

DR KAREN HOOPER:

So welcome back. We now have our final presenter for today's hearing, and I would like to welcome James Houghton from the Office of the Public Guardian. So thank you James, for joining us online this afternoon. We do appreciate your time. Before you provide your presentation, if you could please just state your name and organisation for the purpose of the public record and I'll hand over to you.

JAMES HOUGHTON:

No worries. Thank you. My name is James Houghton from the Office of the Public Guardian . And thank you for the opportunity for the OPG to be able to provide some response to the draft report in relation to the NDIS market in Queensland. Overall, the Office of the Public Guardian would like to acknowledge and the support that the QPC has taken into consideration, the submissions that were previously done by OPG, within the report and including in the draft findings and recommendations, and the OPG would like to discuss three particular areas, which still have a significant influence - sorry, you know, important to the public guardian. The first one is in relation to improving participant outcomes, specifically the draft recommendation for a draft finding for and draft recommendation to regarding clarifying some key concepts. And overall the OPG supports that this clarification is required, particularly in defining terms such as reasonable and necessary supports, and choice and control. But also believe that there should include a definition in relation to capacity. The OPG notes that in the report, page 31, paragraph two under the self-serve - self-management of plan, touches on this concept, in relation to the NDIS taking a risk assessment of the participant's capacity to self manage their plans before allowing a participant to do so. However, the OPG is interested to understand if the commission has considered how capacity will be defined, what would a risk assessment look like, and what safe guards would be in place to ensure that any vulnerable participant is protected, and would it take into consideration the adult's capacity to make the big decisions involved in self-managing the plan. While the OPG acknowledges that Queensland legislation defines capacity in the context of decision-making, how will this be also reflected in the definition of choice and control, particularly in the context of situations where the participant is not the decision maker. For example, a guardian is appointed, which may limit the participants choice and control. From the OPG's experience, there is confusion in the sector regarding how choice and control fits within a substituted or decision maker, or supported decision-making framework. So the clarification regarding capacity in this context, would further support outcomes for NDIS participants, as it would have provide clearer guidelines to service providers, planners, advocates, and formal support regarding decision making processes.

So that's in relation to that first point, second one relates to NDIS accommodation, specifically the availability around shorter median term accommodation to be available, to assist with the assessment and determination of reasonable and necessary supports, or participants who are not currently based in community settings, such as young people in residential aged care within forensic health systems, or long hospital patients or in correctional facilities. The OPG again, would like to acknowledge that the draft report and recommendations have considered the submissions and recommendations of the OPG, particularly in relation to the inclusion of Aboriginal and Torres Strait Islander people in the rural and remote communities when exploring the issues of NDIS accommodation outcomes. These of course remain of a high importance to the OPG.

The NDIA, from the OPG's position the NDIA have adapted to the needs of the market in some ways by exploring alternative accommodation supports, such as individual living options, with a greater focus around individual needs and preferences. However, the OPG agrees with the commission's findings that a lack of housing supports is leading to some people with disability remaining in the appropriate accommodation options, including the hospital custodial - custody, sorry, boarding houses, hostels, and aged cares, and this may contribute to homelessness. Affordable and appropriate housing remains a significant barrier in supporting NDIS participants to live an independent life as possible. From the experience of the OPG, even when affordable and appropriate accommodation has been found, there is often a lack of funding around support for assessments or outcome of assessments has resulted in delays and trends in support transition. This is particularly prevalent in situations where participants may be in a structured environment, such as a mental health facility or custodial setting, and require short to medium term accommodation to, and support, sorry to facilitate community-based assessments to turn on, determine ongoing, reasonable and necessary supports. Students can be discharged or released, cannot be discharged or released until appropriate accommodation and support can be provided. But often appropriate level of funding cannot be provided until evidence is - is available to justify me. So from the public guardian position, there's always a barrier and a blockage to get that information. The clients of the OPG, this has been a significant barrier and has required extensive resources advocacy, and decision-making over a long period of time to facilitate outcomes for clients. The sort of level of advocacy is not readily available in the general community to support participants for the public guardian is not appointed, which places this fruit at a significant disadvantage and risk of remaining in appropriate accommodation. How can this be addressed within the NDIS framework to ensure that participants have access to appropriate levels of advocacy support around NDIS outcomes, which does not rely on the need for formal appointed guardian. While the OPG acknowledges that affordable housing has been responsibility of the state, accommodation and funded support has always been a closely linked matters, been dealing with people with disabilities. A coordinated approach is required to allow that a short term intensive support and assessments to occur within the community setting, which allows for the determination of ongoing and necessary supports.

