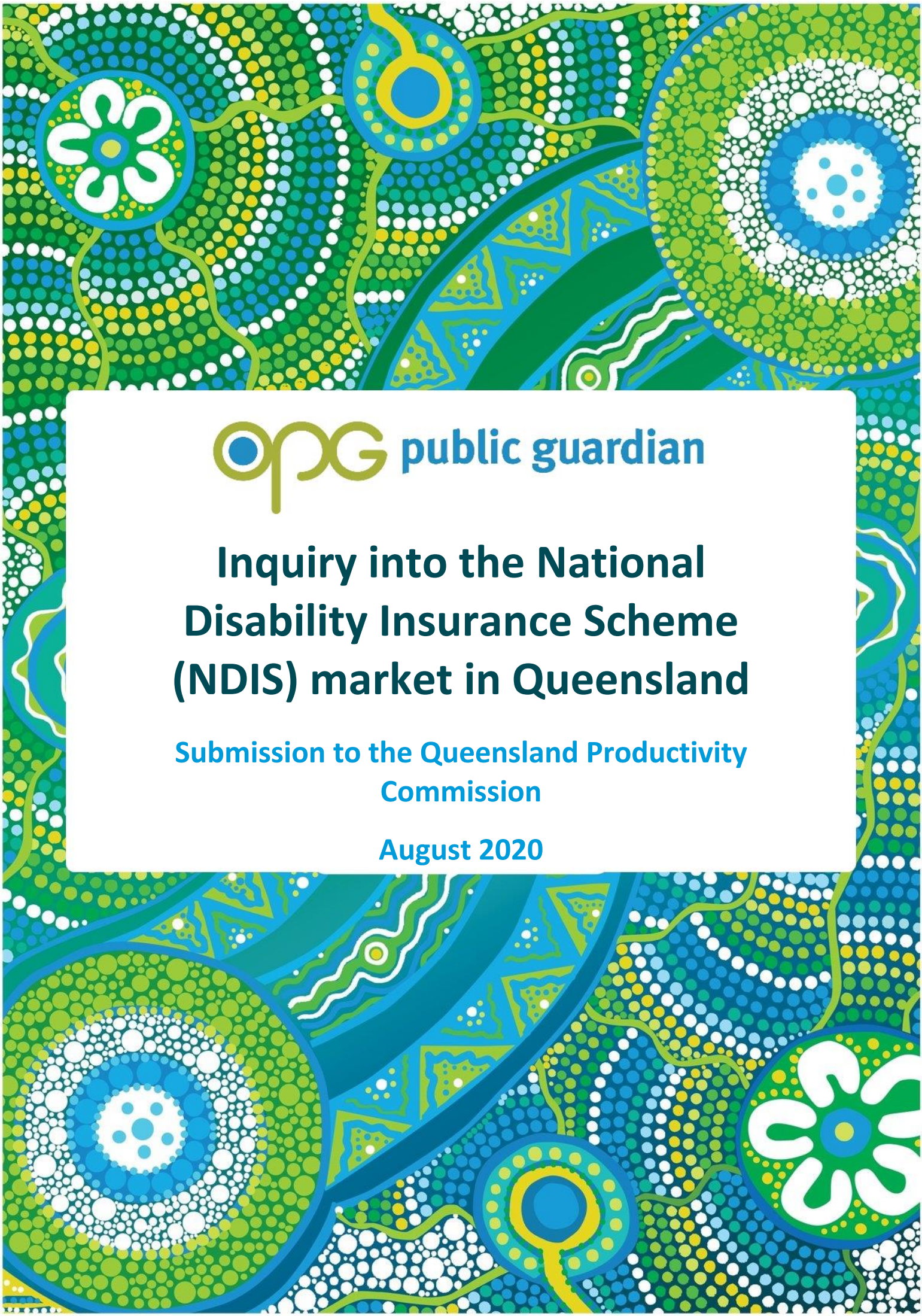

public guardian

Inquiry into the National Disability Insurance Scheme (NDIS) market in Queensland

Submission to the Queensland Productivity Commission

August 2020

Table of Contents

About the Office of the Public Guardian

The Office of the Public Guardian (OPG) is an independent statutory office which promotes and protects the rights and interests of children and young people in out-of-home care or staying at a visitable site, and adults with impaired decision-making capacity. The purpose of OPG is to advocate for the human rights of our clients.

The OPG provides individual advocacy to children and young people through the following functions:

- the child community visiting and advocacy function, which monitors and advocates for the rights of children and young people in the child protection system including out-of-home care (foster and kinship care), or at a visitable site (residential facilities, youth detention centres, authorised mental health services, and disability funded facilities), and

- the child advocacy function, which offers person-centred and legal advocacy for children and young people in the child protection system and elevates the voice and participation of children and young people in decisions that affect them.

