The Public Advocate
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Mr Scott McNaughton
General Manager – National Delivery
The National Disability Insurance Agency

Email: IACOMMS@ndis.gov.au

Dear Mr McNaughton,

NDIS Consultation Papers – Access and Eligibility Policy with independent assessments and Planning Policy for Personalised Budgets and Plan Flexibility

As the Public Advocate for Queensland, I am appointed under the *Guardianship and Administration Act 2000* to undertake systemic advocacy to promote and protect the rights and interests of Queensland adults with impaired decision-making capacity.

It is projected that more than 110,000 Queenslanders will be NDIS participants by 2023, with the most recent figures indicating that Queensland currently has (as at December 2020) 86,535 people receiving NDIS assistance. Almost half of Queensland NDIS participants (49%) are receiving disability related supports for the first time in their lives. A significant proportion also have impaired decision-making capacity, permanently or on an episodic basis.

These statistics make it vitally important for the NDIS scheme and individual plans to be easy to understand and navigate, ensuring that people can receive the supports they need to live their best lives as active and productive members of the community. It is also imperative that the Scheme provides appropriate oversights and protections that maintain its accountability, transparency and responsibilities to participants.

While it is important to avoid being overprotective of people with disability, and recognise that not all people with disability are vulnerable and in need of protection, it is critically important that the NDIS has systems of monitoring, coordination and oversight that will either avoid or identify risks to vulnerable participants, and act on them before a participant suffers harm.

Given the 'dovetailing' of the two new policies above which are the subject of this consultation, I have combined my feedback into one piece of correspondence to the NDIA, focusing on critical issues arising from the proposed changes.

1. Initial access and eligibility for the Scheme

It is understood that access and eligibility for the Scheme will now be considered separately from assessments of functionality of potential participants.

Potential participants will be asked for proof of age, residency and their disability and its permanence. Evidence related to disability will need to be obtained from a medical professional, for which the NDIS is currently preparing guidance material about what information will be required.

In addition to the preparation of this guidance material I would like to suggest that the following issues also need to be addressed in the final policy:

- The development of a **training/education program for GPs** and other medical professionals that are required to complete medical assessments for eligibility. The availability of this information will ensure that the appropriate forms are completed and requisite evidence provided 'the first time' and that potential participants do not have to revisit their medical practitioner and resubmit forms multiple times to complete the process.
- A **Medicare item number for assessments**. The process for undertaking an assessment of a person's disability can potentially be complicated, and is likely to take longer than the 'usual' ten minute consultation that GPs ordinarily allocate to patients. It may also require additional time after the consultation for the completion of the assessment and the involvement of specialists such as psychologists, psychiatrists and other neurological medical professionals (particularly for people with impaired decision-making capacity). If medical practitioners are unable to claim against a Medicare item number for these assessments, a potential participant may face significant charges, which would undermine a key driver for the new independent assessment process – cost. Unless doctors can claim their time under Medicare, It may result in potential participants being unable to obtain their assessment from their regular GP with whom they have an ongoing relationship. This is particularly likely to be the case if the practice is a bulk billing service that is constrained by appointment length.

The policy will also need to consider how people in institutions such as correctional facilities, hospitals, forensic disability services or mental health units can complete the requirements for eligibility while resident or detained in those services. It is respectfully suggested, if programs are not already in place, that the eligibility and access process be incorporated into the development of transition plans for prisoners in the correctional system, which are traditionally commenced around six months prior to an expected release date. In hospitals and mental health facilities the process needs to be similar and form a component of all patients' discharge plans.

For these processes to be effective, hospitals, correctional facilities and other places of detention need to have staff trained in NDIS procedures and access and eligibility requirements, whose responsibility it is to support in-mates and patients to apply for access to the NDIS. These positions would be similar to NDIS Navigators that are designated positons in some hospital and health services in Queensland. The person needs to ideally be trained by the NDIA and will guide people through the process, particularly those with impaired decision-making capacity. Many with intellectual disability, an acquired brain injury or significant mental illness will require a high level of support to collate the information and evidence required and to stay engaged with the process. Merely providing written information will not be helpful for this cohort of people who will generally require 'hands on' support. In a custodial environment, this may potentially involve taking a potential participant through a 'diagnosis' process that the person may have not experienced before, with many never having recognised a condition that might have resulted in the loss of some, or significant, functional capacity.

Not all people assessed for NDIS eligibility in these institutions will be successful. However, it is important if we are to ensure that the NDIS provides the necessary supports to all eligible Australians to help them live their best, most productive lives, that this occurs. The supports provided under the Scheme have the potential to be life changing for many in this cohort and may provide the stability they need to prevent them returning to detention or institutional care.

2. Independent Assessments – Appeals and review processes

It is acknowledged that the functional assessment process needs to change given the issues identified in the consultation paper – high costs, inconsistent assessments, and a disparity in annual plan budgets related to socio-economic status.

It is critically important for the functional assessment process to be independent and consistent, to provide the NDIA with the information that it requires to make decisions about participants' level of need.

Consequently, I support the independent assessment process in principle, but harbour significant reservations about the levels of oversight of the assessment process and the absence of appeal or review mechanisms.

