



PARLIAMENTARY

INQUIRY

SUBMISSION

## Portfolio Committee Number 2 – Health and Community Services

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The implementation of the National Disability Insurance Scheme and the Provision of disability services in New South Wales



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# FOREWORD

The New South Wales Government once provided 40 per cent of the state's disability services. As of 1 July 2018, under the guise of the rollout of the National Disability Insurance Scheme (NDIS) as implemented by the State, all disability services in NSW have been removed from public hands and placed in the non-government (NGO), not-for-profit (NFP) and private sector. The stated objective by this government is to hand over complete responsibility for people with disabilities in NSW to the Commonwealth government. This transition has not been without incident.

In the Second Reading Speech of the National Disability Insurance Scheme (NSW Enabling) Bill 2013 then Minister for Disability Services the Hon Jon Ajaka MLC explained what he considered to be the benefits of transferring all services to the private sector:

"There are thousands of non-government organisations across New South Wales, each with their own philosophy, specialisation, and collaborations. The rich diversity of the sector provides an economic and social benefit for New South Wales. They can take risks where a government service may be more conservative and they can influence the views of the community and government about the people that they support, which can lead to greater inclusion, acceptance and knowledge transfer."

This submission details how and why this stated goal has not and will not be realised.

Prior to and during the rollout of the NDIS as implemented by the Government of NSW, the Public Service Association (known from here on out as 'The Association') has run several campaigns around the full privatisation of disability services, not only to support our member's conditions, but also to ensure that the State remain a regulator and safety net provider for people with disability - particularly those with complex needs and multiple diagnoses - and a provider and resource for people during emergencies. The Association has held several forums over recent years with people with disability, members, parents of people with disability and carers attending to assist us to determine our position. We have also consulted with nursing, correctional and housing staff regarding the impact on the Health, Justice and Family and Community services.

The Association has been inundated with stories about the experiences of disability support workers, advocates and family members of people with a disability. These experiences have highlighted cracks in the NDIS which will be further outlined in this submission. The gaps must be addressed by the State Government as a matter of urgency because too many vulnerable people are falling through them.

The Association believes NDIS is its design is too 'cookie cutter' and too many people with disability are not making the cut. Disability comes in all shapes and sizes and every single person who has a disability is an individual with a unique set of needs. The resounding message the Association has received is that the people with the most severe and complex disabilities are the ones being left behind by the implementation of the NDIS in NSW. At the other end of the

scale, people with mild disabilities have either had their support decreased, or now are receiving no support at all. Vulnerability and profit-driven public service providers do not mix.

The NDIS is a visionary piece of legislation that has the potential to improve the lives of all Australians living with a disability. The Association supports the principles of the NDIS, however the scheme in NSW as it stands today is unsustainable and many of the criticisms go far beyond "teething problems".

The Association is of the view the State Government is using the NDIS as a ruse to privatise the public sector, consequently eroding employment security and pay and conditions. The Association's members have reported significant levels of reduced services with casual hours being slashed and rosters for permanent employees being stretched and reduced. NGO, NFP and private providers are looking to capitalise on the NDIS funding and structuring their operations to ensure they make a profit off the NDIS on each person with a disability under their care. Quality work and quality working conditions are essential to quality care. As this submission will show, the erosion of quality in the disability workforce is consequently eroding the quality of life for people with disability.

The 2011 Productivity Commission report which prompted the Gillard Government to legislate a national insurance scheme for people with disability included the recommendation that state and territory governments should remain as a provider of last resort. The full potential of the NDIS will never be reached in New South Wales in the absence of a public safety net.

For clarification, the Public Service Association of New South Wales (PSA) is a state-registered employee organisation. The Community and Public Sector Union (CPSU) is its federally-registered counterpart. All members of the former are also members of the latter, although not vice versa. Where industrial rights and representation are pursued in the NSW industrial relations system it is the PSA who is the relevant organisation, but where this is done in the national system under the Fair Work Act 2009 (Cth), such as previously public-run disability services now run by the private and non-government sector, the CPSU is the appropriate body. For the purposes of this report the terms are interchangeable, and will both be referred to as 'the Association'.

Our members work in NSW state government disability services departments, and since July 2017 the private and non-government sector, in roles directly working with and supporting clients (eg social trainers, disability support workers, local area coordinators and other clinical services such as psychologists and occupational therapists) and policy, planning, management and administrative roles.

It should be noted that the names provided in this submission have been changed to protect the privacy of our members.

The Association thanks the Committee for its work and interest into this matter of great public importance and looks forward to providing any other assistance that may be required.

Yours sincerely,

Troy Wright

## INTRODUCTION

Members of the Committee are likely to be familiar with the way in which public sector disability services have dramatically changed in recent years however for the purposes and referencing of this submission, it is worth revisiting at the outset.

The Department of Ageing, Disability and Home Care (ADHC) is the NSW Government's disability services provider that delivers specialist residential accommodation, therapeutic intervention (speech pathology, occupational therapy, psychology and behavioural intervention specialists), respite for carers, case management, early intervention, skill development and advocacy for people with a disability.

ADHC is a specialist public sector disability service. It works with the percentage of people with a disability who have very high level and complex needs, and/or challenging behaviours. It is a group that have historically beyond the capacity of and consequently not supported by the existing non-government, charity and/or for-profit disability service providers in NSW.

Whilst present tense is used in that description the role and functions of ADHC have been dramatically reduced and it is proposed to be completely defunct by 2020.

In its negotiations with the Gillard Commonwealth Government regarding the NDIS, the O'Farrell NSW

Government was the first to commit and obtained a condition, presumably at its behest, not granted to any other State or Territory subsequently. It in effect expressly provided that there would be no residual service provision expected or provided by the State Government of NSW. As dealt with in detail later in this submission, unlike any other jurisdiction in the country, NSW was left without a public sector safety net and services for people with a disability in the State through the NDIS would come entirely from the private sector. The NSW Government were walking away.

Whilst Government language has described this as a transfer, the Association submits this is Orwellian sophistry. In terms of sheer scope, it is the largest privatisation of services embarked on by any State Government in the history of NSW, and will be referred to accordingly in this submission.

The privatisation was to take two stages, firstly clinical services, group homes and specialist supported living services, and then in Stage 2, specialist services and large residential accommodation.

The tendering for Stage 1 took place over 2016/17. The clinical support team functions were the first to be privatised and taken on by the Benevolent Society on 1 August 2017. Group homes across the State were considered too large to be dealt with alone, and the State's services was broken down into 16 regions with varying selected providers and transition dates as follows:

DISTRICT	SELECTED PROVIDER	TRANSFER DATE
Western NSW	LiveBetter Community Services	31 July 2017
Far West NSW	LiveBetter	6 Sept 2017
Mid North Coast	Mid North Coast Disability Services *	6 Sept 2017
Sydney	House With No Steps	5 Oct 2017
Southern NSW	House With No Steps	5 Oct 2017
Illawarra Shoalhaven	House With No Steps	5 Oct 2017
Northern NSW	House With No Steps	5 October 2017
New England	House With No Steps	5 October 2017
South West Sydney	Northcott	3 Nov 2017
Western Sydney	Northcott	3 Nov 2017
Murrumbidgee	Northcott	3 Nov 2017
Hunter	Hunter Valley Disability Services Limited **	1 Dec 2017
South East Sydney	Life Without Barriers	22 Feb 2018
Nepean Blue Mountains	Life Without Barriers	22 Feb 2018
Central Coast	Life Without Barriers	22 Feb 2018
Northern Sydney	Cerebral Palsy Alliance	8 March 2018

\* Kempsey Regional Support, About Inclusion, Nambucca Valley disAbility Services

\*\* Ability Options, ConnectAbility Australia and Finding Yellow

The development of consortiums of providers in the Hunter and Mid North Coast should be of particular interest to the Committee. When no single provider in these regions was considered to satisfactorily meet the criteria required, several services combined to form what is in effect a shelf company to successfully tender to operate the accommodation services. These two consortiums have been both beset with governance and capacity concerns, and at least one is openly discussing de-amalgamation at the earliest opportunity.

Whilst the State Government has consistently claimed that the privatisation of the functions of ADHC was necessary for the implementation of the NDIS, and in fact even used language to that effect in some of its relevant legislation, the Association is strongly of the view this is a furphy. As stated no other jurisdiction has abandoned the field and continue to operate disability services as required within the constraints of the NDIS.

This was not a necessary transition. It was not a well-considered transition. It was not a transition made in the interests of nor sought by people subject to the sector, their families, or the workers engaged to provide their services.

It was merely a convenient abrogation of responsibility by a State government who in doing so have abandoned a proven, inclusive, outcome-focused and holistic service for our most vulnerable citizens like ADHC in favour of a fractured, profit-driven model which is doomed to fail.

## Chapter A

# CHALLENGES FOR THE NATIONAL DISABILITY INSURANCE SCHEME

### (Inquiry terms of reference (a), (b), (c), (e), (f) and (h))

From the beginning the Association recognises that the Committee's powers with respect to a Federally funded and administered program such as the NDIS are jurisdictionally constrained. The Association is of the view however that for the Committee to properly understand and consider the matters before it regarding its implementation in the State of New South Wales, it needs to be aware of the shortcomings in both the design and implementation of the Scheme nationally.

To assume that the issues raised in this submission are occurring only within this State or that the Scheme is completely functional in its perfect form elsewhere would be basing the assessment of its implementation on falsehoods. The Committee rightly should be concerned with how the NDIS is proceeding and further, how the implementation of the Scheme in NSW is different from other States and what outcomes this is producing.

### A faulty rationale

*"...the logic of the market is in many practical, political and ethical ways at odds with the logic of care, resulting in, among other things, the exacerbation of inequalities and concerns about quality."<sup>1</sup>*

The philosophy behind the abandonment of service block funding and the move towards individualised voucher-based funding is that it creates consumers who are better able to choose services for themselves that are more suited and utilised. It also assumes the creation of 'a market' with both demand and supply, which will make the industry more competitive and in doing so ultimately create more choice for people with disability. It is from this model the oft-repeated rhetoric of "choice and control" has emerged. Research shows however that individual funding packages do not

automatically result in more choice and greater opportunities for people with disability and their families.<sup>2</sup>

This model may well work in the private sector and even in some areas of public service provision. But there are inherent unsuitabilities to applying it to the disability sector, ones that only a strong hand of market intervention of government can overcome.

*"Whilst the fallacy is that the Agency provide the budget for us to enjoy maximum flexibility with services we find the services quite inflexible. They gravitate to the easiest least complex services, often poor quality, poor value for money and administratively inefficient. We are left to find our own solutions which must be hugely inefficient for a high volume of clients with similar challenges."*

'George', PSA member and PWD parent

This submission is evidence that the market is not capable of determining what is needed for each individual person with disability. The shift to individualised funding does, if done correctly, have the capacity to provide increased flexibility to participants, allowing them to engage with multiple service providers to meet their goals. Despite the NDIA's promotion of an empowerment approach however, whereby consumer choice is the key driver in funding allocation and service delivery, there are concerns that the application of this neo-liberalistic policy has the potential to increase levels of disadvantage and exploitation, particularly in the context of people with intellectual disability whose capacity to exercise choice and control is impacted by their disability.

Firstly, the 'products' PWD consume, and in particular supported accommodation, are not readily portable. One cannot pack up and leave easily if dissatisfied, due to a shortage of supply of appropriate alternatives. The splitting of the statewide services of ADHC on a regional basis means that a change in accommodation service provider would also include the disruption of moving out of that geographic area and presumably away from other services being accessed that may still be suitable. There are also potentially dangerous consequences for PWD in changing service providers in terms of accrued knowledge of the management of their health or psychological needs.

Some of those participants who have been able to exercise choice and selected their providers are finding that their preferred provider is being absorbed by their old provider. Under a fully privatised NDIS, these participants 'choice' is fleeting;

*"The NDIS has made my life hell, I constantly have to worry about services or rather lack of services for my daughter, that in past years she was receiving. The NDIS has definitely not lived up to its vision statement"*

1. Miller, P. and Hayward, D. (2017), 'Social policy 'generosity' at a time of fiscal austerity: The strange case of Australia's National Disability Insurance Scheme', *Critical Social Policy*, Vol. 31, No. 1, p142

2. Laragy, C., Fisher, K.R., Purcal, C. & Jenkinson, S. (2015), 'Australia's Individualised Disability Funding Packages: When do they Provide Greater Choice and Opportunity?', *Asian Social Work and Policy Review* 9, p290.

*that NO disabled person would be worse off, because in our case we are definitely worse off. We have had all respite services cut when we have been accessing those services for over 20 years, as an aging carer this has put tremendous strain on everyone in the family."*

'Monica', PSA member and PWD parent

Further, one key choice was taken away from the people of NSW in the implementation: the choice to remain in the public system. In relinquishing all control of disability services over to the private and non-government sector, the NSW government denied people with disability and their families the simple right to say that they were happy with their existing care and would actively choose to stay with ADHC if given the option. It makes mockery of claims that the implementation of NDIS in NSW has resulted in greater choice, when the provider for approximately 40% of services is suddenly removed.

Finally, like all markets where left to their own devices, the disability services sector is already showing signs of becoming an oligopoly, where only those of a large scale with the means to implement economies of scale are able to continue. This was the experience of many non-government organisations when the Job Network was rolled out, where smaller, community-based organisations were unable to compete with their larger counterparts and forced to withdraw. The Committee can see from the list earlier of successful tenderers for the services provided by ADHC that there have only been a few providers selected each covering a number of regions. The Association can foresee that this situation will only worsen with the pricing pressures outlined below and 'choice' for those with a disability will further lessen.

