

**Submission to the Joint Standing Committee on the NDIS**

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**‘The provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition’**

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**Prepared on behalf of First Peoples Disability Network (Australia)**



**With the support of La Trobe Law School**



**February 2017**

## **INTRODUCTION**

1. This submission has been prepared on behalf of the First Peoples Disability Network (FPDN), a national organisation of and for Australia's First Peoples with disability, their families and communities. FPDN is governed by First Peoples with lived experience of disability.
2. We welcome this opportunity to provide a submission to the joint committee inquiry into the provision of services under the National Disability Insurance Scheme (NDIS) for people with psychosocial disabilities related to a mental health condition. Our submission focuses upon the following terms of reference:  
  

*'1.a. the eligibility criteria for the NDIS for people with a psychosocial disability ...  
1. h. the provision, and continuation of services for NDIS participants in receipt of forensic disability services;  
1. i. any related matter.'*
3. Trauma-related psychosocial and mental health conditions affects Aboriginal and Torres Strait Islander people and result in high rates psychological distress. Data released in the National Aboriginal and Torres Strait Islander Social Survey (NATSISS) found that approximately one-in-three (32.8%) Aboriginal and Torres Strait Islander people reported having high to very high levels of psychological distress.
4. There are multiple causal factors driving high rates of psychosocial disability amongst Aboriginal and Torres Strait Islander people. These can relate to unresolved social injustice, including the removal of Aboriginal and Torres Strait Islander children from their families and communities; the impact of the cycle of incarceration and re-incarceration on family and community functioning; structural violence (particularly through institutionalisation); and sustained exposure to various forms of discrimination.
5. There are also intersectional dimensions – where people are socially isolated due to multiple aspects of their identity - which add to the psychosocial distress experienced by Aboriginal and Torres Strait Islander people. For example, Aboriginal and Torres Strait Islander people with disability experience stressors relating to both their disability and their Indigenous status. Aboriginal and Torres Strait Islander women may experience stressors due to their gender as well as their Indigenous status.
6. FPDN is undertaking a research project to understand the interaction of factors that contribute to the social wellbeing and health of Aboriginal and Torres Strait Islander people with disability. Whilst the data is preliminary, FPDN is finding that when compared to the Aboriginal and Torres Strait Islander population generally, people with disability experience more psychological stressors including:

- greater levels of social isolation (such as more likely to live alone, have less daily contact with other people, and less or no access to the internet or social media)
  - greater exposure to the death of a family member or close friend (1.5-2 times the rate)
  - being discriminated against (approximately 3 times the rate)
  - serious illness (3-4 times the rate)
  - mental illness (approximately 5 times the rate)
  - drug and/or alcohol related health issues (2-3 times the rate).
7. The unique aspects of trauma affecting Aboriginal and Torres Strait Islander people are not well understood nor accommodated within a Westernised clinical model of mental health. This is particularly so when there are co-occurring aspects to someone's identity, such as disability, gender, or LGBTIQ-identification, which can compound stressors and therefore increase the likelihood of the occurrence of psychosocial distress.

***Recommendation:*** *The NDIS develops a specific practice module for Aboriginal and Torres Strait Islander people within its mental health policies and framework that acknowledges and is informed by Aboriginal and Torres Strait Islander experiences of trauma and social isolation.*

8. One of the detrimental consequences of responding inadequately to the unique nature of trauma that can affect Aboriginal and Torres Strait Islander people is that people with mental and cognitive disabilities are forced into the criminal justice system early in life due to an absence of holistic disability support and alternative pathways. Aboriginal and Torres Strait Islander people are being managed by the criminal justice system, rather than being supported and cared for in the community.<sup>1</sup>
9. Furthermore, Aboriginal and Torres Strait Islander people with a cognitive impairment are overrepresented amongst people held in indefinite detention. Following a finding of unfitness to plead due to mental incapacity, people with cognitive impairment often languish in prisons or detention centres for years due to a lack of secure care facilities available in the community.
10. This submission summarises the key challenges and concerns focusing on this group of people who require the provision of forensic disability services, then offers recommendations on how the provision of services under the NDIS might address these issues.

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<sup>1</sup> Eileen Baldry, Ruth McCausland, Leanne Dowse and Elizabeth McEntyre, 'A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system' (2015), Sydney: UNSW.

