

The National Disability Insurance Scheme (NDIS)

The *National Disability Insurance Scheme* (NDIS), is a universal scheme that funds 'reasonable and necessary' supports for Australians with permanent and significant disability, and which is currently being rolled out across Australia. At full implementation of the Scheme in 2020, approximately 460,000 people (10% of the population of people with disability in Australia) are expected to be supported by the NDIS.

The assessment criteria for accessing the NDIS is set out in the *NDIS Act 2013* (Cth).¹ A person satisfies the assessment criteria for the NDIS if: (a) They are under the age of 65; (b) They have a disability that is due to an impairment likely to be permanent and life-long; (c) Their impairment substantially reduces their ability to participate effectively in everyday life; (d) They are an Australian citizen or permanent resident; and (e) They require reasonable and necessary supports to live an ordinary life.²

The focus on permanent diagnosis disqualifies many people with disability from eligibility for the NDIS.³ People with disability argue that emphasis should be on the assessment of functional capacity and needs to determine eligibility.⁴ For example, the NDIS eligibility criteria do not adequately consider the episodic nature of psychosocial disability/mental illness, and the focus on diagnosis rather than physical and psychosocial impact disqualifies many with a demonstrable need for assistance under the Scheme. Governments are withdrawing their funding for a number of mental health support programs and using this funding to offset part of their contribution to the NDIS. At this stage, it is unclear what supports will be available for people with psychosocial disability who do not meet the NDIS eligibility criteria.⁵ People with disability over the age of 65 years are ineligible for the NDIS and reliant on an age care system that does not provide equity of support and lacks expertise in specialist disability support.⁶

As at the end of 2018, 244,653 NDIS participants had an approved plan,⁷ which fell well short of the 315,721 participants who were expected to have had approved plans by this time.⁸

The planning process for NDIS participants is complex and confusing, and often lacks clarity and transparency. Limited information is publicly available to help Scheme participants and their families, carers and advocates to navigate the planning system. Scheme participants are often not aware of their rights and options, such as their entitlement to request a face to face meeting or have an advocate present during the planning meeting. Evidence from people with disability⁹ demonstrates that planners have developed plans which are not representative of participants' needs; they are making adverse decisions that they are not qualified to make; there are lengthy delays in receiving plans, plan reviews, and other information from the *National Disability Insurance Agency* (NDIA);¹⁰ and plan reviews have sparked unnecessary reductions in participant funding.¹¹

Not all eligible participants are benefiting from the NDIS. People with psychosocial disability, Indigenous people with disability, culturally and linguistically diverse (CALD) people with disability, women and children with disability, LGBTIQ+ people with disability, people with intellectual disability, and those in remote areas, are not only experiencing difficulty accessing the Scheme, but are also most at risk of experiencing poor outcomes.¹² People from CALD backgrounds make up 7.7% of participants, despite a stated goal by the NDIA of 20% of CALD participants. Indigenous people with disability make up 5.4% of NDIS participants (or about 9,000 people), despite around 60,000 Indigenous people in Australia having a severe or profound disability. More than half of NDIS participants (52%) are aged 18 and under. There is clear gender inequity in the NDIS. Across all jurisdictions, the percentage of female participants remains at less than 37%.¹³ DPOs have called for the development of an NDIS Gender Strategy.

There is a culture in the NDIA that is not placing the participant at the centre of the Scheme.¹⁴ The insufficient funding allocated by the Federal Government for NDIS advocacy has resulted in inequality and significant unmet need. In addition, the paucity of funded advocacy has resulted in a significant rise in fraudulent activities by providers and fee for service for reviews and appeals by the same services creating serious conflicts of interest.

As disability support programs are rolled into the NDIS, people using these services who are not eligible for the NDIS may no longer receive support. While the Commonwealth and State/Territory Governments have agreed to provide continuity of support through disability services outside the NDIS, in practice there is confusion and uncertainty about what services will continue to be provided and/or funded.¹⁵ Some disability supports are not being provided because of unclear boundaries about the responsibilities of the different levels of government.¹⁶

There is growing evidence that NDIS participants are being denied services and care because of funding disputes between the NDIA and other government services.¹⁷

The lack of clarity and effective interface between the NDIS and mainstream service systems has created artificial barriers, which actively work against the provision of integrated and holistic care for people with disability, including habilitation and rehabilitation supports.¹⁸ The shifting of Commonwealth, state and territory programs to the NDIS is contributing to emerging service gaps and a decrease in community-based therapy services, particularly for people with disability who are not eligible for the NDIS.¹⁹

The interactions between the NDIS and mainstream services are guided by the *Principles to Determine the Responsibilities of the NDIS and Other Service Systems*.²⁰ However, the *Principles* are subject to interpretation and lack clarity. This is resulting in boundary issues and funding disputes, which can lead to reduced or no access to services for both NDIS participants and people with disability not eligible for the NDIS.²¹ Although the *Principles* allow for the provision of disability supports to people with disability in prisons and forensic detention, there is still uncertainty about how, or whether, this provision will be supported. Access to the NDIS represents an opportunity to decrease incarceration rates for people with a cognitive and/or psychosocial impairment, particularly for Indigenous people with disability who are overrepresented in prison. However, the NDIS is stopped when an individual is in custody,²² which denies habilitation or rehabilitation support to assist reintegration into the community.

