



# Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

July 2021

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## Introduction

The Centre for Innovative Justice at RMIT University (CIJ) welcomes the opportunity to provide a submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

The CIJ recognises that this Royal Commission provides a unique opportunity to recommend ways of working differently, so that we can address the overrepresentation of people with disability in prisons and throughout Australia's criminal justice systems.

This submission is not intended to be a comprehensive document, but rather a brief paper identifying some of the key issues we have experienced in the NDIS interface with criminal justice. The submission is drawn from the observations of practitioners working with people with disability across this interface. We hope that the identification of these issues will assist the Royal Commission to explore the issues further in Public Hearing 15: Criminal Justice and the NDIS.

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## About us

### The Centre for Innovative Justice

The CIJ was established in 2012 to explore innovative ways to improve the justice system, with a focus on people's lived experiences. The CIJ's objective is to develop, drive and expand the capacity of the justice system to meet and adapt to the needs of its diverse users. The CIJ meets this objective by conducting rigorous research which focuses on having impact – taking our research findings, most of which involve direct engagement with service users, and using them to develop innovative and workable solutions.

CIJ brings together an experienced team of multi-disciplinary researchers and practitioners to develop solutions to complex problems through research and innovation that is strategic, accessible and practical. Our approach is centred on the experiences of those people and communities who are affected and brings stakeholders together to work collaboratively on designing solutions. The Centre's work includes research on therapeutic jurisprudence, restorative justice, victim services, family violence, women's decarceration, disability in the criminal justice system, as well as the application of human-centred design to legal issues and processes. The CIJ includes Open Circle, a service that provides restorative justice consultancy and research as well as delivering restorative justice conferences. The Centre is also co-located at RMIT University's Social Innovation Hub with two community legal centres: Youth Law and the Law and Advocacy Centre for Women.

## Our experience

### NDIS Clinic at Ravenhall Correctional Centre (Ravenhall)

In 2019, the Mental Health Legal Centre (MHLC) launched a pilot program to link incarcerated people at Ravenhall Correctional Centre (Ravenhall) to the National Disability Insurance Scheme (NDIS). This NDIS clinic was run by a CIJ social worker based at MHLC as part of a partnership between MHLC and the CIJ. The pilot program was funded by the GEO Group, which operates Ravenhall and provides people in custody at Ravenhall with support to engage or re-engage with the NDIS while incarcerated.

The objective of this program was “to assist eligible individuals who are currently incarcerated at Ravenhall to activate NDIS plans before they exit custodial environments”. The program involved the social worker first meeting with a client initially at Ravenhall and then completing the rest of the associated work on supporting the client's engagement or re-engagement with NDIS conducted from the CIJ/MHLC offices, with the option of the client booking in to see the social worker again if needed. The program was initially funded for a 12-week pilot run one day a week, staffed by one social worker and aided at times by RMIT University social work students and volunteers.

Several of the key issues in this paper have been drawn from the experience of the social worker who ran this NDIS clinic and the learnings from supporting people in Ravenhall with their NDIS applications and packages.

### Supporting Justice

In addition to drawing on the direct experience of the social worker through the NDIS clinic, in making this submission the CIJ draws from activities undertaken during our Supporting Justice project. This project has been described in detail in our earlier submission, statements and evidence to the Royal Commission.

CIJ's Supporting Justice project conducted several activities that aimed to build stakeholder engagement and commitment in relation to four priority areas identified by the project stakeholders as requiring change: Housing Pathways; Early Intervention; Disability and Trauma Awareness; and System Collaboration and Information Sharing. Supporting Justice project activities include:



- Hosting an information with the National Disability Insurance Agency (NDIA) forum with lawyers and support workers to address stakeholder concerns regarding access to the National Disability Insurance Scheme (NDIS) and the newly created role of the Justice Liaison Officers (JLO);
- Developing the “Youth Justice NDIS” (YJ NDIS) project working group, connecting stakeholders from across sectors to develop a project proposal “Advocacy Connections for Young People (ACYP)”;
- and,
- Providing accessible updated information on the NDIS for lawyers, support workers and individuals on our SupportingJustice.net website, developed in consultation with stakeholders and people with lived experience.