The OPG provides an entirely independent voice for children and young people to raise concerns and express their views and wishes. When performing these functions, the OPG is required to seek and take into account the views and wishes of the child to the greatest practicable extent.

The OPG also promotes and protects the rights and interests of adults with impaired decision-making capacity for a matter through its guardianship, investigations and adult community visiting and advocacy functions:

- The guardianship function undertakes both supported and substituted decision-making in relation to legal, personal and health care matters, supporting adults to participate in decisions about their life and acknowledging their right to live as a valued member of society.

- The investigations function investigates complaints and allegations that an adult with impaired decision-making capacity is being neglected, exploited or abused or has inappropriate or inadequate decision-making arrangements in place.

- The adult community visiting and advocacy function independently monitors visitable sites (authorised mental health services, community care units, government forensic facilities, disability services and locations where people are receiving NDIS supports, and level 3 accredited residential services), to inquire into the appropriateness of the site and facilitate the identification, escalation and resolution of complaints by or on behalf of adults with impaired decision-making capacity staying at those sites.

When providing services and performing functions in relation to people with impaired decision-making capacity, the OPG will support the person to participate and make decisions where possible and consult with the person, taking into account their views and wishes to the greatest practicable extent.

The *Public Guardian Act 2014* and *Guardianship and Administration Act 2000* provide for the OPG's legislative functions, obligations and powers. The *Powers of Attorney Act 1998* regulates the authority for adults to appoint substitute decision-makers under an advance health directive or an enduring power of attorney.

Submission to the Queensland Productivity Commission

Position of the Public Guardian

The Office of the Public Guardian (OPG) welcomes the opportunity to provide a submission to the Queensland Productivity Commission for the Inquiry into the National Disability Insurance Scheme (NDIS) market in Queensland. The views contained in this submission are that of the OPG and do not purport to represent the views of the Queensland Government.

This submission and our recommendations address the issues raised in the issues paper where they relate to the experiences of the OPG and the people that we serve.

The OPG would be pleased to lend any additional support as the Queensland Productivity Commission Inquiry progresses. Should clarification be required regarding any of the issues raised, the OPG would be happy to make representatives available for further discussions.

The Public Guardian recommends:

1. That the NDIA ensure that development of participant plans is facilitated by NDIA planners rather than LACs for participants with complex needs and life circumstances who are transitioning between health care and disability supports.
2. Improved monitoring of NDIS plan implementation for younger adults at risk of entering aged care or already in aged care.
3. Improved education of planners and the sector, including Support Coordinators, health professionals and aged care facilities, on the Younger People in Residential Aged Care Action Plan and associated targets.
4. Funding of a project in Queensland, including a dedicated project for Aboriginal and Torres Strait Islander people, to support young people in aged care to access NDIS.
5. The NDIA to consider the cultural considerations in Aboriginal and Torres Strait Island communities to facilitate face to face planning meetings.
6. NDIA driven engagement with Housing sector to improve access to transitional housing and SDA.
7. Increased funding for support coordination hours or access to improved access to complex pathway NDIA planners to drive transitioning of young people out of aged care.
8. The NDIA offer flexibility for the use of core support funding for support coordination.

Impact of the NDIS on the OPG

In 2017, an analysis was undertaken on the cost for the OPG to provide guardianship services. This was estimated to cost an average of $4,413 per client, per annum, to fully service a guardianship client. Costs are likely to be higher for clients who require NDIS supports due to the additional tasks required of guardians. These include:

- liaising with the client, their support network, health professionals and service providers to register the client with the NDIS
- arranging the necessary assessments and collating information to ensure the clients' needs are clearly understood by the NDIA
- attending NDIS planning meetings with the client
- subsequently working with the client to help them to utilise their NDIS plans and choose their own service providers.

As the NDIS has evolved, OPG guardians have also expressed frustration about the additional time taken when liaising with the NDIA due to confusing processes, inconsistent practices and conflicting information from NDIA staff.

The OPG has also recently experienced an increase in applications for short term approvals (STA) of restrictive practices. This has resulted in a significant workload increase for relevant OPG teams as each STA take approximately 8.5 hours to process. Other matters relating to STAs are discussed in further detail below.

Each year, the OPG is seeing an increase in the number of clients, and the proportion of the clients, requiring NDIS supports. In 2016-2017, 42% of guardianship clients were likely to be eligible for NDIS supports. This proportion has increased each year, and in 2019-2020, NDIS-related clients accounted for 56% of all guardianship clients. NDIS-related clients predictably occurred with the roll-out of the NDIS in Queensland, however there are likely to be additional factors that contribute to the growth in numbers.

The Guardianship system (particularly when the Public Guardian is appointed) is intended to be used as last resort, where there are no less intrusive options. Prior to the implementation of the NDIS in Queensland, a person might have required a guardian only in circumstances where their services were not working effectively, when they required changes to their service provider, or when a client was not receiving any services and required a decision-maker to help them make decisions around their supports. Frequently, these appointments would be revoked once stable services were in place and minor changes to services or funding could occur directly with the Department of Communities, Disability Services and Seniors (DCDSS) or be approved informally.