People with disability remain concerned with underspending on the NDIS, with payments expected to decrease by \$1.6 billion in 2019-20 attributed by Government to the slower than expected transition of people into the scheme. The Federal Government also spent \$3.8 billion less on the NDIS in 2018-19 than they estimated in the previous year's budget.²³ People with disability argue that the slower than expected uptake is due to problems in people accessing the scheme and lengthy waiting times for participants to receive supports, and argue that underspent funds should be used to fix the scheme's implementation problems.²⁴

There is currently no clear national strategy to grow the workforce despite the need for an additional 70,000 disability workers by 2020.²⁵

In 2017, the NDIA began rolling out the NDIS *Information, Linkages and Capacity Building* (ILC) program.²⁶ The ILC program is a key component of the NDIS and has been set up to provide information, linkages and referrals to people with disability, their families and carers, with the appropriate community and mainstream supports. At the same time, State and Territory Governments are withdrawing from existing ILC-type activities. ILC is short-term and project focused and does not have the investment required to create accessible and inclusive mainstream communities nor to build capacity of people with disability.²⁷

There are limited opportunities for people with disability and their representative organisations to monitor and evaluate the NDIS. NDIS Quarterly Performance Reports²⁸ provide no substantive information from the perspective of people with disability and their representative organisations. People with disability have identified a need for improved public reporting of NDIS review processes, including the numbers of reviews, review timeframes, outcomes of reviews, and participant satisfaction with the review process.²⁹ The Joint Standing Committee on the NDIS has recommended that a principle be added to the *NDIS Act*, to ensure the NDIA collaborate with people with disability in the development and review of its operational plans and guidelines.³⁰

Recommendations

That Australia:

- Amend NDIS legislation to address the permanency provisions for NDIS eligibility, and ensure that assessments are based on functional capacity and needs as opposed to medical diagnosis.
- Amend the NDIS Act to include a principle for collaboration with people with disability and their representative organisations.
- Address the inequity in the NDIS for marginalised groups, and develop an NDIS Gender Strategy.
- Ensure that all people with disability have access to adequately resourced independent advocacy to assert and be accorded their human rights and fundamental freedoms under the CRPD.
- Ensure that people with disability in prison and other forms of detention can utilise their NDIS package whilst incarcerated or detained.

Endnotes

¹ The NDIS Act is not well drafted and has resulted in contradictory interpretations by the NDIA and the Administrative Appeals Tribunal. There is not yet an established body of case law from the Federal Court to provide authoritative guidance on many issues.

² National Disability Insurance Scheme, [Access to the NDIS Operational Guideline](#).

³ See: Commonwealth of Australia (2017) Joint Standing Committee on the National Disability Insurance Scheme; [Provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition](#).

⁴ Commonwealth of Australia (2017) Joint Standing Committee on the National Disability Insurance Scheme; [Provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition](#).

⁵ The National Mental Health Commission's report on Mental Health Programs and Services estimated that about 700,000 Australians experience a severe mental illness in any one year. According to the NDIA, about 64 000 people with primary psychosocial disability are expected to be eligible for individual packages in the NDIS at full scheme. See: Productivity Commission, [National Disability Insurance Scheme \(NDIS\) Costs](#), 19 October 2017. A national inquiry undertaken by the Joint Standing Committee on the National Disability Insurance Scheme in 2018 found that the lack of clarity around eligibility criteria, the apparent reliance on diagnosis rather than functional needs, the absence of a validated assessment tool for planners, and reported lack of skills and expertise of planners in the psychosocial disability field were key contributors to inconsistencies in eligibility and planning outcomes for people with psychosocial disability. See: Joint Standing Committee on the National Disability Insurance Scheme (March 2019) [Progress Report](#). See also: National Mental Health Commission (2018) [Monitoring mental health and suicide prevention reform: National Report 2018](#). Published by: National Mental Health Commission, Sydney.