*"Like any other sector in the economy, this one will have more efficient and less efficient organisations. Less efficient (perhaps predominantly smaller) operations will likely struggle to survive because funding is unlikely to be sustainable to support the whole sector." <sup>3</sup>*

There is even a real concern that a for-profit multinational company such as Serco, which has already has a presence and government contract experience with gaols, traffic camera operation and the NDIS call centre, could try to infiltrate the NSW disability sector and fill these voids. <sup>4</sup>

The danger in a reduction in service providers is magnified now that ADHC no longer exists. Choice and control of participants is limited when under the NDIS the providers themselves have greater 'choice and control' rights. There is a real concern that as the power of a limited number of providers increases they will have the ability to select participants, turning PWD away for reasons including reaching capacity, being unequipped for their needs or simply deeming

the PWD to fit into the 'too-hard' basket. This may have been manageable when ADHC existed as a provider of last resort, however it is foreseeable (and already the experience of the Association's members), that where this occurs PWD will have to be managed by an inappropriate and inadequate safety net through other government agencies such as Health, Housing and Justice. The Association is already aware of many participants who are being considered beyond the capacity of the non-government sector, as has always been the case;

*"My autistic 15-year-old son has thousands of NDIS dollars to spend but no one [in respite] will work with him...This didn't happen under ADHC. I am a single parent working only two days per week as it was too stressful and difficult to continue full time."*

'Emma', PSA member and PWD parent

*"[My son has] all the money in the world from NDIS and still not enough support."*

'Sarah', PSA Member and PWD parent

### **The tyranny of distance**

The failings of the NDIS model in terms of supply of services are magnified in regional areas. The NDIS was in part an attempt to eliminate the "luck of the postcode" in terms of accessibility of disability services for people living outside of major cities. This aim has not been achieved in the NSW implementation of the NDIS to date.

Clients are particularly vulnerable in the regional areas of NSW because there is often only one private provider available. Under the NDIS, providers are able to refuse to support clients and can evict clients from their group homes. For PWD in regional areas, this would mean that there would be nowhere else locally for them to go. Only those who are lucky enough to have family that can care for them while looking for a longer-term solution manage;

*"Under the NDIS we would have to say getting a better life in the country is hard."*

'Lucille', PSA member and PWD relative

*"[outside large towns]... There is very little actual choice."*

'Raymond', PSA member (FACS)

The remoteness of country towns inevitably means that providers will be few and far between, especially in comparison to larger towns and cities. The NDIS in practice, however, is supposed to transcend these boundaries by taking the individual circumstances into account when writing

3. Miller, P. and Hayward, D. (2017), 'Social policy 'generosity' at a time of fiscal austerity: The strange case of Australia's National Disability Insurance Scheme', *Critical Social Policy*, Vol. 31, No. 1, p142

4. Laragy, C., Fisher, K.R., Purcal, C. & Jenkinson, S. (2015), 'Australia's Individualised Disability Funding Packages: When do they Provide Greater Choice and Opportunity?', *Asian Social Work and Policy Review* 9, p290.

the plans. This does not appear to be happening for all people with disability living in rural areas;

*"...if your nearest service is two hours or more away – your package will not cover what is needed... Prior to recent changes the family could choose to use some of their budget for travel so that they could get their preferred practitioner who may be further away."*

'Raymond', PSA member (FACS)

The challenges of providing any service or infrastructure uniformly to regional and rural Australia are well known. But arguably the market-based ideology behind the NDIS and then its implementation in NSW is exacerbating this disadvantage rather than addressing it.

### **Failing to plan is a plan to fail**

The experiences of people with complex care and support needs in the development, implementation and review of NDIS plans has been varied, with their successful engagement in the scheme often intrinsically linked to the capacity of their formal and informal support networks to support the process. PWD with complex support needs, in particular those with intellectual disability, often lack the necessary communication skills and informational literacy to independently navigate the NDIS. This has also been found to be particularly true for those within remote Aboriginal and Torres Strait Islander communities.

People with severe and complex disabilities make up some of the most vulnerable people in our society. Only 7% of NDIS participants solely self-manage their funds.<sup>5</sup> Those with intellectual disabilities in particular do not have the capacity to make their own decisions, and therefore they will need to rely on either a familial support network, or choose an advocate (if accessible) to decide for them;

*"... clients in group homes have no choice about what time they get up or when they go to bed, when they would like to shower what time they eat or what they eat when and if they would like to attend program and the list goes on. They don't choose who they live with they never have. A majority of the clients... can't comprehend what choice is."*

'Juliette', PSA member in disability services

The lack of funding for case management and defunding of advocacy have decreased the ability of participants and families to be able to navigate existing disability markets let alone those that are new and emerging. In addition, the NDIA planners themselves often are not trained to properly understand complex diagnoses. The Association sees a need for fully trained specialist planners to assist people with complex or dual diagnoses to seek appropriate funding.

Ironically the best way to assure that you get support out of the NDIS is to already have support: the quality of a plan is dependent on the ability of the advocate, experience of the planner and/or the technical and bureaucratic savvy of a family member.

*"...people caring for children with a disability are having to essentially become their child's caseworker...The state designs the system, and set up the system, but then requires clients/carers to figure it out for themselves in order to gain services."*

Liam, PSA member (FACS)

In addition to the 'luck of the postcode', it would appear that the NDIS has now also become about 'luck of the planner'. The level of training and experience of the Local Area Coordinators (LAC) and Planners can either help or hinder the planning process, with many participants experiencing negative interactions with planners who do not understand the needs of people and families with disability.

Obtaining the necessary evidence to support an application for the NDIS is an onerous and often cost prohibitive process for many PWD, and this difficulty is further enhanced by the lack of Health and Allied Health professionals servicing regional and remote communities. Additionally, the eligibility requirements, particularly for those with psycho-social disability, remain unclear resulting in confusion amongst potential participants and their families. People with disability require access to funding to assist them in obtaining the necessary diagnostic evidence to support their transition into the NDIS.

The lack assistance provided to PWD and their families at the planning stage is resulting in limitations on the provision of services, with providers noting that success in the scheme is directly linked to knowing the right people and the right forms. The NSW implementation of the NDIS is putting unfair and unrealistic expectations on many families of PWD, many of whom are time-poor, lack computer skills and are not well-versed in bureaucracy. These barriers are putting families from low socioeconomic backgrounds and culturally and linguistically diverse backgrounds at a distinct disadvantage;

*"Navigation of the NDIS is a nightmare for professionals let alone family or elderly relatives."*

'Michelle', PSA member in disability services

*"I am sure there are many people in similar situations that are just falling through the cracks because they just don't know what to do."*

'Monica', PSA member (FACS) and PWD parent

Furthermore, up to 70 per cent of planning conversations

5. Miller, P. and Hayward, D. (2017), 'Social policy 'generosity' at a time of fiscal austerity: The strange case of Australia's National Disability Insurance Scheme', *Critical Social Policy*, Vol. 31, No. 1, p142

between clients and the NDIA have been occurring over the phone. That means many planners are not able to observe home environments, which are usually crucial for determining supports and individual needs.<sup>6</sup> It further prohibits planners who already lack an understanding of the people they are assisting: the Association has heard of one NDIA planner who suggested to a deaf person that they have their planning meeting by phone.

There is a feeling among participants and their families that it is almost as if the NDIA wants people to fall through the cracks. The Association was told of an incident where an intellectually disabled man had the details of his NDIS plan mailed directly to his independent place of living, and the NDIA began calling him directly to finalise his plan, despite his mother being listed as the point of contact for the NDIA and having been the point of contact for the entirety of her son's life.

*"Everyone who has had an NDIS plan says it took months longer than expected, and the process was full of ambiguity and mystery, requiring them to do their own research."*

Liam, PSA Member (FACS)

There also seems to be a large turnover in NDIA staff and coordinators so clients are having their review requests and updates completed by different people with no ongoing familiarity with each individual's needs. This diffuses the quality of the plan, as each time a history is provided elements will be missed. People need continuity of care, and they need continuity of knowledge.

## CASE STUDY

**Julia had surgery after a bowel obstruction. She experienced complications post-surgery including having to be ventilated. While she was ambulant and walked herself into hospital due to the post-surgery complications being immobile for a significant period her mobility deteriorated. Due to her severe intellectual disability she was not a candidate to attend rehab which only catered to dorm like rooms and patients were unsupervised. Her family could not accommodate her needs in the family home as they had 5 other children, both parents worked and she had increased needs including being at risk of falling if she tried to walk unassisted. The hospital were pressuring the family to take her home, despite the risk to Julia and they set up a meeting with NDIA to develop an NDIS plan to get her back into the family home. No hospital staff assisted at the NDIS meeting and they refused to consider supports to exit her from the hospital deeming it not related to a permanent disability. The package that Julia received after that NDIS did not match the supports she received from ADHC. Julia spent five months in an acute hospital bed with one to one supports while the family tried**

**to access additional supports from both NDIS and the hospital system to get her home safely. Ultimately it was the approval of Julia to attend an ADHC respite service, then an in-kind service, for a period of time where she continued to improve her motor skills and could eventually return home.**

**'Eleanor', PSA member in disability services**

Inadequate plans are putting NDIS participants in dangerous situations. The Association has been advised of one participant who did not have her challenging behavioral issues taken into proper account at the time of her plan being made. She was given funding for group activities, but not enough for one-on-one activities with a carer. When she inevitably was barred from group activities due to her behavior, she was left with little to no social stimulation. This drove her to seek entertainment elsewhere, which she found in the form of talking to men online. The participant was subsequently sexually assaulted by one of these men. The sexual assault of this PWD could have easily been avoided if she had been given a plan that comprehensively considered her unique needs. The NDIS has failed this participant. The Association has been informed of another NSW participant who has gone from "very little to very high" self-injurious behaviour since the implementation of the NDIS, simply because she was given inadequate transport funding in her plan and therapeutic calming drives have proven to be the only way to settle her other than sedation.

One cannot underestimate the importance of appropriate case planning and assessment, it is the entry to the Scheme from which all else relies. In fact if not done properly, under the NDIS nothing follows thereafter;

*"PWD are being turned away from organisations if they are not funded. There is no access to services (like accommodation) if there is no funding. PWD are on waiting lists for services with no one identifying if the need increases or changes, they are just waiting."*

'Genevieve', PSA member in disability services

## Reviewing a plan/bogged in bureaucracy

The review process has been described as 'appalling', with service providers noting that without access to an experienced disability advocate many clients are unable to successfully challenge the initial decisions of the NDIA. The waiting times for plan reviews are excessive, leaving PWD at a distinct disadvantage, and halting the provision of services;

*"A client waiting months on an important piece of equipment leading to inability to weight bare and the health impacts leading to cellulitis and bladder issues as requires standing to drain bladder."*

Sharon, PSA member in disability services

6. <https://www.theguardian.com/australia-news/2017/oct/04/disability-advocates-warn-ndis-rollout-could-have-disastrous-results>.

*"We have a client with a current NDIS plan who requires 24 hour care. Tragically, both of the client's parents passed away within a three-month period and with the support of our service the client submitted a change of circumstances review. The review process took six months, during which time the client did not have access to funding to provide the level of care necessary for his survival."*

Sandra, PSA member (higher education)

*"My brother had his NDIS review in mid-June 2018 and his plan expired on 27 July 2018 and to date we have not received his approved plan for the next financial year. So this has brought his physio and occupational therapy program to a halt due to no dollars available at this time because we have used last financial years allocation and with no approved plan for 2018-2019 we cannot engage their services."*

Lucielle, PSA member and PWD relative

*"My foster daughter is 18 with a mild intellectual disability and she finishes school September. She had her NDIS meeting at the high school and the plan came and they had forgot to put SLES funding in to help her when she leaves school. When we contacted them [NDIA] they said we would have to put in for a review. This takes months so come September, I will have an 18 year old at home all day every day with nothing to do."*

'Fran', PSA member (FACS) and PWD parent

## CASE STUDY

**The deterioration in Kylie's\* mental state impacted her relationship with her husband. So in about July 2016 Kylie's specialists recommended that she be placed into a care facility until her condition was at least stabilised. At that time Kylie's applications to the ADHC were not accepted for a period of about six months as the transition to the NDIA had commenced in their area.**

**From the time that Kylie's application to the NDIA was accepted, there has been a constant theme of misinformation and misrepresentation. There was a continual lack of communication from planning staff. We were drip feed with details of NDIA requirements such as specific medical reports and assessments.**

**Kylie's plan has been reviewed about three times with the plans still not addressing Kylie's real needs. An appeal has been lodged against the decision of the NDIA to refuse the application for 'supported independent living'. We understand that this appeal is still pending.**

**We consider that the delays that have been placed in the path of my sister's application to the NDIA by**

**dysfunctional processes and practices; contributed to my sister not receiving proper timely treatment and in turn resulting in the attack upon her husband. Further, the justice process which took about five months to complete; has placed my sister under great deal of stress only heightened by her mental state. At times she had the awareness of a young child. Her mental state has further deteriorated due to this experience.**

**Kylie's husband, their son, my parents and myself, as well as other family members have suffered greatly due the plight of my sister. Some of us continue to suffer health issues due to this stress. The whole process has also impacted the work performance of those of us in the family that are working.**

**Had my sister's situation been correctly managed by NDIA; the involvement of the justice and numerous health services would otherwise not be required. Our situation is the direct result of cuts to services made by the Berejiklian Government.**

**Luna, PSA member (Justice) and PWD relative**

## Service gaps

A ramification of the unsatisfactory planning stage is that participants are not being equipped with the appropriate levels of funding. The provision of services is now entirely dependent on the amount of money in a participant's plan. Conversely, under ADHC a PWD was provided a service for as long as they needed;

*"The sole focus is now on billable hours and meeting KPIs rather than providing a service that truly meets the support needs of the participant. Once a participant's funding runs out then the service has to cease even if one is in the middle of providing it. Under ADHC we were able to continue providing a service until the goals and needs of the participant were met."*

'Melinda', PSA member in disability services

The introduction of the NDIS and the subsequent privatisation of NSW disability services has significantly limited the capacity of many people with disability to access the supports needed to promote their health, wellbeing, social and economic inclusion. Unless they have the capacity to self-fund supports, which is highly unlikely given that some 45% of people with disability live near or below the poverty line, those without an adequate NDIS plan will effectively be cut-off from accessing supports within their local communities.

