



**Inquiry into the NDIS Market in Queensland
(Queensland Productivity Commission)**

Australian Community Support Organisation

10 August 2020

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INTRODUCTION

ACSO welcomes the opportunity afforded to us by the Queensland Productivity Commission (QPC) to submit a response towards their Inquiry into the National Disability Insurance Scheme (NDIS) market in Queensland. ACSO has delivered disability support services for over 35 years and currently delivered outreach disability support and operate a statewide residential program in Victoria, accommodating up to 60 people per year. We commenced delivery of Specialist Support Coordination services in South East Queensland as of 2019, targeting high-risk and complex cohorts. Addressing the barriers that render ACSO reticent to fully immerse ourselves in the Queensland, and indeed the national NDIS market, is a key source of consideration for our Leadership group and this submission aims to discuss some of these barriers.

SUPPORTING HIGH-RISK AND COMPLEX PERSONS ENGAGED IN, OR AT RISK OF ENGAGEMENT IN THE JUSTICE SYSTEM

The Australian Community Support Organisation (ACSO) delivers a range of services and programs to hard to reach and at-risk populations including people with cognitive disabilities, acquired brain injury and psychosocial disabilities. The individuals we support are those who more often than not, present with co-existing risk factors including contact with the justice system, problematic alcohol and drug (AOD) use, mental health concerns, intergenerational disadvantage and long-term homelessness.

Since ACSO's inception, we have worked primarily in the high risk and complex needs space and are recognised as a leader in the support of persons with disability and engagement in the justice system. Consequently, in 2015, ACSO were tasked with supporting a small caseload of NDIS test cases considered to be at the extreme end of those termed 'complex cases' due to their level of presenting risk and complexity. Since NDIS inception we have continued to deliver formerly-DHHS funded services under the new NDIS costing framework. As the QPC will be aware, the NDIS cost framework presents a new range of challenges, including prohibitive pricing that reduces the ability of organisations to offer 'high-quality' services and highly qualified staff that meet the needs of complex or specialist cohorts (see UNSW's 'Reasonable, necessary and valued: Pricing disability services for quality support and decent jobs 2017').

In 2016 we commenced delivery of the Queensland Corrective Services, *CREST program*, delivering support to offenders engaged in the criminal justice system including many of the approximately 10% of those persons with intellectual disability in Queensland prisons (cited

in QAI 2016). Are articulated above, we deliver NDIS Specialist Support Coordination in South East Queensland where we target a small number of participants with cognitive disability who are engaged in the criminal justice system including the QLD Forensic Disability Service in Wacol.

Operating at the juncture of multiple service systems provides ACSO with a unique perspective on the impact of the NDIS funding model on institutionalised, disenfranchised and marginalised people in our community. In our submission, we seek to identify the impact of the NDIS funding model on the cohort of people who have a cognitive disability (including intellectual disability, acquired brain injury, autism spectrum disorder, foetal alcohol syndrome) and/or psychosocial disability, and who are engaged with, or at risk of engagement in the criminal justice system.

The cohort that is eligible for our services is highly likely to experience concurrent risk factors including AOD use, mental illness, long-term homelessness and a range of other social vulnerability indicators. Consequently, the support model required for this cohort relies on inter-agency cooperation and in the case of those organisations providing support coordination, a high degree of resilience and tenacity in sourcing suitable and appropriate services for the participant. This is certainly true in Queensland where there is a lack of affordable housing, and a very few providers willing to support high-risk cohorts with complex needs. Support Coordinators are tasked with sourcing suppliers where there is limited choice and, in their role, have very little in the way of influence to direct other services to provide support to people with disabilities.

COMPLEX INTERPLAY BETWEEN DISABILITY AND OFFENDING BEHAVIOUR

ACSO supports people with disabilities who have come into contact with the criminal justice system. In many cases, it is the behaviours and/or presentation of the person, symptomatic of their disability, that puts the person at a greater likelihood of police scrutiny and/or intervention. For example, people with degenerative diseases affecting memory such as younger onset dementia could forget repeatedly to purchase a travel fare or carry their travel card, identification and so on, bringing them under the scrutiny of police and public transport fare enforcers. Demonstrated cases where a person's disability manifests in impulsive and at times aggressive behaviour can lead to serious instances of criminal behaviour such as the inappropriate touching of another person despite the lack of understanding or criminal intent on behalf of the perpetrator.

