

The provision of services under the NDIS for people with disabilities who are in contact with the criminal justice system

Supplementary Submission to the Joint Standing Committee on the NDIS

Coordinated by Australians for Disability Justice (ADJ)

ADJ is a national campaign that advocates for changes to legislation policy and practice regarding the recurrent and indefinite detention of people with cognitive impairment and mental health disorders. ADJ particularly focuses on the impact of detention on Indigenous Australians.

Written by Patrick McGee, Rikki Mawad, Professor Eileen Baldry,

Dr Piers Gooding, Dr Emma Phillips and Simone Rowe

May 2017



Contents

1. The centrality of the UNCRPD	3
2. Recommendations	5
3. Cost benefit case studies of persons with disability in the criminal justice system	8
Appendix A: List of contributors	13



The centrality of the CRPD

As a signatory to the *UNCRPD*,¹ Australia is required to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.² This fundamental obligation to treat persons with disabilities equitably encompasses an obligation for Australia to ensure accessibility measures for persons with disabilities in the form of '*necessary and appropriate* modification and adjustments'.³ The primary articles relevant here refer to rights to equal recognition before the law (Article 12) and access to justice (Article 13).

Article 12 recognises the right to equal recognition before the law.⁴ States Parties are directed to 'recognize that persons with disabilities enjoy legal capacity on an equal basis with others *in all aspects of life*' and to 'take appropriate measures to provide access by persons with disabilities to the *support they may require in exercising their legal capacity*'.⁵

Article 13 obliges States parties to ensure persons with disabilities enjoy access to justice on an equal basis with all others, 'including through the provision of procedural and age-appropriate accommodations' and training for those working in the judiciary.⁶ Training, in the Australian context, could reasonably include training about the relevance and application of the NDIS to people with disabilities who are in the criminal justice system. More broadly, procedural accommodations must be provided 'to facilitate [persons with disabilities'] effective role as direct and indirect participants, including as witnesses, in all legal proceedings'.⁷

Failure to provide such accommodations may amount to discrimination under Article 5 (equality and non-discrimination) given the definition of 'discrimination on the basis of disability' encompasses failure to provide 'reasonable accommodation'.⁸ Article 5 may also be violated where the NDIS supports are not extended to people with disabilities in the criminal justice system.

Article 19 is also central to the consideration of these issues, as it requires that Australia provides people with disability with the supports they need to live independently and be included in the community. Within the new framework, NDIS funding is critical to the realisation of this right.

¹ GA Res 61/106, UN GAOR, 61st sess, 76th plen mtg, UN Doc A/RES/61/106 (24 January 2007).

² *UNCRPD* art 1.

³ Emphasis added.

⁴ *UNCRPD* art 12(1).

⁵ *UNCRPD* art 12(2)(3) (emphasis added).

⁶ *UNCRPD* art 13(1).

⁷ *UNCRPD* art 13.

⁸ *UNCRPD* art 2.



The rights contained in Articles 15 and 16 must also be noted, as they guarantee persons with disabilities freedom from torture, cruel, inhuman or degrading treatment or punishment (Article 15) and from exploitation, violence and abuse (Article 16). Collectively, Articles 15 and 16 seek to protect people with disabilities from some of the horrific experiences they can endure whilst incarcerated. Access to NDIS funding whilst incarcerated is vital to ensuring that people with disabilities can access the supports and services they need throughout this period, and realise the right of access to physical, cognitive and psychological recovery, rehabilitation and social reintegration following the experience of exploitation, violence and abuse that is protected by Article 16.⁹

⁹ *UNCPRD* art 16(4).



Recommendations

Recommendation 1

Australians for Disability Justice ask the Committee to recommend that the NDIS plan and fund to support people with disability at all points during the criminal justice system in order to:

- Divert them from detention in correctional centres and forensic facilities,
- Support them whilst detained in correctional centres and forensic facilities
- Assist them to Exit Detention from correctional centres and forensic facilities

Effective planning and funding to support people with disability and their interactions with the justice system includes:

Recommendation 2

As clarified at the Hearing, in view of the large number of people with cognitive disability in contact with the justice system and the specialised needs experienced by this group, Australians for Disability Justice recommends that the NDIA engage a senior expert with extensive knowledge and expertise to develop principles, policy and practice (as the agency has for mental health).

Recommendation 3

A review of the NDIA policies and practices in relation to people with disabilities in contact with the criminal justice system against the elements of an appropriate NDIS response recommended by Australians for Disability Justice.