In relation to oversight, the proposed independent assessment process does not appear to provide for any independent oversight of assessors or their assessments. Considering the outcomes of the assessment process will potentially have such a significant and material impact on people's lives, it is necessary that the process is transparent and accountable and that the Australian community has confidence in is quality, standards, independence and objectivity.

The decision to exclude any review or appeal against a report of an independent assessor, assumes that the assessments are 'always correct'. This would be a dangerous assumption to make, in view of what we know about government and other systems and processes and all areas of human endeavour. To deny any review or reconsideration of an assessment, leaves potential NDIS participants with no recourse and no access to the Scheme, without review.

Understandably, the NDIS is facing a significant amount of unrest and criticism about the proposed new independent assessment process.

While I would prefer that the independent assessments be subject to a review or appeal process, at the very least I would suggest, for the sake of confidence in the integrity of the scheme, that a system of oversight be developed and implemented for assessors.

This could include a team of specialist 'auditors' that could assess the performance of the assessors in 'real time', observing them undertaking assessments and reviewing the final assessment report for quality and other standards set by the NDIS. The type of process suggested is similar to what occurs within the NDIS for registered service providers at present.

In cases where the results of an independent assessment are challenged, an auditor could review the results of the assessment and if necessary re-conduct the assessment. This would provide a valuable 'check and balance' that should be a crucial element of the Scheme, particularly when independent assessments are not always being conducted in person and could be constrained by other environmental factors.

It is critical that the assessors are consistent and reasonable in their assessments and do not, over time, become harsher in their assessments of prospective participants' needs, because they are becoming desensitised or concerned about writing reports that they think the NDIS will prefer.

In relation to this latter issue, it is suggested that independent assessors should be discouraged from developing businesses that are solely reliant on the NDIS independent assessment system for income. Potential dangers of independent assessors' businesses being reliant on their relationship with the NDIS are multi-faceted, but include the risk that over time, assessors may consciously or otherwise move towards providing assessments that they perceive to be more aligned with the needs/requirements of the Scheme, rather than the

person seeking access to the Scheme. This may lead to instances of under-funding of supports. Such outcomes can have serious consequences for the individuals and their quality of life, impacting their health and well-being.

Appropriate oversight to ensure that the independent assessment program remains independent and impartial and maintains is standards and professionalism will contribute to community confidence in the program and may alleviate some of the concerns of advocacy organisations about the current proposal.

3. NDIS Budgets

It is acknowledged that changes to the way in which NDIS budgets are allocated to participants are being proposed to enhance participants' 'choice and control' within the Scheme, as well as providing for efficiency improvements.

I remain concerned, however, that the use of flexible budgets not tied to specific supports could potentially lead, over time, to a deterioration in the Scheme's effectiveness, in terms of its provision of services and supports of recognised therapeutic value and assistance to people with disability.

It is also noted that while the Scheme is based on an insurance model, it is still responsible for the allocation of public funds to participants. Community expectations are that the Scheme will have appropriate systems of accountability to ensure that those funds are being spent appropriately on quality services that improve participants' lives.

Flexible budgets bring with them risks that the Scheme will need to actively manage. They will potentially invite unscrupulous behaviour from service providers, particularly when quite large budgets are allocated to participants, as has been observed in the childcare industry. It remains of vital importance that the appropriate checks and balances are in place to prevent any abuse or exploitation of NDIS participants and misuse of their funding.

It is respectfully suggested that flexible budgets still include particular categories of support provision to which amounts of funding can be allocated. Potentially the supports participants receive under each category could still be chosen flexibly. However, this type of allocation would ensure that there is less potential for all of a participant's funds to be spent on a single service or intervention which may negatively impact the participant's longer-term outcomes.

This is particularly relevant for NDIS participants who are particularly vulnerable and rely on others for their daily care and support.

A report prepared by my predecessor in 2016, which investigated the deaths of 73 people with disability in care, found that many preventable deaths of people with disability were the result of the failure of systems and services to community and coordinate the person's care. The report noted that 'systemic issues such as a lack of appropriate support (including support to access health care and appropriate responses by health care agencies) and ineffective coordination between disability and health services can have a serious effect on people with disability. For some, this includes risk of premature death'.[1]

Since the release of this report I have been actively working to incorporate the availability of support coordination resources in the NDIS. This will assist participants with complex health needs to: make and get to medical appointments, develop and implement Annual Health

[1] Office of the Public Advocate (Qld), *Upholding the right to life and health: A review of the deaths in care of people with disability in Queensland*, 2016, p.xi, https://www.justice.qld.gov.au/__data/assets/pdf_file/0008/460088/final-systemic-advocacy-report-deaths-in-care-of-people-with-disability-in-Queensland-February-2016.pdf.

Plans, and monitor particular 'red flags' in the system such as, a person not visiting his GP for a period of 12 months or more.

If completely flexible budgets within plans are implemented, there is a risk that critical support coordination resources may be overlooked or clients may be pressured to spend more of their budget on particular services than they actually need, at the expense of other services that are necessary for their health and well-being.

A series of checks and balances are therefore necessary to ensure that the fundamental supports required in line with a participant's functional capacity are provided, reducing the risk of harm and unintended outcomes.

Thank you for the opportunity to provide input into this review. Please feel free to contact me if you require clarification of the information provided or would like to discuss any of the matters I have raised further.

Yours sincerely

Mary Burgess
Public Advocate (Queensland)