The final area that the public guardian would like to make some further comment on is in relation to the Queensland government goals and interventions in relation to restrictive practices regime, and in particular draft recommendation 33. So the OPG understands that the NDISP and PBS, or the behaviour support rules are intended to set national minimum standards for behaviour support and where registration to the use of restrictive practices. OPG considers that safeguards afforded under the rules are not detailed or rigorous and do not have sufficient high threshold as authorised and requirements under the Queensland framework. This includes the threshold to use the restrictive practice in response to the high risk causing harm, as opposed to risk of harm or behaviours of concern as per the NDISP and PBS rules, and explanatory statement. While the OPG acknowledge the benefits of Queensland having restrictive practices definitions that aligned with those of the rules, we remain concerned that this alignment may lead through reduction in existing safeguards. The rules do not clearly articulate the linkage between types of restrictive practice, and then being used in response to harmful behaviours of the person with a disability. OPG in anticipates that including block Gates, doors and windows as a form of restrictive practices in Queensland, we have a significant workload impact for both that guardianship and community visitor and advocacy functions.

OPG already experienced - has experienced a massive increase in short term approval applications for the use of containment and/or seclusion since the commencement of the NDIS quality and safeguards commission in Queensland in July 2019. This appears to be due to the new requirements for service providers to report the use to block Gates, doors and windows as a restrictive practice to the commission. While the OPG is supportive of increased oversight over these practices, it is anticipated that the number of applications would continue to increase if they were included in the Queensland framework. Inclusion of these practices would also result in a massive increase in visitable sites, which could not be met with the existing resources. OPG also notes the draft recommendation 33 includes harmonising formal requirements around the content of PBS fee to be consistent with NDIS practice rules. The OPG understands that the Queensland legislative requirements regarding a PBS P align with the requirements outlined by the NDIS rules, to the extent that applies to adults with an intellectual cognitive impairment. The OPG would like the opportunity to further discuss this risk the commission outside of this area, to have a better understanding of the proposal. Thank you

DR KAREN HOOPER:

Thanks very much, James, and certainly we're most happy to speak to you about that recommendation outside of this hearing.

JAMES HOUGHTON:

Thank you.

DR KAREN HOOPER:

So clearly you've raised a number of issues relevant to some of the sessions earlier today, and particularly around interactions between government service delivery and the NDIS. Perhaps I could just pick up on a few points that are relevant there. In the experience of OPG, are there any impediments that you see in helping children to transition from child protection to NDIS?

JAMES HOUGHTON:

It is a very I guess complex issue for a number of reasons. not all young people who transition become involved within the adult spectrum of OPG, whether that be public guardian, being appointed as a formal decision maker, or that they reside within a visitable site upon turning 18. So they may transition into another private dwelling, or another accommodation, which falls out of that purview. Generally we've seen, particularly from a guardianship perspective, a significant increase, so accommodation has always been an issue, but that is more related, I think to the independent views of those young people transitioning out of care, wanting to have some choice and control. We found - we have obviously found an increase in the funding, so that linkage within funding at an earlier stage, which has helped where formal support is required within an environment, and we have worked closely particularly with our child advocates, communities or an advocacy program to ensure that that clear transition planning has occurred prior to the young person turning 18, which in turn reduces the need for just like a formal decision maker, if that planning is done, funding's available under an NDIS plan, which is appropriate to that person's support needs, and appropriate accommodation. And we have seen an improvement overall.

DR KAREN HOOPER:

And in relation to your clients has OPG identified any other areas of potential improvement in the NDIS?

JAMES HOUGHTON:

Particularly the NDIS has opened a whole lot of opportunity, particularly for people with psychosocial disability who previously hasn't received funding if they only have a side-by-side psychosocial disability. So that has been a significant improvement for our clients. Certainly what we've also seen of recent, particularly with the push for young people in residential aged care, the transition community, while that is a process which is not a simple process, it's providing better outcomes and will provide better outcomes for clients under the age of 65, as an alternative to aged care. From our experience, we've had clients as young as 45 enter the aged care systems, which we would not consider to be the most appropriate option due to a lack of funded support for them to be in the community. So that can back commitment that the NDIS has made around that certainly we'll see some significant positive outcomes for a number of our clients in those settings. And certainly I think also the work, and even though considerable work still needs to be done around people who are long stay patients within mental health facilities. So the ability for them to have plans initially that allow for community access and engagement in the community, has been a very positive impact for them, particularly on their ongoing treatment. If they do have a mental health condition, but also to allow them to engage in their community in a more meaningful way.

DR KAREN HOOPER:

And James, you mentioned OPG clients being in aged care and in cases where they're below 65, that perhaps not being an appropriate accommodation setting, are they - are they NDIS participants, and if so, what's the key impediment to getting them out of aged care.

JAMES HOUGHTON:

Yeah, certainly they are NDIS participants. And we do have quite a few. The barriers that have been presented is around the identification of appropriate accommodation. So they, a lot of the clients do have significant support needs, which would need to be met within an appropriate environment. The other obviously big factor outside of the impact of COVID-19 is the ability to do assessments in an environment, which again is very restricted in routine. So residents at aged care facilities, for example, don't have the ability to cook meals and stuff like that. So it's difficult to do a functional assessment on someone's - how someone's impairment impacts on their day-to-day functioning in an environment which doesn't allow them. And that is why from public guardian's decision is having a transitional plan, which includes a short to medium term accommodation, which allows for those assessments in the community to care in a safe way, which isn't within those restricted environments is of benefit to support those transitions out.