Recommendation 4

Recognition of the additional complexity involved in planning for people with disability in contact with the criminal justice system and a parallel commitment of resources that will increase the capacity of planners to take into account multiple and interacting personal and service issues.

In particular, the inextricable connection between disability and health requires a close integration of the NDIA with the health system to avoid gaps in service provision as people with cognitive disability transition between these support and service systems.



An example of a best practice/ responsive, comprehensive and sustainable approach to planning is available via this link: www.arts.unsw.edu.au/research/intellectual-disability-behaviour-support-program/support-planning

Recommendation 6

Shortening the time required to assess and initiate a NDIS transitional support plan to ensure that people with cognitive disability on relatively short sentences are no longer excluded from transitional planning and support.

Recommendation 7

Expanding the Information, Linkages and Capacity Building (ILC) arm of the NDIA to complement and enhance the work of a specialist criminal justice unit.

Recommendation 8

Investing in Sector Development and Workforce Capacity to ensure that Disability Workers and criminal justice stakeholders have the requisite skills to assist people with disability in the criminal justice system.

This includes increasing the capacity for the identification and assessment of people with cognitive impairment in the criminal justice system. Specifically, this requires that the NDIA works closely with criminal justice service providers to train and upskill criminal justice stakeholders to recognise cognitive impairment at every stage of the criminal justice process. This would include: a) training staff in best-practice screening in criminal justice settings; b) creating a clearly defined protocol for systematic screening and NDIS eligibility assessment for those who screen positive; c) NDIS support integration for those with cognitive disability found to be eligible in custodial settings; and d) developing national benchmarks for screening, eligibility assessment and NDIS support integration that can be subject to ongoing rigorous evaluation to inform the future optimisation of NDIS support provision for people with cognitive disability in the criminal justice system.

Recommendation 9

Developing a policy framework to ensure service quality and safeguards exist for services funded to respond to people with disabilities in the criminal justice system.

Recommendation 10

Recommending that Australia's Attorney's General and Ministers for Justice review the accessibility of criminal justice systems for people with disability which includes:



- Implementing the recommendations from the Community Affairs References Committee Indefinite Detention Report;
- When available adopt the National Statement of Principles Relating to Persons Unfit to Plead or Found Not Guilty by Reason of Cognitive or Mental Health Impairment (National Principles) being developed by the Law, Crime and Community Safety Council (LCCSC);
- Continue working with the Justice System to implement policy direction 3, 4 and 5 of 'Rights, Protection and Justice' from the National Disability Strategy 2010 – 2020.

Recommendation 11

That the Government invest further in, enact and provide stronger support for the National Disability Strategy: www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/government-international/national-disability-strategy

Recommendation 12

That the Committee improve the accessibility of consultation documents and recommendations relating to the NDIS: www.aph.gov.au/Help/Accessibility

Recommendation 13

That the Committee include Easy English summaries:

<https://www.ndis.gov.au/html/sites/default/files/documents/NDIA-FAQ-Tasmania.pdf>



Cost benefit case studies of persons with disability in the criminal justice system¹⁰

Peter's lifecourse institutional costs by age 40 are

\$1,124,362

This includes 291 days in hospital over 25 admissions, and 1261 days in custody

Case study 1: Peter

Peter is in his early 40s and has a dual diagnosis of a mental health disorder and a mild intellectual disability. He has a history of schizophrenic and psychotic episodes and exhibits post-traumatic stress disorder, obsessive-compulsive disorder and social personality disorder. Peter has little contact with the criminal justice system until the age of 26, precipitated by significant mental illness.

While supported by a complex needs parole officer on a community order, Peter had no recorded offences or hospital admissions. However, without that support he returned to his previous cycle of offending and regular readmission to hospital.

Table 1 Selected agency costs over lifecourse: Peter

	10 to 15	16 to 18	19 to 21	22 to 25	26 to 35	36 to 45	Total Cost
Police	\$4,689	\$0	\$0	\$0	\$92,222	\$67,213	\$166,065
Corrective Services	\$0	\$0	\$0	\$0	\$312,271	\$84,536	\$434,745
Other agencies	\$0	\$0	\$0	\$0	\$237,982	\$237,505	\$523,552
TOTAL	\$4,689	\$0	\$0	\$0	\$642,475	\$389,254	\$1,124,362

¹⁰ Taken from an updated version of McCausland, R, Baldry, E. & PwC 2013 *People with mental health disorders and cognitive impairment in the criminal justice system Cost-benefit analysis of early support and diversion* Report for AHRC, pp1-12 <http://www.humanrights.gov.au/publications/justice-reinvestment-people-disability-could-save-millions>

