



NDIS Workforce

Submission to the Joint Standing Committee on the National Disability Insurance Scheme

15 April 2020

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

Many of our members act for clients who are participants in the NDIS, and have acted in the NDIS review and appeal processes.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input into the inquiry being conducted by the Joint Standing Committee on the National Disability Insurance Scheme ('the Committee') into the NDIS workforce.
2. This submission responds to the following Terms of Reference:
 - (a) the current size and composition of the NDIS workforce and projections at full scheme;
 - (b) challenges in attracting and retaining the NDIS workforce, particularly in regional and remote communities.

Response to Terms of Reference (a)

3. In our experience, the vast majority of those who work in the disability care sector are hardworking, caring, and have the best interests of those they care for at heart.
4. However, the ALA is concerned about a number of issues that will impact the quality of service provision available to people with disability into the future. These issues include the casualisation of the disability workforce, the deskilling of the disability workforce, and the changing nature of employment relationships within the sector.
5. The ALA submits that good care outcomes for people with disability will be facilitated by a workforce which has secure, long-term employment on pay and conditions commensurate with the difficult and sensitive nature of the work performed by disability care workers.
6. Small, individual contractors – particularly personal carers – are struggling with the transition to the market-based regime which is the centrepiece of the NDIS's workforce development plan. Transitioning to a market-based system for personal care provision will not assist in the reduction of casualisation in the sector's workforce – if anything, it will exacerbate it.
7. The disability care sector is in direct competition with other sectors, such as aged care, for quality staff – a situation that will continue to intensify as the NDIS roll out reaches completion.
8. Strategies to address the growing shortage of workers risk either reducing quality standards or increasing costs, or both. It is absolutely crucial that appropriate levels of funding are committed to

this issue. There must not be a 'lowest common denominator' approach to the provision of services to people with disability.

9. There must be sufficient and properly qualified staff available Australia-wide. The risks in not adopting that approach are plain:

- Unscrupulous, profit-driven entities and individuals will enter the market, seeking to exploit the funds available;
- Unskilled and untrained people will be recruited to work with people with complex, multifaceted needs. If a carer's skills and experience are not properly matched with the needs of the participants, participants will suffer, with catastrophic consequences; and
- Workers will be highly vulnerable to exploitative conduct by their employing entity.

10. The ALA draws the Committee's attention to the current trend toward the 'Uberisation' of the disability workforce. It is important that the legislative and regulatory frameworks underpinning the NDIA's work recognise that:

- The disability workforce is made up of some of the most vulnerable worker cohorts in Australia;
- These vulnerable cohorts of workers are particularly susceptible to actions of unscrupulous employers;
- Sham contracting is rife, with workers told they must be independent contractors rather than traditional employees. These employees are then missing out on superannuation, insurance, workers' compensation, award protections and the other workplace benefits Australian workers have come to expect;
- Technology-based employment matching services that actually employ their staff, rather than merely connect contractors to clients, need to be rewarded; and
- In order to compete with other care sectors (including health and aged care), the employment conditions within organisations registered to provide NDIS services must be first rate.

11. The direct engagement of support staff is complex and fraught, and may not be the optimal model for many people with complex care needs.

12. The 2019 report *Growing the NDIS Market and Workforce Strategy* tells us that:

*'The scale at which the workforce needs to grow in a short period is significant. It is estimated that the NDIS workforce will need to increase by up to 90,000 full-time equivalent (FTE) employees over the next five years.'*²

13. The NDIS will thus become the main supplier of funds for the employment of disability care professionals. The ALA submits that the NDIA's procurement processes for service provision should have far higher expectations on the credentials of the applicant firm as an employer of choice. If a firm cannot provide details of their success as a quality employer, they should not be funded by the NDIS to provide services to people with disability.

14. The *Australian Disability Workforce Report*, produced by National Disability Services, reveals a number of interesting facts about the disability care workforce:

- Around 70% of disability support workers are women, compared to a figure of 46% in the wider Australian workforce;
- Disability support workers are slightly older than the Australian workforce: 44% are aged 45 years or more, compared to a figure of 39% in the workforce more generally;
- Most disability support workers are employed as permanent (55%) or casual workers (42%). Very few are fixed-term workers (3%). The number and rate of casual workers is the fastest growing employment type in the sector;
- Small and medium organisations/employers engage more casuals;
- Organisations with higher female-to-male ratios have higher levels of casual employment and lower levels of permanent employment. In organisations with a majority male workforce, the proportion of permanent employees in those organisations is 74% and the proportion of casuals is just 22%; and

² <<https://www.dss.gov.au/disability-and-carers-programs-services-for-people-with-disability-national-disability-insurance-scheme/growing-the-ndis-market-and-workforce-strategy>>; p.10.

