



**Government of South Australia**

Office of the Guardian  
for Children and Young People

Mr Gerry McInally  
Joint Standing Committee on the  
National Disability Insurance Scheme  
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Dear Mr McInally

Thank you for your invitation to provide a submission to the inquiry concerning the provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition.

As you would be aware, South Australia was a pilot site for children and young people to the age of 13 years to transition to NDIS. My office has not been directly involved in this pilot or with the subsequent transition for young people aged 14 to 17 years. My comments are therefore of a general nature and relate to observations my staff and I have made in our dealings with children and young people in out of home care and what we have learned through conversations with colleagues and stakeholders in the child protection sector.

I am concerned that children and young people in care with severe forms of mental health issues may not meet the current legislation's eligibility requirements – primarily as they relate to permanency. The apparent rigidity of the 'permanency' requirement means that the NDIS is not responsive to enabling access to adequate treatment for some highly vulnerable children and young people.

It is our experience that children are diagnosed with a range of mental health related disorders including, for example, reactive attachment disorder and oppositional defiance disorder that often require significant treatment. It is fair to say that the impairments of these disorders, for example, could mean the child would have substantially reduced psychosocial functioning in communication and social interaction, and that the impact could be life-long – thereby reflecting the definition of psychosocial disability. Would the scheme recognise these children as eligible for the reasonable and necessary supports to reach their goals and aspirations?

The general principles of the *National Disability Insurance Scheme Act 2013* include 'People with disability have the same right as other members of Australian society to realise their potential for physical, social, emotional and intellectual development', and 'People with disability should be supported to receive reasonable and necessary supports...'.<sup>1</sup> I have serious concerns that the legislation, and therefore the scheme, may not support children and young people as well as it does adults.

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<sup>1</sup> *National Disability Insurance Act 2013* (Cth) s4.

### **SAM'S STORY**

Sam, a young woman aged 16, had a history of significant mental health issues for several years, which has led to self-harm, including multiple suicide attempts. She assaulted a therapeutic care worker and was subsequently charged and remanded in custody. It was at this time that Sam's mother relinquished her parental responsibilities to the State (Sam's father is deceased) as she believed that she could protect or adequately care for her daughter.

The nature of the offence would not ordinarily result in a young person remaining in custody, yet Sam could not be released despite being granted bail, as an appropriate placement was not available. The custodial environment was not equipped to respond to her significant needs related to her mental illness and struggled to respond to her complex behaviours which included selective mutism, catatonic states and soiling multiple times a day. This affected other residents at the facility also.

Following high-level multi-agency meetings, including the Office of the Guardian for Children and Young People, a comprehensive psychological assessment was completed. This was the first time Sam was assessed in this way. No formal disability was diagnosed, but serious psychosocial concerns were raised. Sam is now under care and protection orders and lives in residential care. Medical opinion is that this will be a lifelong mental illness for Sam and that significant intervention will be necessary.

My office has received conflicting advice from various stakeholders on whether children and young people would receive support from NDIS related to a psychosocial disability. Whilst one source has claimed that a number of children/young people are receiving NDIS relating to a psychosocial disability, another has stated that the NDIS is arranged primarily to deal with only adults in this capacity and that it would be highly unlikely that a child would be eligible.

I am also advised that a small number of children in South Australia were recorded as having a psychosocial disability as their primary disability, but the National Disability Insurance Agency considered this a data anomaly and was investigating these cases. I would like to know the actual diagnoses of those children thought to be an anomaly. Given the inconsistencies around children and young people and psychosocial disability, it would be prudent for the committee to investigate this area further.

Commonwealth or State; there is a responsibility to provide services to people with disability. Inadequate planning in legislation and service provision should not see children and young people relegated to the most basic services after the shift to the NDIS. It would be a great injustice to see the NDIS excluding children and young people from the most appropriate and effective treatment. Whilst there is a commitment for the States to provide adequate services to those not eligible for NDIS, I want to be sure that our most vulnerable children and young people will not miss out.

Mental health conditions, even significant cases, can be remedied or well managed with the right type and level of treatment and support. Without access to the best and most appropriate services, this may not occur and could lead to a child experiencing mental health issues for life. As the system is currently configured, it would likely preclude a child or young person from NDIS due to the eligibility requirement of permanency, yet could see them eligible for it later on as an adult with a life-long psychosocial disability. Does the scheme as it stands, with its restrictive 'permanency' requirement, serve people with a psychosocial disability at all?

As South Australian Guardian for Children and Young People, I can only speak to my mandate and am not in a position to speak about children in the broader Australian community. I would therefore invite the committee to engage with the Australian Children's Commissioners and Guardians (ACCG) about how the NDIS could better respond to meeting the psychosocial needs of children and young people with significant mental health conditions. I am happy to be the ACCG's primary contact in this regard.

I will follow the progress of your inquiry with interest and look forward to hearing from you soon.

Yours sincerely

Amanda Shaw

Guardian for Children and Young People

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