



## **The Community Restorative Centre**

# **Submission to the Proposed National Disability Insurance Scheme Quality and Safeguarding Framework**

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## Submission Rationale

Currently across Australia there are thousands of people with intellectual and mental disabilities who are criminalised and imprisoned in criminal justice institutions designed primarily for punishment<sup>1</sup>. Evidence clearly indicates that the disadvantage of disability is exacerbated by contact with the criminal justice system<sup>2 3</sup>. There is also growing awareness of the profound injustices and human rights abuses perpetuated by the criminalisation of what are essentially disability related behaviours and responses to life circumstances<sup>4</sup>. Nevertheless, the continuing rate of over-representation of this vulnerable group in prisons suggests that the incarceration of people with intellectual and mental disabilities has become a normalised response<sup>5</sup>. In New South Wales for example, people with intellectual and mental impairments are three to nine times more likely to be in prison than the general population<sup>6</sup>.

Over the past decade however, there has been an increasing commitment from many Australian jurisdictions to address the extreme disadvantage, marginalisation and injustices experienced by this group. Still, there remains a paucity of services in the community that are willing and/ or able to provide the specialised, holistic, long-term rehabilitative service interventions so urgently

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<sup>1</sup> Baldry E. (2015). Disability at the margins: limits of the law, *Griffith Law Review*, 23(3), 370-388.

<sup>2</sup> Cunneen C, Baldry E, Brown D, Brown M, Schwartz M & Steel, A. (2013). *Penal Culture and Hyperincarceration: The Revival of the Prison*. Surrey: Ashgate.

<sup>3</sup> NSW LRC (New South Wales Law Reform Commission). (2012). *People with Cognitive and Mental Health Impairments in the Criminal Justice System: Criminal Responsibility and Consequences*, Report No. 138, NSW LRC.

<sup>4</sup> Baldry E. (2015). Disability at the margins: limits of the law, *Griffith Law Review*, 23(3), 370-388.

<sup>5</sup> Butler T, Andrews G, Allnutt S, Sakashita C, Smith NE & Basson J. (2006). Mental disorder in Australian prisoners: A comparison with a community sample, *Australian and New Zealand Journal of Psychiatry*, 40, 272-276.

<sup>6</sup> McCausland R, Baldry E, Johnson S & Cohen A. (2013). *People with Mental Health Disorders and Cognitive Impairment in the Criminal Justice System: Cost-benefit Analysis of Early Support and Diversion*, PwC & UNSW.

required<sup>7 8</sup>. The Community Restorative Centre (CRC) is one of the few organisations throughout Australia with an extensive history of working alongside this population group.

Yet with the introduction of the NDIS, at least in its current manifestation, the sustainability of CRCs existing services to this population group remains unclear. Furthermore, given their complex presentations (the nature of which are explored in ensuing sections of this paper), there is significant concern that people with intellectual and mental disabilities who are enmeshed in the criminal justice system will not fare well under the NDIS; rather, it appears likely that their incarceration rates will continue to escalate<sup>9 10 11</sup>. Elements of the proposed NDIS Quality and Safeguarding Framework illuminate many of the key challenges that individuals with intellectual and mental disabilities who are in contact with the criminal justice system are likely to experience under the NDIS.

Using this as our starting point, this submission paper explicates and explains the chief concerns held by CRC for this vulnerable group with the introduction of the NDIS. CRCs concerns can be summarised as: 1) the need to reconsider existing notions regarding choice and control in relation to this population group; 2) the importance of understanding the full effects of incarceration on these individuals; 3) the need to appropriately consider the risks posed to the community from some individuals in this population group; 4) the implications of excluding prisons in NDIS pilot sites for the continuation of throughcare models of intervention based on best practice; 5) the importance of

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<sup>7</sup> Baldry E, Clarence M, Dowse L & Trollor J. (2013). Reducing vulnerability to harm in adults with cognitive disabilities in the Australian criminal justice system, *Journal of Policy and Practice in Intellectual Disabilities*, 10(3), 222-229.

<sup>8</sup> Baldry E. (2015). Disability at the margins: limits of the law, *Griffith Law Review*, 23(3), 370-388.