Whilst these examples are skewed to demonstrate real-world examples where the intention to offend was not present, they neatly explain how the juxtaposition between forensic and disability is much like an iceberg. At the top, exposed, are the visible actions that the person has engaged in and that can be explained as 'forensic' or 'offending' behaviours, for example, unwarranted sexualised touching of another, aggression towards police, high-risk behaviours in public areas, but below this lies a range of behaviours stemming from the person's disability which have in likelihood contributed to the resulting outcome such as impulsivity, cognitive distortions, low inhibitions, impaired judgement, hallucinations and delusions.

Since 2015 ACSO have been advocating for a more nuanced or at the very least, open discussion around the nature of the interplay between the symptoms of disability and offending behaviours yet in our operations our staff continue to encounter a majority of individual NDIS planners and specialist support coordinators who have a compartmentalised view of disability. There have been examples where the NDIS has been reticent to fund psychological counselling designed to address inappropriate sexualised thinking and behaviour even though a qualified psychologist assesses that the person's cognitive distortions stem from their disability requiring a disability-specific treatment response. The assumption that appears to underlie these responses is that state-based justice systems fund such interventions. This is true for a very small number of clients only, where the person is on a specific forensic order. These assumptions result in significant treatment gaps for those living in residential programs without orders and for those who are on community-based supervision such as bail, probation or parole or those who have served their full term within the justice system. In Queensland, there is no disability-related funding for these persons within any of the criminal justice or human service agencies.

Since 2018 an acknowledgement of the significant gap in services to people with complexity has been provided in the form of the Complex Needs Support Pathway (*Complex Pathway) however this is yet to be bedded down in most jurisdictions. ACSO's 'Specialist Forensic Disability Accommodation service clients are engaged in this stream although many of our similarly complex clients living independently in the community are not. This pathway is designed to ensure an appropriate support and plan assessment response for people who are engaged across multiple support systems including the justice, mental health and homelessness systems. It acknowledges that participants with significant trauma and those with critical needs including people leaving custodial environments, require an informed and qualified decision-maker in the development and delivery of NDIS planning. Notably, it is expected to bridge the significant challenges in finding services who will accept participants

who represent a significant risk to an organisation including the risk of harm to others, and financial and reputational risk.

At times, if ACSO believes that the NDIS has erred in their decision-making around 'approved supports' during the NDIS planning stage, we have been engaged to provide further proof in the form of a doctor or psychologist's assessment. This is at the individual or ACSO's expense and no funding stream is currently available to access support such as advocacy and support work. In the majority of cases where this has occurred, a participant's funding is put on hold by the NDIA until negotiations are complete. In some cases, this has meant that a person with a disability will not receive a service until the funding agreement is approved by all parties. In the opinion of ACSO the practice of putting a plan on hold is highly concerning and potentially significantly increases the risk of harm for the individual participant and at times the community, specifically for those high-risk, complex and vulnerable persons in contact with the criminal justice system.

A chief concern of ACSO's is that in many cases it is not within the designated planner/support coordinator's capacity or skillset to make the call about what behaviours, actions and needs fall into the disability or forensic categories. Our understanding is that the Complex Pathway is expected to ensure a higher level of qualification and knowledge in the staff engaged in planning for complex participants. Our NDIS lead at ACSO as well as our participants' care teams (which often includes external organisations and persons) have raised concerns with NDIA around the lack of experience and capability of both the NDIS planners and Support Coordinators who direct the use of NDIS packages, and make decisions that impact participants use of funding. ACSO would recommend that the NDIA hasten its implementation of the Complex Needs Support Pathway and ensure it is staffed by a panel of persons with the appropriate background experience and knowledge of forensic clientele.