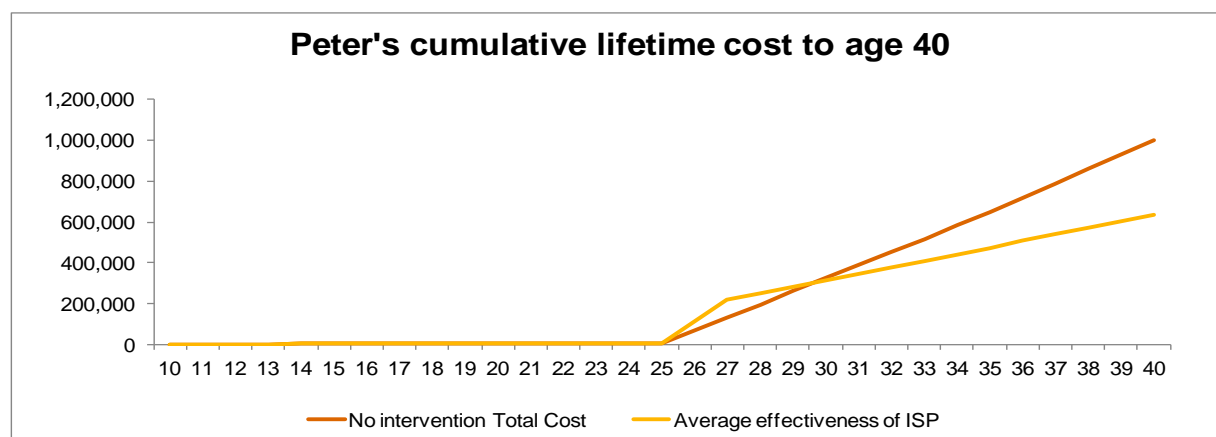


Substantial savings and great improvements to Peter's wellbeing could be achieved if:

- At age 26, Peter was instead provided with intensive case management support services, such as the ISP.
- This support helps him to access Housing support from age 28 (after 2 years on the intensive intervention program), rather than age 35 (when he was placed with a complex needs parole officer). The annual cost of the Housing support is costed at \$31,398 pa.
- The support results in reducing Peter's court costs, prison days and hospital admissions by 50-100% of average ISP success rate.

The figure below compares the trajectory of Peter's lifetime cost without investment to the lifetime cost with average effectiveness of the ISP.

Figure 1 Case Study from Lifetime cost of homelessness: Peter



The lifetime cost of no-action breaks even with the lifetime cost of the investment and around 52% of the average effectiveness of the ISP. The extra investment between ages 25 and 29 is small compared with the diminished costs and savings later.

By age 40, the benefit cost ratio is estimated to be

1.7



Casey's lifecourse institutional costs by age 20 are

\$5,968,867

This includes 356 police incidents, 604 days in custody and 270 days in hospital.

Case study 2: Casey

Casey is an Aboriginal woman in her early 20s who has an intellectual disability and has been diagnosed with a range of mental and cognitive conditions and intellectual disability, including Attention Deficit Hyperactivity Disorder, conduct disorders, adjustment disorders, personality disorder and bipolar affective disorder. She has a long history of self-harm, physical abuse and trauma.

Casey's intellectual disability and personality disorders are key factors precipitating her very high levels of institutional contact from a young age, particularly with police. The extreme costs of Casey's contact with the criminal justice system are significantly reduced after she becomes a client of the NSW Ageing, Disability and Home Care Community Justice Program at the age of 18.

Table 2 Selected agency costs over lifecourse: Casey

	10 to 15	16 to 18	19 to 21	Total Cost
Police	\$303,239.46	\$318,870.36		\$609,476
Juvenile Justice	\$215,571.40	\$262,486.08		\$523,599
Health	\$111,631.67	\$174,290.01		\$313,162
Other agencies	\$147,156.07	\$978,976.80	\$3,003,071.96	\$4,522,630
TOTAL	\$777,598.60	\$1,734,623.25	\$3,003,071.96	\$5,968,867

ADHC and on Centrelink supports, amounting to \$1m pa. If Casey is given an early intervention from the age of seven that would mean she didn't offend, come into the criminal justice system, or end up on such an intensive package, substantial savings of up to \$3m can be achieved by age 20. In another five years, further savings of \$3.9m could be achieved.