<sup>9</sup> Clift K. (2014). Access to the National Disability Insurance Scheme for people with intellectual disabilities who are involved in the criminal justice system, *Research and Practice in Intellectual and Developmental Disabilities*, 1(1), 24-33.

<sup>10</sup> Dowse L. (2014). *At the Sharp Edge: People with Intellectual Disability and Complex Support Needs in the NDIS era*, Paper presented to the National Disability Services CEO meeting, December 9.

<sup>11</sup> Soldatic K, van Toorn G, Dowse L & Muir K. (2014). Intellectual disability and complex intersections: Marginalisation under the National Disability Insurance Scheme, *Research and Practice in Intellectual and Developmental Disabilities*, 1(1), 6-16.

understanding the significance of long term therapeutic relationships and training; and 6) the implications of the market ideology accompanying the NDIS for the survival of smaller, specialised organisations.

## **About The Community Restorative Centre**

Established in 1951, The Community Restorative Centre is a NSW community organisation dedicated to providing pre- and post-release services to prisoners, ex-prisoners and their families. CRC works primarily with people with multiple and complex needs, the majority of whom are frequently unable to access other services. Such individuals include people with intellectual disabilities, people with mental illness, people at risk of self-harm and suicide, people with a high risk of re-offending and re-imprisonment, people at risk of relapse into problematic drug use, and people who have historically fallen through the gaps in social service provision, ending up instead being 'managed' in criminal justice systems.

With over 60 years of accumulated knowledge and experience, CRC has progressively developed a unique model of practice that informs each of our highly successful programs. Much of the success of these programs is attributable to our distinctive casework model, and to the holistic approach taken to service provision. Features of this support include: the provision of throughcare programs based on best practice<sup>12</sup>; the use of the best practice 'housing first' model<sup>13</sup>; the utilisation of strong interagency relationships with key partner organisations<sup>14</sup>; the development and maintenance of hopeful, pragmatic, non-judgemental and genuinely caring relationships between

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<sup>12</sup> Borzycki M & Baldry E. (2003). Promoting integration: The provision of prisoner post release services, *Trends and Issues in Crime and Criminal Justice*, No. 262, Australian Institute of Criminology.

<sup>13</sup> Scott M. (2013). Evaluation of two pilot projects aiming to prevent homelessness in people leaving prison, *Parity*, 26(8), 25-26.

<sup>14</sup> Baldry E. (2015). Disability at the margins: limits of the law, *Griffith Law Review*, 23(3), 370-388.

workers and clients<sup>15</sup>; and a commitment to ensuring that all workers develop the high level specialist skills required to work alongside individuals with highly complex needs and often challenging behaviours<sup>16</sup>.

## About People with Intellectual and Mental Disabilities in the Criminal Justice System

Over the past decade, understandings of the characteristics and experiences of individuals with intellectual and mental disabilities who come into contact with the criminal justice system has grown significantly. The vast majority of these individuals have multiple and compounding disabilities; they are overwhelmingly male; have been or are homeless; have a substance abuse problem; and have come from poor, highly disadvantaged families. Indigenous Australians are also disproportionately represented in this group<sup>17</sup>.

The term now commonly used to describe the multiple and compounding disabilities and disadvantages that characterise the lived experiences of these individuals is 'complex needs'. While this term renders visible a deeper and much needed appreciation of the lived experiences and life trajectories of this population group, it also suggests that the problem of having multiple disadvantages and disabilities originates from the individual, rather than being a creation of state agencies and social institutions<sup>18</sup>. This individualisation and pathologisation of disability and disadvantage can be seen to contribute to the normalised procedure of pushing people with multiple and complex needs into the criminal justice system. It thus must be stressed that 'complex needs' originate not from an individual, but rather from the systematic failure of

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<sup>15</sup> Pollack S. (2004). Anti-oppressive social work practice with women in prison: discursive reconstructions and alternative practices, *British Journal of Social Work*, 34, 693-707.

<sup>16</sup> Baldry E & Sotiri M. (2013). 'Corrections: Social work and prisons', In S Rice & A Day (eds.), *Social Work in the Shadow of the Law (4<sup>th</sup> Edn.)*, Leichhardt: Federation Press, pp. 80-95.

