostels and boarding houses are a highly vulnerable group, often with complex support needs. With the rollout of the NDIS, there has been a concerning trend whereby residents are coerced by the manager of their accommodation to accept not only accommodation but NDIS-funded supports and services from the accommodation provider. There may be a real or perceived threat that non-compliance may result in eviction and perhaps homelessness. The vulnerability of people in this situation is heightened because they can easily slip through the cracks in the system and either entirely miss the opportunity to gain access to the NDIS, or fail to utilise supports and services potentially available to them, for a range of reasons. It is imperative that the NDIS reaches out to people in this situation and takes active steps to understand their support needs and their goals and to ensure they do not experience coercion or intimidation from hostel or boarding house managers to utilise a particular service(s).

We also draw your attention to the significant conflict that has arisen with respect to NDIS supports and funds for home modifications for people with significant disabilities. QAI considers that this conflict reneges, at least in part, on the NDIS commitment to Specialist Disability Accommodation (**SDA**). QAI notes that it is consistent with the stated vision of the NDIS for participants to be supported to live, with appropriate supports and services, in a place chosen by them in the community. Taking the approach of refusing to appropriately modify premises chosen by a person with disability is a direct means of coercing them to live in disability-specific accommodation in the community, which may be isolated from their family and friends, in living arrangements outside their choice and control.

QAI submits that the NDIA should fund free information and legal advice about housing options for people with disability and should also fund tenancy law advice for people with disability who qualify for SDA.

QAI is appalled by the knowledge that owners of Boarding Houses, Hostels and Long Stay Health Facilities have been registered as providers of supports. This perpetuates the archaic system that the NDIS was designed to move away from and consigns vulnerable people to a locked-in housing and support arrangement from which it is almost impossible to move without adequate alternative housing options.

H: The impact of the Quality and Safeguarding Framework on the development of the market

QAI considers that vital safeguards are needed to ensure that the power imbalance that routinely exists between a person with disability and their service provider does not adversely impact on market development. At its best, the quality and safeguarding framework should support market development in a positive way – only those service providers who genuinely reflect the NDIS ethos of choice and control should continue to experience demand for their supports and services, and the dwindling demand for lower quality service providers should increase the space for higher quality providers to enter the market and to expand their client base.

However, many participants and other people with disabilities rely for support on the people who are responsible for violence, abuse or neglect, and they may fear further abuse, punishment, reprisal or withdrawal of support if they complain. In the new, market-based system, some participants will be able to leave, or, in effect, to ‘fire’ service providers who harm or exploit them, but in practice even those who can voice complaints (and there are many who cannot) may be constrained by adverse market conditions, for example, an absence of similar market-competitive services in regional and remote areas, or because they fear that a complaint may jeopardise their living conditions.

The Code of Conduct will only be as effective as the Commissioner’s enforcement of it. QAI considers that the Code of Conduct must, at a minimum, impose an obligation on the Commission to proactively initiate investigations, to pursue alleged breaches fairly but vigorously, and to refer all people with disability to communication and advocacy support where appropriate.

There is a strong need to develop and implement systems and strategies that are based on the proactive identification of complaints and dissatisfaction amongst service users who may not be able to directly express such a complaint or articulate their dissatisfaction in the form of a complaint. External visitors to residential disability services (such as the existing community visitors in Queensland) are a crucial part of such a strategy as well as a crucial part of a system of oversight and monitoring of disability services. QAI calls for an expansion of this program.

Passive methods of promoting the right to complain and the pathways to enacting that right are largely ineffective for many people with disability. Other barriers to making complaints may include fear of retribution, being labelled a ‘troublemaker’, or if you are a family member of the service user, that the service may decide to relinquish the service provided to your family member, particularly where the service provider is also the landlord. This is particularly problematic where the provider of supports and services is also the provider of a person’s accommodation.

As providers of advocacy support for NDIS participants and prospective participants seeking to appeal a decision by the NDIA, QAI has become significantly concerned that the NDIA itself is exploiting the power imbalance that exists between the person and the NDIA, as decision-maker and gateway to the supports and services a person with disability requires. For example, the practice of the NDIA has been to routinely hire solicitors for external merits appeals in the Administrative Appeals Tribunal (AAT), increasing the legality and formality of an already legalistic and formal environment. This is so despite that the support provided to people with disability seeking to challenge an NDIA decision is non-legal advocacy only, unless they can meet the threshold test that their matter is ‘novel’ or ‘complex’ and therefore CAP funding for legal advocacy is available.

QAI submits that all complaints handling systems must be accessible, fair, customer focussed, efficient, accessible, and proactive and must improve systems.

With an appropriately robust and well enforced quality and safeguards framework, the market will develop in a positive way, with a selection of quality providers of supports and services available to participants. Yet QAI is concerned that there is the real (and demonstrated) potential for some service providers to exploit the NDIS. This can be particularly seen in the developing 'market' for Restrictive Practices. The denial of the right to self-manage their funding for participants living under Restrictive Practices is not only discriminatory, it will significantly restrict the choice and control that people living under Restrictive Practices – who are amongst the most vulnerable people with disability – have as regards their choice of provider(s). It also has the alarming consequence of stacking the market and creating a boutique market for service providers accredited in the application of Restrictive Practices.

QAI submits that people with disability living under Restrictive Practices should be entitled to self-manage their NDIS funding.

I: Provider of last resort arrangements including for crisis accommodation

QAI recognises the need for a 'provider of last resort', recognised by the NDIS and state and territory governments as a means of safeguarding participants who have no other service options – ie where there is a market failure. Our concerns with respect to this option are twofold:

1. Firstly, we are concerned that in thin markets, many people with disability may be forced to accept supports and services from a provider of last resort, which does not give them any choice or control over their supports and services. This will disproportionately adversely affects people with disability who are located in regional, rural and remote localities (a high proportion of which are Aboriginal or Torres Strait Islander) and also those with significant disabilities and complex needs, such as a history of incarceration, such that some service providers are unwilling to be engaged by them. Given the vulnerability of this group, and their lack of choice, in circumstances where a provider of last resort is truly needed it is imperative that the providers chosen are subjected to stringent scrutiny to ensure the supports and services provided are of appropriate quality.
2. Secondly, we are concerned that, notwithstanding recognition of the need for a service provider safety net, there are no provider of last resort arrangements in most states and territories to date. This leaves many highly vulnerable people with no options.

QAI submits that there is a particular need for robust advocacy support to be available to this cohort. We are concerned that, in the absence of adequate independent advocacy support, there will be many people with disability who fall through the gaps – unaware of their rights to supports and services or unable to articulate their needs.

J: Any other related matters

QAI is concerned that General Practitioners, health and allied health professionals are still unsure of what the reports, supporting letters and assessments need to address to support a person with disability to access the NDIS. They are still providing evidence through the lens of the biomedical model. General practitioners are not resourced adequately to support people with disability to get appropriate eligibility documentation, and this is leading to people not meeting the NDIS access criteria.

QAI recommends that clear information about NDIS eligibility is made available to practitioners including a relevant questionnaire to guide the conversations with their patients.

Conclusion

QAI thanks the Committee for the opportunity to make a submission to this important inquiry. We would welcome the opportunity to have further input into these issues as the inquiry progresses.