The following assumptions are made in the calculation of the benefits for Casey:

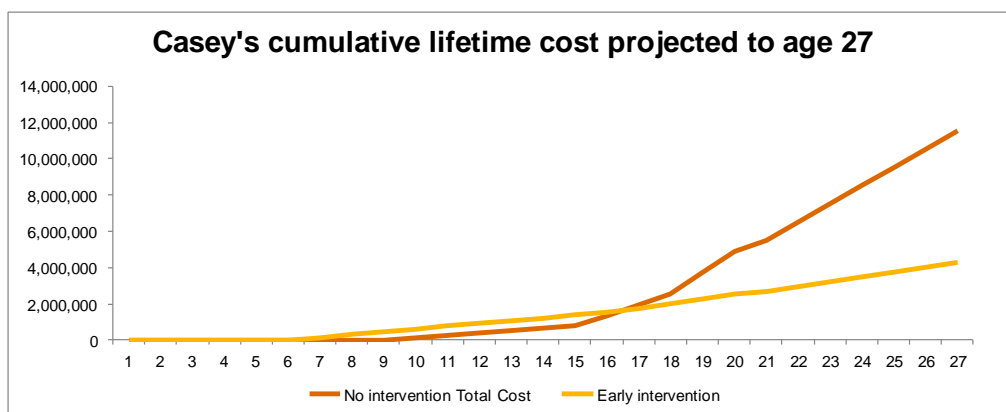
- from age 7, Casey was provided with an intensive early intervention package of \$150,000 pa



- from age 18, Casey moves to an increased level of support, including accommodation, of \$250,000 pa
- It is assumed that these supports prevent Casey from contact with the criminal justice and health systems, and mean that she does not require crisis supports from ADHC.

The figure below compares the trajectory of Casey’s lifetime cost without investment to the lifetime cost with early intervention. The extra investment early in Casey’s life is not much more than was being invested.

Figure 2 Case Study from Lifetime cost of homelessness – Casey*



*Please note that the No Intervention Total Cost for Casey is the actual institutional cost up to age 20, plus a projected institutional cost from age 21 to age 27.

The cumulative saving from early intervention become apparent at age 16.

By age 20 the benefit cost ratio is estimated to be

2.1

By age 27, the benefit cost ratio is estimated to be

2.4



Research in the field and the case studies presented in this paper demonstrate that **early holistic support is crucial** for the development and well-being of children and young people with mental health disorders and cognitive impairment, particularly Aboriginal children and young people and those from disadvantaged backgrounds.

Without such early intervention and diversion, the costs to individuals with mental health disorders and cognitive impairment, to their families and communities, as well as **the costs to government can be extremely high**. Such costs increase over time, as people with mental health disorders and cognitive impairment become entrenched in the criminal justice system and are further disadvantaged. Case studies presented in this paper illustrate that the lifetime of prison and crisis supports can be as high as \$1 million per annum per person.

However, a number of small but **successful initiatives appear to improve well being and other outcomes** for people with mental health disorders and cognitive impairment and result in diversion from the criminal justice system. Estimated benefit cost ratios in the above case studies range from 1.4 to 2.4. That is, for every dollar spent on the early investment, between \$1.40 and \$2.40 in government cost is saved in the longer term.

The estimated extra early and diversionary investment presented in the case studies is little more or no more than was being expended already, but resulting in significant savings

Robust, holistic, targeted cross portfolio support and intervention for people with mental health disorders and cognitive impairment would reduce the significant economic and human costs of cycling in and out of the criminal justice system.



Appendix A: List of Contributors

Australians for Disability Justice	Patrick McGee & Ian McKInlay
Australian Lawyers for Human Rights	Natalie Wade
Community Restorative Centre	Alison Churchill, Dr Mindy Sotiri & Simone Rowe
Deaf Indigenous Community Consultancy	Jody Barney
Developmental Disability Council WA	Taryn Harvey
Endeavour Foundation	Simon Wardale
Funds in Court	Miranda Bain & Glenn Jordan
Intellectual Disability Rights Service	Kelly Watson & Janene Cootes
NSW Council for Intellectual Disability	Jim Simpson
Queensland Advocacy Inc.	Dr Emma Phillips, Dr Nick Collyer & Michelle O'Flynn
University of Melbourne	Jesse Young & Dr Piers Gooding
University of New South Wales	Professor Eileen Baldry & A/ Professor Leanne Dowse
University of Tasmania, Tasmania Law Reform Institute	Rikki Mawad