



# 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 Individual Advocacy for vulnerable People with Disability*

23<sup>rd</sup> August 2019

Electronic lodgment:

<https://engage.dss.gov.au/ndis-thin-markets-project/>

Dear Madam/Sir

We thank you for the opportunity to provide our submission to the NDIS Thin Markets.

This inquiry is indeed a matter of deep concern to Queenslanders with disability and their families and supporters and we welcome this opportunity to raise our concerns and offer our contribution so that any decisions may be based on all the relevant information, human rights and the intention and purpose of the National Disability Insurance Scheme and how its implementation reflects on our obligations under the National Disability Strategy and ultimately the Convention on the Rights of Persons with Disability.

We attach our submission for your consideration.

Yours sincerely,

Michelle O'Flynn

Director

**Ph: (07) 3844 4200 or 1300 130 582 Fax: (07) 3844 4220 Email: [qai@qai.org.au](mailto:qai@qai.org.au) Website: [www.qai.org.au](http://www.qai.org.au)**

**2nd Floor, South Central, 43 Peel Street, STH BRISBANE QLD 4101**

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

**SUBMISSION TO**

**Department of Social Services  
Engage Consultation**

**NDIS THIN MARKETS PROJECT**

**“There's small choice in rotten apples.”**

William Shakespeare, “The Taming of the Shrew”

**“In a maturing market it's not advisable to be always everybody's darling, because  
you get too thin.”**

Thorsten Heins

**“Money is only a tool. It will take you wherever you wish, but it will not replace you  
as the driver.”**

Ayn Rand

**Measure what is measurable, and make measurable what is not so.**

Galileo Galilei



## 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.

Queensland Advocacy Inc. (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 was set up progressively from the Steering Committee phase in July 1987 to its incorporation in March 1988 and has operated continuously since.

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 concentrates its advocacy efforts on the people with disability it considers most vulnerable. They are most likely to be denied access to society's benefits, including medical services, on the basis of negative 'quality of life' judgements. These judgments hold that there is a limit to how much finite government resources should be spent on someone with a low 'quality of life'.

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 individual advocacy services – the Human Rights Legal Service, the Mental Health Legal Service and the Justice Support Program and more recently the National Disability Insurance Scheme Appeals Support Program and Decision Support Pilot Program.

### Values Statement

At QAI, we believe that all human beings are equally important, unique and of intrinsic value. Everyone should be seen and valued as a whole person, first and foremost. The human condition is such that societies tend to devalue those who do not fit within their models of perfection. These groups, including people with disability, are socially marginalised. As an organisation we seek to bring about a common vision where all human beings are equally valued.

**The process of interaction between people with and without disability is a social exchange.**

The experience of people with disability is that they are often seen as recipients of charity rather



than social contributors. A person without a disability gains from the interaction through having an opportunity to engage with another person's experience of disability and, as a result becomes more aware of their own humanity. Both lives can be enriched through this exchange.

The following submission is based on the values, beliefs and aspirations that Australians with disability can have a good but ordinary life when they have personal power and control and are supported to exercise their autonomy and rights as other Australians.



## QAI Recommends

- Provide clear, transparent information about SILS. Clarify the restraints that SILS imposes on 'choice and control'. Explain that SILS pressures participants to share accommodation and support. Explain that SILS constrains planning and review.
- The participant and/or family may control the first plan, but despite their conflicts of interests, service providers may arrange subsequent plans and reviews and inflate quotes.
- The solution is to abolish Supported Independent Living (SIL) from Plans. Replace it with individualised NDIS Plans for everyone including people who wish to share accommodation and support.
- Restructure pricing for supports at the top and bottom of the market with particular emphasis on mental health supports, therapy services and services for people with complex needs:
  - a. In regional, rural and remote regions, the NDIA must use affirmative action to encourage new providers and encourage existing providers to strengthen their service delivery. The NDIA's regional price weighting currently does not account fully for travel costs, worker time, and the challenges of good governance.
  - b. Work with remote Indigenous councils to train staff and deliver NDIS services in their regions. This will build the capacity of local people and businesses and reduce under-unemployment.
  - c. Make it easier for Participants with small NDIS packages (for example, under \$40,000 pa) to find providers that are willing to manage or provide support services.
  - d. The NDIS Price guide must be adhered to by all providers including sole-traders.
  - e. Adherence to the appropriate levels of the price guide must be monitored as the scarcity of workers has created a 'workers' market'?
  - f. The Price Guide could be restructure with a scale of fees such as what is used by Medicare but where no gap fees are applied.
- Create opportunities for experienced and innovative providers to fulfil the paucity of services to these Participants and others in the community who require similar expertise.
- Provide financial and logistical support<sup>1</sup> to enable Access requests and to activate the NDIS plans of people with disabilities who are detained in prisons or in civil facilities for involuntary treatment and habilitation. Plans and supports may assist prisoners who apply for parole.

---

<sup>1</sup> Prisoners need support for identification/diagnoses, functional assessment, NDIS-access requests, planning, support coordination, behaviour support, aids, equipment and support for transition.



- Authorise behaviour supports for prisoners with disabilities while they are in the 'system'. The NDIA must work with state-based corrective services and prisons to ensure prisoners get NDIS Access, and supports while in prison.
- Pilot research that will identify the most appropriate and effective supports for people with disabilities while they are in prison, and transitioning from prison, and determine the effects that such supports have on recidivism.
- Queensland Department of Communities and Disability Services and the NDIA work together to address the transport needs of people with disability who are on NDIS plans, and those who are not.
- The Quality and Safeguards Commission scrutinises agencies providing housing and support and restricts registration to ensure no provider is able to provide both functions.
- The NDIA and the Quality and Safeguards Commission must examine the rules for workers acting as independent contractors, to mitigate the price gouging of Participants' Plans.
- Provide support and guidance to self-managing Participants who are grappling with ATO rules, underfunded Plans and a competitive, low-supply market of support workers.



## Methodology

The information for this submission comes from a number of sources:

As QAI is a member driven organisation with a majority of our governing body comprising people with disability, and members of staff who are either participants or nominees for participants, lived experience of the NDIS and the market contributes to the knowledge base for this submission.