Prior to the privatisation of NSW disability services, many NFP's and NGO's received block funding which allowed them to run programs that were inclusive and accessible to the wider disability community. The introduction of an individualised, cash-for-care funding model has meant that disability service providers, and in particular NFP's, have no capacity to continue to offer these programs and those



ineligible for NDIS funding will receive inadequate levels of support, leading to further over-burdening on the healthcare system.

The NDIS is not funding all necessary items in participants' plans and some NDIA planners are ignoring the advice of specialists and families, writing plans that do not meet participants' needs. Items that absolutely should be included are not included. An example is modified food/fluid and medical grade food and supplements not being funded by the NDIS with non-government accommodation providers in NSW either not choosing or not being able to purchase them. This is leaving the health of those participants who are ill-equipped to purchase these items themselves at risk.

### CASE STUDY

**Zoe\* is a 19-year-old young women who lives with mild intellectual impairment, anxiety and post-traumatic stress disorder and has limited informal or familial supports. This lack of support has contributed to Zoe's inability to demonstrate her eligibility for the NDIS and she remains without funded supports. Zoe would benefit immensely from case management support however she is unable to access this through Community Mental Health services until her condition deteriorates significantly. Zoe needs and deserves support to enable her to positively contribute to her community and live a healthy, good life however her ability to receive this support is effectively non-existent without an NDIS plan. Without support Zoe will continue to experience increased levels of stress and anxiety, resulting in poor diet, loss of mobility and social skills and decreased capacity to participate in paid employment opportunities. Zoe should not have to wait until she is considered 'disabled enough' to access support.**

#### **'Sandra', PSA member (higher education)**

Complex equipment needs are often being addressed or provided as because quotes are required, it is not possible to comprehensively discuss the funding of the equipment at the planning stage. Conflict between the NDIS and the health sector is further inhibiting participants from obtaining required equipment, with the NDIA often rejecting the claims for items such as OT equipment under the 'reasonable and necessary' clause. Hospitals are discharging PWD without necessary rehab equipment, telling them that the NDIS is in charge of providing it to them. The NDIS however does not always fund rehab equipment – it will only fund rehab equipment when the participant's health is stable and it is determined that the participant has a new functional capacity. The only loser in the bureaucratic game of handball is the participant.

### CASE STUDY

**My daughter (20 years of age) suffers Auditory Processing Disorder as part of her condition. On**

**her first plan interview we were urged to have her professionally assessed so she could receive the necessary supports. She was assessed by Australian Hearing who recommended equipment costing \$1700. We submitted an Assistive Technology request (in May 2017) and this was "lost" in the system. We included the same application at her annual review Oct 2017. Her plan provided a budget of \$235 with no explanation for the difference. After raising two complaints and finally writing direct to the Minister we were first advised NDIS didn't cover the cost because Australian Hearing would (confirmed as incorrect) then ultimately advised that the assessment did not sufficiently connect her diagnosis with the disability. We are at a loss to this re-definition of "disability" as we have lived and breathed the impacts of this condition over her 20 year life and can vouch the impacts of this impairment are significant.**

#### **'George', PSA member (Transport) and PWD parent**

After equipment, a further obvious service gap under the NDIS is that of early intervention. The NDIS requires families of children needing early intervention (ages up to 7 years old) to provide evidence of their child's permanent disability or developmental delay. This seems reasonable until it becomes obvious that the road to that diagnosis can be very slow, and many of the monitoring services i.e. the small local early intervention services that allowed an early identification of delay and support through the diagnostic process, have been defunded. The very support that was a responsive part of the fabric of early childhood settings, that was funded primarily through ADHC or in combination with the Department of Education, no longer exists. Early childhood nurses, early educators, childcare services all referred to these early intervention services. A much more bureaucratically rigid and time-consuming pathway has replaced the small group of early intervention workers who were experts at identifying risk factors, supporting the settings to provide enhanced learning opportunities, applying for funding to increase staff ratios in childcare for children with a disability, referring to specific therapies, and supporting a gentle journey towards diagnosis and more formal intervention.

Since the rollout of the NDIS, smaller services have been forced to find ways to charge for billable hours under limited line items which are only available upon completion of the diagnosis. The Association understands that a specific local early intervention service that was the hub for play-based assessment and identification of "at risk" preschoolers has been forced to leave that role behind whilst they pursue line items will allow early education billable hours. Forced to abandon the in-demand service they were providing, instead they now concentrate on school-aged children, not because there is a more pressing need, but because the billable hours are easier identify in a well-established diagnosis.

Once funding has been gained for early intervention, the NDIS promotes a transdisciplinary model which is often corrupted to mean "whatever therapy, discipline or early

educator is available and approved". A true transdisciplinary model requires all therapies needed to be available, all to know and have assessed the child, with each taking some carriage of the strategies developed by other therapies. It may entail duplication but it is preferable to making do with the available discipline.

### Price gouging

The public loss of control and creation of a market of services is dependant in part upon service providers acting in good faith and conscience. Unfortunately this is not always the case. The cost of vital disability equipment has skyrocketed under the NDIS, with some parents reporting registered suppliers are charging five times more for the equipment than existing providers.<sup>7</sup> Clients with NDIS funding can be charged more for the same products or services than those without. The Association is aware of one client being charged \$300 for modified shoes pre-NDIS. The same shoes purchased last year were not modified and cost \$600 under the NDIS.

Nationally, there were more than 300 claims of fraudulent or dodgy behaviour made to specialist hotlines in 2016-17.<sup>8</sup>

*"It is clear that as part of their financial plan NDIS providers are freezing funds in participants NDIS plans. Client NDIS reviews occurred in the Hunter in late June 2018 as this was the cut off point for FACS funded staffing for the NGO's. The beginning of July 2018 saw an NDIS "feeding frenzy" with many providers freezing excessive amounts of participant funds to try and maintain their viability in "the marketplace". The lack of governance across the sector has placed clients at risk and ensured that NDIS funding does not guarantee positive outcomes for participants nor does it guarantee a sustainable business market."*

Amy, PSA member in disability services

*"Another experience I had not long after I started in the unit, clients received an invoice stating they owed the day program for attendance backdated almost 2 years. On checking old bankbooks cheques had been drawn and the bank said the cheques had been presented. At the time the cost for attending the day program was \$5 per day so it quite a substantial amount. When day program was contacted to let them know the money was paid they said they had just updated their computer program and there were problems and they were working on it. But there continued to be errors in their calculation for another 6 months with clients receiving bills for public holidays, clients off sick and attending 5 days a week. Under the NDIS we don't know if clients are still being charged when they haven't attended. "*

Anonymous

*"On another point I am sure there are unscrupulous providers out there ripping off the system as well, my example is that when one of my daughter's previous providers over charged her by \$3,000 it was only the fact that I was checking her payments that I discovered it."*

'Monica', PSA member (FACS) and PWD parent

*"When you have so many private service providers without a watchdog maintaining a watchful eye on their delivery of service there will be people with disabilities and mental health being left with substandard care."*

'Gill', PSA member (Justice)

The dash for cash includes some services not traditionally focused on the disability "market" but are now (mistakenly) targeting it as an additional potential revenue stream;

### CASE STUDY

**A local block funded youth service saw an "opportunity" to supplement their funding by employing a disability coordinator and diverting current centre participants or recruiting more participants by advertising NDIS services. The inequity was created at this point when people who used to access generalist services were under pressure to get an NDIS plan so that they could access services under the disability arm. Not all were successful in application, as anyone working in youth services would know, there is a broad origin for developmental concerns in this age group not all of which have ever been properly assessed by adolescence, and not all of which fit the NDIS access criteria. It could be an emerging mental health issue, domestic dysfunction and potential homelessness, behavioural concerns related to executive functioning disorders such as ADHD which don't attract NDIS funding anyway. So people who needed the support being set up were excluded, and a 2 tier system created in a previously very accessible generalist youth service.**

**Then the false notion that the NDIS funding might be able to prop up the generalist function came into play. The small disability arm of the service worked valiantly to attract support workers (who they could only ever employ casually because of the fledgling uncertainty) to attract clients, and to provide quality support. The realities of providing support to this most complex of populations whose parents may or may not be in a position to follow through on programming, clients at the point of more independence but without the skill**

7. Dunlevy, S. (2018), 'Disability services shutting up shop', The Sunday Telegraph, 4 March.

8. Morton, R. (2018), 'Probes as NDIS fraud cases grow', The Australian, 12 January.

**and without the insight to enact this, some with vulnerabilities around abuse and homelessness and substance abuse, all needing the sort of intensive support coordination and indeed case management that is so poorly funded under NDIS. This shifting population was never going to be the “cash cow”, or the rescuing of the generalist service. It could barely pay its own workers, most of whom could only attract the cheaper line items in capacity building and improved daily living, and seldom were enough funds allocated in the plan because planners are seldom aware of the complexities in these less visible disabilities. So because this disability arm could not rescue the generalist arm (who were still safe in their block funded positions albeit always under funding pressure), the generalist arm began to “blame” the disability arm, and demand the sort of efficiencies that are just not possible. These hard workers who put their heart and soul into providing service to youth with a disability and their family became criticised because they were not “efficient” enough. They could not rescue themselves let alone a service that was looking for an opportunity to access this bonanza of funding that the state government insisted was going to be available as it progressively defunded one ADHC funded local service after another.**

**This is a disgrace, and so sad for our community**

**Tash, PSA member in disability services**

### **Only the essentials**

The introduction of the market ethos encourages providers to maximise profit and minimise expenditure. One of the expenses forgone under this philosophy has unsurprisingly been that of leisurely activities. From a business point of view, spending money on leisure is unnecessary and disposable; from a human perspective, it is an essential part of a quality life.

There is one case of a veggie garden in a group home on the north coast of NSW where participants each grew a variety of veggies and herbs, and shared meals together cooked with their own homegrown food as a form of therapy. One day the garden was levelled by external contractors without consultation with the participants or staff. This caused great distress to the PWD in the home and removed an element of their lives which gave them a sense of independence and community.

The PSA has been told of incidences where participants have no diversity of outings because the provider is conscious of the cost of kilometres. Weekly Friday night outings, such as dinner at the local RSL or a trip to the movies have had their funding removed, with clients being told they must pay their own way. These outings were funded so that people living in group homes could feel included and normal within their community. Without these experiences, it is likely that the people affected will suffer from feelings of isolation and loneliness, and the social gap within society will expand.

Other incidents that have been raised include a participant being sent back to their group home provider from an outing with their activities therapist stating that there has been “an incident” which has ultimately led to the administering psychotropic medication. This has been known to happen without the required legal documentation and the group home has still incurred the cost of a whole day of service, despite the participant being brought back early.

The NDIS aims to promote the independence and social inclusion of people with disability. However, social inclusion here is conceptualised as an outcome rather than a process and is therefore at odds with inclusion discourses and representative of an overly simplistic view of the issue. For the social inclusion of people with disability to be realised, they must be afforded the opportunity to connect meaningfully with society, to occupy valued social roles and actively participate as members of the community, none of which can be achieved through increased consumer choice alone. The consumer choice in the above situations stop at the participant choosing their provider. Once with their chosen provider, choice can once again be taken from them.

*“Persons with a disability require greater opportunity for their quality of life to be improved, not less. By restricting their service delivery to a dollar value, the possibility of their life being enhanced through greater study, work, leisure and social engagement is diminished not increased.”*

‘Judith’, PSA member in disability services

### **Inadequate safeguards and regulation**

The Association is concerned that the NDIS Quality and Safety Framework is not a prescriptive response to safeguarding issues. It is instead a broad outline of requirements with little detail around how to deal with the key safeguarding issues, such as the reporting of serious incidents. The Safeguarding Framework makes overarching statements about the need for system-level oversight to respond to the risk of harm, abuse and neglect. It does not refer to legislative requirements to report serious incidents, as was formerly the case in NSW under Section 3C of the NSW Ombudsman Act 1974 (NSW).

The Framework states that providers have primary responsibility for preventing and managing serious incidents, and makes reference to a Complaints Commissioner. The Complaints Commissioner will have capacity to refer compliance action on to an NDIS registrar. The Association previously noted that the failure of some new providers in the early rollout stage of the NDIS to be compliant with the NSW Disability Inclusions Act 2014 highlighted the need for a prescriptive process to place before the NSW State Government exited the disability sector. This did not happen and now irregularities are evident in The Framework as it is designating responsibilities to the State in Restrictive Practice approvals when in NSW no state mechanism now exists.

*“NDIS participants, particularly those without advocates have found themselves vulnerable to*

unethical Support Coordinators (SC) and Community Access (CA) Providers. In this case the person responsible was unable to understand the implications of the decisions the SC was making and felt it was “easier” to leave it to her.