With the introduction of the NDIS, service providers require formal decisions to be made in order to enter into service agreements on a regular basis (usually every 12 months). If a client does not have capacity to do so, a formal guardian or nominee must be appointed, rather than someone informally providing support. This means that for many OPG clients who do not have family or friends to assist with their decisions, the appointment of the Public Guardian will not be able to be revoked, as there will always be a need for an upcoming service provision decision. This may account for part of the increase in guardianship clients over time.

With recent changes, the NDIS is becoming even more reliant on formal decision-makers. Decision-makers now have a role in approving 12 weekly service agreements and rosters of care. In addition to the increase in financial costs, the OPG has increasing concerns that NDIS systemic issues may also be impacting negatively on the client's rights as it may not encourage a system for increasing capacity and self-reliance.

Impact of the NDIS on health care

Even in the early stages of full scheme NDIS in Queensland, the OPG has witnessed many positive outcomes for people with a disability, with improved situations, increased supports, and a real opportunity for choice and control in their lives.

Case study

Mary* is a 24-year-old woman who lives with an intellectual disability and epilepsy causing serious and frequent daily seizure activity.

Mary previously resided in a 1:2 co-tenancy arrangement which received funding under the support model of the Queensland Disability Services Department. At that time, funding was also being sought for support to enable Mary to travel to Melbourne and undertake comprehensive epilepsy monitoring, to determine if she was a suitable candidate for surgery to decrease or eliminate her seizure activity. Mary had previously received monitoring as a child from the same hospital, but as she became an adult it was far more difficult to receive the appropriate funding for her progressing health care matters. The epilepsy monitoring was essential to enable Mary to have a fulfilled life as a young adult, with ongoing input from her neurologist, however, the funding was not approved.

Mary currently resides on her own receiving 1:1 support due to her increased care needs as a result of her epilepsy and increased seizure activity. Upon approval of an NDIS plan, Mary's guardian and other stakeholders continued to advocate to seek relevant funding to enable support to accompany Mary to Melbourne to undertake comprehensive epilepsy monitoring. This was approved under her NDIS plan. As a result, Mary has now received an offer of surgery.

**Name has been changed*

Case study

Tom* is a 57-year-old man, diagnosed with an intellectual disability and bipolar disorder. The Public Guardian is appointed to make decisions in relation to provision of services, and the Public Trustee is appointed as Tom's financial administrator. Tom is his own decision maker in all other areas. Tom's residence also receives visits from the OPG's Community Visitors.

At a recent visit, the Community Visitor observed that Tom was slowly shuffling on his feet, with an evident forward lean. Tom's support worker confirmed that Tom had been increasingly unsteady on his feet and had been unable to participate in his afternoon walks. Tom advised that he had been using an exercise bike in the home to keep active. The support worker added that a request had been made to Tom's NDIS Support Coordinator to complete a referral for physiotherapy, but there had been no response or outcome.

The Community Visitor contacted the service provider's manager and referred the matter to Tom's guardian, which prompted further correspondence between all parties including the NDIS Team Leader to progress the matter. This advocacy by the Community Visitor and the Guardian resulted in a physiotherapy appointment being scheduled for Tom.

**Name has been changed*

Unfortunately, for some, the NDIS has been a source of confusion, frustration and disappointment, with inaccessible processes, lengthy delays and inconsistent outcomes. The experience of NDIS participants with impaired capacity can be greatly improved with the assistance of advocates and support people to help them navigate the system to ensure positive outcomes. Interaction between NDIS and mainstream interfaces.

The complexity of a client's support needs, and life circumstances may be exacerbated by the intersect between the NDIS and mainstream interfaces. The OPG has observed that planning is particularly challenging when the planner is required to interact with the mental health system to facilitate the client's transition to the NDIS. For those detained in authorised mental health services, effective planning during the period of being detained is vital to ensure the client's successful transition to the community. Critical mainstream interface issues include limited mechanisms to seek further supports for clients in mental health or hospital settings, which can lead to longer periods of detention being necessary. This is further impacted by the inability of private allied health professionals, such as Occupational Therapists, to complete required assessments within mental health or hospital settings due to certification barriers which delays the gathering of evidence to support a client's disability support needs. Other issues relating specifically to the interface between the NDIS and the mental health system included insufficient resourcing to support collaboration across multiple systems and to coordinate individual planning processes for people with complex support needs, resulting in poor discharge planning and extended stays in hospital. NDIA timeframes for access, plan reviews and planning do not align with rapid health responses to meet changing needs for the target group, causing delays in hospital discharge processes.