## Key Issues

### Workforce Capability and Information Silos

Issues in relation to workforce capability relate to workforces providing both NDIS services and justice services. Workforce capability is something that has been raised with CIJ several times by stakeholders, people with lived experience and at our NDIS clinic. Our experience suggests that lack of knowledge, information and resources prevents staff providing support to people with a disability in custody. In some cases, members of both the NDIS service and justice workforces may also view NDIS support in a justice setting as outside of their scope of work, creating a service gap.

It can be unclear whose responsibility it is to ensure that a person who enters or exits custody has the appropriate disability supports, information or access to existing plans. Because of information silos between NDIS services, support providers and justice services, it appeared to us that little information is transferred when a person enters or exits custody. Responsibility for support and information sharing is unclear. There is no clear responsibility on either justice or NDIS services to transfer information alongside a person as they transition in or out of custody. Further, internal consent structures in both justice and NDIS often caused delays when making inquiries and information could take longer to obtain than the time a person spent in custody, creating further challenges for access to support, and continuity in the provision of advice by our service to clients.

*“Whilst the JLOs are well equipped to identify people in prison who are already engaged with the NDIS or who would like to be, JLOs are still required to direct people to traditional channels of access and engagement. Acknowledging that the presence of JLOs makes this process of directing people easier, it does not necessarily change the outcome and barriers for them. An NDIS truly committed to the support of justice-involved people with disability, would be a scheme that made genuine changes to support the JLOs in their role and reduce barriers to access for justice-involved people with disability more broadly” – NDIS Clinic Staff*

In responses to surveys about the NDIS clinic at Ravenhall, Ravenhall staff noted that they had a very limited knowledge of the NDIS prior to the advent of the clinic. Ravenhall staff also noted that while they have some limited capacity to support men at Ravenhall with NDIS, they do not have the capacity to manage this process in its entirety, with one staff member noting the program provides “extra support we are unable to provide”. Another staff member stated that the NDIS clinic provides an “easy referral basis- we are able to speak with MHLC with any questions we have regarding NDIS and how it works”. In this way, the NDIS clinic helped build the knowledge and understanding of the NDIS amongst prison staff and increased their capacity to support clients with it. However, the NDIS clinic was created to fill a gap in support for the men at Ravenhall and the program relied upon the knowledge and skills of the social worker servicing the clinic. This model is not sustainable for a low resourced community legal service and must be structured into the ongoing NDIA or justice service model (see discussion in relation to JLOs below).

At intake stage when a person enters custody, it is unclear how much information is being gathered about individuals, their disability diagnosis (if any), their NDIS package or support coordinator (if any) or identifying



a need for further disability investigation. During the pilot NDIS clinic at Ravenhall, the majority of clients met were already on the NDIS and were seeking assistance to link with their support coordinators and NDIS supports while in custody. The clinic filled a gap of service for clients who already had NDIS supports but did not have support to connect with their support coordinators or NDIS package information.

*“Despite all the knowledge and experience possessed by the JLOs, they are still bound by the highly bureaucratic and restrictive nature of the NDIS, ultimately resulting in an inability to challenge the unjust and inequitable outcomes for those in prison. This can be seen in terms of accessing supports whilst in prison or accessing the scheme more generally – something the JLOs have little control over. An apt metaphor would characterize the situation as the NDIS placing the JLOs in a role with one hand tied behind their back” – NDIS Clinic Staff*

For services on the outside, support coordinators may not have the requisite understanding or knowledge about the justice system, court processes, corrections or youth justice. It can be difficult for support workers on the outside to know who to speak to in order to provide relevant information.