“An example of this is an SC who rather than using a local provider strongly favored a provider located 34 Km’s away this incurred additional costs to the NDIS participant in travel and ate into Core Support funding. Rather than engaging in meaningful activities the participant was regularly taken by the provider to Westfield shopping center where she ate junk food and engaged in shoplifting. When the SC recommended that the supports be changed from weekdays to weekends it was raised by group home staff that it was important to the participant to have meaningful activities as part of her weekday routine and a quote was requested for weekday versus weekend staffing costs. The SC openly stated to staff “why do you care!” Lack of governance has left participants open to financial abuse and decisions that are clearly a conflict of interest. ”

Amy, PSA member in disability services

## Chapter B

# FURTHER CHALLENGES ARISING FROM THE PRIVATISATION OF DISABILITY SERVICES IN NSW

## (Inquiry terms of reference (d), (h), and (i))

“I have travelled throughout the world and looked closely at disability services in as many as 130 countries where services are either non-existent or poorly delivered. The NSW model (ADHC) was by far the world’s best practice and most respected service providing services to improve the lives of vulnerable people. ADHC had developed from the need for State overview of the most critical aspects of service operators that saw the need for better management of available funds and staff trained to give appropriate service with State supervision. The destruction of the State managed services of ADHC will prove to be a failure of enormous proportion.”

Graham Burgess, Disability Volunteer And Advocate

“The bottom line is that since NDIS and privatisation the quality of care and support available for the customers we support has decreased in standard and availability.”

Peter, PSA member in disability services

The privatisation of disability services in NSW has overwhelmingly resulted in PWD, particularly those with an intellectual disability, experiencing less choice and control over their lives, a reduction in their quality of care, a reduced diversity of services and providers, less transparency and reduced pay and conditions for workers;<sup>1</sup>

The Association has been inundated with stories of disability workers and families of PWD who knew life with ADHC, and now are living life without it. The overwhelming message has been that ADHC, while it had its flaws, provided an irreplaceable public service that is essential to the effective delivery of both public and private disability services;

“I believe we should go back to where full care was provided for people with severe disabilities. Too many of them are left to flounder on their own with inadequate assistance.”

Leslie, PSA member (Justice) and PWD relative

“Every day I hear the clients [in the group home] say the same thing... ‘I hate the NGO’s, I hate the NDIS’. I never heard them say ‘I hate ADHC.’”

Colin, PSA member in disability services

“I have not heard one person say they are happy with the NDIS.”

Fran, PSA member (FACS) and PWD parent

“Since the transfer to private sector... it is all about profits, and no longer the care or needs of the individual.”

Eric, PSA member in disability services

“NDIS must be one of the most insidious schemes ever dreamt up by a government under the pretext of addressing disability needs and it has not been a happy time for our family since inception.”

George, PSA member (Transport) and PWD parent

## Loss of wrap around, holistic focus

“ADHC staff were tireless... we had a client disappear from temporary accommodation... the case manager was then out scouring his known hangouts, eventually locating him under a tree in the pouring rain at a beach. In the NDIS climate, we have lost this personal connection. Similar reports are left with a ‘wait and see’ approach.”

Jasmine, PSA member (FACS)

ADHC provided disability workers in both the public and private sectors with a comprehensive, dedicated, problem-

1. <https://www.peoplesinquiry.org.au/report>

solving, gap-filling service. ADHC caseworkers were a pivotal support for those working in the disability industry, and particularly for people with complex and severe disabilities. Case managers averted crises by having in-depth knowledge of an individual's situation and needs, and by having access to various publically funded supports, including respite. Case managers supported PWD and their families through complicated systems and processes; they developed detailed transition report plans and coordinated case conferences. Case managers were also crucial in assisting CALD and refugee participants to get the right services that they needed. Case managers, in the private and NGO/NFP sector, have been replaced with financial managers or they have been replaced with support coordinators who lack the breadth of knowledge and experience ADHC staff had and are constrained by time limits and funding;

*"ADHC was not perfect, but my experience working with mutual clients was that it was full of dedicated and client-focused professionals struggling to achieve best outcomes for their clients, but hampered by scarce resources/funding, and perhaps some top-heaviness. Many clients struggle to get what they need under NDIS."*

Liam, PSA member (FACS)

When referrals out to specific therapies occur they can be extremely fragmented. When children with complex disabilities were referred to ADHC, there was regular communication across disciplines. There is now very little true multidisciplinary service available, and the billing pressures mean that these important indirect aspects of service are much less valued. Each clinician is under enormous pressure to provide billable work, and in so many cases the person who designed the plan has very little notion of how long any type of service will take. There is invariably insufficient time to complete the work to the same high quality as was expected as an ADHC employee. The pressure is to take shortcuts and find generic solutions rather than highly individualised best practice service, and to dispense with the sort of networking and research that marks out specialist disability services.

Referrals out to providers can be very difficult for families, especially for children who need highly specialised skill. ADHC was the centre of excellence for people with an intellectual disability, and for people with complex and numerous diagnoses. It was also a centre of excellence for behaviour management. It is very hard for families to find any therapy services, let alone ones that have the specific specialised skill.

The impacts of the lack of access to disability support services for those without NDIS plans are felt most prominently within regional and remote indigenous communities. This is of paramount concern given the estimates that Aboriginal and Torres Strait Islander People experience disability at twice the rate of the non-indigenous community. Considering this, exclusion of Aboriginal and Torres Strait Islander People over the age of 55 (with non-Indigenous participants capped at 65 years of age) is appalling. The lack of access to appropriate disability support services will contribute to the continuation

of the social apartheid experienced by people with disability in Australia.

Many people with disability who previously received assistance through the ADHC block funding model, particularly those with psycho-social disability, do not qualify for the NDIS and consequently have limited to no access to adequate support services. Additionally, NFP's and NGO's who provide disability support services no longer have access to the clinical and allied health support that was previously provided by ADHC which is resulting in difficulties in assisting clients to gain access to the NDIS, furthering their disadvantage. Access to Commonwealth funding respite services has also been lost by those with NDIS packages which often do not have sufficient funding to cover this.

### **Accommodation**

The privatisation of the operation of supported accommodation across the State has been rolled out steadily over the last year however is already compromised and overly stretched.

As detailed in the introduction, ADHC's network of some 800+ supported accommodation homes across the State were broken down into sixteen packages for the tendering process. Notwithstanding this concession, the service proved to be beyond the capability of most non-government operators, and only five providers were successful in obtaining coverage of a region – House With No Steps (5), Northcott (3), Life Without Barriers (3), Live Better (2) and Cerebral Palsy Alliance (1).

The terms of these privatisations and the conditions incumbent upon each party are not public knowledge, protected as a commercial-in-confidence transaction. One interesting by-product of the enabling act has been the creation of wholly-owned, subsidiary shelf companies for the purposes of taking on employees. As employees could not be lawfully forcibly transferred from public sector employment to a private sector, they had to be transferred first to an empty vessel, which was at that stage a government owned company, which in turn was transferred to the private operator. Proceedings in Fair Work Commission against one of the providers revealed not only had employees stayed engaged within this company rather than being integrated into the parent organisation and named tenderer, but the organization was using it as a shield in arbitration, claiming some sort of Chinese-wall corporate immunity. The Association has serious concerns regarding the corporate governance and solvency of these shelf companies where they still exist as the employer.

Of further concern to the Association are the two consortiums which received the tender for the Hunter and Mid North Coast. In those regions NGO was considered suitable to take on the grouping of accommodation in that area and instead loosely arranged consortiums were formed between three providers in order to satisfy the criteria. These consortiums have already proven to lack the governance, policies and procedures and internal management capacity to manage the

demanding operation of supported accommodation for PWD with complex needs, and are in industrial terms at least the least stable of the providers. The tripartite Hunter consortium is openly discussing de-amalgamating into its component parts at the earliest opportunity. Whilst an argument can be made this may be potentially good for competition between providers and choice for NDIS participants, questions must be asked of the process that saw fit to privatize the service into an unstable and untested provider.

The privatisation process is still not yet complete, with Stage 2 to still be completed. Large residential units such as Stockton and specialist services such as the Criminal Justice Program (CJP) remain at the time of writing in the control and management of the public sector and are proving to be difficult to progress. Stockton in particular requires the building of dozens of new accommodation units, a project that has been beset by funding and governance issues that have led to the delay. The ambitious targets for privatisation set by ADHC from the outset have not been met, and the postponement must raise concerns about the absence of a suitable provider for these services in the community.

Supported accommodation under ADHC has always had differences in practice and procedures from its non-government counterparts. These differences in practice have been driven by the increased physical, medical or behavioural needs of the residents. Whilst with privatisation and the NDIS the resident population has not changed, members of the Association are concerned that many of these practices are being abandoned due to budgetary pressure.

An example of this are sleepover shifts. Supported accommodation under ADHC had 24/7 staffing that were awake, and checks on residents were required to be performed at night. The shifts were consequently paid at full rate throughout the night, and provided staff with an opportunity to also catch up on administration, household organization and other matters that could not receive attention whilst the residents were awake. NGO's have not generally traditionally had such a model, instead have effectively stand-by staff within the home who are allowed to sleep and accordingly receive a lower rate of pay for the shift. Due to the restrictions of the NDIS, the Association's members are being forced to consider a move towards the latter model notwithstanding that it is inherently less safe for those in their care who may be vulnerable to fits or other medical issues during the night. Bizarrely it is only the current industrial instruments that seemingly enshrine night shift work and not any mandate from either the NDIS or ADHC. A similar situation is emerging with respect to when residents are out of the home on day programs, with no staffing contingency made for should the participant need to return home as the NDIS funding does not exist.

Finally, and of paramount immediate concern to the Association and its members is the future of the physical asset of accommodation. Currently notwithstanding privatisation these houses remain in public ownership and are managed by the Land and Housing Corporation. The Association is unclear on the operation of the tenancy agreements nor the

future intention of government with respect to these assets but has been informed unofficially that there may be proposals on foot for them to also be transferred to the private sector accommodation providers. Without adequate protections and secrecy around these details, there presents a real risk that NGO's will be gifted a significant real estate portfolio that will require significant management in itself beyond their capacity and expertise, and further be vulnerable to profiteering by unscrupulous operators.

## Loss of specific services - respite

### CASE STUDY

**NDIS was initially ideologically opposed to respite and set limits on what participants could receive. Despite being told they would be no worse off many families had the number of days they could use slashed without the increase in other supports that were supposed to alleviate their need for respite. Families are still being given NDIS plans that do not match the funding they were eligible for under the ADHC system. It is now the responsibility of families to again prove that they are sleep deprived, at risk of family breakdown, have health concerns or injuries of their own and the results are haphazard. Despite being given evidence to take to meetings of the supports people received from ADHC the NDIS planners and LACs ignore much of it. When you compare the plans of people who have similar support needs the disparity is shocking. I have had parents tell me that they are being burnt out just trying to get access to the NDIS funding they require. I have had parents who are so afraid by the lack of funding their child received that they wanted their children to die before they did so they did not have to be concerned with their care into the future.**

### Eleanor, PSA member in disability services

Some services previously provided by ADHC will be completely lost in the implementation of the NDIS in NSW. Many of these services are considered 'niche' services, meaning they are less mainstream and are being either forgotten about or given lower priority in the rollout.

An example of one such service is centre-based respite. NSW respite services are rapidly disappearing in the implementation of the NDIS. Without them, many families of people with disability are going to suffer hardship and could be driven to drastic actions that could have severe consequences for PWD.

*"...as I write this I am actually in tears not knowing when I am going to get at least a small break from the trauma of living on the edge all the time... not knowing when his next meltdown will come and not knowing what damage will come of it, whether he does damage to himself, the house or the people around."*

Viji, PSA member and PWD parent

The chaotic process that is creating an NDIS plan is seeing niche services like centre-based respite fall through the cracks. One of the reasons for this is how isolated families who use respite are from the rest of the disability community. Under ADHC, these families were ADHC Community clients, attached to a CST, which meant that support had always come to them without them having to think much about it. This meant that these families were inexperienced in knowing what to ask for which made writing an NDIS plan a challenge. It is consequently proving very difficult for these families to get anything out of the NDIS. Another issue is that in the early stages of the NDIA, the agency set a \$500 per day standard funding model for respite. It then went to a tiered system, however the services under ADHC did not. This led to families under ADHC services underselling their needs against the NDIA system, and has resulted in their plans being underfunded. With inadequate funding, families are looking at being out of pocket up to \$1200 per night to receive respite. Other families who were receiving up to 80 days of respite per year with ADHC are now receiving a maximum of 28 days under the NDIS.

The Association believes if the NDIS continues unhindered down its current implementation track, respite will cease to exist as a service for families of PWD. All but one government-run respite centre have now closed in Sydney. The others were transferred to NGOs. The longevity of these NGO-run respite centres is precarious, with some centres already either being sold off or decreasing their operations. One respite home in North Sydney previously in the care of ADHC and then transferred to the CPA in the NDIS implementation has now been sold by the CPA. The Association has heard about a children’s respite centre that was privatised under the NDIS which has informed its staff that it would be shutting its weekday services and only operating on weekends. The staff were simply told to go find work elsewhere.