The experience and expertise of NDIA planners

Some NDIA planners (and support coordinators) lack clinical expertise, which can lead to a failure to incorporate key support recommendations in a participant's plan. It is of concern to the OPG that Local Area Coordinators (LACs) continue to undertake planning for clients with complex needs who require specialised support in disability or other mainstream interface areas, including health care. In the OPG's experience, clients generally experience better outcomes when the development of their plan is facilitated by a planner at the NDIA rather than a LAC, who may be less experienced and lack specialist expertise. OPG guardians have observed mental health teams insisting on a planning meeting being conducted by an NDIA planner and not a LAC. Unfortunately, this has resulted in delays in clients being able to access the NDIS. The relative inexperience of LACs has also been observed in their approach to information sharing, with some LACs being unwilling to share plans with independent advocates even after consent is provided by the participant's formal decision maker.

The OPG has advocated for the NDIA to ensure that development of plans is facilitated by NDIA planners rather than LACs for participants with complex needs and life circumstances, particularly where the participant needs to transition between health care and disability supports. The OPG acknowledges this issue should be addressed to some extent through the introduction of the Complex Support Needs Pathway which includes dedicated planners skilled in supporting participants with complex support needs.

Recommendation 1:

NDIA to ensure that development of participant plans is facilitated by NDIA planners rather than LACs for participants with complex needs and life circumstances who are transitioning between health care and disability supports.

Transitioning participants into the NDIS

An ongoing challenge identified by the OPG in the roll-out phase of the NDIS has been the barriers to transitioning clients into the new system. Clients have encountered lengthy waitlists for access to public allied health providers and specialists such as pediatricians and psychiatrists, particularly in regional areas. Private providers are similarly limited in regional areas, while access is further impeded by a lack of affordability of private health specialists and private assessments. Residents of Level 3 hostels are a particularly vulnerable cohort, with OPG having found that many hostel residents lacked access to NDIS information, support to make an access request and access to providers for assessments.

During the initial roll out of the NDIS, the OPG advocated for clients who experienced delays in having their access met as information around their diagnosis and functionality did not meet the requirements of the NDIS. There remains a need for independent advocates or the formal appointment of decision makers to navigate entry to the scheme. The OPG continues to refer individuals to advocates and Access and Referral Teams for client's seeking additional support to enter the scheme. Proper resourcing of such programs will support increased NDIS participation in Queensland and will continue education of treating practitioners and allied health providers about access evidence requirements.

Case study

Robert* is an 18-year-old man with a moderate intellectual impairment. An NDIS access request was submitted eight months prior to Robert's 18th birthday, while he was subject to a child protection order and in the care of Department of Child Safety, Youth and Women (DCSYW). Robert's transition to adulthood plan was designed to allow Robert to remain with the same accommodation provider who had supported him as a child, transitioning from DCSYW funded supports to NDIS funded supported independent living (SIL). However, Robert transitioned from care without NDIS access in place.

The OPG Community Visitor advocated for an adequate level of funding to continue his accommodation under a DCSYW support case, and for DCSYW to continue to support Robert to seek NDIS access. The Community Visitor made inquiries as to why there were delays with Robert's NDIS access request, it was determined that although the initial application contained an assessment report from the psychologist who diagnosed the intellectual impairment, the access request decision was delayed due to a request for further evidence. Robert had to wait to engage with a suitable occupational therapist to complete a second functional capacity assessment. Robert's NDIS access request was met 10 months after the initial request was made and he transitioned with the same provider as desired from the DCSYW support case to NDIS funding.

**Name has been changed.*

Transitioning providers into the NDIS

OPG has witnessed areas of short supply in the community as the market adjusts. Participants requiring assistive technologies have experienced significant delays in obtaining equipment such as mobility aids, with wait times incurred for assessment and for manufacturing. Delayed access to assessments, allied health services and behaviour support practitioners have been reported, particularly in thin market areas.

In some instances, OPG identified shortages of community access and accommodation providers able to support participants with particularly complex needs. OPG advocacy has proven particularly important for participants who have experienced a delayed discharge from inpatient mental health units while awaiting a suitable supported independent living placement.

Case study

Ellen* is a 48-year-old woman with an acquired brain injury. Ellen had limited ability to communicate verbally and often demonstrated frustration at this limitation. At the time advocacy support was requested of the Community Visitor, Ellen had been assessed for a communication aid. However, Ellen had been waiting 18 months for its delivery, having been provided multiple delivery dates and postponements.

The Community Visitor made inquiries, following which the approval for a communication aid was confirmed. However when the aid was delivered, Ellen encountered a further two month delay to commencing the use of the aid, while waiting on an Occupational Therapist to provide a mount to attach it to her wheelchair , and the training for Ellen and her support staff in using the aid.