PEOPLE WITH DISABILITY WHO ARE ENGAGED IN THE JUSTICE SYSTEM NOT OFFENDERS WITH DISABILITIES

As articulated in the *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability's* 'Criminal Justice System Issues Paper 2020', people with disability are manifestly overrepresented at each point of the justice continuum and face a disproportionate risk of violence, abuse, neglect and exploitation within that system. Whilst ACSO does not exclusively support people in custody, Human Rights Watch (2018) asserts that almost 50% of people entering prison have a cognitive and/or psychosocial disability. Across the broader Australian criminal justice continuum, 18% of people are identified as

having either or both cognitive and psychosocial disabilities. Locally, *Queensland Advocacy Incorporated's* 2016 report suggested that approximately 10% of people in Queensland prisons have intellectual disability, a rate *five times greater* than the national average (QAI 2016). People engaged in the criminal justice system are some of the community's most disadvantaged and at-risk populations and a cohort highly likely to miss out on NDIS funding, and where funding has been granted, excluded from mainstream and supported service due to perceived and actual level of risk and complexity.

The Australian Institute of Health and Welfare in their study on the health of Australian prisoners (2018) found that almost 1 in 3 (29%) prison entrants aged 18 and over reported living with a disability compared with 1 in 5 (22%) people aged 18 and over in the general community. But the report noted that comparisons of the prevalence of disability between prison populations and the general community were difficult, as people in prison sample were younger than those in the community, and the prevalence of many types of disability, particularly core activity limitations, increases with age. The same study found that of those aged 18–34, 26% prison entrants reported a disability significantly higher than the general community at 8%. Strikingly, prison entrants (20%) reported education or employment limitations at rates 4 times that of their counterparts in the general community (5%).

ACSO supports this cohort via pre-release programs and in greater numbers via post-release community outreach programs in Victoria, New South Wales and Queensland. In Victoria, ACSO is considered the leading standard in supported accommodation programs for people with cognitive disabilities (e.g. intellectual disability, acquired brain injury, foetal alcohol syndrome, psychosocial disabilities) and high risk, offending behaviours, via our ten Specialist Forensic Disability Accommodation programs located throughout Victoria.

The forensic disability cohort is by no means homogenous; First Nations persons continue to be overrepresented in the justice system. They face multiple forms of discrimination in what the previously cited Royal Commission Issues paper terms, 'the intersection of racism and ableism' (Baldry cited in Royal Commission into Violence, Abuse...). Similarly, women with disabilities who find themselves engaged in the criminal justice system, are more likely to have experienced trauma, sexual assault and interpersonal violence than their male counterparts; they are often the victim of crime and their imprisonment and/or engagement in justice interventions is more likely to impact family members including dependants as women are often the main caregivers in the home.

The chief problem facing the cohorts ACSO support is that in addition to the impact of living with a disability, individuals are further impacted by significant risk factors including long-term disadvantage; stigmatisation and isolation stemming from engagement in the justice system. In the case of First Nations persons, this is further impacted by the ongoing trauma and intergenerational disadvantage resulting from Australia's history of discrimination and violence. The NDIS scheme has traditionally attempted to compartmentalise a person's disability as separate and thus able to be isolated from such formative factors that influence a person's support needs. The Complex Pathway may go some way to developing an NDIS workforce with an adequate understanding of the needs and risks that intersect and are intertwined for complex cohorts but more is required to ensure that the most marginalised and those with very challenging behaviours are provided with the care and support they require.

ACCESS TO THE NDIS

The NDIS requires the participant to provide proof of their disability. This is used to gauge eligibility and is used to inform the planning process where decisions are made about what types of the support the person requires over the next 12 months (The writer is aware that some participants may have plans of longer duration, but all ACSO clients currently receive 12-month plans – another significant difference for those in the forensic cohort) and how many hours will, therefore, be funded under their plan.