## **CHALLENGES AND RECOMMENDATIONS**

11. Aboriginal and Torres Strait Islander people with cognitive impairment make up a large proportion of people in indefinite detention, where they do not receive the disability support they need. The recent Senate Inquiry into indefinite detention of people with cognitive and psychiatric impairment concluded that a prison environment is inappropriate for people with cognitive impairments, in terms of meeting therapeutic and support needs.<sup>2</sup> When prison takes the place of a secure care facility, it can cause the mental condition of people with cognitive impairment to deteriorate.

**Recommendation:** Better sentencing and service outcomes can address this problem. Primarily, there is a need for investment in sustainable, secure, individualised, culturally responsive accommodation; in order to avoid the inappropriate use of prisons or detention centres for people with cognitive impairment. As an alternative to incarceration, accommodation options should meet both the security needs of people with cognitive impairment, as well as their therapeutic service needs. Secure care facilities and accommodation should be staffed with culturally responsive caseworkers, applying case and risk management approaches in a non-punitive, therapeutic way.<sup>3</sup>

12. Across Australia, there is a lack of appropriate early diagnosis and culturally responsive support available for Aboriginal and Torres Strait Islander children and young people with cognitive impairment. In fact, the first time many Aboriginal and Torres Strait Islander people with cognitive impairment are diagnosed is upon entering the criminal justice system. Without access to holistic disability support, Aboriginal and Torres Strait Islander people with cognitive impairment are at a much greater risk of entering a cycle of offending and imprisonment.<sup>4</sup> People with cognitive impairment should be provided with care and support throughout their lives, rather than having to wait until crisis point to receive assistance.

**Recommendation:** In order to address the criminalisation of people with cognitive impairment, early intervention should be prioritised. The provision of services under the NDIS for people in need of forensic disability services should include early assessment, diagnosis, support and intervention services. There must be funding for culturally appropriate disability support systems in the community. Timely intervention can prevent criminalisation by identifying and addressing root causes of offending behaviour.

<sup>2</sup> The Senate Community Affairs References Committee, Parliament of Australia, *Inquiry into indefinite detention of people with cognitive and psychiatric impairment in Australia* (2016).

<sup>3</sup> First Peoples Disability Justice Consortium, Submission No 39 to Senate Community Affairs References Committee, Parliament of Australia, *Inquiry into indefinite detention of people with cognitive and psychiatric impairment in Australia*, April 2016, 48.

<sup>4</sup> Ibid 11.

13. Incarceration itself is likely to exacerbate certain kinds of behavioural problems associated with cognitive impairment, due to the highly stressful, isolating and punishing nature of prisons. The imprisonment of a person with cognitive impairment actually serves to increase their risk of involvement with the criminal justice system in the future.<sup>5</sup> In order to reduce this risk of reoffending, access to community support and transitional options upon release from prison is essential.
14. The itemised nature of NDIS support – whereby supports are provided on the basis of their relationship to disability – may, without additional targeted service provision, prove insufficiently responsive to the reality that individuals may cycle in and out of custody or require changing services. A simple example of this may be where an NDIS support may be tied to daily occupancy and not fund empty beds - which may result in clients involved in the criminal justice system not having a space to store their belongings while in a custodial setting. The default approach of planning and costing supports based on a linear, defined needs base fails to recognise the changing circumstances and complexities of individual's lives.<sup>6</sup>

**Recommendation:** The NDIS should fund service provision that bridges the gap between correctional settings and the community. The NDIS should incorporate mechanisms for planning of service provision to occur whilst the person is in prison, to achieve effective community reintegration on release. This kind of planning for post-release services should be undertaken with the same worker, both in the prison and upon returning to the community. Therefore, NDIS service provision needs to be able to continue throughout a period of incarceration, to improve community reintegration and reduce the likelihood of an unnecessary return to prison.

15. A further concern is that the NDIS funding model may lack the capacity to service those with complex support needs, including people with cognitive impairment. The NDIS funding model relies heavily upon the utilisation of a casual workforce. However, for individuals with cognitive impairment, what is often most important is the development of trusting, therapeutic relationships.<sup>7</sup> The landmark Productivity Commission report into the NDIS underlined the importance and indispensability of such targeted investment, particularly to support disadvantaged groups “as a tool to promote innovation, experimentation and research”.<sup>8</sup>

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<sup>5</sup> Alison Churchill, Mindy Sotiri and Simone Rowe, ‘Access to the NDIS for people with cognitive disability and complex needs who are in contact with the criminal justice system: Key challenges’ (Briefing Paper, The Community Restorative Centre, January 2017).