- The turnover rate for casuals has averaged around 1.6 times as high as the permanent rate and appears to be increasing.³

15. The ALA draws the Committee's attention to the following suggestions for reform.

Addressing unequal pay

16. It is imperative that disability care workers are paid what they deserve, and specifically that they are paid a wage that is commensurate with their labour and the particularly difficult nature of their work. As competition between sectors increases, it is important that the disability sector is able to offer well-paid jobs, with good working conditions.
17. As the primary price setter for the industry, the NDIS plays an important role in determining pay and conditions.

Addressing underemployment

18. Many aged care positions are now dependent on federal Government/NDIS funding. Consideration should be given to NDIS funding/service procurement being predicated on more full-time positions or, at least, higher minimum hours for staff.

Addressing casualisation

19. The ALA advocates for measured changes to address casualisation, such as through adopting schemes which augment existing rights for workers to request a conversion from casual employment to permanent employment. Again, consideration should be given to NDIS funding being predicated on commitment to such schemes.

Regulation of labour hire

20. A number of state governments have sought to regulate the labour hire industry, including Queensland and Victoria. What is currently missing from the legislative framework is labour hire regulation at the national level.

³ <<https://www.nds.org.au/policy/australian-disability-workforce-report-second-edition-highlights-workforce-risks1>>.

21. Consideration should be given to the relative merits of introducing a federal regulatory scheme to either 'cover the field' of labour hire regulation or to 'fill the gaps' of existing state-based regulation, to ensure that this practice, which undermines wages and conditions, is limited.

Disability care provided by allied health professionals

22. The ALA notes the important role played by allied health professionals in the provision of care for people with disability. We believe there is a greater role that those with specific expertise can and should play to ensure quality care within the sector.
23. It is our observation that many NDIA planners seem to lack specific knowledge in relation to the work of health specialists such as physiotherapists and occupational therapists. The expert recommendations from specialists in these fields are, on many occasions, ignored by planners.
24. The ALA submits that there is a clear deficit of skills and experience with some planners and urgent action is required to remedy this through comprehensive training. This is particularly critical for planners working with participants with complex care needs, whose plans must only be prepared by planners with appropriate experience and training.
25. The ALA believes that the NDIA should consider sourcing professional development for planners from the relevant health industry peak bodies. This would be beneficial for all involved.

Capacity, skills and experience of NDIS planners

26. The experience of ALA members and their clients is that there is a clear skills and experience deficit among NDIS planners. This is undermining the effective operation of the scheme and causing significant problems for participants.
27. ALA members have also reported significant delays in the planning process. This suggests that there are not enough planners to meet demand. Such delays are clearly inappropriate when participants are relying on NDIS funding for their care and supports.
28. In our view, the primary problem is a lack of understanding: of a participant's care needs; of the support that is available; and of the legislation and rules that underpin the NDIS. This results in plans being approved that do not meet participants' needs. Other problems arising from the lack of skills and experience among planners include inappropriate communication and delays in assessing and approving care plans.

29. The problem is particularly stark for participants with complex care needs – the most vulnerable cohort of participants. An appropriate, comprehensive and tailored care plan for such a participant demands a planner with sufficient training and significant experience.
30. In many cases, there also seems to be a fundamental lack of understanding of the legislation and rules that underpin the scheme. This leads to decisions that are incorrect at law and undermines the quality and appropriateness of the plans.
31. Poor planning also results in a significant administrative burden and financial cost for the NDIS because it increases the numbers of complaints and requests for internal review. It also increases the number of external appeals to the Administrative Appeals Tribunal (AAT) and Federal Court.
32. The ALA submits that urgent action is required to increase the skills and capacity of NDIS planners through training and professional development. The impact of disability can be complex and nuanced, and understanding the care and support needs of those living with disability requires specific training.

Response to Terms of Reference (b)

33. The precarious position of participants in rural and remote areas has been well documented, as have the challenges associated with effective service delivery. Thin markets are emerging and becoming entrenched and there is a glaring lack of workforce infrastructure.
34. ALA members report examples of regional and remote communities where there are no service providers to provide the services that participants need. So, participants have funding but no way of spending it. The ALA has also heard that transport support offered through the NDIS does not adequately address the needs of those in rural and remote areas.
35. Urgent intervention is required to address the workforce infrastructure problems. This must include more flexible approaches to planning and funding.

Delivery of NDIS services to Aboriginal and Torres Strait Islander peoples

36. According to data from the 2014–15 National Aboriginal and Torres Strait Islander Social Survey (NATSISS), 45% of Aboriginal and Torres Strait Islander people reported living with disability or long-term health conditions. The NATSISS also found that 7.7% of Aboriginal and Torres Strait Islander people reported having severe and profound disability.