- QAI's previous submissions to the Joint Standing Committee on the NDIS on NDIS implementation
- First-hand reports by clients of QAI's NDIS advocates
- First-hand reports of the clients of QAI's Justice Support Program, Human Rights Legal Service and Mental Health Legal Service. A majority are NDIS participants, or are in the process of applying. Those who are not are likely to be eligible to have ILC support.
- Interviews with –
  - QAI's NDIS Appeals advocates
  - QAI's lawyers who represent clients in the Queensland Mental Health Review Tribunal
  - Individual advocates who work in disability advocacy services throughout Queensland.
  - Participants and families who contact QAI for information, advice and referral
  - Conversations with Participants via social media
- Observations by
  - Other QAI staff
  - Service providers and other stakeholders in the sector.

## What role does your organisation undertake in the sector?

Queensland Advocacy Incorporated (QAI) is a member-driven and non-profit advocacy organisation for people with disability. 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's Mental Health Legal Service provides advice and representation to people who are on Involuntary Treatment Orders, Treatment Authorities or Forensic Orders. As a condition of involuntary treatment, many clients are detained in Authorised Mental Health Facilities located around Queensland or at the Forensic Disability Service ('FDS') at Wacol, near Ipswich; are in the process of transitioning from these facilities into the community; or, are under community treatment.



Queensland is a large state and while the most decentralised state, most of the population lives along the long coastline. It is not uncommon for Aboriginal and Torres Strait Islander clients at FDS or in other places of forensic detention to be thousands of kilometres and many days' travel from their remote communities and country.

Many clients have psychosocial or dual disability (intellectual and psychosocial, addiction and psychosocial, addiction and Acquired Brain Injury, addiction and FASD<sup>2</sup>, and so on) and complex support needs. Many QAI clients have no interested family, are homeless, have experienced multiple traumas and have been banned or discouraged from seeking further support from multiple disability, drug & alcohol, and accommodation support services, and cycle between civil detention, remand, prison and country. Those clients who do have family are struggling to maintain quality supports and services and to remain in community, but are at risk of relinquishment or detention due to a paucity of quality supports and services.

Accessing ID, treatment records and needs assessments is problematic, and seamlessly activating NDIS plans is near impossible. Many of our clients have applied to the NDIS with the expectation that the NDIS will reject them. The need evidence of rejection in order to apply for Queensland's 'Community Care,' or, since the end of June 2019, the 'Queensland Community Support Scheme' which provides in-home supports and social engagement.

QAI's Human Rights Legal Service provides advice and representation to people in relation to guardianship and administration and the use of Restrictive Practices.<sup>3</sup> Many of these clients are NDIS participants. The Justice Support Program supports people with disabilities in the criminal justice system, primarily people who have intellectual or psychosocial disabilities.

The NDIS Appeals service gives advice and representation to people who are seeking Access, or who are appealing their NDIS plans. QAI also conducts Systemic Advocacy at both State and Commonwealth levels, and as part of that role convenes the Combined Advocacy Groups of Queensland network, from which we gather broader information on NDIS implementation from 14 Queensland and Commonwealth National Disability Advocacy Program agencies around the State.

---

<sup>2</sup> Foetal Alcohol Spectrum Disorder.

<sup>3</sup> And anti-discrimination matters.



## 1. Has your organisation recently supported participants who are affected by thin markets?

### 1.1 People with Psychosocial Disabilities

Key 'thin markets' for the people with psychosocial disabilities who we support are:

- A shortage of support coordinators and/or advocates who are available to support people to activate NDIS plans, particularly in rural and regional areas.
- Potential participants encounter barriers to accessing specialist therapy services to obtain assessments and reports to support access requests particularly outside metropolitan areas, and costs of these services are unaffordable.
- A scarcity of support services that cater the top and bottom ends of the support market, i.e.:
  - Lack of support workers available for Participants with high and complex needs;
  - Lack of supports for Participants with small NDIS packages, or none.
- Unsatisfactory transport options: everywhere but particularly in rural and regional locations.

#### 1.1.1 Access Requests and Finding Support

The NDIS statute's emphasis on stabilised and permanent functional impairment does not fit easily with the lived experiences of people with psychosocial disability. QAI clients who have psychosocial disabilities face significant challenges gathering satisfactory evidence for scheme access.<sup>4</sup> If accepted into the Scheme, they have problems in finding competent support coordination and support. If not accepted into the Scheme, they cannot find non-acute, strength-building supports through the Information, Linkages and Capacity ('ILC') program or from mainstream sources.

To obtain access, our clients report that they face a variety of challenges that test their organizational skills, energy and financial resources. Some lost hope and abandoned their NDIS application after receiving repeated NDIA requests for more evidence.

It seems likely that the statistical evidence of the underrepresentation of people with psychosocial disability in the scheme is more than just a coincidence; low take-up confirms that the Scheme's criteria for entry is set too high. Other clients, particularly in rural areas, report that their packages are 'great' but that they do not know how to activate their plans; or, they are not able to activate their plans because the supply of support services is too thin. Service providers, too, report that they have difficulty in attracting and retaining suitable support worker staff.

---

<sup>4</sup> Twelve percent (12%) of participants who entered this quarter had a primary psychosocial disability, compared to 8% of participants in previous quarters combined.



Of the 3.7 million Australians who experience mental illness, 690,000 Australians live with severe mental illness.<sup>5</sup> According to Federal Government estimates, about one third of them (~230,000 people) need ongoing support.<sup>6</sup> However, the National Insurance Disability Agency (NDIA) estimated in 2017 that at full 'roll out' in 2019, only 64,000 people with a primary psychosocial disability - or approximately 13.4% of Scheme participants - will qualify for support.<sup>7</sup>

The March 2019 NDIS Quarterly Report has that proportion at 8% of the 277,155 NDIS Scheme participants, or 22,172 people. This means that there is a gap: and the 'Gap' is a significant one. Approximately 91% of people with severe mental illness (166,000 - 626,000 people- depending on the figures used) will have to rely on non-NDIS community mental health services to meet their needs.