Even with funding, families are struggling to gain the respite support they previously had under ADHC. The private providers are ill-equipped and/or unwilling to help, and the health sector, also unequipped, is having to turn people away. Some families and people with disability are finding themselves with nowhere to go;

#### CASE STUDY

**My son (21 years of age) has Down syndrome and type 1 diabetes and requires 24/7 supervision. His Diabetes is supported with an Insulin Pump... Since transition we have struggled to engage respite as the service providers are not equipped to change the set. The service providers advise the set change is outside protocols (as the set change is “invasive”) and besides, they are not funded for medical requirements. We have separately tried to engage support from the Health system and whilst they provide extensive support for pediatric/school requirements they are not funded for adult services. The assumption is either that adults are responsible for their own requirements or in the case of a disabled person this is the remit of disability**

**services. As a result we have been unable to engage respite services. Of most concern for us as we ourselves age (or in the event of some unforeseen event and we were unable to care for our son) we are not convinced the “system” would be able to care for his 24/7 needs.**

**George, PSA member (Transport) and PWD parent**

The implementation of the NDIS has left families who utilised respite services in a hopeless situation. The loss of access to respite is devaluing these families’ lives, and these are people who already sacrifice so much of themselves to care for their loved one/s with disability. It is imperative that the NSW government does not let these families fall through the cracks;

*“I am saddened to think of the stress that is going to be placed on these families and the long-term impact we are about to see.”*

Willow, PSA member in disability services

*“The impact on these families is invisible costing but long-term will cost the nation a fortune e.g. mental health cost of carers, family breakdown, accommodation placement breakdown, school placement breakdown etc.”*

Raymond, PSA member (FACS)

#### The de facto ‘safety net’

Above all else, the most important service that ADHC provided – as a public service – was that of a public safety net. ADHC’s client group was by design and nature, PWD beyond the capacity of non-government services on account of their physical, medical or behavioural needs. Even prior to the implementation of the NDIS the NGO, NFP and private sector was either inept at or unwilling to service some of those with the most severe disabilities and complex needs;

*“In the years past, I transitioned clients with a disability to a non-government group home only to see this client being returned to ADHC service due to their complex behaviour.”*

Erin, PSA member (education) and formerly disability services

In the absence of a public sector safety net, the lack of appropriate disability support services, particularly in regional and remote areas, and the failure of the NDIA to equip people with appropriate NDIS plans has resulted in the overburdening of other community services.

Tensions are rife between the NDIS and mainstream community services, including housing, justice and health. There is a lack of clarity in terms of where the responsibilities of different levels of government lie and who should be providing which services. Privatisation means that some PWD have lost access to supports they once received through ADHC.

*"My understanding with the NDIS is that potential clients are being missed out altogether where if ADHC were still available, these potential clients would be picked up."*

Jessica, PSA member (Justice)

The NDIS has blurred the boundaries between public services and departments and removed the public safety net for people with disability. ADHC was a silo for disability services: it provided a one-stop shop for both directly for PWD whose complexities did not fit the mould of any other service for the employees of other service areas, who were able to turn to ADHC for advice and assistance with complex cases. Without ADHC, NSW is seeing services with no competence in dealing with PWD, having to deal with issues that were not their problem when a public safety net was in place. The evidence presented here makes the clear case that there are massive holes in the NDIS being uncovered by its overly ambitious rollout in NSW.

The NDIS is designed with the assumption that people with disability should be defined by their disability, and that if you support the disability, every other aspect of a person's life will fall into place. This is an extremely simplistic and narrow-minded view: the reality is that people with are multifaceted human beings who experience problems in life completely unrelated to their disability. The important difference is, however, that while a PWD should not be defined by their disability, their disability does go with them wherever they go. This means that even when they have a medical issue that needs treatment by professionals within the health system; even if they commit a crime and are put in a general population correctional facility, they need an expert team around to go. Their NDIS should go with a PWD wherever they go. Instead, the NDIS is being implemented in a way where PWD have to go to where the services are, losing essential parts of what they need along the way. ADHC went with PWD wherever they went.

Whilst ADHC's disassembly has led to a lack of coordination and support for other services working with PWD who are in receipt of the NDIS, there is a more pressing concern. Without ADHC as a last resort service, where do PWD who are beyond or have exhausted the current network of non-government services go? The Association has long held the view that the safety net for these people provided previously by ADHC will be provided by inappropriate and inadequate other areas of the public sector – corrections, child protection, and health. What has caught the Association and its members by surprise however is how quickly it has taken for this scenario to eventuate and where it is being felt.

## **Housing NSW**

NDIS participants are slipping into the void created by Commonwealth-funded NDIS and State-funded Housing. According to The Australian the issue of housing is one of the most underdeveloped parts of the NDIS.<sup>2</sup> Housing NSW

employees are being overwhelmed with cases involving PWD, many of which they had never experienced before the NDIS began its rollout. The Association heard from one member who said that they were finding themselves working full time on cases for people with disability despite them not being a disability specialist;

*"The NDIS is a disgrace and a terrible burden on FACS workers. It is creating stress and illness amongst workers."*

Simon, PSA member (FACS)

Without the ADHC silo, workers in other government departments are finding it difficult to determine who to turn to when PWD turn up at their office doors. Large amounts of time are being spent by these employees trying to solve problems that would be far more appropriately (and efficiently) solved by a government department (ADHC) whose exact purpose was to handle such cases;

*"I literally spent 7 hours a day, for 8 days, escalating via NDIA, calling colleagues working in NDIS for direction/suggestion; emailing community services, the OOHC transition provider- meanwhile HNSW was paying for Temporary accommodation for a person not eligible on the basis that she had no capacity to seek an alternative."*

Jasmine, PSA member (FACS)

These workers are unanimously telling the Association that their jobs were less complicated when ADHC was in place, and that PWD in accommodation crises were better supported. This matter is typical of the many that ADHC would have managed without our interference. The ADHC team were experienced and competent. They were also extremely accessible to other departmental staff, often working in the same building;

*"I would have made a phone call to an ADHC colleague who would have accessed previous records/diagnoses, come down stairs, talked to the client and worked with myself to find the best outcome."*

Jasmine, PSA member (FACS)

Housing NSW staff have told the PSA that they are spending significant blocks of time, fielding phone calls/emails/face to face interviews having to try and explain that the 'want' is simply not enough. These staff say that ADHC colleagues had managed this process for many years and had a thorough understanding of what 'Independent Living Skills' means, the same cannot be said for the private sector. There is a perception that anyone who doesn't fit their service can put in an application for Social Housing, and be given a priority tenancy because they have a disability.

*"I was allocated the co-ordination of supports to a*

2. Morton, R. (2018), 'NDIS housing blowout threat', The Australian, 7 February.



gentleman with an ABI, mental health diagnosis who also injected methamphetamine & abused alcohol.

*"His house was firebombed & he was effectively homeless- on contacting the NDIS to request advice as to how to assist him into housing I was told to refer him to a supported living placement! I was so shocked as he would not be able to mix with people with Downs Syndrome or intellectual disabilities & would pose significant risks to them & himself in such an inappropriate setting. It took all my advocacy & pleading with agencies to be able to find an organisation who would agree to support him. The only one who did was managed by an old colleague from ADHC who understood the enormity of his support needs."*

Jane, PSA member in disability services

### CASE STUDY

#### Employee statement, FACS (Housing):

**It has been my experience that many NDIS clients need SDA however, with the decanting of ADHC Group Homes, there are not the number of SDA places that there were pre ADHC privatisation. They then do not have SDA as part of their plan whether they need it or not. These are clients with very high support needs that are incredibly vulnerable in independent housing. This also means that there is an expectation that FACS provide accommodation from the Housing stream and there is a real risk for these clients. They cannot live unsupported, yet with privatisation, if the client has challenging behaviours, disability support services have been known to 'dump' the clients and arrive at public housing offices with the clients expecting we house the clients immediately. Worse still, we could house these clients and then have the support services disengage, leaving someone unsupported who is not able to live without the appropriate supports in place.**

Rachel, PSA member (FACS)

### Department of Health

#### CASE STUDY

**John is a 19-year-old young man currently experiencing homelessness as a result of his previous service provider closing down. Despite the best efforts of his disability advocate, John has spent the last nine months residing in the dementia ward at the local hospital. The community has resorted to developing a 'go fund me' page to assist John in securing the financial capital to access alternative private housing options. The lack of appropriate accommodation options for people with disability in our region has been exacerbated by the loss of ADHC**

**funded crisis accommodation and will continue to result in the unnecessary hospitalisation of people with disability who have nowhere else to go.**

#### Sandra, PSA member (higher education)

NDIS participants are slipping into the void created between the Commonwealth-funded NDIS and State-funded Health, with the NDIS & Health regularly in dispute as to who is responsible for funding. This is resulting in a maximised use of resources but minimal outcomes for PWD. There are countless reports of PWD being denied NDIS support because supports were "best met by the health system".<sup>3</sup> Without a public safety net in NSW, people with complex disabilities are being thrown into an overstretched hospital system, where the pressures are always on available beds. With nowhere else to go, many PWD are finding themselves stuck in the hospital, which is impacting their quality of life, and is putting a great strain on the Health system;

*"I have been informed by colleagues in Lismore that there are people in the local hospital blocking beds because they are too high risk for disability services to support."*

Jane, PSA member in disability services

*"My mother... has been neglected by the NDIS system. This neglect has resulted in her having multiple falls due to inadequate staffing levels and equipment at her residence. Since the falls she has lost her ability to walk on her own feet and now requires specialist care, which there isn't a provider for, and as such has been left to sit in a public hospital bed for the last few months awaiting an NDIS provider to be willing to take her on."*

Hamish, PSA member (Justice) and PWD parent

*"We are in a constant battle with health re whether someone's condition is primarily a health issue or disability."*

Liam, PSA member (FACS)

#### CASE STUDY

**An NDIS participant living in a group home with a diagnosis of moderate intellectual disability/mental health as well as mobility and behavioural support needs fell while in the community, sustaining a broken hip and pelvis. The PWD was hospitalised and underwent surgery. As the PWD has limited capacity to engage in rehabilitation they have been in hospital for over two months but are still unable to mobilise.**

**The hospital has declined to rent the appropriate equipment in order for the PWD to return to the group home, identifying this as the responsibility of NDIA. However NDIA identify this as a medical**

3. <https://www.theguardian.com/australia-news/2017/oct/04/disability-advocates-warn-ndis-rollout-could-have-disastrous-results>

**issue and will not provide funding for the equipment. Meanwhile the non-government organisation managing the group home will not accept the PWD back into the group home, identifying that they cannot afford the 1:1 staffing required for manual handling as well as the staffing “on costs”. It has become evident through this series of events that the PWD has no option other than to go to a nursing home. Prior to the privatisation of ADHC, a multidisciplinary clinical team was able to provide a clinical assessment, appropriate equipment, manual handling and safe work practice recommendations to support the PWD to safely return to their home.**

**Amy, PSA member in disability services**

#### **CASE STUDY**

**A non-verbal NDIS participant with a severe intellectual disability, Spastic Quadriplegia, who has high physical and medical support needs and is totally dependent on group home staff support for all activities of daily living received only standard NDIS funding for therapies to the value of \$10,000. This participant requires complex Occupational Therapy, Dietician and Physiotherapy Supports, she is also fed via Naso-gastric tube and requires daily tube management and routine tube replacement. The allied funding was exhausted halfway through her annual NDIS plan. A plan review was requested and denied by NDIS who directed the NDIS funded Service Coordinator to Health for all clinical therapies. Health declined to fund the therapies deeming it the responsibility of NDIS. An internal review was requested by the Disability Advocacy NDIS appeals office and a case conference was held by telephone with the Administrative Appeals Tribunal. In the meantime, the participant was using her minimal savings to pay for life saving therapies that are directly related to her disability diagnosis. The participants plan has been extended by NDIS for a further 6 months whilst awaiting the outcome of the hearing.**

**Amy, PSA member in disability services**

In situations where PWD are in hospital for a medical procedure both the medical professionals and the patient being put at a disadvantage without a public safety net. Issues such as challenging behavior are not managed, understood or supported in Health system. When ADHC was still in place, the hospital could easily call an ADHC caseworker who was familiar with the individual. For health professionals who don't understand a person's disability, even a basic task such as getting them to take their medicine can be a massive feat. It can be due to the health professional's lack of knowledge about the PWD complexities, the lack of trust the PWD has for the health professional, or often, a combination of both. There have been incidences where hospital staff spend all day trying to get a PWD to take their medication (by that point the person has already missed two doses). When the patient's

DSW arrives, the patient takes their medication after being asked only once. This is able to happen because of the level of trust and understanding between the PWD and their support worker. Under ADHC, these DSWs had far greater access to their participants while being cared for by the Health system.

#### **Department of Justice**

There could be no more inappropriate placement or outcome for PWD than upon the collapse of their accommodation and other social supports in the NDIS, they then land with Corrective Services NSW. This however is a real risk without an appropriate public sector safety net for PWD whose needs are beyond the capacity of current services. The dismantling of ADHC also means there is little to no support in the community to coordinate the release of PWD already incarcerated, meaning they may spend more time in gaol purely because of a lack of appropriate options.

This is not new territory for ADHC. ADHC's Criminal Justice Program (CJP) is designed for people with disabilities who have high needs, have committed a crime and can be a danger to themselves or others. FACS still operate 15 SLA's under its Community Justice Program (CJP) and Integrated Services Program for Client under Custodial or other court/Health orders. These clients usually have been in Correctional or Juvenile Custody with a criminal record. This program was set up so that people with disabilities could receive the quality care they needed, avoid the criminal system and stay out of jail.

At the time of writing FACS is currently scoping these services for privatisation notwithstanding their complexity and the documented concerns regarding the outcomes of the privatisation of other SLAs. In the interim the Association has concerns regarding the staffing mix and

Current issues are that FACS is not filling vacant jobs and using agency staff (backpackers) to operate units. This practice represents a is danger to staff and clients alike as the residents often have a history of absconding and are not meant to be alone in the community with a 24/7 requirement to maintain a “line of sight”. The contract staff engaged are not properly trained and the clients have a history of violence.