Alongside this lack of knowledge, lack of funding is a big issue. When someone is incarcerated, they may not have enough support coordination hours available. This not only impacts the delivery of supports but the assessment of what is appropriate ongoing funding. Often, NDIS coordinators are unaware that someone has entered custody and may believe that an individual has stopped engaging. This reflected the experiences of a number of clients in the NDIS clinic, who were disengaged with their NDIS plan due to incarceration and needed assistance to reconnect with their support workers. As a result, their reporting to the NDIA will suggest that an individual has stopped engaging and therefore does not require the provided support, which may limit future package support when a person exits custody.

### **Case Study**

The social worker met with Ardalan\* at the NDIS clinic at Ravenhall Prison. At this meeting Ardalan stated that he believed his NDIS plan had been cancelled due to him entering custody. The social worker explained that this should not be the case as NDIS participants are still entitled to access their plans if incarcerated. Upon investigation, it was found that even though Ardalan’s support coordinator informed the NDIA in advance that he would be incarcerated at the time of his review meeting and requested a meeting be organised where someone could attend in his absence, the NDIA scheduled a meeting without notifying either Ardalan or his support coordinator.

After Ardalan failed to attend this meeting, his plan was suspended. This meant his support coordinator could no longer access information about his plan as their service booking had ended. Ardalan could no longer be supported by this service or any other service. The NDIS clinic social worker worked with Ardalan to sign the relevant NDIS forms and contacted the NDIS on his behalf. Through this process, the social worker was able to obtain information about the upcoming review meeting and inform his support coordinator who was able to re-book this meeting to be held at the prison.

Without the NDIS clinic, Ardalan likely would not have heard anything from or about NDIS until his release. This would have caused significant delay for Ardalan who would not have been able to access supports while attempting to reintegrate into the community after time in prison.

## **Eligibility, assessment and inadequate packages**

One of the re-occurring issues identified in the NDIS clinic and in our Supporting Justice work, has been the difficulty meeting NDIS eligibility criteria and obtaining adequate packages for justice involved individuals. This is in large part due to the lack of services for diagnosis and assessment available for individuals in custody, as well as a lack of documentation to prove diagnosis for those already assessed.



## Diagnosis

In relation to the NDIS eligibility requirements, as described in section 24 of the *National Disability Scheme Act 2013*, the NDIS clinic staff observed that these requirements are not easily satisfied by available documentation. The NDIS clinic staff experience also found that documentation that appeared to satisfy the eligibility requirements was refused by the NDIA without clear explanation.

When people are remanded into custody on short notice, many individuals did not have relevant documentation or access to diagnostic reports. Some individuals did not know how they could access diagnostic reports or proof as this information has not been something they control or access (as support workers or other supports have accessed this on their behalf in the past or they did not know the name of their doctor etc.). It can also be challenging to obtain historical documentation from many years prior and the NDIA may not accept assessments that are not current. For many individuals in custody, especially people with disability, they have had transient lives and therefore do not have a strong history of documentation, assessment and support associated with their disability. In many cases, individuals have not been aware of their disability before entering prison.

### Case Study

The NDIS clinic staff and student met with Ben at Ravenhall prison. He requested support to apply for the NDIS. Ben had received a diagnosis of ADHD and Asperger's as a child, however, he had not been in contact with any health staff or support services regarding this in over a decade. Ben was able to provide the details of the last service he had been engaged with, so the NDIS clinic contacted them to obtain the original diagnostic documents - one from 2009 and one prior to 2005.

After no response from the services after numerous calls, the NDIS clinic staff lodged a Freedom of Information request for the first diagnosis from 2005. The NDIS clinic staff also continued to follow up the second diagnostic report. Despite the lengthy process to obtain the diagnostic reports, Ben will still need to have functional assessments completed before he can apply for NDIS.

For individuals who have not been diagnosed, there are several issues obtaining an assessment. Obtaining an assessment in custody is difficult because of lack of funding (unless obtained by legal representation prior to sentence), and there are few services that will assess people in custodial settings. In fact, there are limited services available for assessments in general. Even when a clinical service is available at a facility (e.g. Forensicare manage the mental health ward within Ravenhall and complete clinical assessments), there are different processes and limited communication between mainstream staff and these clinical services. This causes delay and further barriers to obtaining assessments even when services are available.

