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Submission to the Parliamentary Joint Standing Committee on the National Disability Insurance Scheme (NDIS)

26th June 2014

Disability Advocacy NSW (DA NSW) provides individual and systemic advocacy to people with disabilities in the Hunter, New England and Mid North Coast regions of NSW. More specifically, DA NSW provides advocacy in the context of the National Disability Insurance Scheme (NDIS) by ensuring that people with a disability in the Hunter trial site receive fair treatment in their dealings with National Disability Insurance Agency (NDIA).

Although DA NSW receives feedback from clients regarding their various dealings with the NDIS within the Hunter, DA NSW wishes to provide the Committee with examples of specific cases which serve to highlight various service 'gaps' in the interface of the NDIS with state health as well as mainstream disability/community services.

Disability Advocacy NSW considers the following submission pertinent on the basis that it falls under the Committee's broad remit of reviewing the implementation and administration of the NDIS.

1) Functional capacity assessments (NDIS Evidence of Disability Form)

In order to be considered as a Participant of the National Disability Insurance Scheme (NDIS), Applicants are required to complete and lodge an *Access Request Form*. In addition to this form, Applicants are also required to provide the NDIA with evidence of their disability by submitting an *Evidence of Disability Form*.

The above form needs to be completed by a treating medical specialist or, for developmental delay, by an appropriate health professional such as a member of a multidisciplinary team. Part of this form also requires a medical professional to complete a 'functional impact assessment'.

DA NSW has received feedback from clients (with Level 2 Autism), the majority of whom rely primarily on the Disability Support Pension (DSP), which indicates that they generally cannot afford for a medical specialist to complete the functional impact assessment as required by the *Evidence of Disability Form*,

Currently, the *NDIS Act* does not contain any legislative provisions which specifically enable the NDIA to provide Applicants with funding which would assist them to obtain a functional capacity assessment. While Chapter 2, Section 14 (1) of the *NDIS Act* provides that;

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14 Agency may provide funding to persons or entities

The Agency may provide assistance in the form of funding for persons or entities:

(a) for the purposes of enabling those persons or entities to assist people with disability to:

(i) realise their potential for physical, social, emotional and intellectual development; and

(ii) participate in social and economic life; and

(b) otherwise in the performance of the Agency's functions

Disability Advocacy has received strong advice from the NDIA that the above provision applies only to NDIS Participants, and not to Applicants.

In addition to the financial difficulties previously outlined, feedback provided by the aforementioned clients also suggests that even in the event they had the necessary funds, the nature of their disability means they often lack the level of self-management necessary to engage the services of a medical professional so as to successfully complete the *Evidence of Disability* documentation.

2) Continuity of Support Agreement**i. Interface of NDIS with NSW Health-funded case management service in Newcastle/Lake Macquarie LGA**

Section 62 of the *Intergovernmental Agreement on the National Disability Insurance Scheme Launch* provides that Continuity of Support arrangements will be required for people with disability who currently receive support but do not meet the access requirements outlined in the *National Disability Insurance Scheme (NDIS) Act 2013*, to ensure that they are not disadvantaged in the transition to the NDIS.¹

Despite the safeguards outlined by the Continuity of Support agreement above, DA NSW has received feedback which suggests that certain Hunter residents ineligible for the NDIS may be at risk of being unable to obtain case management under state Health due to the anticipated closure of Newcastle/Lake Macquarie Community Options Projects (COPS).

COPS, managed by Hunter-New England Health (HNE Health), are funded to provide case management to frail aged and younger people with disabilities, who have complex care needs, require case management, are at risk of inappropriate institutionalisation and reside within the Newcastle and Lake Macquarie LGAs. Only recently, DA NSW has received firm advice from HNE Health that Newcastle/Lake Macquarie COPS is expected to cease operation within the Hunter in approximately 6-12 months time.