<sup>6</sup> Ibid 20.

<sup>7</sup> Ibid 24.

<sup>8</sup> Productivity Commission (2011) *Disability Care and Support: Productivity Commission Inquiry Report*, No. 54 at p 471.

**Recommendation:** Funding needs to be invested in the professional development and ongoing supervision of staff in order to create a skilled workforce, trained in multiple and overlapping areas (disabilities, mental health, cultural awareness and sensitivity).

16. The eligibility criteria for the NDIS may make it challenging for Aboriginal and Torres Strait Islander people with cognitive impairment to access the disability supports they need. The idea of choice and control is central to the NDIS model of funding.<sup>9</sup> The initial step in accessing the NDIS involves verifying a person's eligibility for the scheme, requiring both computer literacy skills as well as self-advocacy. Alternatively, they must possess the appropriate interpersonal skills to approach the NDIS or have an advocate who can support them in doing so. Unfortunately, for many people with cognitive impairment and complex support needs, this kind of self-advocacy is not possible.<sup>10</sup>
17. Under section 7 of its parent Act, the National Disability Insurance Agency is under an obligation to adapt its information processes and communications "to the maximum extent possible to the person in the language, mode of communication and terms which that person is most likely to understand". The Agency must ensure that adequate protocols exist to ensure that the modes and frequency of communication with individuals with a cognitive impairment are adapted to comply with its statutory obligations. The Agency in particular should ensure that individuals are aware of, and request, support co-ordination within their plan, and that additional information is sought from other sources such as community groups.

**Recommendation:** It is crucial that people with cognitive impairment who have complex support needs can have access to an advocate or support person to assist with the NDIS application process so the individual's wishes are communicated. This kind of support must be available within the criminal justice system.

18. Another issue is that the eligibility criteria for the NDIS is based upon a diagnostic framework where the existence and degree of impairment must be established.<sup>11</sup> However, providing evidence of such a diagnosis could be challenging for those who have never had access to appropriate diagnostic services. Furthermore, many Aboriginal and Torres Strait Islander people with cognitive impairment may be unwilling to identify as disabled, and they

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<sup>9</sup> Churchill, Sotiri and Rowe, above no 5, 14.

<sup>10</sup> Karen Soldatic, Georgia van Toorn, Leanne Dowse and Kristy Muir, 'Intellectual Disability and Complex Intersections: Marginalisation under the National Disability Insurance Scheme' (2014), 1 *Research and Practice in Intellectual and Developmental Disabilities* 6.

<sup>11</sup> *Ibid* 11.

may not recognise their own need for assistance. Other times it is due to cultural factors, for example in some Aboriginal and Torres Strait Islander languages there is no comparable word for 'disability'.<sup>12</sup>

19. The Independent Review of the NDIS Act, published in December 2015, highlighted the need for greater certainty and clarity regarding the nature of Information, Linkages and Capacity functions of the Agency under section 118 of the NDIS Act.<sup>13</sup> It supported an amendment which would provide a more specific breakdown of the nature of the NDIS advocacy support and outreach activities. The need for targeted, community driven advocates in implementing the NDIS in Aboriginal and Torres Strait Islander communities was emphasised in a report that was released by the Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Women's Council in 2014.<sup>14</sup> Given the centrality of outreach, information and advocacy to the NDIS, it is vital to supplement the role of Local Area Co-ordinators with capacity building and outreach projects under the leadership of community organisations.

**Recommendation:** The NDIA should encourage and support a concerted outreach approach, to help make the NDIS accessible to all those in need. There should be funding in place that enables organisations to open up a dialogue with Aboriginal and Torres Strait Islander communities around disability.

**Prepared on behalf of the First Peoples Disability Network (Australia) with the support of La Trobe Law School as its disability justice research partner.**

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<sup>12</sup> National Disability and Carer Alliance, 'Implementing the NDIS in Aboriginal and Torres Strait Islander Communities: Key Points from Roundtable' (Roundtable Report, 2013).

<sup>13</sup> Department of Social Services, Independent review of the NDIS Act, December 2015, recommendation 6.

<sup>14</sup> Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council, Provision of Services in Relation to Assisting Indigenous Australians in Anangu Pitjantjatjara Yankunytjatjara (APY) Lands to Benefit from the National Disability Insurance Scheme (NDIS), 2014. Available at: <https://ndis.gov.au/ngaanyatjarra-pitjantjatjara-yankunytja>