The Association has raised the recruitment issue with FACS however their acknowledgement of the issue has not been forthcoming. Instead we consequently have a service for arguably the most demanding and resource-intensive cohort of the community who face the most serious of ramifications managed by a transitional, unqualified and temporary workforce.

Post-privatisation the Association has grave reservations regarding the capacity and competence of the non-government sector to operate a service where the added demand for resources to prevent criminal offending is not compensated in the NDIS. Association members in other areas are already noticing a service gap emerging;

*“Another gentleman, who has criminal charges crimes against children ( sexual assault) was released into a*

*service with a line of sight order- this is not something that the NDIS will fund as its related to his criminal behaviour and not his disability. Before he could be transferred to my area he reoffended and is again in custody. I am supporting a young Aboriginal girl with a diagnosis of Foetal alcohol syndrome who is also in the criminal justice system- Family & Community Services do not see her as needing their support as she has an NDIS plan- she is only 15 and should have a joint approach between child protection and allocated disability supports but Community Services are unskilled in this area so no action is taken."*

Jane, PSA member in disability services

At least one community-based service specialising in the complex area of PWD and preventing recidivism has already disappeared on the North Coast of NSW, presumably as they now fall in this gap between rigid funding sources;

*"The Personal Helper and Mentors program was a recovery-based mental health initiative with proven results in crime prevention and harm reduction. The de-funding of this recovery and prevention focused service will lead to increased numbers of people with mental health issues being channelled through the criminal justice, health and housing system."*

Sandra, PSA member (higher education)

*"Those who rely on the provision of services... are, in effect, at the mercy of this rollout process. They bear the brunt of poor service quality, lack of service availability and, ultimately, service provider failure".<sup>4</sup>*

## Chapter C

# WORKFORCE ISSUES IMPACTING UPON THE DELIVERY OF DISABILITY SERVICES

## (Inquiry term of reference (g))

### Background

Prior to the privatisation of ADHC, its employees were engaged under one of three State Awards:

- Crown Employees (Public Service Conditions of Employment) Reviewed Award 2019;
- Crown Employees Ageing, Disability and Home Care – NSW Department of Family and Community Services (Community Living Award) 2015; and

- Crown Employees (New South Wales Department of Family and Community Services) Residential Centre Support Services Staff Award 2015.

Each of these Awards were connected to the Crown Employees (Public Sector - Salaries 2015) Award for salary rates and salary increases.

Broadly speaking, employees within Community Support Teams were subject to the former Award, employees in supported accommodation in the community were within the scope of the 'community living' award whilst those engaged in large residential centres were subject to the 'residential centre' award.

The Committee should require no reminding of the process which the Government undertook to transfer public sector workers employed by ADHC to the new selected private sector providers. No options were provided to employees nor redundancies offered, rather they were transferred, via purpose-built legislation, to their new employers as though they were part of the organisation's chattels and as though they were part of a sale of property.

As compensation employees were offered by Government a 'transfer payment' of up to eight weeks, conditional upon their length of service, and a two year 'employment guarantee' with their new employer (six months in the case of casual employees). This employment guarantee included that their terms and conditions of employment would not be altered by their new employer during this period. It in effect operated in parallel with and addition to the provisions of section 768 of the Fair Work Act 2009 (Cth) which in the event of State public sector employees being transferred to the national system creates a copied State instrument which cannot be replaced for up to five years other than through enterprise bargaining<sup>1</sup>.

The preservation of the terms and conditions of employment in these copied State instruments is considered of utmost importance to the Association and its members due to the significant margin between them and standard industrial instruments in the disability sector. These margins would not only potentially impose a significant cut in the take home salary of current employees were they operate but act as a disincentive for retention of the current ADHC workforce

Enterprise bargaining has been rarely utilised in the disability sector and consequently the vast majority of employees with non-government organisations are engaged under the Social, Community, Home Care and Disability Services Industry Award 2010. Even taking into account the increases to salary rates in this Award won through the 2011 Equal Remuneration Case a DSW employed through the applicable copied State instrument, when incorporating current wage growth at a conservative 2.5%, is some 25% better off. In fact even after the full implementation of the equal remuneration decision the highest salary bracket under the Federal award is lower than the entry rate for new employees under the relevant State instrument as the tables illustrate on the next page:

4. <https://theconversation.com/understanding-the-ndis-the-challenges-disability-service-providers-face-in-a-market-based-system-57737>  
1. S768AO(2)

**Social, Community, Home Care and Disability Services Industry Award 2010**

		<b>Current salary</b>	<b>Equal Pay Order</b>	<b>2020 salary</b>
<b>Level 2</b>	Year 1	\$35 778	\$6 325	\$42 103
	Year 2	\$36 905	\$6 773	\$43 678
	Year 3	\$38 026	\$7 267	\$45 293
	Year 4	\$39 042	\$7 850	\$46 892
<b>Level 3</b>	Year 1	\$39 042	\$7 850	\$46 892
	Year 2	\$40 169	\$8 867	\$49 036
	Year 3	\$41 024	\$9 055	\$50 079
	Year 4	\$41 858	\$9 813	\$51 671

**Crown Employees ADHC – FACS (Community Living Award) 2015**

	2015	2016	2017	2018	2019	2020
<b>Year 1</b>	\$49 799	\$51 044	\$52 320	\$53 628	\$54 969	\$56 343
<b>Year 2</b>	\$50 675	\$51 942	\$53 240	\$54 571	\$55 936	\$57 334
<b>Year 3</b>	\$52 002	\$53 302	\$54 635	\$56 000	\$57 400	\$58 835
<b>Year 4</b>	\$53 014	\$54 339	\$55 698	\$57 090	\$58 518	\$59 980
<b>Year 5</b>	\$54 015	\$55 365	\$56 750	\$58 168	\$59 622	\$61 113
<b>Year 6</b>	\$55 502	\$56 890	\$58 312	\$59 770	\$61 264	\$62 795
<b>Year 7</b>	\$56 466	\$57 878	\$59 325	\$60 808	\$62 328	\$63 886
<b>Year 8</b>	\$57 460	\$58 897	\$60 369	\$61 878	\$63 425	\$65 011
<b>Year 9</b>	\$59 383	\$60 868	\$62 389	\$63 949	\$65 548	\$67 186
<b>Year 10</b>	\$61 314	\$62 847	\$64 418	\$66 028	\$67 679	\$69 371

The Association concern regarding the margin between public and private sector industrial instruments was not limited to salaries however but extended to conditions of employment that its members had accumulated over many years of negotiation and considered vital to professional work practices. In particular these included fair and safe rostering principles, which previously were contained in policy documents between the Association and ADHC but were subject to a fiercely contested but ultimately successful application to include them in the Award pre-privatisation.

It should be apparent to the Committee then that there remains post-privatisation a significant gap in remuneration and employment conditions between former ADHC employees now employed by the non-government organisations and their traditional workforces. The workforce could consequently

be considered as having two tiers, and one of either two approaches can result. Either a 'rising tide floats all boats' position will be adopted where all employees in the disability sector see their conditions of employment rise to those of their former public sector counterparts, or a 'race to the bottom' where cuts are made to the latter workforce.

It is obvious to the Association only twelve months after the privatisation which of these approaches is being implemented by most providers.

**Cuts to conditions of employment**

Notwithstanding these Federal and State legislative protections, new employers and service providers have sought to cut, limit and reduce the employment rights of transferred employees.

Since the transfer of NSW public sector disability services and their employees to the private sector, the PSA has received more than 800 inquiries from members regarding the application of their employment conditions this year alone.

These issues have included, but are not limited to:

- application of flexible working hours
- underpayments
- parental leave
- rostering
- workers compensation
- overtime
- increments
- access to training
- meal allowances
- investigations of misconduct
- carer's responsibilities
- redundancies
- secondary employment
- leave entitlements
- transfers

Some issues have been more frequent and reoccurring. The first of these is in regard to casual staff. Unlike permanent employees, casual employees were only provided an employment guarantee of six months. Most employers immediately terminated their employment agreements upon the expiry of this guarantee and re-engaged the same employees on lower rates under the Social, Community Home Care and Disability Services Industry Award 2010. This has led to an immediate significant drop in take home pay for these employees, and has acted as a disincentive to remain in the sector.

Work in the disability and social services sector generally is increasingly precarious, often involving contract, part-time, on-call, casual, split-shift and other types of employment. Casualisation rates in the industry in the private sector are at about 40 per cent, compared to 15-20 per cent in the public sector.<sup>2</sup> Since the NDIS was introduced, the disability sector has seen a significant rise in casual employment. Casualisation has meant employees feel less secure and increasingly disposable. It has not only impacted on the working lives of members but the collective morale in the sector:

*"At least as a permanent staff member if they try and get rid of you unfairly it is more visible. But as a casual employee you haven't got a hope."*

Dylan, PSA member in disability services

*"...we only employ casuals it's easier if the client doesn't like you or mum doesn't like you – it's just easier that way."*

Shay, PSA member in disability services

*"Group homes rely primarily on agency staff which change from shift to shift. This is very hard for*

*complex clients to cope with. They need consistent familiar staff who can provide them with a stable and predictable routine. When this doesn't happen it impacts negatively on their behaviour and ability to cope with change."*

Melinda, PSA member in disability services

There is an increase in the casualisation of the workforce which is having a negative impact on people with disability. Many clients are vulnerable, have multiple diagnoses including physical and intellectual disabilities as well as mental health complications which can result in them being physically threatening. A key form of support for many of these people is having a stable group of people they know supporting them. It can take months for a new disability support worker to build the trust and confidence of a particular client in order for the client to have the sense of security needed for an improved quality of living.

With the private providers, many ongoing employees are being replaced by casual staff and agency staff. This means that clients are supported by unfamiliar faces, strangers they have never met resulting in months of work and development being lost. This can also lead to increased violent behaviour, agitation and disruption in the group home environment.

One of the proclaimed benefits of the NDIS was that services would be more demand-focused and flexible. Service provision would be dictated by the need of the participant rather than subject to the capacity of a service. This has led to providers attempting to alter their rosters and staffing in ways that are disadvantageous for employees;

*"Staff are now being asked to work double shifts on a regular basis and even on at least 2 occasions 24 hrs straight which is not only impracticable but downright dangerous to staff and the people they are supporting."*

Peter, PSA member in disability services

*"Where your daily shift can be broken into two short shifts this makes your working day longer as you have to return in an hour or two after leaving and it cost you twice as much to attend work. This is at the cost of family life as you are needed for the morning and then the evening so no breakfast at home and no dinner either with the family."*

Juliette, PSA member in disability services

*"I have a daughter that is working in the industry and is being split shift to start at 7.00am which means out of bed at 6.00am and then being asked to work until 9.00pm. This could result in her working a total of 4hrs and being on call to them for 14 hours...Try doing that for \$500.00 a week?"*

Eric, PSA member (Justice)

*"I live in a rural area of Northern NSW and the thought of having to do split 3 hour shifts is also a great concern due to vast distances needed to travel and the high price of fuel."*

Justine, PSA member in disability services

The lack of regulation in shift requirements also puts people with disability at risk. The PSA understands that a House With No Steps unit changed its policy so that where there is no manual handling required, only one staff member will be allocated to a shift. This demands unrealistic multi-tasking of disability support workers whose shifts require them to perform domestic duties such as cooking and cleaning, as well as medical and behavioral management. The Association believe that the government should have regulated the roster system across all providers to reflect the former ADHC-transferred roster as it geared to meet both the needs of the client and the WH&S of the workers.

The marketisation of disability care within the NDIS landscape poses significant challenges to the viability of disability service providers. Given the funding limitations imposed by the NDIS pricing system, service providers will be forced to diversify their services to cover their overhead costs. This will result in a loss of focus on the core business of supporting and empowering people with disability. Many service providers are now running on deficit budgets and some, as in the recent case of FSG Australia, will be forced into administration. The limitations on support co-ordination in individual's plans also means that service providers will be forced to undertake this work for the benefit of clients without any financial reimbursement.

*"The organisations are trying to balance "billable hours" with how much staff are being paid (needing to also cover the entire system, resources, buildings and management). Staff are working very hard but can they bring enough money in? constant reminders from management that the staff need to do more billable hours to be sustainable. Targets are 75% of working hours – this is an impossible target given all the incidental work that also needs to be covered and when considering the mental health of the staff!!"*

Colin, PSA member in disability services

There is an increased focus by accommodation providers from not what is necessarily in the interest of the participants, but what is recognised by the NDIS and billable to the participant. Operational requirements such as awake night shifts are under pressure, as are essential professional development, networking and case planning;

*"How can staff develop and review client Individual Risk Profiles, behavior support, health care, mealtime management, epilepsy plans and all other relevant client plans as a team and in consultation with stakeholders when team meetings are not funded?"*

Amy, PSA member in disability services

*"Having worked with ADHC for 20 years I saw the expertise the staff had and the team approach to each client. Now most services are delivered without collaborating and working as a multidisciplinary team as funding allocation effects this."*

Erin, PSA member (Education) and formerly in disability services

A further driver of these cutbacks is one that should have been apparent to all parties at the tendering stage. Several private providers have bemoaned to the Association the gap between the hourly rate for accommodation paid by the NDIS, which is based on the Award, and that paid to former-ADHC employees under the copied State instrument. The Association remains unsympathetic to this issue, it was contingent on the successful NGOs to undertake due diligence at the time of tendering when this gap would have been readily identifiable. It is the view of the Association that the rates paid to its members under the copied State instrument are an appropriate recognition of the complexity and responsibility their job entails, and the adjustment needs to be made at the NDIA end to raise rates accordingly rather than reducing the take home pay of former ADHC employees.