**Name has been changed*

Meeting the needs of participants

NDIS participants experience several factors constraining the ability to exercise choice and control, including instances where decision makers, nominees or child representatives fail to uphold the participant's right to be included in decision making and to exercise choice and control. The OPG advocates for participants to participate to the best of their ability in making decisions that affect their lives. This can be further supported by NDIS participant access to independent advocacy services, provided access to such services isn't constrained by limited funding and availability.

Choice and control for NDIS participants can be limited by a lack of awareness about mechanisms to address underperforming service providers. Thin markets in rural and regional areas further limit choice and control over supports such as assistive technology, accommodation, and allied health providers. In thin market areas there are often few alternatives when a participant experiences a service that is not meeting their needs.

Case study

Eric* is a 45-year-old man with impaired decision-making capacity due to his diagnosis of schizophrenia. Eric complained to his Community Visitor that he had been denied attendance at a planning meeting, leaving him feeling upset and concerned his goals hadn't been addressed. Eric stated his mother, who is his informal decision maker, told him they didn't want him there.

When the Community Visitor inquired with the service provider, they learnt the service provider and Eric's decision maker, his mother, had been told that the attendance of an NDIS participant was not necessary after the initial meeting, if the participant did not wish to go. However, the service provider was of the understanding that Eric and his mother made the decision together that Eric would not attend.

While Eric's wish to attend the meeting was not upheld, Eric had previously had input into the completion of his service profile, which included his NDIS goals, and the service provider was able

to speak to Eric's goals at the planning meeting. Through Community Visitor advocacy the service provider was made aware of Eric's wish to participate in future planning meetings.

**Name has been changed.*

Following the implementation of the NDIS, the OPG has been visiting a proportionally larger number of participants in accommodation services. This may be an indication that accommodation options, such as supported independent living arrangements, have increased in availability under the NDIS. The OPG is optimistic that the previous accommodation delays experienced by participants will be fulfilled by new NDIS supports such as medium-term accommodation and individualised living options.

Underutilisation of plans can be attributed to factors such as delays in entering a service agreement with a support coordinator, thin markets and dissatisfaction with service delivery, leading to withdrawal from services without suitable alternatives in place. The suspension of a number of services during COVID-19 restrictions has seen an underutilisation of plans that will need to be considered when service delivery resumes and plans are reviewed. The OPG believes that participants and their decision makers should be encouraged to continue utilising supports while awaiting reviews.

Case study

Kylie* is a 17-year-old and lives in small rural community. At the time Community Visitor advocacy support was sought, Kylie's NDIS plan had been in place for six months and the only funding utilised was for support coordination. The Community Visitor's inquiries determined that the support coordinator had been unable to source suitable registered providers to deliver the funded supports, as there were no registered NDIS providers operating in the community in which Kylie lived. It was three months prior to the end of her plan that Kylie first engaged with an occupational therapist from a larger community who was willing to provide a service to Kylie.

**Name has been changed*

The majority of OPG clients have support coordination included in their plan, and this is an important component of their NDIS supports. However, in small markets and remote areas, the OPG recommends providing, where possible, for both support coordination and plan management in a participant's NDIS plan in order to broaden available services able to be accessed by participants.

Young people in residential aged care

Younger people in aged care represent a vulnerable cohort of adults with complex disability and health needs who require a targeted and collaborative approach to realise the potential of the NDIS. At the time of transition to the NDIS in Queensland, the OPG identified the absence of a Queensland or federally led initiative developed to support younger people in aged care to engage with the scheme. Unlike New South Wales, where the Summer Foundation was initially funded in limited trial sites to support young people in aged care to access the NDIS, no such project funding was offered to adults in Queensland. Many younger adults in aged care did not have the capacity or support network to assist them to understand the NDIS or enter the scheme. It was further recognised that a higher proportion of younger people in aged care identified as Indigenous (Aboriginal, Torres Strait Islander or both) and many lived in rural and remote locations. The OPG's initial contact with these

aged care facilities identified that the aged care sector was not resourced to assist these adults and a number of facilities had little to no knowledge of what the NDIS could do for younger adults in their care. Attempts by the OPG to refer adults through to advocacy services were not always successful as the advocacy agencies identified that the adult did not have the capacity to engage with the NDIS without a formally appointed decision maker. Advocacy agencies were also often at capacity and at times could not accept the referral.

The OPG notes that it was not until March 2019, that the Department of Social Services issued the Younger People in Residential Aged Care – Action Plan which was designed to help minimise the need for younger people to enter aged care. Despite this action plan being in place for over 12 months the OPG is yet to see a large proportion of our clients who are young and residing in aged care receive appropriate plans to progress them moving to more age appropriate accommodation. The OPG further notes that despite the goal to have all NDIS participants in aged care on the complex needs' pathway by July 2019, this has not yet been realised. The OPG is also continuing to see adults having to transition from hospital to aged care as an interim measure to allow time for functional needs assessments to be completed before NDIS will fund age appropriate accommodation and support.