People with complex mental health and cognitive disabilities, particularly those with untreated mental health concerns and/or homelessness and transience, represent hard to engage cohorts who are at greater risk of missing out on a disability funding package. In addition to these participants sometimes being difficult to locate and to engage in support, the NDIS intake and assessment process are highly bureaucratic and difficult to navigate for people in this group; access to the NDIS requires the person to be able to provide evidence of their disability, evidence of need including assessments and reports from G.Ps, mental health providers and psychologists and where these items have been lost or never sought, the person is expected to take control of sourcing and supplying these documents to the NDIA and attending planning meetings. For many of those in the forensic cohort, it has been our experience that it is only through the work of skilled support workers that any of those in contact with the criminal justice system with the level of poor executive functioning resulting from backgrounds of trauma and other disadvantage, are supported to access the NDIS. It is the experience of ACSO that this cost of supporting people to access the NDIS is funded out of a range of other pipelines or not at all within current NDIS funding structures.

In Victoria, this significant risk to this cohort is acknowledged by Department of Health and Human Services who fund ACSO to deliver the Mental Health Access Program, supporting individuals to source and prepare their NDIS access documents, and provide advocacy and support to the person as they engage in negotiations with the NDIS around what supports the NDIS will fund. It can take many weeks for a person to prepare all the required documentation. We support participants who have moved often, who have poor memories and cannot recall where their diagnosis was made and those who have been told by many providers including medical professionals that they have a disability but have not received a formal diagnosis. We support the person to engage in the required assessments and to contact professionals to source the information; participants are often charged a fee to retrieve these assessments and report, the cost of which is either borne by ACSO or the participants. Whilst the timeframe has certainly improved, we have had many participants who have waited up to **12 weeks for NDIS funding to be approved**. It is a strong recommendation of ACSO that Queensland urgently investigates the implementation of a similar funding stream or program for the complex clients in contact with the criminal justice system.

CHOICE AND CONTROL FOR HIGHLY COMPLEX COHORTS

The notion of 'choice and control' as eschewed by the NDIS is difficult to achieve and potentially unsafe in practice for the cohorts ACSO supports. Under the NDIS funding model, participants are free to choose their service provider, a philosophy that aligns with ACSO's values and practices to support self-determination by our clients and a commitment to supporting their long-term independence. However, in reality, this desire to support clients in the choice of a suitable provider within existing markets in Queensland (and nationally) is hampered by a marked lack of appropriate service providers who are able and willing to work with high-risk cohorts. In reality, this leads, in our experience, to situations where high-risk and complex participants are being supported by organisations who do not possess the appropriate experience, skills and risk management capacity to balance community safety alongside the appropriate support and care for individual participants. In most cases for those we have assisted, those individuals had been waiting without support for long periods. This is a particular concern in small and/or remote and regional communities across Queensland but also in other jurisdictions. ACSO in many cases has become a provider of last resort after an individual has cycled through many other providers – often in the process damaging relationships and experience harm to themselves or creating and engaging in harm to others.

Our NDIS support staff report frequently that they face significant barriers to placing participants into the support services that are designed to support them. In our initial NDIS test period in Victoria, ACSO supported an extremely vulnerable female with cognitive disability and borderline personality disorder who was homeless. The woman was turned away by housing providers multiple times, who stated that they 'did not cater to people with complex needs'; other housing services noted they 'did not cater to people with disabilities'; she was removed from a service due to the use of profanities and challenging behaviours during sign-up. Further, the individual was asked to come back after 7pm to see if any vacancies had opened up, however, the participant's NDIS funding plan comprised only day rate supports meaning the client would have to attend without a support provider. In these instances, the client was unable to navigate the functional requirements and as such could not access these services.

ACSO has invested in a robust risk management framework over a long period that enables us to undertake work with these complex and hard to engage clients. This includes the development of specially trained staff with skills in the management of individuals with such behaviours; risk management systems (including robust oversight and governance) and tools including duress systems, GPS tracking in vehicles and cameras in vehicles. Further ACSO has a Clinical Team who support our staff to deliver services in line with evidence-based and best practice initiatives designed to keep our staff safe and improve outcomes for the participants. The current NDIS funding model does not remunerate ACSO for these initiatives and this can be seen in the existing service market where there is only an extremely small number of organisations willing to put their organisations at financial and other risk to support complex participants, and very few with the skills and capacity to do so.