<sup>17</sup> Baldry E, Dowse, L & Clarence M. (2012). *People with Intellectual and Other Cognitive Disability in the Criminal Justice System*, Sydney: UNSW.

<sup>18</sup> Cunneen C, Baldry E, Brown D, Brown M, Schwartz M & Steel, A. (2013). *Penal Culture and Hyperincarceration: The Revival of the Prison*. Surrey: Ashgate.

services to appropriately support people who experience multiple and compounding disabilities, health and social disadvantages.

Service provision for people with complex needs involved in the criminal justice system has been the subject of growing concern for at least the past three decades. It is increasingly recognised that many services in the community are ill equipped or do not want to deal with people with mental and intellectual disabilities who have difficult behaviour and have a history in the criminal justice system<sup>19 20</sup>. Furthermore, research in the field clearly indicates that people who experience multiple and compounding disabilities, health and social disadvantages have low rates of disability support as children, young people and adults, with Indigenous people having the lowest levels of service and support<sup>21</sup>.

It is also clear that the longer the complex needs of these individuals are ignored, the more and more vulnerable these people become to both personal and system harm<sup>22</sup>. Yet at the present time, there remains a serious under recognition of the need for special supports for people with complex needs who are involved in the criminal justice system<sup>23</sup>. There remains also a paucity of services in the community that are willing and/ or able to provide the service interventions so urgently required for this vulnerable population group.

## **Disability and Complex Needs**

The following case study, compiled from CRCs client records, illuminate the very real and manifold challenges, vulnerabilities and injustices confronting people

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<sup>19</sup> Baldry E, Dowse, L & Clarence M. (2012). *People with Mental and Cognitive Disabilities: Pathways into Prison*, Background paper for Outlaws to Inclusion Conference. Sydney: UNSW.

<sup>20</sup> Baldry E, Clarence M, Dowse L & Trollor J. (2013). Reducing vulnerability to harm in adults with cognitive disabilities in the Australian criminal justice system, *Journal of Policy and Practice in Intellectual Disabilities*, 10(3), 222-229.

<sup>21</sup> Baldry E, Dowse, L & Clarence M. (2012). *People with Intellectual and Other Cognitive Disability in the Criminal Justice System*, Sydney: UNSW.

<sup>22</sup> Baldry E, Clarence M, Dowse L & Trollor J. (2013). Reducing vulnerability to harm in adults with cognitive disabilities in the Australian criminal justice system, *Journal of Policy and Practice in Intellectual Disabilities*, 10(3), 222-229.

<sup>23</sup> Baldry E, Dowse, L & Clarence M. (2012). *People with Mental and Cognitive Disabilities: Pathways into Prison*, Background paper for Outlaws to Inclusion Conference. Sydney: UNSW.

who experience multiple disabilities and complex needs who come into contact with the criminal justice system.

## **Case Study: James**

*James is a 33-year-old man who has an intellectual disability; Paranoid Schizophrenia; Attention Deficit Disorder; Epilepsy; Hepatitis C; and an extensive history of substance abuse and self-harm, including numerous suicide attempts.*

*From a very young age James was surrounded by, and directly experienced ongoing physical violence and sexual abuse. Substance abuse is a common theme throughout James' immediate and extended family. James describes his mother as a "drug addict" and his father as a "violent alcoholic". His mother's extensive history of heroin abuse meant that James' life began with the experience of Methadone withdrawals. He was also born with only one functioning lung.*

*James had considerable difficulties at school. After ongoing behavioural issues, he was transitioned to a special needs class. Following years of constant bullying, James left school at 13 years of age. To date, James has not participated in adult education. He is considered to have low communication and socialisation skills.*

*Up until the age of 13, James lived with his parents, after which DoCS intervened and James was sent to a refuge. Immediately absconding from the refuge, from age 13 to the present time, James experienced extensive periods of homelessness. At age 13, James also begun using heroin and speed, shortly followed by his engagement in criminal activities.*

*From age 18 to the present time, James has continued to cycle in and out of prison, primarily for drug related offences and assault. Records of James' offending history reveal that each period of incarceration precipitated more serious and frequent offending, leading to increasingly longer periods of imprisonment. After living in one hostile environment after another, James occasionally has unpredictable outbursts of aggression.*