To date in Queensland, enrolments into the NDIS Scheme by people with a primary psychosocial disability are low. Anecdotally, people do not know enough about the Scheme or how to apply for it, or require significant assistance that is conflict free in order to apply, and there are problems with Scheme assessment. It is difficult for people with primary psychosocial disabilities to show that they have a permanent condition.

Latest figures show that in Queensland, only 7% (3,167 people) of Scheme participants have a primary psychosocial disability.<sup>8</sup> This is half the rate that the NDIA predicted. Community and social participation differs by age and disability when participants enter the Scheme, but the highest rates of participation were participants with Down Syndrome (48%) and sensory impairments ((Hearing (48%), Visual Impairment (39%), and Other Sensory & Speech (40%)) compared with participants with Autism (28%) and Psychosocial Disability (30%).<sup>9</sup> Over the life of the Scheme, 81.4% of people with psychosocial disability who requested access to the Scheme were accepted into the Scheme compared to over 97% for people with cerebral palsy, autism or intellectual disability.<sup>10</sup>

The latest Queensland figures show that only 6.4% of Queensland Scheme participants have a primary psychosocial disability, confirming again that people with psychosocial disability are entering the Scheme at less than half of what was expected.<sup>11</sup> These figures reinforce what we have been hearing from people working in the sector: that is, many people with psychosocial disability are either not testing eligibility or they are not being accepted into the Scheme. This suggests that the NDIA is failing in appropriate engagement and must revisit its engagement strategy.

<sup>5</sup> 2015. Commonwealth of Australia (2015) Australian Government Response to Contributing Lives, Thriving Communities – Review of Mental Health Programmes and Services. Department of Health: Canberra.

<sup>6</sup> Ibid

<sup>7</sup> National Disability Insurance Agency (2017) Attachment A: Key Data on Psychosocial Disability and the NDIS - as at 31 March 2017. <https://www.ndis.gov.au/medias/documents/hda/h2c/8804425367582/Attachment-A-Key-Data-on-NDISand-Psychosocial-Disability.pdf>

<sup>8</sup> QLD Public Dashboard 31 March 2019 <https://www.ndis.gov.au/media/1375/download>

<sup>9</sup> March 2019 | COAG Disability Reform Council Quarterly Report

<https://www.google.com/search?q=ndis+quarterly+report&og=ndis+quarterly+report&aqs=chrome.69l69j0j4&sourceid=chrome&ie=UTF-8>

<sup>10</sup> Ibid.

<sup>11</sup> Mind the Gap: the NDIS and psychosocial disability. Page | 9



It is not enough to rely on the previously existing support service sector to outreach to these potential participants or to the areas never serviced before. The NDIA must find new innovations but with particular regard and safeguards to ensure that vulnerable and isolated people with complex and or high support needs are not disadvantaged or victimised by providers with high levels of conflict of interest.

Encouragement of specialist services that provide only Plan Management and Support Coordination but not direct personal support is a means to avoid those conflicts, and a safeguard for participants and applicants. Separation of functions of direct support services delivery from housing and SDA provision will also ensure safeguards and potential new service providers who have expertise in these specialist areas rather than attempting to cover too many functions poorly.

Direct Support Service Providers and Support Coordinators are actively encouraging the proliferation of congregate settings such as SILS and due to the high workload of Public Guardians, this is too readily acquiesced rather than working towards improved and more appropriate options and choice and control for highly vulnerable individuals.

### 3.1.2 Support for Cost of Assessments

Two and a half thousand dollars for a psychologist's report on a person with psychosocial disability's functional support needs is prohibitive. Medicare does not cover these sorts of activities; nor are many potential NDIS participants covered by private health insurance. Accessing a Mental Health Plan to cover the cost of an assessment and report will severely limit the mental health support to the person's actual needs by diminishing several of the measly ten appointments.

### 3.1.3 Support for People with Psychosocial Disabilities and Complex Support Needs, and Who Have NDIS Packages

An employee of a major Queensland statutory authority<sup>12</sup> approached QAI in early June 2019 concerned that his agency is struggling to get NDIS-funded support workers for their clients who are moving back into community from Authorised Mental Health facilities. The concern was for clients in the Ipswich/Brisbane areas, but we have been advised of similar problems around Rock Hampton and Cairns.

An NDIS Registered Service Provider ('RSP') that provided supports primarily for CALD people with psychosocial disabilities in the Ipswich area closed their doors in June 2019, citing, among other things, the cost of auditing.

**Case example:** A middle-aged man with psychosocial disabilities lives about 40 minutes from Rockhampton in Central Queensland. He applied successfully for NDIS access and received a \$100,000 plus Plan. He used to receive supports through the PHaMs Scheme, but since that scheme ended there is no supplier of appropriate supports. His advocate says there is no money to train new support workers. He is therefore unable to access the supports he needs, notwithstanding his NDIS plan.

<sup>12</sup> The Public Guardian.



Anecdotal evidence is consistent with the findings of the University of Sydney's *Mind the Gap Report*:<sup>13</sup> reporting that organizations with expertise in psychosocial disability are "collapsing, merging and selecting not to engage with the NDIS due to an inability to provide effective services within the NDIA costing structure".

### 3.1.4 Support for People with Psychosocial Disabilities who have small NDIS Packages

A large provider for people with psychosocial disabilities in South-East Queensland and Northern New South Wales advised us that they will not take a client with a package *under* \$40,000. The organisation gets ~ 65% of its revenue from NDIS participants, but for every dollar from an NDIS Participant, they spend about \$2.60 to support non-NDIS clients. This is not sustainable and raises the question about future viability of the service and the many potential clients who are missing out on this service.

### 3.1.5 Support for People with Psychosocial Disabilities Who Do Not Have NDIS Packages

Some local mental health support services are struggling, particularly due to the Commonwealth's defunding of Partners in Recovery (PiR), Personal Helpers and Mentors (PHaMs), and Day to Day Living (DtDL) programs from 30 June 2019.