For complex clients, including those with justice engagement, it is integral that the elements articulated above, including quality risk management, quality and appropriately credentialled staff and instigation of evidence-based methodologies, are built into the costing model and funded appropriately. Organisations that can afford to manage risk and attract highly skilled staff are more likely to offer support services to the currently underserved high risk and complex cohorts in our communities.

ACHIEVING BEST RESULTS FOR COMPLEX AND VULNERABLE PERSONS WITH DISABILITY ENGAGED IN THE JUSTICE SYSTEM

At present, there is little research regarding best practice for the forensic disability population, which places significant challenges on services to ensure that the forensic disability population is provided equal opportunities for rehabilitation (Baldry et al., 2013).

ACSO's aim is to work holistically with this cohort, so in the future, they can be referred into more mainstream disability support providers and ultimately reduce their reliance on services.

ACSO has developed a disability support model with a forensic lens that allows us to support individuals in a manner that balances the person's right to autonomy, with that of the safety of the community. The model incorporates a 'step down' approach which continually assesses a person's health and wellbeing; alongside the risk they pose to themselves and community members. This model aligns to the NDIS philosophy of supporting the person to reduce over-reliance on specialist providers in the future.

Our model recommends a range of considered and staggered interventions to ensure the best chance of successful client reintegration, including:

- Staged introduction to supports: a minimum of two visits before release from prison / custodial facility or if transitioning over from another provider, as well as contact and continuity of support for clients on remand or have returned to a custodial or residential environment for a duration.
- Outreach programs allowing throughcare from custodial setting to ACSO residential placement.
- Graduated step-down of supports driven by the client's plan, including support on a weekly basis for monitoring client wellbeing and progress, while fostering independence and self-management.

Whilst the NDIS framework has clear objectives with regards to meeting the individual support needs of people with a disability, there is a permeating gap that exists with regards to meeting the complex behavioural (including offending behaviours), supervision and complex health needs that many of ACSO's current participants encounter daily. ACSO suggests that a multi-agency approach to directing services and policy for high-risk and complex cohorts, primarily those engaged in or at risk of engagement in the criminal justice system, is required for each State. Certainly, in Victoria there has been rigorous collaboration to improve the service system for the 'forensic disability' cohort however this is not genuinely embedded in the NDIS system, nor are the resources required to enable this function, funded under the current model.

CONCLUSION

ACSO is committed to the support and rehabilitation of people with disabilities who are engaged in the justice system or who are at risk of engagement, and those who present with

complex needs and a high level of risk to self and community. We continue to strive to do this work despite the current NDIS costing framework and support model presenting significant barriers to its successful implementation for the cohorts we support. ACSO is strongly engaged in the Victorian disability support system and has recently commenced delivery of specialist support coordination in South East QLD. Our chief concerns, and those issues which continue to act as a barrier to our intention to grow our ability to provide effective support to our client groups include a costing model that does not support the types of requirements ACSO believe this cohort urgent require. This includes maintaining a robust risk management framework, hiring an 'above-award' and higher quality workforces, provision of effective and strong training and development for staff as well as models which can holistically address the unique and diverse needs of the people ACSO supports including those with problematic AOD use, mental health concerns, intergenerational disadvantage and long-term homelessness, and more specifically First Nations Australians, women with disabilities, and those whose complexity sees them engaged in the justice system.

ACSO remain committed to ensuring choice and control for all clients in our service but believe there remains a long way to go before the NDIS is truly equitable and accessible to the cohorts we support. Further, there is much work that needs to be undertaken to ensure organisations are fairly remunerated for the work they do, which would, in turn, encourage new and appropriate providers to enter the NDIS market, thus providing 'genuine' choice and control to the 'complex' market.

We'd like to thank you for the opportunity to provide the inquiry with our submission and we remain open to any further discussion should the Queensland Productivity Commission request it.

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