¹ COAG, *Intergovernmental Agreement for the National Disability Insurance Scheme (NDIS) Launch*, 7th December 2012. pg. 10

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Regarding the above point, DA NSW has a recent case concerning a person with an intellectual and psychiatric disability who, already deemed ineligible for the NDIS, has had their former case management service with COPS extended for an additional 6-12 months due to the impending closure of the service. Notwithstanding the short-term extension of this individual's case management under COPS, it remains unclear as to how the *Continuity of Support* arrangement will operate to ensure this individual continues to receive case management after the closure of COPS and in the lead up to the conclusion of the NDIS trial in 2018.

ii. Interface of NDIS with HACC services in Hunter trial site

The Commonwealth HACC Program is available to frail older people, people with a disability and their carers. HACC-funded services aim to support frail older people and people with a disability to continue to live at home where their capacity for independent living is at risk of early or inappropriate admission to residential care.

Various HACC-funded services exist to provide assistance "to help maintain the independence of eligible people, including help with household chores, health and personal care, activities and transport, short breaks and home maintenance and modification."²

DA NSW has received feedback from clients, ineligible for the NDIS, which suggests that HACC services may no longer be available to new applicants within the Hunter launch area. Currently, access to HACC services within the Hunter trial site is through a single point of access - the Community Care Access Point (CCAP). Currently, CCAP staff will provide new or existing clients with information about the NDIS as required, including referring them to NDIA for further assistance.³ While CCAP practice also includes providing existing clients with the choice to remain with their current supports, those currently ineligible to access the NDIS yet likely to require HACC services in the future, may stand to lose the supports outlined above.

3. Role of the NDIA regarding complaints made against registered NDIS service providers

The Agreement between NSW and the Commonwealth for the Hunter launch states the following in relation to complaint mechanisms:

NDIS participants will have access to a range of NSW complaints mechanisms, with provision for complaints to be made to the Agency, Administrative Decisions

² NSW Department of Ageing, Disability and Home Care (ADHC), *Home and Community Care Services* (updated 6th June 2013) <http://www.adhc.nsw.gov.au/individuals/help_at_home/home_and_community_care_services>

³ NSW Department of Ageing, Disability and Home Care (ADHC), *Community Care Supports Program (CCSP) - Policy Statement - NDIS Launch* (September 2013), pg.1.

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Tribunal, Ombudsman, Health Care Complaints Commission, and any other NSW or Commonwealth body or tribunal, as appropriate.⁴

Currently the NSW Department of Ageing, Disability and Home Care (ADHC) has capacity to consider complaints made against ADHC-funded services in so far as referring the complaint back to the organisation for examination, investigating how the complaint was originally handled and ensuring that the organisation in question has a complaint handling policy.⁵

In a recent case, DA NSW assisted a client to make a complaint to the Abuse & Neglect Hotline. The Abuse & Neglect Hotline's general procedure in such cases is to contact the funding body of the group home, ask them to investigate the complaint and then provide a written response to the complaint. The service that manages the client's group home however has transitioned to the NDIS and consequently the Abuse & Neglect Hotline had forwarded the complaint to the complaints department of the NDIS.

Despite the action taken by the Abuse & Neglect Hotline above, current NDIS quality assurance policy contradictorily states that the role of the NDIS complaints management department regarding serious incidents is actually to refer them to the Abuse & Neglect Hotline.⁶ It therefore remains unclear whether the NDIA shares similar powers traditionally held by ADHC with regards to regulating service provision complaints and if not, it is equally uncertain how such an issue will be resolved under the NDIS."

Disability Advocacy NSW wishes to thank the Committee for the opportunity to provide the above submission.

⁴ NSW Department of Ageing, Disability and Home Care (ADHC), *Quality Assurance and Safeguards Working Arrangements for the launch of the NDIS in NSW* (18th October 2013), pg. 8-11.

⁵ NSW Department of Ageing, Disability and Home Care (ADHC), *ADHC Complaints Procedure*, (updated 7th June 2013) < http://www.adhc.nsw.gov.au/contact_us/complaints_procedure >

⁶ Ibid, above 4, pg. 9.