*Combined, James' lived experiences have led to the development of a number of distressing beliefs. In James' words: "I can't look after myself". Frequently, James has expressed that he feels depressed and lonely most of the time, and he has difficulty finding appropriate relationships. He has no support from his family. Due to their continual abuse of drugs and mistreatment of him, James has stated that he wishes "never to see them again". While James has no positive social relationships in his life, he has managed to*



*establish and sustain a trusting relationship with his key worker from CRC, a relationship that has existed for some 4 years.*

## **Key Concerns**

### **Re-considering Notions of Choice and Control**

For people with cognitive impairment who are involved in the criminal justice system, the notion of ‘choice and control’ foundational to the proposed NDIS Quality and Safeguarding framework, and indeed to the entire NDIS model, is highly problematic. Implicit in this notion is the assumption that the only way to support self-determination with people with disabilities is through the promotion of choice and control.

Yet as the story above reveals, for the majority of individuals who experience intellectual and mental disabilities, and who involved in the criminal justice system, the extent and complexity of their disadvantage often means that they have never had the privilege of experiencing control over their own lives. As James clearly states, “I can’t look after myself”. Indeed, the very nature of intellectual disability means that there are ‘issues with understanding and recalling and for many people, this means difficulties with making informed decisions’.<sup>24</sup>

As the people who work alongside and advocate for people with intellectual and mental disabilities who are involved in the criminal justice system well know, the majority of this population group may not have insight into their own needs. Rather, as revealed by the highly disadvantageous accumulation of circumstances that came define James’ life trajectory, the vast majority of these individuals have had few, if any, positive life experiences. Consequently, it is often inconceivable for such people to imagine what a non-offending, positive life

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<sup>24</sup> Dowse L. (2014). *At the Sharp Edge: People with Intellectual Disability and Complex Support Needs in the NDIS era*, Paper presented to the National Disability Services CEO meeting, December 9, p. 18.

might entail, or by extension, what is required to support such a life<sup>25</sup>. To assume self-determination is achievable only through the promotion of an individual's capacity for choice and control over their own lives is thus to ignore the extent and complexity of disadvantage and alienation experienced by this population group.

### Understanding the Impact of Incarceration

There is a significant research base that points to the relationship between incarceration and disadvantage;<sup>26</sup> Our prisons house a disproportionate number of people with mental illness<sup>27</sup> and intellectual disability,<sup>28</sup> Aboriginal people are vastly over-represented,<sup>29</sup> many people in prison have significant histories of trauma,<sup>30</sup> and are often alienated from their families and communities, or come from families and communities which are disconnected from many mainstream opportunities.<sup>31</sup> It is also clear that the majority of people in prison have had limited educational opportunities, have poor functional literacy, and have multiple barriers to paid employment.<sup>32</sup> Many people in prison have a

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<sup>25</sup> Clift K. (2014). Access to the National Disability Insurance Scheme for people with intellectual disabilities who are involved in the criminal justice system, *Research and Practice in Intellectual and Developmental Disabilities*, 1(1), 24-33.

<sup>26</sup> Cunneen, C., Baldry, E., Brown, D., Brown, M., Schwartz, M & Steel, A (2013) *penal Culture and Hyperincarceration: The revival of the Prison*. Surrey: Ashgate; Kinner et al (2009) "Randomised controlled trial of a post-release intervention for prisoners with and without intellectual disability",

<sup>27</sup> Butler, T, Andrews, G, Allnutt, S, Sakashita, C, Smith, N & Basson, J, (2006), 'Mental disorders in Australian prisoners: a comparison with a community sample', 40(3) *Australian and New Zealand Journal of Psychiatry* 272-276.

<sup>28</sup> Butler, T., & Milner, L. (2003). *The 2001 New South Wales Inmate Health Survey*, Corrections Health Service. Sydney

<sup>29</sup> Australian Bureau of Statistics, (2007), *Prisoners in Australia 2007*, ABS, Canberra available at <[www.abs.gov.au](http://www.abs.gov.au)>.