In circumstances where the OPG is appointed as a guardian for an adult residing in aged care, significant work is required by the guardian to educate and advocate to the sector on the rights of these adults to explore more age appropriate accommodation. Significant barriers have existed for adults to transition out of aged care due to the number of steps required to obtain adequate support funding. In most cases the adult's first NDIS plan will fund an assessment to determine their accommodation support needs. A lack of available Occupational Therapists with relevant clinical experience means that adults can wait months before the assessment is complete and at times the assessment must be repeated as the evidence is not sufficient to progress the matter back to the NDIA. Once the assessment is complete, a guardian must then request a plan review and, if approved, the guardian will need to work with the Support Coordinator to identify suitable accommodation and support options. The guardian may also have to respond to questions and criticism from the aged care facility for moving the adult out of their care. This may be due to a lack of understanding from the staff of aged care facilities.

Case study

*Errol is a 53-year-old man, diagnosed with early onset dementia and schizophrenia. The Public Guardian was appointed in mid-2019 to make decisions in relation to accommodation and provision of services after Errol experienced a significant decline in his cognition. At the time of appointment Errol already had an NDIS plan and was residing in a large supported accommodation. While an NDIS plan had been approved, the planning had been done with a Local Area Coordinator and Errol did not have the understanding required to advocate for adequate funding or implement his plan. It was noted that Errol was at high risk in his accommodation and was often found wandering on busy roads. Due to long waits for a functional needs assessment and the time it took to get an NDIS plan review the guardian was left with no option but to temporarily place Errol in aged care.

The guardian made progress with implementing the original NDIS plan and obtaining necessary assessments to advocate for supported independent living accommodation. Some of the barriers the guardian faced in implementing the NDIS plan included the support coordination referral being initially refused due to Errol's dual diagnosis, obtaining age appropriate accommodation, a six month wait for an OT functional needs assessment, and the need for additional assessments due

to poor understanding of the needs of young people in aged care. The process to get Errol out of aged care has been onerous for the guardian and support coordinator due to the need to advocate and educate parties on Errol's right to age appropriate accommodation. A significant amount of work was also required in the guardian attending multiple NDIS planning meetings as Errol required three NDIS plans in less than seven months due to his changing needs.

Errol is now successfully living back in the community in a supported independent living arrangement funded through his current NDIS plan. Errol is doing incredibly well, he has built new friendships, and is showing signs of improved memory and ability to complete tasks independently.

**Name has been changed*

Recommendation 2:

Improved monitoring of NDIS plan implementation for younger adults at risk of entering aged care or already in aged care.

Recommendation 3:

Improved education of planners and the sector, including Support Coordinators, health professionals and aged care facilities, on the Younger People in Residential Aged Care Action Plan and associated targets.

Recommendation 4:

Funding of a project in Queensland, including a dedicated project for Aboriginal and Torres Strait Islander people, to support young people in aged care to access the NDIS.

Impact of COVID-19

COVID-19 restrictions have created a new set of barriers in transitioning younger people out of aged care. Residential aged care facilities have some of the strictest movement restrictions placed on residents. Current restrictions on people entering and leaving aged care has meant that critical assessments have been postponed. Adults in care have also been prevented from accessing the community, designed to reduce their social isolation and help build their capacity to transition to community living.

The COVID-19 restrictions saw NDIS participants unable to access their funded community access, due to temporary closure of group programs and day services. Accessibility of allied health services was impacted as providers postponed of visits and delivered services through the alternate technology such as telehealth or video conferencing.

Changes to NDIS funding in response to COVID-19 included increases in core support funding and the option to use core support funding for support coordination. The ability to use core support funding flexibly for support coordination where it wasn't already in the plan could have benefits in other circumstances where a participant is confronting challenges in implementing and utilising their plan.

Restrictive Practices and Positive Behaviour Support

Lack of registered providers

The Public Guardian is appointed as the decision maker in relation to restrictive practices matters for approximately 250 adults with impaired decision-making capacity. Additionally, the Public Guardian is appointed as decision maker for approximately 70 adults where they are subject to restrictive practices pursuant to a Short-Term Approval from DCDSS or the OPG. Since the implementation of the NDIS, OPG has seen a significant increase in delays of the provision of Positive Behaviour Support Plans (PBSPs) for review, which has led to a small but enduring number of clients being subject to restrictive practices without consent in place. It is the observation of the OPG this is due to the lack of registered providers available with the required expertise to author PBSPs, leaving some service providers exposed to liability if they do not have an 'in house' plan author.

Increase in Short-Term Approvals

Since the commencement of the NDIS Quality and Safeguards Commission in Queensland in July 2019, the OPG has received almost twice the usual amount of Short-Term Approval (STA) applications for the use of containment and/or seclusion. This has increased the workload of the OPG, as each STA application takes approximately 8.5 hours to process. Much of this increase appears to be due to the new requirement for service providers to report the use of 'locked gates doors and windows' as a restrictive practice to the NDIS Quality and Safeguards Commission.

