

24 August 2018

National Disability Agreement Review
Productivity Commission
4 National Circuit
Barton ACT 2600

To whom it may concern

The Public Advocate was established under the *Guardianship and Administration Act 2000* (Qld) to undertake systems advocacy on behalf of adults with impaired decision-making capacity who live in Queensland. The primary role of the Public Advocate is to promote and protect the rights of Queensland adults with impaired decision-making capacity.

More specifically, the Public Advocate has the following functions:

- promoting and protecting the rights of adults with impaired capacity for a matter (the adults);
- promoting the protection of the adults from neglect, exploitation or abuse;
- encouraging the development of programs to help the adults reach the greatest practicable degree of autonomy;
- promoting the provision of services and facilities for the adults; and
- monitoring and reviewing the delivery of services and facilities to the adults.¹

As Queensland Public Advocate, I am committed to addressing issues relating to the National Disability Agreement that affect Queenslanders with cognitive and/or intellectual impairments, psychosocial disability, and other conditions that impact upon a person's capacity to make decisions.

The significant national reforms to the funding and delivery of disability supports do not negate the need for a National Disability Agreement, or equivalent mechanism. Irrespective of the full implementation of the National Disability Insurance Scheme (NDIS), both levels of government still have key responsibilities in relation to disability policy and provision of various supports and services to support Australians with disability, their families and carers outside of this scheme. There will therefore be a continued need for a national framework that clearly articulates the responsibilities of the Commonwealth, state and territory governments in the provision of support and services to people with disability.

It is well-recognised that, at full implementation, the NDIS will only provide supports to about 10 percent of Australians with disability. Consequently, there will be an ongoing need for a mechanism outside of the NDIS to drive disability policy, services and the achievement of positive outcomes for people with disability to continue to seek to achieve the goal for people with disability and their carers to "have an enhanced quality of life and participate as valued members of the community".

¹ *Guardianship and Administration Act 2000* (Qld) s 209.

One key group of people with disability who are currently tracking well below their target rate of NDIS participation, are people with psychosocial disability related to a mental health condition. My submission to the Joint Standing Committee on the NDIS – Mental Health on its inquiry into the “Provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition” noted the considerable barriers that people with psychosocial disability face when attempting to access NDIS supports.

These barriers related to:

- the way NDIS assessors determined eligibility for people with psychosocial disability;
- the challenges for people needing to establish a functional disability while undertaking treatment within a treatment framework that focuses on recovery; and
- the challenges of linking people experiencing significant additional disadvantage and mental health issues with the NDIS.

My submission also noted that evidence collected in NDIS trial sites supported widely-held concerns that people with psychosocial disability had a low rate of participation in the NDIS. The Mental Health Coordinating Council reported that in the NDIS trial site in the Hunter, New South Wales, only 22 percent of people receiving support through Partners in Recovery (PIR)² who applied to the NDIS were successful in securing funding packages.³ Given the highly complex needs of many PIR service users, it was expected that most, if not all, would successfully transition into the NDIS.⁴ Similar issues were identified for this cohort in Queensland, with the Queensland Alliance for Mental Health reporting that more than half of participants in the Day to Day Living program who were receiving support from a service provider in a Queensland launch site were assessed as ineligible for the NDIS.⁵

In January 2018, the University of Sydney and Community Mental Health Australia released a report, *Mind the Gap: The National Disability Insurance Scheme and psychosocial disability*,⁶ (that I contributed to). The report warned the NDIS' handling of serious mental health issues could leave many people with psychosocial disability without adequate support. The report noted that 6.4 percent of NDIS participants had a primary psychosocial disability, which is less than half of the anticipated number of participants. The rate of NDIS participants in Queensland as at 31 March 2018, whose primary disability was psychosocial disability, was slightly higher, at 8 percent.

The report noted that at full rollout, the NDIA estimated that only about 64,000 people with psychosocial disability will be participants in the NDIS (accounting for 13.9 percent of all NDIS participants). This figure is well below the total number of people who have severe mental illness in Australia. The National Mental Health Commission estimates that, of the 3.7 million Australians who experience mental illness, 690,000 live with severe mental illness.⁷ This means that around 91 percent of people who are recognized as having severe mental illness will need to rely on non-NDIS community mental health services for support. This is a serious concern, particularly when existing support services are being discontinued and their funding withdrawn on the assumption that they will be replaced by NDIS-funded supports.