*"Ultimately, no good can come from a system predicated on creating an underclass of workers to provide [disability services]. You just can't neatly swap one social disadvantage for another."*

Dylan, PSA member in disability services

### **Impact on morale of sector and client outcomes**

The privatisation of ADHC was excruciatingly drawn-out and poorly communicated to employees. Most of the workforce were made to feel as disposable chattels being passed on from one owner to the next with no consideration of their input sought nor opportunity provided. For many it has only been their commitment to the work they undertake and their relationships with participants that have motivated them to remain in the sector during a disempowering and frustrating process.

Now that the privatisation is complete for the majority and the uncertainty of their collective future has somewhat lifted, most members of the Association are struggling to deal with the regime change. The pressures outlined above have not only detrimentally impacted their employment conditions and particularly their working hours, but also the professional satisfaction they experienced as being part of a well-resourced and professional statewide service.

*"Under NDIS it is about quantity of clients, money and speedy service ie it is a business. With ADHC it was about quality service and monitoring even after an intervention and making necessary changes."*

Erin, PSA member (Education) and formerly in disability services

*"I have never heard my workmates talk about work in such negative ways to the point that they don't want to even be there."*

Juliette, PSA member in disability services

*"There are several staff off on work cover and many more are close to burn out stage."*

Peter, PSA member in disability services

What this means is that at a time when Australia is foreseeing a dramatic increase in disability support jobs, NSW is seeing a mass exodus of experienced and qualified staff from the sector. When you then consider the lack of training being made available to new staff and the very low bar that has been set to quality for positions, this can only lead to a dysfunctional industry and a lower standard of care for people with disability.

*"The privatisation of disability services has impacted greatly on disability employees, who have no security of tenure, no certainty and are under a great deal of stress trying to cope with an extremely dysfunctional system and meet billable hours etc. Employment conditions have deteriorated, and will continue to deteriorate further if nothing is done about it. Good, experienced, educated, skilled and knowledgeable staff are leaving the disability industry in droves as they become increasingly disquieted by the deplorable way that they are treated and the lack of respect afforded them and their professional integrity. No acknowledgement is made of professional integrity whatsoever as the industry becomes totally reliant on a business, profit dominated model of service provision. Employee health both physical and psychological is compromised, thus optimal service delivery cannot be ensured. The degree of commitment of staff to their work fades as they become resentful about the way they are treated and seek alternative employment. Staff morale is at an all time low."*

Judith, PSA member in disability services

In the non-government sector there appears to be a much lower emphasis on experience and no expectation or encouragement to improve. The focus on the staff is to reduce cost, both in hours worked and in the day to day duties;

*"There is a black and white difference between the two workforces, the most obvious difference between non-government sector and the government sector being experience."*

Juliette, PSA member in disability services

The majority of people usually only work in disability for up to five years in the non-government sector, in contrast to the government sector where employees looked forward to making it their careers. This was attributed to not merely the remuneration, but the training, education and work benefits that made up the conditions of employment. The privatisation of ADHC dismantles a career trajectory for disability support workers that has long existed where workers would go on to work in more senior roles in the department. This is highly beneficial in not only staff development but provides stability for the workers, the department, and for the clients themselves. The loss of a career trajectory for disability workers and the subsequent high turnover of staff and unskilled workforce is at the detriment of the people the NDIS is tasked to protect.

The absence of funding for training of disability workers in the NDIS has already led to a lower paid and deskilled workforce. Without proper training and remuneration, the disability market will find it hard to attract new workers and may come to rely on a largely unskilled contingent labour workforce. In some areas this is already occurring and has led to a de-professionalising of the disability workforce.

There is even a feeling amongst disability workers that in order to respond to market pressures and maximise profits, the non-government and private sector is perhaps even intentionally pushing out permanent and/or experienced staff and replacing them with inexperienced casual staff;

*"Casuals with lots of experience who had been in system for years were over looked/ not interviewed for Permanent part time positions instead people off the street with no experience were given those positions."*

Peter, PSA member in disability services

### **The resultant convenient but avoidable 'workforce crisis'**

The Productivity Commission estimates that one in five new jobs created in Australia in the next few years will need to be in the disability care sector.<sup>3</sup> This will be in attempt to tackle the growing care deficit caused by a steady increase in the proportion of disabled people in the Australian population. Over the next 40 years, the number and proportion of people in Australia with severe and profound disabilities is projected to rise from 6.7 per cent to 10.2 per cent of the population<sup>4</sup>. This is in stark contrast to the reality of what the implementation of the NDIS has done to disability service jobs in NSW.

The PSA is aware of at least two non-government providers who have reported that they will be recruiting workers internationally to bolster their current workforce. This is mainly due to the difficulty recruiting disability support workers when the market does not support adequate pay and conditions. Recruitment of workers from overseas on

3. <https://theconversation.com/the-ndis-costs-are-on-track-but-that-doesnt-mean-all-participants-are-getting-the-support-they-need-79424>

4. Miller, P. and Hayward, D. (2017), 'Social policy 'generosity' at a time of fiscal austerity: The strange case of Australia's National Disability Insurance Scheme', *Critical Social Policy*, Vol. 31, No. 1, pp 128-147

457 Visas demonstrates not only the lack of development of the disability workforce to support the market, but also leaves those workers open to exploitation.

The welfare of clients may suffer twofold. An increased casual workforce whether domestically or internationally sourced will be less likely to make interpersonal bonds with participants, but also be unfamiliar with their physical, psychological, medical and behavioural needs. Further, foreign workers on temporary visas will be less likely to whistle blow or fulfill their mandatory reporting requirements, due to fear of losing their visa status.

The hiring of cheap foreign labour is also being done at the detriment of local workers. The PSA understands that Australian workers who were unsuccessful in their applications to work at the Cerebral Palsy Alliance subsequently learned that the organization had recently been in the Philippines to canvas the hiring of staff on 457 Visas.

*"The system just does not seem to be sustainable. Clinicians are leaving the disability service in DROVES. The new jobs are being advertised at approx. 40% less pay (to make them sustainable) which is not attracting ANY suitable applicants. Positions are being left unfilled, strain on existing teams who simply cannot to the work. Qualified staff will not work for such little money with so many demands. The workplace is miserable, morale is low and no one (management) cares because the bottom line is all about billable hours. No one joined disability services to become accountants and the collegial spirit has disappeared – we hardly have time to talk with each other. There is no consideration for the health and wellbeing of the work force. "*

Colin, PSA member (FACS)

Developing and maintaining a workforce which understands and responds to the needs of people with disability is key to ensuring that the choice agenda espoused by the NDIA is more than just policy rhetoric. A UK study of public services found that the major drivers of quality are: "lower user-staff ratios, better qualifications and experience, and adequate remuneration to attract and retain good employees"<sup>5</sup>. The catch is that these attributes can often make up a large proportion of costs for service providers and are therefore not being included in the provision of services across an array of providers in NSW;

*"Service providers are now all about calculating the amount of dollars they can make and not the provision of quality educational or vocational services therefore the safety net that was previously there for especially lower functioning customers is no longer there and some have already fallen through."*

Peter, PSA member in disability services

The Association is of the strong belief that the only way for the NDIS to be successful is for the government to enforce these qualities on all providers.

There is high anxiety among the families and carers of people with disability that the casualisation of the workforce and the mass exit of long term staff will leave large gaps in industry and participant knowledge;

*"I have grave concerns about some of the staff employed by providers due to the demand on those services surviving the rollover to the NDIS because some don't appear to have much knowledge about disabilities, about how to relate to people with a disability in general. Staff are not aware of policy and regulation due to what appears to be lack of training/experience"*

Monica, PSA member (FACS) and PWD parent

The disability sector is experiencing a flux in casual workers and an exodus of experienced staff. The disbanding of ADHC has put all disability workers at the mercy of non-government and private providers, who themselves are at the mercy of the market. This has resulted in an increasingly unskilled, casualised workforce, high staffing turnover, and the abdication of many experienced public sector staff from the industry. ADHC staff had a vast knowledge of the different aspects of the multitude of diagnoses. ADHC staff were proficient in various forms of communication, including verbal and non-verbal. They had the ability to recognise the very early signs of a seizure or illness or the antecedence to behaviors of concern based on their intimate knowledge of the individual client. NDIS clients with complex needs require the vast knowledge of experienced people. They do not do well with constant change of staff. They require consistency of care by the people who know and understand the different facets of their needs;

*"They [the participants] do not do well with constant change of staff, they require consistency of care by the people who know and understand them. They can be violent, abusive, sexually motivated unable to communicate in the normal sense, they do things that would not be tolerated in normal workplaces."*

Juliette, PSA member in disability services

*"The thought of staff being obtained by an agency sending in casual staff who have little to no experience working in the disability sector being placed in a group home with very high behavioural needs is terrifying for family and staff alike."*

Justine, PSA member in disability services

*"...we had a very complex diagnoses client break his pelvis, when he was discharged from hospital the staffing levels required to be increased so that*

5. Miller, P. and Hayward, D. (2017), 'Social policy 'generosity' at a time of fiscal austerity: The strange case of Australia's National Disability Insurance Scheme', *Critical Social Policy*, Vol. 31, No. 1, p142



*this client could be observed 24 hours a day with 1:1 staffing. This was to prevent him trying to walk and risk further damage, he also required physiotherapy. By the time he was assessed and it was approved it was all too late. This client - who already had difficulty mobilising - has lost at least another 40% of this ability. This is the result of not being able to access quality care efficiently through the NDIS."*

Peter, PSA member in disability services

The preference of providers to hire unskilled, inexperienced workers is of great concern for the welfare of people with disability. These workers will not understand the complex needs of people with disability and may not be capable or willing to distinguish between needs and wants, or will simply choose the "easy" solutions to problems;

*"...we have never had so many clients on thickened fluids and puree food as inexperienced people dismiss the comments of carers."*

Juliette, PSA member in disability services

*"I personally have seen this inexperience at work with a wheel chair ordered and custom made for a client... except the client has seizures and requires midazolam for this to be administered while in the chair the chair need to be able to tilt. As a result, the lack of experience of this particular professional cost the NDIS around \$6,000 for a chair to be put in the garage."*

Peter, PSA member in disability services

Clinical supports have also declined in standard and there are less hours available for clients. There have been reports of clinicians using other participant's plans. For example, under ADHC, a participant would have been supported by an experienced disability OT/ physio/psych multidisciplinary team with a holistic approach. Under the NDIS, that same client may find themselves supported by a clinical practitioner who does not have experience in disability and when the participant's allocated plan funding runs out the service simply stops.

This is a manufactured workforce crisis where the beneficiaries are the providers in being able to mount arguments to access cheaper labour and the loser are the participants. Caught in the middle are the current workforce, desperate to maintain their professionalism and service standards, but often now at their own detriment.

The solution is not the recruitment of a new, cheap workforce, it is the retention, recognition and appreciation of the current one. Where new workers are required either due to increased demand or natural attrition, they should be recruited to the sector knowing that there is a career available to them and not piecemeal work. A casualised industry will bring a casualised attitude in its workforce.

Without government intervention on these issues the race to the bottom in employment standards will continue. If there is likely to be a skills crisis in the sector due to increased demand as projected, then this needs to be addressed and managed by all levels of government and not left to labour market mechanisms. The State Government can play a vital part in incentivising quality entry-level training through providing subsidised and regionally accessible qualifications through the State training provider, TAFE.

A successful NDIS depends on more than money, but the best people to deliver it.

## Chapter D

# A WAY FORWARD

## (Inquiry term of reference (j) and (k))

### The State of the nation

The issues outlined with respect to the NDIS are not unique to NSW. They are compounded however by the State Government's decision to be the only jurisdiction to completely relinquish all public control to the non-government and private sector. Understanding the state of play in other jurisdictions is crucial for the Committee to appreciate the unique and untenable position NSW is facing.

### Victoria

On 18 December 2017, the Victorian government formally announced they would proceed with plans to tender DHHS (Department of Health and Human Services) disability services to the non-government sector.

The government have announced they are proceeding with a tender process for non-government providers to deliver disability accommodation (also called Supported Independent Living) and respite (Short Term Accommodation and Assistance) services in Victoria. Tender proposals will be shortlisted from mid-2018 and services will transfer from 1 January 2019.<sup>6</sup> The government will remain a service provider in some form though, with the DHHS will continue to run the five group homes built for the residents of the former Sandhurst Centre, the Disability Forensic Assessment and Treatment Service (DFATS), Disability Justice Case Management and specialist forensic accommodation services. The DHHS will also continue to operate client services, outreach and BIST (Behaviour Intervention Support Team).

HACSU (Health and Community Services Union, representing disability support workers in Victoria), have won protections for workers in the privatisation, including:

- 8 years of job security, conditions and quality care protections until 31 December 2025, including the maintenance of hours, protection of classification structures, protection of accrued

6. <https://www.vic.gov.au/ndis/tender-to-deliver-disability-accommodation-and-respite-services.html>

leave and entitlements, all prior service recognised and preservation of superannuation.