There does however appear to be a smaller group within this cohort of adults with impaired capacity, who previously were only subject to 'locked gates, doors and windows', but upon further in-depth review (triggered by the Commission's requirements to report such practices), it has become apparent that the purpose of locking the doors included a response to a behaviour that may cause harm, therefore should have previously been defined as containment. This suggests that without the Commission's additional expectations of service providers, many instances of containment would have continued to occur unnoticed, and without consent and adequate oversight. This indicates the use of containment may be more prevalent than previously thought.

Clinical advice in the sector

The OPG appreciates the important educative role the NDIS Quality and Safeguards Commission has in the sector. However, DCDSS, under their previous ambit, was able to provide more detailed clinical advice to service providers in relation to the use of restrictive practices, including face-to-face assessments in a person's home to assess and provide subsequent advice. It is the OPG's view that this is now a potentially significant gap in a sector where there are many new service providers who do not have a confident grasp of restrictive practices legislation, decision-making requirements, and positive behaviour support requirements. It is the OPG's view that this situation has the potential to place clients at unnecessary risk.

Impact of NDIS on OPG clients subject to restrictive practices

Prior to the introduction of the NDIS, many of OPG's clients subject to restrictive practices lived in group homes and were in receipt of block funding from DCDSS. This limited the ability for clients to choose a different provider, or to change accommodation settings. At this time, there was a push to fill vacancies rather than matching potential co-tenants based on compatibility. The OPG observed that many service providers would re-locate clients as a means to manage their own vacancies with no consideration of whether the new arrangements would be suitable for the client. Prior to the

NDIS, the service provider, as opposed to the client under the NDIS, held the funding. In some cases, this acted as an incentive for a service provider to make arrangements to suit their operational needs, as opposed to focusing on the needs of the client. Inappropriate co-tenancies often contribute to behaviours that may cause harm to an adult or others, however, due to the block funding model, there were limited alternative accommodation options for the OPG to pursue on behalf of the client. Subsequently, in some cases, the use of restrictive practices were in response to clients living with incompatible co-tenants. Although the OPG advocated for changes to occur in these situations, clients were often subject to more restrictive practices than they would have been if they had the opportunity for more choice and control over where they lived and who they lived with. Individualised funding through the NDIS has had a significant positive impact for clients in these situations by providing the choice and control to change to more suitable accommodation. The OPG is optimistic that this will see a reduction in the use of restrictive practices in circumstances where an adult's behaviour is attributable to inappropriate, and avoidable, living arrangements.

Rural and remote regions

Quality and choice of registered supports

As discussed briefly above, in rural and remote areas, OPG clients have experienced limited choice of service providers to deliver the funded supports provided in their NDIS plan. In some very remote areas, there a no locally based service providers operating, so instead, communities rely on fly-in fly-out services. This impacts the quality/consistency of support and limits the choice of service providers. In regions where there are no NDIS registered service providers available to deliver supports to OPG clients, plan managed funding has been considered to allow non-registered providers to be engaged. This is not the preferred option for OPG as it increases the risk of exploitation. However, with no other options, the OPG is compelled to support sub-optimal support arrangements. OPG staff have received feedback from unregistered providers that it is not financially viable for them to become a registered provider as the audit process is too expensive for small providers.

Lack of plan utilisation

Many OPG clients are unable to fully utilise all the available funds in their NDIS plan due to the lack of available service providers in rural and remote areas. Consequently, when the client's plan is reviewed, supports are reduced for the subsequent plan. This however is not an accurate reflection on client need, but rather a reflection on the availability of services. Consequently, the OPG has advocated to keep the required level of supports in the plan. The OPG has also experienced the lack of culturally appropriate providers resulting in an underutilisation of funding in plans as clients will disengage with service providers.

Impact on Aboriginal and Torres Strait Islander clients

Many OPG clients who are of an Aboriginal or Torres Strait Islander background have experienced difficulty meeting the NDIS access criteria. In some instances, clients have been unable to provide the required eligibility documents to support their level of impairment and functionality to the satisfaction of the NDIA and are unable to provide the necessary identification documents. The OPG has also experienced clients initially not wanting to engage in planning meetings held at NDIA offices or over the phone however, when these were held face-to-face in more culturally appropriate settings, participation and engagement increased.

Further to this, the absence of services available in remote communities forces some Aboriginal and Torres Strait Islanders to relocate from their community of origin to access services to meet their disability support needs.

OPG has also experienced lack of flexibility/understanding of cultural movement of clients between Indigenous communities in regions which has placed clients at risk of losing funds due to underutilisation of funds in their plans.

Recommendation 5:

NDIA to consider the cultural considerations in Aboriginal and Torres Strait Island communities to facilitate face to face planning meetings.