Secondly, for individuals on remand or serving short sentences, the delay in securing an assessment means that a person may have been released before the assessment date or once an assessment report has been completed. This is a lost opportunity to ensure that a person with disability is connected with support while in contact with the justice system. Earlier work by the CIJ on the *Enabling Justice* project suggests that not receiving the right support at the right time can contribute to people with disability becoming further entrenched in the justice system, and may be a factor contributing to the over-representation of people with cognitive disability in the justice system.

### Functional Assessment

NDIS has guidelines around what documentation is needed to satisfy the application process, not just in relation to diagnostic documents, but also functional assessments. Functional assessments document current capacity and are used to determine how much and what sort of support will be provided under an NDIS package.



For functional assessments within the custodial setting, some assessors consider custody an artificial environment for a current functional assessment and therefore believe an assessment should instead be conducted in the community. However, for those serving long sentences or on remand (with an increase in long remand times), custodial environments are not temporary or artificial, but should be viewed as the current environment for assessing need. There are also ongoing discussions between Justice and the NDIS regarding the role and responsibility of each party, and who is financially responsible for the assistance that someone may need in prison due to their disability (e.g. someone who has a visual impairment may require a talking clock, but agencies cannot agree on which agency bears the cost of providing this clock). This lack of clarity over funding responsibility in a custodial environment has an ongoing impact on people with a disability in the justice system.

## Communication and information sharing with the NDIA

Another challenge for individuals and support workers in custody is obtaining information from the NDIA about existing packages. The NDIS clinic experience was that processes to access information were inconsistent and often lengthy and convoluted. The length of time taken to respond to information requests varied significantly as well as the requirements for consent.

*“One NDIS staff member advised us that in order to access information on behalf of a participant you are required to send to NDIS three forms of ID, however on another day and speaking to another staff member this was not required.” – NDIS Clinic Social Worker*

In particular, the “Consent to Exchange Information Form” must be signed by anyone who wishes to have another person contact the NDIS or access information about them. In many cases, the NDIS accepted this consent form when MHLC was listed as an organisation and the form was signed by both the client and NDIS clinic social worker. During the clinic pilot, staff were informed that instead, individual names of each staff member of the NDIS clinic were required to be listed and signed for consent. This required a change in the process of obtaining consent moving forward and in many cases, earlier consent forms were found ineligible despite having been accepted at the time.

*“We had changed offices during the NDIS program and that meant that the original address that was listed in the ‘Consent to Exchange Information Form’ was no longer valid. When contacting the NDIS to obtain information on a client’s behalf, they had advised that a new form had to be completed with the updated address. However, the client had already exited from Ravenhall and we did not have a way of contacting the client in order to do so, causing months of work to be stalled due to an address change” – NDIS Clinic Social Worker*

In order to assist individuals, lawyers and support services access existing NDIS information, the CIJ has updated our SupportingJustice.net website to include a section on [“Accessing an existing NDIS plan”](#). This section provides clear information about how to contact the NDIS to get information about an existing plan, the forms and the documentation needed to apply for information. The SupportingJustice.net website is regularly updated to respond to the needs of people with a disability and their support workers. The NDIS section of the CIJ’s website is an area that is often updated in response to requests from lawyers and people with disability.

## Market failure and lack of services in custody

Once a person has an NDIS package and is identified in custody, there continue to be barriers to access disability services both in custody and when someone is under correctional supervision. Our NDIS clinic experience suggests that many disability services do not provide services in custodial settings either because of internal policies or barriers, or a belief it is not possible to do so. There may be a belief that access in a custodial setting is not possible, or there are prohibitive permissions to do so. Geographical location may also create a barrier, where support coordinators are unable to travel to the prison given that



they are based very far away, and there is no funding in the plan for travel. On the other hand, some disability services may be generally reluctant or lack the knowledge and skills to provide services in custody.