The Stepping Stones Clubhouse at Coorparoo in Brisbane, for example, is an NDIS Registered Service Provider that also, until recently, provided supports to other clients using block-funded programs. This service like many others, struggle without additional funding sources to provide services apart from through NDIS packages. The Clubhouse applied unsuccessfully for a recent Queensland grant found for services delivering Peer and Group Support. Many of its constituents are borderline NDIS-eligible. The service has encouraged them to apply, but many have found the Access process slow and expensive, particularly when there is no guarantee that they will get an NDIS package OR that Stepping Stones will be funded to support them if they do not get an NDIS package.

A mental health support service that exists in Toowoomba is unable to cope with the demand for services yet maintains the image of a Club style membership. It appears that there is confusion around its function, charging for group-based activities that were once funded as a mental health

**Case example:** Janet has adult ADHD and PTSD. She needs support to organise day to day living activities because she is unable to concentrate on any single activity for long enough to complete it. She has been hired for many semi-skilled clerical jobs, but never for more than a few months. Inevitably, she finds multi-tasking and extended focus stressful. Eventually she stops turning up for work. She has found support and a sense of belonging through a local mental health support organization. Until 30 June 2019, that agency received funding through the Commonwealth's Partners in Recovery ('PIR'), Day-to-day Living ('D2DL') and Personal Helpers and Mentors ('PHaMs'). She would like to continue with these programs, but her support service advised her that she may be eligible for the NDIS. Janet needs practical and financial support to gather evidence for an NDIS Access request. If she is unsuccessful she may use the rejection letter in an application for the former state support called Queensland Community Care Scheme. This system has now been changed and is more restrictive for access.

<sup>13</sup> University of Sydney, Sydney Policy Lab, 2018. *Mind the Gap: The National Disability Insurance Scheme and psychosocial disability Final Report: Stakeholder identified gaps and solutions.*



service that were free of charge. While charging on a group-based arrangement some participants are obliged to bring their own support workers.

QAI has spoken to support services and people with psychosocial disabilities around the state, and mental health support services report that in order to provide required services, losses are being incurred and jeopardises their long-term sustainability.

The government must provide supports and services for areas and types of services that are not met in the market. However, this should merely be transitional with opportunities for new start-ups to enter the market and to fill those service gaps in those locations experiencing the direst need. An example is that government should provide support and services to people with disability in places of detention or contract approved providers to deliver them. Government should provide supports and services where they are needed particularly for those areas not funded by NDIS and for people who are not NDIS eligible. However, individuals should have a plan to which they agree to ensure they actually get the supports or services they need.

Access barriers create thin markets. NDIS take-up is below predicted for South-East Queensland, and lower participant density makes services less viable. The NDIS must mitigate access barriers if the NDIS is to reach its full potential.

1. People with psychosocial disability are experiencing increased levels of stress, anxiety and/or paranoia when attempting to access the NDIS, particularly in the application and planning stages;
2. Individuals with complex needs, such as those living with addiction, unstable housing or homelessness, and/or domestic violence, need urgent support for those issues before considering applying for NDIS support. Although this has the potential to slow the NDIS application process for the individual, it highlights the need for an understanding of the multiplicity of needs for individuals – not just a ‘one size fits all’ approach;
3. The cost and difficulty getting reports and assessments is prohibitive. In many cases, people with psychosocial disabilities (particularly those who experience other social disadvantage) do not have access to a regular, bulk billing general practitioner (GP) so are unable to request an assessment for the NDIS process. In some rural and remote locations in Queensland, there are simply no available bulk billed appointments with GPs. Pricing needs to be monitored so that services do not automatically charge the top price - this is particularly evident with therapy services and assessments. Instead a scale of fees such as what is used by Medicare could be used, but where no gap fees are applied.
4. GPs and other health professionals, including psychologists, are not able to bill for the time spent preparing the assessment, leaving the individual out of pocket, or simply not able to request the report due to unaffordability. We understand that, in some cases, the GP has simply refused to undertake the report, leaving the individual at a loss as to how to properly apply for the NDIS.
5. Participants are struggling to understand the process and, when found eligible, the packages they receive. Around Queensland, Primary Health Networks are providing information to individual’s to support their understanding of the process and packages, but this support is



often sporadic and relies on the individual (or their family/carer) knowing where to turn for available support.

6. People are remaining in hospital beds because they cannot access disability or aged care services.
7. Inconsistencies with application and planning processes are leaving people out of the system, without services and is creating a second class of people amongst those who are no longer able to access services (such as PHaMs) that they were previously accessing, leaving them with no support.
8. As Community MH providers have reduced services we have seen a spike in Acute Hospital Admissions, Involuntary Treatment Orders, Treatment Authorities and Forensic Orders.

QAI is concerned that Queenslanders with psychosocial disabilities will be left without support, relying on underfunded organisations to assist them. Although many of our clients have had positive experience with the NDIS, huge gaps are forming for people struggling to engage with the changes.

### **3.1.6 Mental Health Services – Transport**

Open Minds, a provider for people with psycho-social and intellectual disabilities and Acquired Brain Injury, announced on 11 July 2019 that as of the 1st July 2019, the service will no longer be providing transport in Open Minds fleet vehicles to our clients for community access support.<sup>14</sup> Historically, Open Minds was provided with direct government funding to have a fleet of vehicles to transport clients. With NDIS individual funding, they no longer have access to funding for this fleet.

Open Minds will still provide transport for the next three months in Support Workers' personal vehicles up until 30th September 2019. Staff will be supporting clients to use alternate transport, including buses, trains, taxis, community transport, and walking. They have developed an Easy Read Transport and Travel Guide and a wallet sized Transport Info Card for clients to carry with them.

