public guardian

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Senator the Honourable Kevin Andrews MP
PO Box 6022
House of Representatives
Parliament House
CANBERRA ACT 2600

Via email: ı

Dear Senator,

I am writing to you following our discussion after the Joint Standing Committee on the National Disability Insurance Scheme (NDIS) hearing in Brisbane on Tuesday 26 September 2017, where I committed to providing you with further concerns that I have in relation to potentially perverse consequences arising from NDIS funding and the prevalence in the use of restrictive practices by service-providers. I also believe that the matters rasied in this letter have implications for the cost of the scheme to the Australian Government.

I would appreciate if the contents of this letter could be considered as a further line of inquiry by the Committee.

In summary, I hold genuine fears that the philosophy of reducing and eliminating restrictive practices under the National Quality and Safeguards Framework is being contravened by the incentives towards their usage by the large funding packages they attract. The NDIS appears to provide financial incentives towards their use, as opposed to any disincentive or incentive for positive behaviour support alternatives. The issue relates not to the quantum of funding itself, but rather the incentives for the service-provider to maintain their usage, and a lack of review by the NDIS as to whether the funds provided for behaviour support (under 'capacity building') have actually resulted in improvements to quality of life and a reduction in 'behaviours of harm'.

As you would be aware, the *National Quality and Safeguards Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Sector* centres on the principle that (p6):

> "[r]*estrictive practices should occur only in very limited and specific circumstances, as a last resort and utilising the least restrictive practice and for the shortest period of time possible under the circumstances. Restrictive practices should only be used where they are proportionate and justified in order to protect the rights or safety of the person or others.*"

Yet, as my clients are being transitioned into the NDIS, I have become increasingly concerned that the funding mechanisms provide no incentive for service providers to use restrictive practices as a 'last resort' or 'for the shortest period possible'. Correspondingly, there is no disincentive towards their usage as anything other than a last resort. A participant subject to restrictive practices is also more likely to attract a much higher package of 'core supports'. One may speculate that there is an incentive to increase restrictive practice usage, and seek its use as an 'earlier' resort, due to the high levels of individualised funding it attracts that may support the administration of a service

provider more generally. This would defeat the principles of the Safeguarding Framework and even the 'choice and control' concept espoused by the Scheme. It would also defeat the principles of the UN Convention on the Rights of Persons with Disabilities. If a participant's funding required the service provider to positively address the person's challenging behaviour, while reducing and eliminating the use of, and need for, restrictive practices, there would be a clear service imperative placed upon the service provider to ensure supports were in place to build the client's independence. With a reduction in the need for specialist behaviour support, a participant not only has their human rights met, greater freedom, choice and control, **but may ultimately require less intensive, and expensive NDIS supports.**

I strongly believe that support packages for people who exhibit 'behaviours of harm' should be appropriately funded, and I fully acknowledge that supports required will be both costly and intensive. However, my concern is that while these high support packages are *linked to an individual person* there is no *financial* incentive for the service provider to support the development of that individual's skills, both in addressing their behavioural issues as well as in other areas (such as life skills, personal care, or how to travel on transport) to help the person achieve their ultimate goal of independence, and therefore a reduction, and possibly elimination of the need for restrictive practices supports at all.

While the NDIS retains a market model based on individual funding, there is limited or no flexibility available to service providers to offset costs, or divert service delivery where the needs are greater. While there are arguments both for and against block funding, such funding arrangements did at least to some extent mitigate the administrative costs borne by service providers. However, the risk is that under current funding arrangements, high individual support packages for specialist behaviour support can unintentionally lead to the perverse outcome of a service provider being driven more by the need for financial stability (and therefore maintenance of the use of restrictive practices); rather than risk losing that funding by promoting the person's independence, and proactively working towards a reduction in restrictive practices.

Without appropriate financial incentives or disincentives within the NDIS to drive the practice of reducing and eliminating the use of restrictive practices, there is a significant risk that these participants will stay subject to the use of restrictive practices far longer than is necessary or appropriate, risking entrenchment of the use of restrictive practices as an ongoing part of their life. While these perverse outcomes can be mitigated in part by ensuring that there are strong and robust oversight mechanisms such as those available through Queensland's community visitor program, fundamentally these issues are best addressed at the initial stage of funding, where they can drive best practice through a nationally consistent funding approach that incentivises behavioural support and the active devolution of the use of restrictive practices.

Should you wish to discuss this matter further, or require further information please contact me directly

I trust this information is of assistance.

Yours sincerely

Natalie Siegel-Brown
Public Guardian