² Partners in Recovery clients have severe and persistent mental illness and complex needs.

³ Mental Health Coordinating Council, *Further Unravelling Psychosocial Disability: Experiences of the National Disability Insurance Scheme in the NSW Trial Site: A Mental Health Analysis* (August 2015), 38.

⁴ Ibid.

⁵ Queensland Alliance for Mental Health, *Queensland Transition to NDIS for Mental Health (QTN Forum) Communique* (October 2016) 2.

⁶ University of Sydney and Community Mental Health Australia, *Mind the Gap: The National Disability Insurance Scheme and psychosocial disability* (30 January 2018) <<http://apo.org.au/system/files/130666/apo-nid130666-574926.pdf>>.

⁷ National Mental Health Commission (2014), *Contributing Lives, Thriving Communities*, 20.

The Australian Government Department of Health website⁸ states:

The Partner in Recovery initiative is transitioning to the National Disability Insurance Scheme (NDIS). The programme has been extended for three years to support the transition of programme funding to the NDIS. The extension will ensure service continuity for programme clients until the NDIS rollout is completed in each jurisdiction.

The discontinuation of the PIR program is likely to result in a significant service gap for people with psychosocial disability after the full implementation of the NDIS, particularly in light of the limited success that this group are having in accessing the NDIS.

The National Disability Agreement should continue to focus on enhancing the quality of life of all people with disability in Australia, whether or not they receive supports under the NDIS. This objective is clearly, and rightfully, broader than what will be achieved for Australians with disability by the NDIS.

It is essential that there is an ongoing commitment by the Commonwealth and state and territory Governments to provide supports to people with disability who will not meet the eligibility requirements, or may not have their support needs fully met, by the NDIS.

There are also other significant supports and services that are critical to ensuring people with disability have an enhanced quality of life, that Commonwealth, state and territory governments must continue to commit to providing for all people with disability, not just NDIS participants. These include supports for decision-making, legal and disability advocacy, and employment supports.

The current National Disability Agreement recognises the importance of "maintaining innovative and flexible support models for people with high and complex needs". This national priority area is of critical importance and must remain a key priority in future agreements. Governments must continue to deliver services and supports for this cohort, which includes young people with disability who are at risk of entering residential aged care, people who interact or are at risk of interacting with the criminal justice system, people who exhibit challenging behaviours and people subject to restrictive practices.

The National Disability Agreement must also include commitments that ensure governments will provide supports and services to people whose challenging behaviours and extensive support needs result in NDIS providers being unwilling or unable to provide services to them. (Service providers may perceive this cohort to be too high risk and high cost to service.) This group is likely to include people on forensic orders, such as those in Queensland's Forensic Disability Service, and people subject to such orders living in the community. There was a recent high profile case in Victoria where a person with disability who was charged with a criminal offence was unable to secure a willing service provider to deliver his NDIS package. Instead he remained in a prison because he could not gain bail without having appropriate community supports in place. Ultimately, governments will need to come to some agreement to be the provider of last resort for some people with disability for whom the market will not deliver services. The risk of not doing so will potentially deny the human rights of people with disability who have extensive support needs and expose them to serious risk of abuse and neglect. In addition to the provision of appropriate supports and services to this cohort, there is also a need for strong safeguarding and reporting frameworks.

The performance of the National Disability Agreement is informed by the Survey of Disability, Ageing and Carers and the Disability Service National Minimum Data Set. National mental health datasets may also help inform the performance of the National Disability Agreement,

⁸ Department of Health, *Partners in Recovery: coordinated support and flexible funding for people with severe and persistent mental illness with complex needs (PIR)* (25 February 2016) Australian Government, <<http://www.health.gov.au/internet/main/publishing.nsf/content/mental-pir>>.

particularly in relation to people with psychosocial or psychiatric disability. For example, the Australian Institute of Health and Welfare are responsible for National Minimum Data Sets for the health sector. There may be an opportunity to modify or add to existing data sets to enable the collection of additional information that may inform the National Disability Agreement. Other mental health data sources should also be accessed, including the National Survey of Mental Health and Wellbeing, the National Health Survey and the General Social Survey.

I appreciate the opportunity to provide a submission to the Productivity Commission in relation to the National Disability Agreement Review. Should the opportunity arise, I would be pleased to contribute to further discussions conducted by the Commission in relation to the review.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mary Burgess', written in a cursive style.

Mary Burgess
Public Advocate (Queensland)