In some cases, disability services believe that an individual's support needs (both disability and justice related) will be transferred and provided to the responsibility of justice and correctional services once a person is in custody. When a person is then released and transitioned into the community, if a person is supervised on parole or by community corrections, many disability support services continue to see support needs as the responsibility of justice services. However, disability services are not always available or appropriately provided by justice or correctional services, and disability services can be can and should still be provided to an individual in custody and upon release.

This misunderstanding can be even more confusing when a court orders disability services, for example, when a court makes a sentencing order that includes conditions ordered under a Justice plan. A Justice plan is a plan legislated under the *Disability Act 2006* (Vic) and services under a Justice plan are provided by disability services. However, the order is made by a court under section 80 of the *Sentencing Act 1991* (Vic)<sup>1</sup> and so there is often confusion as to who is responsible for the provision of services under a Justice plan – justice and corrections, or disability services.

There are currently long wait lists for advocacy services to assist people to access support through existing disability services. This delay is further complicated for individuals in custody or who are transitioning into the community. For individuals who are successful at obtaining an NDIS plan in a custodial setting, they may still not receive the support required because of a lack of services available or willing to engage with people in custody.

## Youth Justice

Successive reviews of Victoria's Youth Justice system have recognised the high levels of unmet disability support needs for young people with cognitive impairment, language and communication delays in the justice system. The Ogloff Armytage Youth Justice Review and Strategy<sup>2</sup> made a number of recommendations relating to prioritising access to the NDIS and disability support for young people in contact with the youth justice system.

Currently, there is no universal disability screening for young people entering Youth Justice Detention and screening is only conducted at the discretion of Youth Justice staff at admissions. Where screening is undertaken, it is limited to a mental health assessment and the CAIDS-Q assessment tool which screens only for intellectual disability and not other signs of disability, language or communication delays which may be eligible for support through the NDIS. The Youth Parole Board estimates that 24 per cent of young offenders having an intellectual cognitive concern, 48 per cent present with mental health needs and 67 per cent have been victims of abuse, trauma or neglect. Parkville College, a school that operates within Parkville Youth Justice Precinct, estimates the rate of disability amongst the young people attending their school to be much higher, stating that disability seems to be the norm rather than the exception. Despite these high numbers, the CIJ understands that only 10-15 per cent of young people in Youth Justice detention have access to disability supports through either the NDIS or State based specialist disability services. CIJ's Supporting Justice project has found a significant desire across the criminal justice, disability and social service sectors for investment in early intervention for young people with disability in the youth justice system to prevent cycles of detention and criminalisation continuing into adulthood.

Currently in Victoria, the new Youth Justice Disability Adviser roles provide some support for youth to access NDIS planning. However, issues very similar to those in adult corrections exist in the youth justice system,

<sup>1</sup> "For offenders with an intellectual disability, the court may attach a justice plan as a condition of sentence. The Department of Families, Fairness and Housing prepares justice plans. The plans specify treatment services aimed at reducing the chances that the offender will reoffend." <https://www.sentencingcouncil.vic.gov.au/about-sentencing/community-correction-order>

<sup>2</sup> <https://www.justice.vic.gov.au/justice-system/youth-justice/youth-justice-review-and-strategy-meeting-needs-and-reducing-offending>



such as a lack of diagnostic assessments and reports, functional assessments or lack of funding and resources to conduct these. For youth, diagnosis is often a major barrier since these young people have often not had support services or diagnosis prior to justice involvement. Young people are also more likely to serve shorter sentences which causes challenges to obtaining reports and assessments in youth justice detention. Funding for reports also continues to be a major barrier for young people accessing the NDIS.

### **CIJ work in this area**

The CIJ continues to gather information and work with stakeholders to identify issues arising from the interface between the NDIS and the criminal justice system. In particular, the CIJ is working on building the capability of staff who work with people with disability and justice involvement to increase their awareness, skills and capability around supporting people with disability and justice involvement and the NDIS. The CIJ continues to prioritise lived experience to inform this work and our priorities for system change being pursued through our Supporting Justice project, and associated projects, to reduce the over-representation of people with disability in the justice system.