<sup>30</sup> Lawrie, R (2003) 'Speak Out Strong- Researching the Needs of Aboriginal Women in Custody' Aboriginal Justice Advisory Council, Sydney

<sup>31</sup> Select Committee on the Increase in Prisoner Population (2001) Final Report, NSW Legislative Council, Sydney

<sup>32</sup> Select Committee on the Increase in Prisoner Population (2001) Final Report, NSW Legislative Council, Sydney

problematic relationship with drugs and/or alcohol<sup>33</sup> and (often as a consequence of unsafe injecting practices) have contracted Hepatitis C.<sup>34 35</sup>

What is also now clear, is that incarceration itself is a risk factor for elevating certain kinds of behavioural problems.<sup>36</sup> Prison has a detrimental impact on mental health<sup>37</sup> and increases the likelihood of self-harm and depression.<sup>38</sup> For people with cognitive impairment, the experience of imprisonment increases the likelihood of homelessness on release, and also increases the risk of multiple forms of future criminal justice system involvement<sup>39</sup>

It is clear that people in prison with cognitive impairment are frequently survivors of complex trauma. It is also clear that offending behaviour and the drug and alcohol use that so often fuels this behaviour is intimately linked to trauma response. However, prison, rather than ameliorating the trauma, tends by its very nature (institutional, de-humanising, punishing, adversarial and deeply stressful) to compound it.

Services in the community frequently are entirely unaware of the extent to which prison itself can have an impact on somebody's capacity to cope on the outside. The deprivation of liberty, and the experience of institutionalisation are

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<sup>33</sup> Johnson, H, (2006), 'Factors associated with drug and alcohol dependency among women in prison', in Trends and Issues in Crime and Criminal Justice, Australian Institute of Criminology, Canberra.

<sup>34</sup> Butler, T. & Milner, L. (2003). The 2001 New South Wales Inmate Health Survey. Sydney, Australia: Corrections Health Service

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<sup>36</sup> NSW Council for Intellectual Disability (2014) "Participants of just policed? Guide to the role of the National Disability Insurance Scheme with people with intellectual disability who have contact with the criminal justice system", p. 6; Baldry et al (2006) "Ex-Prisoners, Homelessness and the State in Australia", *Criminology & Penology*, Vol. 39(1): 20-33.

<sup>37</sup> Kinner et al (2009) "Randomised controlled trial of a post-release intervention for prisoners with and without intellectual disability", p. 73

<sup>38</sup> Ibid.

<sup>39</sup> Cunneen, C., Baldry, E., Brown, D., Brown, M., Schwartz, M. & Steel, A. (2013). *Penal Culture and Hyperincarceration: The Revival of the Prison*. Surrey: Ashgate.

rarely adequately understood in the community sector, and for vulnerable populations, with cognitive impairment, unless specialist organisations that understand the criminal justice setting that someone has come from are involved in the support, it is likely that key issues with regard to behavioural support will be missed.

Individuals with multiple layers of trauma who come into contact with the criminal justice system have frequently had exposure to multiple welfare and support agencies. It is clear however that for many people who have been 'through the system' the experience of services (in terms of access and quality) is overwhelmingly negative.<sup>40</sup> Such negative experiences with agencies that are intended to 'help' can have very serious consequences in terms of an individual's ability to build trust and form relationships with service providers, and can result in further challenges in engaging with mainstream support agencies.<sup>41 42</sup>

Given the complexity of need of this population, the disconnect from mainstream services, the fact that they have for so long been 'managed' in criminal justice settings, serious attention needs to be given as to how this group might possibly access the NDIS without significant additional support.<sup>43</sup> Further, given that people with intellectual disabilities may have difficulty articulating their needs, or have difficulty in terms of achieving a kind of nuanced insight into their own life that is required via individual case-planning, the role of an advocate or support person is crucial in communicating their wishes about which supports they require.<sup>44</sup> Further, this population requires advocates that are clear about the challenges that are involved in building genuine pathways into the

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<sup>40</sup> Clift K. (2014). Access to the National Disability Insurance Scheme for people with intellectual disabilities who are involved in the criminal justice system, *Research and Practice in Intellectual and Developmental Disabilities*, 1(1), p. 27

<sup>41</sup> Ibid.