⁶ Disabled People's Organisations Australia, "Building a Disability Inclusive Australia", [Election Policy Platform 2016](#)

⁷ Australian Institute of Health and Welfare 2017. [Australia's welfare 2017](#). Australia's welfare series no. 13. AUS 214. Canberra: AIHW. See also: Productivity Commission (2019), [Report on Government Services 2019](#)

⁸ Joint Standing Committee on the National Disability Insurance Scheme (March 2019) [Progress Report](#).

⁹ Joint Standing Committee on the National Disability Insurance Scheme (March 2019) [Progress Report](#); Joint Standing Committee on the National Disability Insurance Scheme (September 2017) [Progress Report](#).

¹⁰ The scheme is administered by the [National Disability Insurance Agency](#) which has been established under Commonwealth legislation, the National Disability Insurance Scheme Act 2013 (NDIS Act) and is governed by a Board.

¹¹ Joint Standing Committee on the National Disability Insurance Scheme (March 2019) [Progress Report](#).

¹² Joint Standing Committee on the National Disability Insurance Scheme (September 2017) [Progress Report](#).

¹³ Australian Institute of Health and Welfare 2017. [Australia's welfare 2017](#). Australia's welfare series no. 13. AUS 214. Canberra: AIHW.

¹⁴ See: Joint Standing Committee on the National Disability Insurance Scheme (September 2017) [Progress Report](#).

¹⁵ This has resulted in some quality providers already leaving the market. Some new market entrants and existing providers are exploiting the pricing structure established by the [NDIS Price Guide](#).

¹⁶ Joint Standing Committee on the National Disability Insurance Scheme (September 2017) [Progress Report](#).

¹⁷ Joint Standing Committee on the National Disability Insurance Scheme (March 2019) [Progress Report](#).

¹⁸ Joint Standing Committee on the National Disability Insurance Scheme (March 2019) [Progress Report](#).

- ¹⁹ The lack of community-based therapy services seriously inhibits the ability of these services to meet the needs of those needing assistance to improve, maintain or minimise deterioration in their level of functioning.
- ²⁰ Council of Australian Governments; [Principles to Determine the Responsibilities of the NDIS and other Service Systems](#).
- ²¹ Joint Standing Committee on the National Disability Insurance Scheme (September 2018) [Market readiness for provision of services under the NDIS](#).
- ²² Commonwealth of Australia (2017) Joint Standing Committee on the National Disability Insurance Scheme; [Provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition](#).
- ²³ See: Michael, Luke (3rd April 2019) [Advocates ask, why are NDIS funds not being used to fix the scheme?](#) In ProbonoAustralia. See also: Michael, Luke (28th March 2019) [Advocates fight plan to use surplus NDIS funds to boost budget](#); In ProbonoAustralia.
- ²⁴ The NDIS rollout has been plagued by issues around participant plans, unrealistic pricing, providers struggling to enter the scheme and a poorly functioning IT system. See: Michael, Luke (3rd April 2019) [Advocates ask, why are NDIS funds not being used to fix the scheme?](#) In ProbonoAustralia. See also: Michael, Luke (28th March 2019) [Advocates fight plan to use surplus NDIS funds to boost budget](#); In ProbonoAustralia. The Australian National Audit Office (ANAO) released an NDIA Performance Report in October 2017. The Australian National Audit Office (ANAO) assessed the effectiveness of controls being implemented and developed by the NDIA to ensure Scheme access decisions are consistent with legislative and other requirements. The Audit found among other things, that, while the NDIA had implemented some controls, these were inconsistently applied, data integrity and reporting issues had limited the Agency's ability to monitor training completion by decision-makers, and the access process was not well supported by ICT systems. See: Australian National Audit Office (ANAO) (October 2017), [Decision-making Controls for Sustainability - NDIS Access](#).
- ²⁵ Joint Standing Committee on the National Disability Insurance Scheme (September 2018) [Market readiness for provision of services under the NDIS](#).
- ²⁶ Funding for the [ILC program](#) will gradually increase over transition (from \$33 million in 2016-17 to \$131 million in 2019-20). The focus of ILC is on community inclusion.
- ²⁷ Australia's Productivity Commission has recommended that ILC funding should be increased to the full scheme amount (\$131 million) for each year during the transition and be focused on national ILC activities. See: Productivity Commission, [National Disability Insurance Scheme \(NDIS\) Costs](#), 19 October 2017.
- ²⁸ The [NDIS quarterly reports](#) provide the COAG Disability Reform Council with information (including statistics) about participants in each jurisdiction and the funding or provision of supports by the NDIA in each jurisdiction.
- ²⁹ See: Productivity Commission, [National Disability Insurance Scheme \(NDIS\) Costs](#), 19 October 2017.
- ³⁰ Joint Standing Committee on the National Disability Insurance Scheme (March 2019) [Progress Report](#).