In the Brisbane area and more broadly, state block funding allowed service providers to purchase vehicles for client community access. That funding is no longer available. Even if service providers were able to combine the transport component of each of their NDIS participant's plans, it would not be enough to allow the providers to purchase sufficient vehicles to transport them. Clients, too, would rightly be unhappy if their access to vehicles that were purchased with their funding was curtailed because the service provider was using vehicles to transport clients who do not have NDIS packages. QAI does not propose the use of Participants' Plans to purchase service vehicles as an appropriate measure. Nor does QAI attest to the accuracy of reported financial constraints for service providers. However, the impact of the closures of so many service will undoubtedly leave many people both NDIS participants and on-participants without any supports or services.

---

<sup>14</sup> <https://openminds.org.au/news/changes-how-open-minds-provides-transport>



## 3.2 NDIS Services to Prisoners and People in Forensic and Authorised Mental Health Services

- On the night of the National Prisoner Census, 30 June 2018, Queensland prisons held 8,840 prisoners.<sup>15</sup>
- Over 1,100 Queensland prisoners have been identified as potentially eligible for the NDIS.<sup>16</sup>
- Approximately 360 prisoners with disabilities are being supported to gather evidence of their disability support needs and complete access requests.
- 157 prisoners have been determined to be eligible for the NDIS.
- 62 prisoners have an NDIS plan.

### 3.2.1 Background

One of the thinnest of all NDIS markets is supports for prisoners with disabilities. Access to support while they are still within the 'system' ensures better connections on release, lowering rates of recidivism, but the NDIA appears to have no publically stated position on whether prisoners are entitled to funding for such supports.

People with cognitive and/or psychiatric impairments are overrepresented in the criminal justice system broadly and in prisons particularly, and a disproportionate number of people with disability in prison are also Indigenous Australians with disability. Detained people with disability who are in either prisons or forensic detention are often subject to isolation and restrictive practices associated with the interaction of their disability and the requirements of the prison environment.

While they are in detention, or transitioning from it, they have much to gain from the provision of disability supports that are available from the NDIS. Similarly, the corrective services system would also benefit from the provision of allowable supports to people with disability within their control.

**Human Rights Watch** argues that 'if a person's NDIS plan is suspended while in prison, hospital or psychiatric facility, it should be reviewed and resumed immediately upon their release so that they receive the supports to which they are entitled'.\*

\*Human Rights Watch, 'I Needed Help, Instead I Was Punished': Abuse and Neglect of Prisoners with Disabilities in Australia, p1 (3 February 2018)

The November 2015 Council of Australian Governments (COAG) [Justice Interface Principles](#) allow for the provision of disability supports to people in prisons and forensic detention, but NDIA staff, Support Coordinators, Registered Service Providers, and corrective and forensic institutions are still uncertain about how, or whether, to support that provision.

<sup>15</sup> <http://www.qgso.qld.gov.au/products/reports/prisoners-aus/prisoners-aus-2018.pdf>

<sup>16</sup> Source: 15 July 20190. Queensland Minister for Corrective Services. Letter to Queensland Advocacy.



Numerous government inquiries highlight the lack of therapeutic, disability-specific supports to people with disability who are detained, and the inevitable costs to people with disabilities, their families and communities.

The Joint Standing Committee on the NDIS report, *“The provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition”* noted that, “The continuing lack of access to appropriate service provision directly contributes to the criminalizing of and disproportionate representation of people with cognitive disability in prison”.<sup>17</sup> The 2016 Senate Community Affairs References Committee report *“Indefinite detention of people with cognitive and psychiatric impairment in Australia”*,<sup>18</sup> expressed concern about “the lack of therapeutic support in this environment [which] unnecessarily exposes them to physical risk and to isolation—both within the prison and from the community”.<sup>19</sup>

As the National Disability Insurance Scheme (NDIS) moves to full rollout, the NDIA is developing a Complex Support Needs Pathway. Integral to that pathway must be an effective model of support that will reduce the costs of fragmented or non-existent specialist and mainstream services for people with disability in prison and for forensic detainees. The model must apply across nine corrective and forensic jurisdictions but be flexible enough to adapt to local environments.

### 3.2.2 Challenges in getting NDIS supports in prison

- **Confusion about whether NDIS covers people in prison**

The NDIA staff do not offer a consistent message about this. Anecdotally, an NDIA employee has stated ‘We will support a person form 6 weeks post-release’.

COAG’s *Principles to Determine the Responsibilities of the NDIS and Other Service Systems* states:

‘The NDIS will fund specialised supports to assist people with disability to live independently in the community, including supports delivered in custodial settings (including remand) aimed at improving transitions from custodial settings to the community, where these supports are required due to the impact of the person’s impairment/s on their functional capacity and are additional to reasonable adjustment’.

Some support coordinators (e.g. Ipswich) also believe that NDIS is not available to people in prison.

<sup>17</sup> At # 5.3.

<sup>18</sup> Senate Community Affairs References Committee. 2016. [Indefinite detention of people with cognitive and psychiatric impairment in Australia](#).

<sup>19</sup> Senate Standing Committee on Community Affairs. 2015. *Violence, abuse and neglect against people with disability in institutional and residential settings*. Australian Law Reform Commission. 2014. *Equality, Capacity and Disability in Commonwealth Laws*. Australian Human Rights Commission. 2014. *Equal before the Law: Towards Disability Justice Strategies*. Human Rights Watch. 2018. *“I Needed Help, Instead I was punished”*.



- **Identification of Potential NDIS participants**

Many prisoners have not heard of the NDIS, so the onus is on prison management proactively to identify potential NDIS participants. Prisoners face a double bind when they consider whether to declare impaired capacity. They may require extra services but in disclosing any impairment they run the risk of stigma, lowered expectations and the possibility that prison staff or other prisoners may exploit their vulnerability.<sup>51</sup>

We understand (and support) that Queensland Corrective Services (QCS) currently is using the HASI test to identify potential NDIS participants for further assessment and, depending on the results, assistance with an NDIS Access Request.

- **Difficulty proving diagnosis and functional capacity**

Unless already with a guardian or through child safety, it is difficult or impossible for a prisoner to get the evidence needed for an NDIS Access Request. Many prisoners with disabilities are illiterate, do not have evidence of a current diagnoses or any assessment of functional capacity. To get them, the prisoner needs to have ID, information from Queensland Health and access to allied health professionals.