Support Coordination

NDIS Support Coordination is an essential service for clients who have a NDIS Plan, as it provides a central point of contact for plan implementation and oversight of plan utilisation. This ensures that a client's plan is used to its full capacity and reduces the chances of funding reduction upon Plan review.

The OPG has observed some support coordination agencies having a lack of understanding of their role, responsibilities, and limitations. Support coordinators undertaking activities outside of their role has resulted in over utilisation of support coordination funding. Subsequently, services have ceased providing support coordination due to exhausted funds. The OPG has been required to request plan reviews based on a lack of support coordination funding or change support coordination agencies during the plan implementation period.

The OPG has spent time working with support coordinators, providing education and support regarding the NDIS and plan implementation. At times, this contact time with the support coordinator has been charged by the provider in the client's plan. The lack of experience and understanding of the NDIS system, specific knowledge in sectors such as Young People in Residential Aged Care (YPIRAC), Mental Health and Forensic systems and the support coordinator's role are significant areas of concern which require further investment into the future to ensure best outcomes are achieved for NDIS participants.

The OPG continues to hold concerns about the increased risk of conflicts of interest, where support coordination and core supports are provided by the same service provider. Although we acknowledge that there are likely many service providers who can manage and prevent conflicts of interest, the potential for such issues to occur within a service are difficult to identify from the perspective of the client or the OPG. Privacy and information sharing between different parts of one service provider may be difficult to manage effectively, and the client and stakeholders would not necessarily be aware if privacy were breached (whether it occurred in error or intentionally). Additionally, where support coordination and core supports are provided by the same service provider, there may be reluctance by the support coordinator to engage services outside of their own agency.

Mental health and hospitals

Obtaining adequate professional supports for people with mental illness upon discharge from secure mental health rehabilitation units (SMHRU) has been a long-term historical challenge for the OPG. Prior to the NDIS, DCDSS was rarely able to provide supports to these individuals, who were instead considered to be the responsibility of health services.

With the NDIS specifically acknowledging psycho-social disabilities, these issues have reduced, but have also created new challenges in the sector. Disability workers and services who have worked in the disability sector for many years, now require new skills and knowledge to appropriately support clients with specific mental health needs. Similarly, mental health workers have required up-skilling to understand complexities within the disability sector. Barriers for discharge – housing, assessments and behaviours.

Many OPG clients have significant behaviours of concern and although there are many service providers who are willing to accept these clients into their services, it can be difficult to identify services with the range of skills and knowledge across disability, health and at times, justice sectors, that is required to support these clients. Locating appropriate service providers is even more challenging in regional locations. Housing for this cohort is also challenging as the clients may require specialised disability accommodation or specific locations or environments (including compatible cotenants and neighbours) to meet their needs and ensure the best chance for success in the community. The limited availability of appropriate housing remains one of the biggest barriers for this cohort of clients.

The assessments required for these clients to access the services they need to reside in the community successfully can often be problematic. Many of these clients are unwilling to engage with certain professionals or engage in assessment processes as they may be suspicious of their intent, or do not consider themselves as having a disability. Where the NDIS requests a specific type of assessment, which requires the client to work with a new professional, the process may be halted. The OPG has observed that when the NDIA has been flexible in the kind of assessments that are sufficient to meet service access, or willing to accept assessments and information from other professionals who have an established positive ongoing relationship with the client, service access and planning processes have been much more effective and swift.

Clients transitioning from mental health services generally face the added barrier of balancing behaviours of harm/concern which are impacted by their disability with managing forensic risk associated with offending. Limited community treatment (LCT) conditions under the *Mental Health Act 2016*, often require a greater level of funding and support based on forensic risk as opposed to disability support needs, which is not funded under the NDIS. This has required the OPG to increase the level advocacy on behalf of clients not only with the NDIA but also within the Mental Health Court and Mental Health Review Tribunal (MHRT) to ensure that NDIS funding is at an appropriate level to meet the support needs of clients. OPG advocacy is also required to ensure that LCT conditions are not so restrictive as to impede a successful discharge to the community.

Recommendation 6:

NDIA driven engagement with Housing sector to improve access to transitional housing and SDA.

Recommendation 7:

Increase funding for support coordination hours or access to improved access to complex pathway NDIA planners to drive transitioning of young people out of aged care.

Recommendation 8:

NDIA to offer flexibility for the use of core support funding for support coordination.

Positive Outcomes

Where systems are in place to advocate to the NDIA, OPG has observed repeated positive outcomes. In the last six months, OPG have seen 12 clients transition out of one Brisbane-based hospital, back into the community, with appropriate support and housing. Many of these clients have lived in the restrictive hospital environment for many months, with some residing there for a number of years. One client has resided in the secure mental health unit for eight years with current plans to move into Specialist Disability Accommodation (SDA). These are welcome developments that the OPG is optimistic will be experienced by all participants as the scheme evolves.