37. This is 2.1 times the rate for non-Aboriginal and Torres Strait Islander people. The prevalence of disability is higher among Aboriginal and Torres Strait Islander women (47% reported living with disability or long-term health conditions, with 8.4% experiencing severe and profound disability, compared to men: 42.9% and 7.1%).
38. According to the First Peoples Disability Network (FPDN), the majority of Aboriginal and Torres Strait Islander people with disability live in poverty, lack access to disability-appropriate housing, and young Aboriginal and Torres Strait Islander people with disability often cannot attend school or can only participate in a limited way because the local school cannot accommodate their disability.⁴
39. According to Avery, the number of Aboriginal and Torres Strait Islander people with severe and profound disability is particularly relevant to the implementation of the NDIS in Aboriginal and Torres Strait Islander communities.⁵ The FPDN reports that Aboriginal and Torres Strait Islander people with disability often fail to get NDIS plans or are given seriously under-resourced plans. One major reason for this is the absence of meaningful advocacy support for Aboriginal and Torres Strait Islander people with disability to access the NDIS.⁶
40. The difficulties of accessing appropriate NDIS plans is particularly serious in remote communities, where 44% of Aboriginal and Torres Strait Islander people report living with disability or long-term health conditions and 7.5% report having severe and profound disability.
41. The ALA is concerned that the lack of services in remote Aboriginal and Torres Strait Islander communities means that either the community itself must bear the cost of providing necessary support services to Aboriginal and Torres Strait Islander people with disability, or that those people must leave the community and their Country in order to access the necessary services. The latter option presents a difficult dilemma for Aboriginal and Torres Strait Islander people with disability. The ALA submits that the NDIS needs to be prepared and equipped to provide necessary support services in remote communities so that Aboriginal and Torres Strait Islander people with disability can continue to participate in community, cultural and ceremonial activities.

⁴ Griffis, Damian (2019). *In traditional language, there is no word for disability*. The Guardian, 21 November 2019.

⁵ Avery, S. (2018). *Culture is inclusion: A narrative of Aboriginal and Torres Strait Islander people with disability*. First Peoples Disability Network (Australia) July 2018, p.77.

⁶ Griffis, n 4 above.

42. The ALA is also concerned about the failure of the NDIS to meet the specific needs of Aboriginal and Torres Strait Islander people with disability who live in remote areas. The ALA has heard reports that NDIS plans for some of these Aboriginal and Torres Strait Islander people fail to address some of their specific needs, including access to basic amenities, the ability to afford food and/or electricity, and the importance of maintaining contact with culture, environment and community.⁷
43. In *Culture is Inclusion: A narrative of Aboriginal and Torres Strait Islander people with disability*, Avery shares an example provided by an Elder from a remote community in which people had been approved for substantial packages from the NDIS but couldn't spend the allocated funding due to a lack of services. The Elder recounted that these same people were starving and homeless, but could not spend their allocated package money on basic amenities such as food and blankets as they were not considered by the NDIA as 'reasonable and necessary'.⁸
44. According to Avery:

*'Responding to the prevalence and profile of Aboriginal and Torres Strait Islander people with disability will require a service model which is realistic to issues in remote service delivery, where there may be a small number of people with disability living in any given remote community, but also characterised by a cultural model of disability support which can benefit all Aboriginal and Torres Strait Islander people with disability regardless of where they live.'*⁹

45. Avery also observes that the lack of access to disability support services in remote communities has a significant discriminatory effect on Aboriginal and Torres Strait Islander women. According to his research, many men who acquire disability while living away from their Country are able to return to their Country and communities because Aboriginal and Torres Strait Islander women will often assume carer duties, effectively making up for the lack of formal support services that are available in remote communities. However, women with disability do not benefit from such informal carer roles from men to the same extent and are therefore often forced to leave community and Country in order to access their required support services.¹⁰

⁷ Stevenson, Kylie and Howie, Tamara (2019). *The land the NDIS forgot: the remote Indigenous communities losing the postcode lottery*. The Guardian, 5 November 2019.

⁸ Avery, n 5 above, p.157.

⁹ Ibid 91.

¹⁰ Ibid 93.

46. Avery notes that this produces a gender inequity in which the burden for compensating for lack of services in remote communities falls predominantly on Aboriginal and Torres Strait Islander women, either through the provision of informal care, or in being forced to leave communities and Country in order to access necessary support services.¹¹

Conclusion

47. The ALA welcomes the opportunity to have input into the review being conducted by the Joint Standing Committee into NDIS Workforce. The ALA would welcome the opportunity to appear before the Committee to further explain its views.

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President

Australian Lawyers Alliance

¹¹ Ibid.