- **No Money for Allied Health Assessments**

OTs and GPs cannot get Medicare to cover prison visits. QAI understands that as part of their NDIS Engagement Strategy, QCS has set aside some money for allied health assessments, but this soon will run out.

- **No capacity for assessments through prison health staff**

A prisoner can wait nine months to see a prison doctor who in any case is likely just to have met the prisoner and is in no position to make a functional needs assessment for the purposes of an NDIS Access Request. Prison health staff are too busy/overrun with appointments to do medical/functional assessments anyway.

### 3.3.3 Aboriginal and Torres Strait Islander people in prisons and civil detention

The importance of behaviour supports to prisoners with disabilities *while in prison* and *exiting from prison* was not part of the QCS agenda until the Queensland Audit Office examined the issue. In 2017, the Queensland Audit Office report on the National Disability Insurance Scheme<sup>20</sup> reviewed

#### Case Example:

Gary\* was arrested in May and charged with a minor assault which occurred while he was living in a Housing Queensland home under the care of a previous service provider. That service provider pulled out of its contract to provide 24-hour intensive care and support for Gary two days later, citing him as a “business risk.” Without a care provider, Gary was denied bail and held in isolation. His offending was at the lower end of the scale, but now he is in 23-hour lockdown. He needs an intensive support package under the NDIS.

The system requires urgent change to ensure that this doesn’t ever happen again to Gary or to anyone else. His and others’ experiences point to a systemic problem with the design of the NDIS.

\* Name has been changed

<sup>20</sup> Queensland Audit Office. 2017. *The National Disability Insurance Scheme - Report 14* page 55.



12 parole reports prepared by QCS officers about disabled prisoners (including those identified with a possible cognitive impairment) who were eligible for parole after 1 July 2016.

The report found that none of the parole reports noted prisoners' disability needs as part of their community support/re-entry requirements to manage risk of re-offending, even though one report identified that the prisoner's disability was linked to their offending behaviour. None of the 12 reports specifically addressed NDIS eligibility for prisoners where they were intending to be released into regional areas that had already transitioned to the NDIS.

There is a dire and urgent need to understand the types of interventions and supports that will be effective for prisoners with disability, and an equally urgent need for the development of standardised, evidence-based programs to reduce recidivism. It is commonly understood and recognised that evidence-based programming targeting the criminogenic needs of general prison populations, such as courses in cognitive behavioral therapy, reduces the risks of recidivism. In the US:

.. Research<sup>21</sup> shows that inmates who participate in correctional education programs have lower odds of returning to prison than those who do not, and that every dollar spent on prison education saves four to five dollars on the costs of re-incarceration.<sup>22</sup>

### 3.4 Indigenous NDIS Participants - North Queensland

Young Aboriginal and Torres Strait Islander people in aged care are stuck there because they have no funding or support to make NDIS Access requests. Aboriginal and Torres Strait Islander NDIS participants want to receive support from Aboriginal and Torres Strait Islander people. It's a matter of feeling comfortable with the support worker- enough to go to cultural events like those in NAIDOC week, and not feel out of place.

#### Market Breakdown - Rural and Remote

Andrew has had an NDIS package for 6 months. He uses a wheelchair, but does not have one that is fit to his purposes. He is deaf, and he has a cognitive disability and cerebral palsy. He lives with his mother and brothers, all of whom have autism. His support coordinator lives over 40 minutes away. His package has a small transport component of ~ \$1500 pa.

According to his advocate, Andrew is desperate for social engagement. A return taxi to his preferred form of social engagement in Yeppoon is ~ \$110. Without any other trips at all, Andrew will have exhausted his transport support within 14 weeks, if he travels for social engagement once per week. He has a citizen advocate, but he needs more advocacy support for a review of his NDIS Transport component.

### 3.5 Hostel and Rooming House Residents – NDIS Services

The market often is 'rigged' in private hostels. The owner of the hostel and the registered provider of all supports may be one and the same.

<sup>21</sup> See for example Edward J. Latessa Ph.D. Christopher Lowenkamp Ph.D. 2006. 'What Works in Reducing Recidivism?' *University of St Thomas Law Journal*. Vol 3: 3: 520-535.

<sup>22</sup> Deputy Attorney General Sally Q. Yates Delivers Remarks at Harvard Law School on Sentencing and Prison Reform Cambridge, MA ~ Monday, January 9, 2017 - <https://www.justice.gov/opa/speech/deputy-attorney-general-sally-q-yates-delivers-remarks-harvard-law-school-sentencing-and>



- Hostel providers' direct relations have become service providers for residents as NDIS Registered Providers of Supports or Support Coordinators
  - Residents threatened with eviction if they complained about their living or support arrangements or engaged another support provider
- Providers stand-over residents while negotiating NDIS support agreements and or excluding them from the Planning discussions entirely
- Providers restrict entry to residents' guests, including advocates and support coordinator
- Provider sought Guardianship in order to override disadvantageous resident decision
- Provider yelling, abuse, coercion, threats to get compliance
- Manager controls activities residents do with support workers
- Poor health care by provider-preferred visiting doctor
- Providers have negotiated residents' NDIS plans without participant's knowledge
- When a resident arrived back to CC after 7pm, medication would be refused as the resident has missed the dedicated time.
- Providers withholding mail and or vetting residents' mail
- Abuse of power controlling everything from what a person watches on television, where the residents go for leisure; denying a resident access to food of his choice and how often visitors are allowed.

### **3.6 SILS Arrangements**

The Independent Living Scheme ('SIL') needs be abolished. The SIL is in breach of the National Disability Insurance Scheme Act 2013 (Qld) ('NDIS'). The objectives and general guiding principles of the NDIS aim for people with disabilities to have choice and control in planning the type of support they are given, which maximize independent lifestyles.

The SIL fails to promote the NDIS by:

- (a) assigning people with 24/7, high, complex and individual support needs, into shared care in congregated settings;
- (b) putting pressure on NDIS participants to fill shared living vacancies even if they do not want to;
- (c) not providing participants adequate support to live in their own homes meaning potential heightened risk to health, wellbeing and safety
- (d) increasing revenue of service providers at the cost of the choice, control, and independence, people with disabilities deserve.