- 29% in wage increases over 8 years (6.5% in the first 6 months and 17% in the first four years)
- Up to \$15,000 in transfer incentive payments
- \$2,000 in sign-on payments
- The option for a limited number of staff to take a redundancy rather than transfer
- Redeployment opportunities will also be available.<sup>7</sup>

#### *Western Australia*

Under the Barnett Liberal government, WA had planned to privatise 60% of disability group homes, while keeping 40% government-run, purportedly to service the most complex cases that the private sector will not take on. Under the Liberal government, WA was also rolling out their own version of NDIS ('WA NDIS') which featured a state-run Local Area Coordinator model. The State Government commissioned a report by Stanton's International which found that the WA NDIS trial was equal or better for outcomes to end users than the national model run by the NDIA. The methodology of the report came under fire from the federal government however, with Social Services Minister Christian Porter reiterating the federal government's position that WA should join the national NDIS delivery model.<sup>8</sup>

With the change of government in February 2017, the new McGowan Labor government announced that WA would sign up to the national NDIS model. A new bilateral agreement was signed in December 2017, with the federal government assuming responsibility for the roll out from July 2018, and all participants transferred to the national scheme by December 2018.<sup>9</sup> The McGowan government has also ceased the privatisation of disability group homes. Despite ceasing of further privatisation of group homes, some workers have reported cases of subtle pressure being placed on families to consider transferring the client to a private facility, particularly in accommodation with low numbers. Experience from other jurisdictions demonstrates that in such cases, publicly-run facilities risk closure due to 'low numbers.'<sup>10</sup>

#### *South Australia*

The Labor government announced in February 2017 that they would commence the privatisation of disability services to non-government service providers "in response to Commonwealth changes to aged care and disability funding."<sup>10</sup> The changes include the transfer of Metropolitan Domiciliary

Care (which provides in-home care for older people) to the non-government sector by June 2018, along with other disability services to be transferred to the non-government sector over the next few years. They announced that government supported community accommodation services will stay with government and will operate commercially. The announcement stated that 1,100 state government staff would transfer to the non-government sector out of a workforce of 2800, and that staff who transfer will have their terms and conditions protected in a transfer agreement, while those who choose to remain with the public sector can be redeployed.

The Public Service Association SA, the union representing public sector disability workers, outlined in February 2018 the government's plan for each part of disability services and the issues for workers:<sup>11</sup>

#### **Service**

Group Homes

#### **Future Direction**

Creation of a Public Corporation within State Government (like SA Water).

#### **Issues for Members**

This will involve a significant restructure. The PSA will be involved in ensuring staff conditions are protected because staff would still be employed under the Public Sector Act.

#### **Service**

Community Services

#### **Future Direction**

No longer provided by the state.

#### **Issues for Members**

Currently being "reshaped" to support move to NGO sector. All staff are materially affected. The PSA will support members through the process.

#### **Service**

Recreation and activities and CTASS

#### **Future Direction**

Will be provided by NGO sector in the future. Consultation to commence soon.

#### **Issues for Members**

Consultation will commence soon. All staff will be materially affected. PSA will support members through this process.

#### **Service**

Child and Youth Therapy and ECEI

#### **Future Direction**

Creation of an Employee NGO Mutual. Constitution established and approval given by the NDIA. Staff will be represented on the board.

#### **Issues for Members**

Staff can continue as disability workers but employed by the employee mutual. The PSA will provide information and

7. HACSU member newsletter 15 Feb 2018, <https://hacsu.asn.au/file/36256/13806>

8. <https://thewest.com.au/politics/state-election-2017/porter-hits-out-at-wa-over-ndis-ng-b88403644z>

9. <https://www.perthnow.com.au/news/wa/wa-moves-to-federally-run-national-disability-insurance-scheme-ng-b88688372z>

10. <http://www.dcsi.sa.gov.au/latest-news/media-releases-2017/changes-to-in-home-aged-care-and-some-disability-services>

11. <http://www.cpsu.asn.au/latest-news/dcsi-disability-and-the-ndis>

support for this new venture.

**Service**

Adult Therapy and Residual Therapy services

**Future Direction**

Move to NGO sector.

**Issues for Members**

All staff will be materially affected. The PSA will support members through the process.

**Service**

Corporate/implementation

**Future Direction**

Wind down over time as NDIS commences.

**Issues for Members**

Staff will be impacted over time as the NDIS is rolled out. The PSA will support members through this.

**Service**

Highgate Park

**Future Direction**

Individualised approach – reconnecting to the community.

**Issues for Members**

All staff will choose between a move to the NGO sector or be materially affected. The PSA will support members through the process.

It is unclear at this stage whether the change of government earlier this year will make any changes to the outsourcing of disability services and the roll-out of NDIS.

*Tasmania*

The Tasmanian government had already outsourced the delivery of specialist disability services to the non-government sector as part of its human services reforms prior to the roll out of the NDIS.<sup>12</sup>

*Queensland*

In addition to funding non-government organisations to provide disability services, the Department of Communities, Disability Services and Seniors delivers services directly through Accommodation Support and Respite Services (AS&RS). AS&RS provides accommodation support to adults with a disability in their own homes in a community setting with support provided by paid departmental staff and short-term centre-based respite stays primarily for people with intellectual disability who are cared for by their families or other voluntary carers.<sup>13</sup>

The Newman government initiated a process of privatising all disability services and handing over responsibility to the non-government sector, but in 2015 the Palaszczuk government came to power and committed that the government will continue to provide accommodation support and respite services to clients with high and complex needs and new clients accessing services through the NDIS will be able to choose the public disability service provider.<sup>14</sup>

In line with the election commitments of the Palaszczuk Government, the Department of Communities, Disability Services and Seniors will register as an NDIS service provider with the NDIA, and AS&RS will continue to deliver services. Continuity of support means people who do not meet the National Disability Insurance Scheme (NDIS) eligibility requirements but who were accessing a disability service prior to being assessed by the NDIA will continue to receive support consistent with their current arrangements. People receiving support from AS&RS will continue to receive services from the department until the NDIS is introduced in their location. After this time, eligible participants can either choose to stay with AS&RS services delivered by the department, or choose another provider as part of their NDIS plan.<sup>15</sup>

*Northern Territory*

The NT government does not provide disability support accommodation services, but they do provide some behaviour support, therapeutic and support services.<sup>16</sup> The NT government, however, have acknowledged the need for a ‘provider of last resort’ in the roll-out of NDIS. It is the only state/territory to have included a ‘provider of last resort’ framework (POLR) in the case of market failure in its bilateral agreement, which acknowledges the requirement for a POLR as a responsibility of the NDIA. Under the NDIS Provider of Last Resort Framework, in the context of remote or thin markets the NDIA will be required to commission a service to meet the needs of the participant.<sup>17</sup>

Although as Anglicare note their submission to the Productivity Commission NDIS Costs Inquiry in 2017, the POLR arrangement does not clearly define what constitutes ‘service failure’ or how it will be recognised or measured by the NDIA, nor when it is necessary for the NDIA to step in and find a provider of last resort.<sup>18</sup>

*Australian Capital Territory*

The ACT was the first jurisdiction to roll out the NDIS in full and outsource government services, which occurred over

12. <https://documentcentre.education.tas.gov.au/Documents/NDIS%20-%20Frequently%20Asked%20Questions.pdf>

13. <https://www.communities.qld.gov.au/gateway/reform-renewal/disability-services/national-disability-insurance-scheme-queensland/information-rs-clients>

14. <https://qld.awu.net.au/news/labor-minister-announces-disability-services-be-saved>

15. <https://www.communities.qld.gov.au/gateway/reform-renewal/disability-services/national-disability-insurance-scheme-queensland/information-rs-clients>

16. <https://www.ndis.gov.au/medias/documents/nt-provider-list-name/Provider-NT-by-Name.pdf>

17. [https://www.pc.gov.au/\\_data/assets/pdf\\_file/0016/217312/sub0205-ndis-costs.pdf](https://www.pc.gov.au/_data/assets/pdf_file/0016/217312/sub0205-ndis-costs.pdf)

18. <https://www.anglicare-nt.org.au/wordpress/wp-content/uploads/2017/07/Anglicare-NT-response-to-PC-NDIS-Costs-19-July-2017.pdf>

3 years with a loss of approximately 500 jobs.<sup>19</sup> The ACT government has withdrawn from the provision of specialist disability and therapy services provided by the Community Services Directorate and early intervention services provided by the Education and Training Directorate. Disability ACT, which provided support to 153 people with disability living in 55 households, wound up in June 2017, with all clients transferred to the community sector. The ACT Office for Disability continues to provide strategic advice and practical assistance to enable people with disability to enjoy their rights and to assist in the implementation of NDIS in the ACT.<sup>20</sup>

### Rebuilding a State safety net

Aside from the mere inconsistency with the other States and Territories, there are other compelling reasons why NSW should revisit its decision not to remain as a provider within the disability sector. By extricating itself, the state government has not only put people with disability at higher risk of ‘falling through the cracks’, but has also potentially put itself in the dangerous position of holding ultimate responsibility for the market failure of disability services while having no real power to address it.<sup>21</sup> Similar models internationally have always led to local government eventually being drawn back into the sector.<sup>22</sup> Too many PWD – from those with the most complex needs to those with lower level needs – are being left behind in the implementation of the NDIS in NSW and because of this, the state government will inevitably be drawn back to pick up the pieces. The longer the NDIS is allowed to be implemented without a public safety net, the more it will cost the government when it is finally forced to step in and pick up the pieces.

The NSW NDIS delivery system is inherently expensive,

exacerbated by many elements of the design being extraordinarily wasteful in the short-run: new computer systems, new staff roles, major consultancy contracts. The NSW Government could have reduced waste by investing in improving the existing public system and making it a resource and benchmark for the NGO, NFP and private providers. Instead, the government scrapped a public safety net and is in;

*“...danger of wasting enormous amounts of money as the State’s infrastructure is demolished, only to be replaced with something that will end up (because of its poor design) even more expensive.”<sup>23</sup>*

The Association argues that reinstating a safety net for NSW disability services will not be cost-neutral: it will save the State money. The inadequate plans being handed out by the NDIA and the failures of ill-equipped private providers are costing the State by sending participants in the direction of other community services including Health, Housing and Justice. Reinstating a public safety net will take the pressure off these services.

ADHC still has an operative presence, at least until 2020 when it is anticipated that the privatisation of all disability services will be complete. The Association urges the Committee to consider establishing a public sector safety net for PWD in this State to address the shortcomings of the NDIS outlined in this submission and fill service gaps. This is a policy area too important to fail. Lives literally depend upon it.

It is the Association’s respectful submission that a public sector safety net should be compromised of at least four vital elements:

## KEY COMPONENTS OF A NSW PUBLIC SECTOR DISABILITY SAFETY NET

### Area

Accommodation

### Details

- NSW public sector run 24 hour state-wide crisis support teams or emergency response units utilised by PWD who require emergency short-term supported accommodation where either no NDIS assessment has been completed or no accommodation is available;
- Maintain specialist supported accommodation services for PWD whose requirements and ramifications of failure are too great to risk privatisation including, but not be limited to, the retention of all Integrated Services Program, Criminal Justice Program and Specialist Supported Living group homes.
- Maintain and ensure respite centres are available for families supporting people with disabilities with subsidised placements where the NDIS funding is inadequate.

19. <https://www.sbs.com.au/news/act-first-with-disability-scheme-in-full>

20. [http://www.communityservices.act.gov.au/disability\\_act/national\\_disability\\_insurance\\_scheme](http://www.communityservices.act.gov.au/disability_act/national_disability_insurance_scheme)

21. Miller, P. and Hayward, D. (2017), ‘Social policy ‘generosity’ at a time of fiscal austerity: The strange case of Australia’s National Disability Insurance Scheme’, *Critical Social Policy*, Vol. 31, No. 1, p143

22. <https://www.centreforwelfarereform.org/library/by-az/fears-for-ndis.html>

23. <https://www.centreforwelfarereform.org/library/by-az/fears-for-ndis.html>

- A further network of supported accommodation and related services for anyone with a disability who, for whatever reason, is not able to be supported by private providers. This could be due to being evicted from the only provider in their region, or lack of access to the NDIS in part or in full.
- The NSW Government/ADHC become a registered NDIS provider in order to secure funding for the above programs where possible, making them cost-neutral, if not a cost-saving through other budget line areas such as health, to the NSW taxpayer
- The NSW Government to retain all housing assets currently within the portfolio and commercially lease, rather than transfer, them onto private providers through the Land and Housing Corporation.

**Area**

Workforce development

**Details**

- Implement regulations to ensure minimum qualification requirements consistent with industrial instruments and compulsory employer-funded training for workers engaged through NDIS funding.
- Committed funding for consistent training for all staff in disability through TAFE.

**Area**

Policy and regulation

**Details**

- A Government/State Public Sector unit for accreditation, audit, oversight and support of quality safeguards, including training, across the sector. This should include capacity to investigate providers and individuals to ensure quality of service and support.
- Clear regulation by the state government establishing the rights of people with disabilities to a certain level of quality of life, applicable regardless of the provider or the funding source. An ombudsman to be established to investigate individual and systemic issues relating to the level of quality of life with anonymous reporting available and whistleblower protections available regardless of employer
- NSW public sector research and policy unit to ensure best practice and to engage in sector development.
- That implementation, administration and enforcement of the NDIS Code of Conduct be undertaken by Government/State Public Sector unit.

**Area**

Advocacy, case planning and assessment

**Details**

- Committed and recurrent funding for disability advocacy.
- Additional funding for advocacy or legal support with NDIS planning, service level agreements and threat of eviction.
- Provision of teams of qualified, professional and objective case planners to assist PWD and their families navigate the onerous NDIS assessment and review system
- Public investment in early childhood assessment and support.