<sup>42</sup> Ibid. p. 28.

<sup>43</sup> Ibid. p. 31

<sup>44</sup> Clift K. (2014). Access to the National Disability Insurance Scheme for people with intellectual disabilities who are involved in the criminal justice system, *Research and Practice in Intellectual and Developmental Disabilities*, 1(1), p. 27

community for groups that are frequently accustomed to being 'managed' in the criminal justice system.

### **Re-conceptualising Risk**

The proposed 'Quality and Safeguarding' framework of the NDIS is focused primarily on two key types of risk: the risk that people with a disability could receive poor quality supports that do not help them achieve their goals; and the risk that people with a disability could be harmed in some way. While these are clearly important parameters, in the context of working with people with histories of offending, there is also the need to broaden the scope of the concept of risk, and pay at least some attention to risk in terms of community safety. The rights based, person centred focus of much disability policy does not always easily co-exist with the community safety focus –as well as the legislative requirements of legal and justice agencies. There is perhaps the need to acknowledge the impact of the reach of different agencies and organisations in the lives of clients who are as connected (if not more) to agencies of criminal justice as they are to services providing disability support.

In Australia, two thirds of prisoners have been previously imprisoned, and 25% of prisoners return to custody within three months of being released from prison<sup>45</sup>. The experience of incarceration itself constitutes the greatest risk factor for recidivism. That is, the more someone goes to prison, the more likely they are to return. Within the NDIS there is a need to focus at least some energies on this population, and on the risks of re-offending if not adequately supported (particularly in the high risk release period).

### **The Exclusion of Prisons: The Importance of Through-care**

The exclusion of prisons from the NDIS (in pilot sites) and as far as we can gauge in future planning for the roll out is deeply problematic. Best practice in post-

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<sup>45</sup> Payne, J (2007) "Recidivism in Australia: findings and future research", *Australian Institute of Criminology, Research and Public Policy Series No. 80*. Canberra. P. xiii

release support has for the last two decades, consistently stressed the importance of through-care as a central feature in pre-release planning. That is, pre-release planning should occur while the person is in prison, usually with the same worker who will work be involved with supporting the person on release from prison. This way, the worker (and their organisation) become like the metaphorical bridge between prison and the community. Programs that use this model report much higher levels of engagement, sustained engagement, and post-release success than programs without it. The current disconnect between the NDIS and the correctional settings that house large populations of people with complex needs *and* disability needs to urgently be addressed. Through-care is crucial in preventing reoffending,<sup>46</sup> as well as improving community integration and ultimately enhancing community safety.<sup>47</sup>

### Support Needs for Providers: The need for highly skilled workers

In order to work effectively with complex needs populations in any long term sense, it is necessary to employ **skilled professional workers**.<sup>48 49</sup> The culture in some disability services of employing staff with minimal qualifications is deeply problematic with this client group. Workers must have the capacity to 'hold' clients with multiple and complex needs confidently over time (and avoid the chronic over-referral experienced by this population). Although referral is of course crucial, case-workers need be able to work directly with issues as they arise, and do so in a safe and confident manner.<sup>50</sup>

In practical terms this means that workers need to have skills across a range of different areas (i.e., disabilities, mental health, criminogenic needs, substance

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<sup>46</sup> Baldry, E (2007) "Recidivism and the role of social factors post-release", *Precedent*, Issue 81, p. 5

<sup>47</sup> Borzycki & Baldry 2003, p. 4

<sup>48</sup> Deakin, E (2013) 'Aboriginal Women Leaving Custody Strategy. Good Practice Paper. A targeted review of literature and stakeholder feedback providing lessons for NSW' A Research Paper commissioned by Department of Family and Community Services, Housing NSW and Department of Attorney General and Justice, Corrective Services NSW

<sup>49</sup> Scott, M (2013) NSW Homelessness Action Plan Evaluation, Final Evaluation Report for Project 2.10 Sustaining Tenancies Following Exits from Correctional Facilities, Westwood Spice

abuse). In addition, this kind of approach requires a work environment and culture which has the capacity to support the workers tasked with assisting people with high needs, at high risk, and often with a range of challenging behaviours. This means organisationally investing significantly in training and supervision, and shifting a culture where 'disability' work is valued differently from other kinds of complex needs work (particularly when this comes to the payment of workers).