In addition – the issues raised above in Hostels and Rooming arrangements are applicable to SILS arrangements in many instances.

To implement minor amendments to the SILS is to ‘turn the cheek,’ to a funding mechanism which supports the infringement of basic human rights and is in breach of the objects and principles of the NDIS legislation.

The data indicates that participants with SIL NDIS Plan arrangements have a higher utilisation of their plans. This is an indication that it is the Provider that is ensuring the expenditure of Participant funds rather than Participants exercising choice and control.

SILs arrangements discourage other providers from entering the market as many SILS providers obtain signed agreements that exclude or restrict the provision of other services. The conflict of interest is very high, with some providers providing accommodation, direct personal support, supports coordination, community access, and even decision support. This is abuse of power, often employing coercion and exploitation.

SILS must be abolished and replaced with individualised NDIS funded Plans for everyone including people who do wish to share. Participants should be permitted to articulate what if any support or services they are willing to share with others as **their** choice and control – not that of the service provider.

### **3.7 Experienced and Skilled Workforce**

Many service providers and self-managing participants are experiencing great difficulty in recruiting and retaining experienced and skilled support workers. There are a number of on-line platforms for agency hire workforce that contract labour, many of whom have exited the nursing or aged care profession, or are students in the same industry.

On-line platforms and social media groups for self-managing participants and support workers up until a few months ago were a source of recruitment for participants, yet now there are very few workers available, fewer with experience and almost none who are wanting employee status – the remainder are choosing to be contractors. This scarcity of employees means that people who want and need regular and skilled staff who know and understand their communication, supports and needs well are unable to fill their vacant job positions.

All too many who are advertising their availability are parents of school-aged children looking to work 9-3 only and who have no skills, training or experience in disability. "Qualifications" are not as valuable in some aspects of support but rather the commitment to learn from participants, to stay in the role and to undertake the training. Government should invest in supporting participants to train their workers or to fund the training that participants choose for their staff.

Instead of funding business improvements for providers there needs to be a breakdown of the functions that any service can deliver to one person. For example no service should deliver Plan Management and Support Coordination if they are also Direct Support providers. This eliminates other providers especially in regional and remote locations.



### 3.8 Self-Managing Participants and Families

Grants should be provided to self-managers so that they can start up as such and give assistance to obtaining software packages, understanding of tax and employment responsibilities, recruitment, training (including the payment of buddy shifts) and retention of staff.

Self-Managing Participants who live in local geographic locations should be able to pool resources to hire consultants or coordinating 'key workers', source group training for workers. However, this should not be interpreted as merely pooling resources to share care or living arrangements such as SILS as this is part of the reason for thin markets. (SILS providers end up providing all the services and supports and edge out others).

Government must provide information about the current and future demand for services and service types and where demand is not being met. This will give the service sector and any potential start-ups the information they need to decide how and when to enter the market.

Any government established e-market must be delivered with participants who can attest to the credibility and quality of the services listed.

➤ **Pricing**

Participants and Nominees have informed QAI staff of the underutilization of Plans due to the issue of unaffordable supports and services.

Many Self-Managing Participants and or Nominees are using Labor Hire Platforms or similar employment services. While the hire company takes a fee, many of the workers are contractors. In fact there has been a rise in the number of labor-hire companies employee the workers and manage the insurance and taxation obligations, charge the Participants a percentage of the hourly rate as their fee.

Alarmingly an increasing number of contractors are setting fees at the top of the price range as their standard rate. One support worker recently posted to other sole traders on a social media website “2018/19 payrate for Monday to Friday day time hours is \$52.85. Do not undervalue yourself....Stand together, united. Charge the set NDIS rate. No pay equals no support.”

Examples of typical contractor rates for a web-based labor hire platform:-:-

The screenshot shows a profile for a 'Social Support & Domestic Assistant'. The pricing section is as follows:

MEET AND GREET	
FREE	
For the purposes of an interview with potential new clients	
WEEKDAY: \$52.50 p/h	WEEKEND: \$57.75 p/h
Based off indicative agreed rate of \$50 p/h	Based off indicative agreed rate of \$50 p/h
AVAILABLE DAYS	
<input type="checkbox"/> MON <input type="checkbox"/> TUE <input type="checkbox"/> WED <input type="checkbox"/> THU <input type="checkbox"/> FRI <input checked="" type="checkbox"/> SAT <input checked="" type="checkbox"/> SUN	
*Please note that the total cost of support is 5% higher than the agreed rate.	

The 'Services Offered' section includes:

- Activities, Outings & Community Access
- Home Maintenance • Companionship • Light Gardening
- Light Housework • Meal Preparation
- Personal Assistant (Admin) • Shopping
- Sports and Exercise • Provide Transport

A note states: "This support worker is not qualified to provide medication assistance or medication management."

The 'Badges' section includes: First Aid Certificate, Insurance & Police Check, Licensed Driver, LGBTI Friendly, Non-Smoker, Pet Friendly, and ABN.



**MEET AND GREET**

**FREE**

For the purposes of an interview with potential new clients

WEEKDAY:	WEEKEND:	24HOURS SHIFT:
<b>\$60.90</b> p/h <small>Based off indicative agreed rate of \$58 p/h*</small>	<b>\$78.75</b> p/h <small>Based off indicative agreed rate of \$75 p/h*</small>	<b>\$78.75</b> p/h <small>Based off indicative agreed rate of \$75 p/h*</small>

**AVAILABLE DAYS**

MON TUE WED THU FRI SAT SUN

\*Please note that the total cost of support is 5% higher than the agreed rate.

**Work Locations**

**Social Support & Domestic Assistant**

Services Offered:

- Activities, Outings & Community Access
- Home Maintenance
- Companionship
- Light Gardening
- Light Housework
- Meal Preparation
- Personal Assistant (Admin)
- Shopping
- Sports and Exercise
- Provide Transport

This support worker is not qualified to provide medication assistance or medication management.