DR KAREN HOOPER:

And is there anything else you'd like to comment on from your client's perspective around their experience of operating or participating in the NDIS in terms of outcomes that they may have experienced individually?

JAMES HOUGHTON:

Yes. certainly a lot of clients have... would definitely put forward that they've benefited a lot. A lot of clients don't understand on the other side what NDIS can do for them and how it works, and are quite resistant to having any type of formal support. So I think a lot more work in education and support for them to understand that benefit is really important, that's something that we see quite a lot expressed from our clients, but also their support networks. But overall clients have responded really well to the transition, to the NDIS and happy to, you know, engage in supports, particularly for those who may have again, been in long stay accommodated, you know, mental health facilities, et cetera. It provides an opportunity for them to be a part of the community in the community, which is a positive.

DR KAREN HOOPER:

And James, you know, a key focus of the inquiry is on looking at issues around supply and thin markets from the perspective of where you sit in OPG, I'd be interested in your view around where you see gaps in service provision in particular in the state.

JAMES HOUGHTON:

Yeah, certainly as we've highlighted, accommodation, affordable accommodation is a big issue, particularly for people who may end up in a level three supportive accommodation. A lot of the times they end up in those environments because they kind of sit in between of requiring more intensive support and not. So it's a big challenge for that cohort, because they are charged a large amount of money to reside in those properties, which impacts on their ability to participate in the community. And if alternative accommodation options then are presented for them which are affordable, that is going to provide better outcomes for them. They don't have to, I guess, even in an environment where there's a lot of people, where there's a lot of people with different names, and they can have some more independence and individuality within the community, and not this - be a part of that big cohort of people in those environments. So definitely that's a big area of concern and lack of - a lack of resources.

DR KAREN HOOPER:

And outside accommodation given you've got clients spread across the state, do you see different challenges presented based on geography?

JAMES HOUGHTON:

Oh, absolutely. Particularly around access to service providers that can meet the needs of the individual. So particularly as we've highlighted in our previous submissions in the rural or remote communities, and that doesn't necessarily just extend to the far North of Queensland, but areas such as Romero and stuff in those areas as well, where there's limited access to service providers to deliver the services, which means that people might have to relocate from those areas that they may have grown up in or feel our connection to, to receive supports that they need. It also means that in some situations, decisions have to be made around non-registered providers, which of course also adds a level of risk to those people and vulnerability because there's no other alternatives that are available in full for those supports. And that could be a range of different supports, whether that be something like psychology support or go to your allied health assessments, to the day-to-day general support that's provided to people. It's a broad range areas, particularly in those communities.

DR KAREN HOOPER:

James, I'm really interested in the comment you made around the risks of using non-registered providers. I'm wondering if you could give us the benefit of your experience there in relation to issues or concerns around quality.

JAMES HOUGHTON:

Yeah. and the OPG position is generally around only using unregistered providers as a last resort when all other options. Obviously have been exhausted. What we have found particularly prior if a client has transitioned into guardianship as a result, and decisions have been made prior to public galleons appointment and some of the complexities around that separation of boundaries, and appropriateness, and undue influence at times around engaging in particular services without really the adult understanding the nature and effect of what that means. But also around what they can expect from a formal service provider in as opposed to someone who may be unregistered. So there's the obligations and the structure that's put in place, particularly around complaint management, when you get to a service provider who has these registered. Of course there is exceptions, and where we worked a lot in the field is where someone may have engaged with an allied health professional, or a psychologist in a private setting who's not an NDIS provider, and we can - registered provider, and we can see the benefit that that's providing to the client. In those circumstances is when we really look at well, what is going to be the impact on the individual? What are the risks? What are the sites are in place? Is that a more appropriate decision than changing to a registered provider who may not know the particular client that well. So certainly we do look at it in a case by case basis, and again, in those rural communities, there's what we find is a lot of our clients are known for a lot of people within the community and they can burn out real services really quickly. Particularly ones, which aren't registered because they don't have the infrastructure there to provide alternative options to support that person.

DR KAREN HOOPER:

No, look, thanks very much James, for your oral submission today. And I'd like to thank the OPG for the support of the inquiry. And this has extended to meeting with commission staff and obviously the submission that was made on our issues paper. So thanks again for your comments today and for your participation. And we'll certainly be in touch to talk further about the recommendation on restrictive practices.

JAMES HOUGHTON:

Yes, right, thank you very much.

DR KAREN HOOPER:

Thanks for joining us.

JAMES HOUGHTON:

Thank you.

DR KAREN HOOPER:

So that brings us to the end of the public hearing today. I'd like to thank both presenters and observers both online and in the room for their participation. We have run a little bit early, so we do have some time for any comments or statements from those who were in the room.

Would anyone like to make a comment or a statement? No. OK. Well thank you for coming along today. A second day of public hearings will actually be on Monday. So I encourage everyone to join us for our public hearing on Monday. So thank you for joining us today, whether it's in the room or online. And for those in the room, if you wouldn't mind signing out as you leave today. So thank you and enjoy your weekend.