People with intellectual disability and criminal justice involvement often have volatile and fast changing support needs. There is a need within NDIS for support providers to have the capacity to react flexibly and quickly to any changes in circumstances.<sup>51</sup> At the moment, the 'categories' of support on offer under NDIS do not adequately reflect the needs of people with lives that are in frequent crisis and do not adequately reflect what is required of service providers in this space. When people with intellectual disability and criminal justice involvement come to the notice of disability agencies at times of sudden and serious crisis the NDIS needs to be able to respond very quickly to these situations including by providing support during the process of becoming an NDIS participant.<sup>52</sup> It would be useful to further explore ways in which the framework captures this ambition.

### **Market Ideology and the Survival of Smaller Specialised Organisations**

Specialist services are required to work effectively with people with disabilities who have also spent time in custody.<sup>53</sup> However the individualised approach to funding, the competitive approach to the provision of services, and at this stage a total lack of certainty around whether 'block' funding will be an option for

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<sup>51</sup> NSW Council for Intellectual Disability (2014) "Participants or just policed? Guide to the role of the NDIS with people with intellectual disability who have contact with the criminal justice system", p. 14.

<sup>52</sup> Ibid, p. 18

<sup>53</sup> Borzycki M & Baldry E. (2003). Promoting integration: The provision of prisoner post release services, *Trends and Issues in Crime and Criminal Justice*, No. 262, Australian Institute of Criminology, p. 4.

services that run on 24 hour models makes the potential provision of specialist services in the current service landscape deeply problematic.<sup>54</sup>

For instance, it is difficult to imagine how solely utilising the individualised funding model the provision of 24-hour support for people with challenging behaviours would be possible. People with complex needs frequently cycle in and out of custody, and services supporting populations with intellectual disability need to be able to support them through this process. If funding were to be withdrawn for individuals if they exit the service and enter a custodial environment, the sustainability of 24 hour services becomes immediately compromised.

For smaller, or even mid-sized NGO's, there are serious operational concerns about maintaining service provision to complex needs populations based only on individual funding. Too often the packages funded under the NDIS do not address the range of complex issues this client group hold. For instance, clients require access to AOD programs, they require access to programs that address their offending behaviour, *as well* as the more traditional 'living skills' and 'assistance with transportation'. If NDIS is not paying for these programs, and there is no block funding, it is difficult to see how this client group would actually be able to access the services necessary to remain in the community. For too many of this client group, prison becomes a default social service. It is critical, that in developing the new service landscape, there is an ongoing conversation about what can be done within existing structures to ensure that people with complex needs and disability do not end up in prisons in even greater numbers than what they currently are.

Wider community activities that cannot be individually billed will have to be discontinued or funded from elsewhere. If an individuals' funding package is not adequate to meet the individuals' support needs, that person may then miss out

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<sup>54</sup> Dowse L. (2014). *At the Sharp Edge: People with Intellectual Disability and Complex Support Needs in the NDIS era*, Paper presented to the National Disability Services CEO meeting, December 9, p. 13.



on services and support which are vital to their full participation in wider community.

The Productivity Commission Seminal Report (2011) supported these concerns, saying that “while consumer payments should become the industry norm over time, there may still be a role for some block funding where markets would otherwise not support key services. Specific areas where block funding may be required are crisis care; rural areas; community capacity building; some individual capacity building; to support disadvantaged groups (such as Indigenous Australians) and as a tool to promote innovation, experimentation and research”<sup>55</sup>.

## **Conclusion**

People with cognitive impairment and complexity of need require a nuanced, specialist response within the new NDIS service landscape. Serious consideration needs to be given to the option of block funding (for complex needs populations), and further attention needs to be paid to supporting specialist organisations that are able to work with and around the impact of incarceration. There is a need for skilled workers, a commitment to pre-release engagement, and for the NDIS to recognise the unique support needs for populations who have historically been managed in criminal justice settings, rather than supported in the community.

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<sup>55</sup> Productivity Commission Seminal Report (2011), p. 471