**Reviews**

This support worker has not received any feedback yet.

**Badges**

- First Aid Certificate
- Working with Children Check
- Insurance & Police Check
- Licensed Driver
- ABN

From a web-based hire platform

## ➤ Transport

Allocation of transport components in Plans for Participants to engage in their funded Social and Community Participation, attending appointments (even Capacity Building and Health and Wellbeing supports and services) are woefully inadequate. One participant who lives in a local suburban region, reports that her travel in one day to attend appointments, engage in her gym, library visit, social engagement can amount to 150 kilometres. For participants in rural and regional locations the distances are multiplied many times.

It is frustrating and disappointing for people with high and complex needs who cannot catch public transport either because it doesn't exist, or because they must travel in the vehicles of their support workers, to be denied adequate funds to achieve their Plan state and funded goals. It is unfair and not right to award higher transport allocation to participants who can work, than to participants who do not or cannot work. Indeed, it is most often that Participants who cannot work have higher support needs, are denied access to work and are most likely to need to travel in the vehicle owned by the service or the support worker. The most vulnerable are then penalized because of their vulnerability!

Further, it appears that under-utilisation of Plans (because of thin markets, over-charging of hourly rates by support workers, underfunded transport costs) that subsequent Plans are then redrafted with fewer funded supports, punishing the Participant for not spending the funds in their previous Plan.



### 3.9 Conflict of Interest

QAI has written previously about the conflicts of interest of certain service providers<sup>23</sup>, and reported to the NDIS Quality and Safeguards Commission about some deeply concerning behaviours exhibited by large providers who have the confidence of many Participants. The Ability Forum offers inducements for Participants and decision makers to undertake surveys.<sup>24</sup>

The NDIS Code of Conduct says in part -

'Act with integrity, honesty and transparency.

Integrity and honesty are crucial to developing trust between you and people with disability so you must be transparent about your qualifications and any limits on your competencies. You must disclose to your NDIS provider if you have failed a worker screening clearance or been subject to a professional misconduct finding.

People with disability have a right to get information about the comparative cost and effectiveness of treatments and the risks and benefits of service options.

**QSSS** Queensland Support Services & Solutions

**QSSS CLIENT REFERRAL BONUS**

- QSSS is taking referrals to assist people with Physical disabilities who receive NDIS, DVA and CoS Funding;
- QSSS Service Area is the whole state of Qld;
- **Earn up to the value of a \$250 Voucher of your choice when your client referral is successful!\***

\*Eligibility criteria applies.

Queensland Support Services & Solutions offers high quality personal support (including in-home, personal care, housekeeping and community support) to Clients with physical disabilities throughout Qld who receive funding to live and participate within the community.

**Earn yourself a FREE voucher up to \$250 very easily with a client referral!!!**

P: (07) 5543 6757 | M: 0487 913 990  
E: admin@qsss.com.au | E: support@qsss.com.au  
W: www.qsss.com.au

ndis REGISTERED PROVIDER

You should declare and avoid any real or perceived conflict of interest in your work.

You should avoid giving, asking for or accepting inducements or gifts that may influence decision-making or service delivery under the NDIS. This includes to and from people with disability, their family or carers, or other service providers. You must avoid unethical practices such as over-servicing and high-pressure sales.'

Clearly service provider have no qualms about offering inducements to Participants nor incentives as commissions to staff to coerce Participants into SIL arrangements and reportedly working in cooperation with each other to 'vacancy manage' congregated living.

With such questionable behaviour it is conceivable that a number of services (both registered and unregistered) will fail or be forced to close as those unethical practices are pursued through legal recourse or deregistration. While this will create a further gap in the market, QAI hopes that it would encourage higher standards and ethical practices, whilst setting the benchmark for new entries to the Scheme.

<sup>23</sup> QAI Submission to DSS National Disability Insurance Scheme Quality and Safeguarding Framework May 2017  
Submission to the Joint Standing Committee on the NDIS – General Issues around Implementation 2<sup>nd</sup> March, 2018  
NDIS Quality and Safeguards Commission

<sup>24</sup> [https://www.abilityforum.org.au/web/abilityForum.home?in\\_src=FB101&fbclid=IwAR3L8NFZbVYdkwKfQ11esLA4eu-KZbeuSkUEqMJrMrnFjPYKTOQIfycp5xc](https://www.abilityforum.org.au/web/abilityForum.home?in_src=FB101&fbclid=IwAR3L8NFZbVYdkwKfQ11esLA4eu-KZbeuSkUEqMJrMrnFjPYKTOQIfycp5xc)



## Supports for People from CALD Backgrounds

- There are not enough bi-cultural support workers across the state of Queensland, particularly male workers, and Arabic-speaking.
- There are few Support Coordinators who know what supports are available for people from CALD backgrounds, and many of those few are reported to be dishonest and or suspect.
- The TISC provides free interpreting services, but many people, including Local Area Coordinators (LAC's), do not know they exist.
- Few interpreters in Brisbane are available for face-to-face encounters.
- Face-to-face interpreters are most effective, but rarely is the same interpreter available, and rarely can people choose which of those few to use.
- Not all interpreters are competent or respect people's privacy.
- Support services have poor cultural competency.
- CALD people face difficult NDIS access challenges and these are reflected in the CALD NDIS Participant numbers; CALD people are 3.9% of participants, but should represent about 20.9 % of Participants.
  - In order to aid a better service response for people from CALD backgrounds, there is a need for investment of funds for new startups with outreach capabilities, or providing geographic hubs from which people can access culturally appropriate supports and services.
  - The Department should investigate the viability of employing family members of participants from CALD backgrounds to train services and support staff in culturally appropriate support.

## Final Word

The NDIA must ensure that Participants and their families are not penalised for the underutilisation of Plans due to the Thin Markets. Instead the Local Area Coordinators must contact the Participant to check in and provide support to access services and or recruit workers. In order to truly enable 'choice and control' for Participants the NDIA must adopt a stark change in culture from a denial and punitive approach to one of enablement and support.

.....

