

**INQUIRY INTO IMPLEMENTATION OF THE NATIONAL
DISABILITY INSURANCE SCHEME AND THE PROVISION
OF DISABILITY SERVICES IN NEW SOUTH WALES**

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Confidential

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LEGISLATIVE COUNCIL
PORTFOLIO COMMITTEE NO. 2 – HEALTH AND
COMMUNITY SERVICES
Inquiry into the implementation of the National
Disability Insurance Scheme and the provision of
disability services in New South Wales
Submission

Dear Mr Donnelly,

Introduction

I write as a 44-year-old man with cerebral palsy who has had the misfortune to deal with the National Disability Insurance Scheme (NDIS) its attendant Agency and, that coterie of charitable bodies which the Agency refers to as "partners". I say unfortunate because given that the NSW Government closed the Department of Ageing, Disability and Homecare (ADHC), one had no choice but to accept the ultimatum provided in a letter from the NDIS Agency and, prior correspondence from then FACS Deputy Secretary the Honourable Jim Longley,¹ that all ADHC clients would be transferred to the NDIS.

¹ See file "Correspondence with the NSW Government". This contains letters from Jim Longley, as well as Minister Ajarka and representatives for Minister Williams and Minister Goward. All want to insist that the transition from Government-run social services and disability support services to NGO-run (but Government-funded) services will be of benefit to clients.

I beg to differ. Those letters in the file that do not deal with the NDIS and the outsourcing of government services, are from a series of NSW Treasurers. They are busy noting the findings of the NSW Parliament's Public Accounts Committee (PAC) that the NSW Auditor should be given power to audit the books of any NGO

One was assured that in the transition I would see no change to services and, may even be better off with enhanced support. The fact that this enquiry has been called suggests to me that State, and Federal governments and the NDIS Agency may finally be held to account. This should not only be for overblown promises about the standard of care and support services not delivered, but for the State's² preparedness to abandon some of the neediest in our community to the NGO sector and, then to have the audacity to present this as a noble or generous act.

It is no such thing. I never asked to become the unremunerated administrator of an unintelligible personal Plan budget, which even after hiring a Plan Manager in My Voice Sydney³ still sees me emailing them receipts and, other supporting documentation, usually several times a week, to make various claims. While some might say I should do that, the comes on top of regular fortnightly reporting to Centrelink. Both bodies represent two administrative Behemoths (Commonwealth Human Services having begat both), who have a never-ending desire for documents to justify monies earned and/or spent, however insignificant these might be.

This experience has made me an advocate for a Universal Basic Income, as a means of eliminating much of the means-testing and cross-checking bureaucracy at State and Federal level. The pre-Budget submission which advocated for this reform also clearly identified the NDIS as a failure; remarks which one happily stands by now.⁴ From this Committee's point of view, you need to ask what 'choice and control' is in practise, rather than in some "hypothetical human rights" or "critical disability studies academic theorem".⁵ The reason for my mocking of many disability advocates and academics is that they have delivered us (those they claim to represent) into the hands of a huge Agency, which rather than take any direct responsibility for our care and support, farmed us out again to the church and charitable sector.

(a) Choice and Control

Let us be clear about what this really is. State and Federal Governments have largely succeeded in putting people with disabilities and their families at arm's length from government, because nobody in government directly delivers a disability-related good or service. To be honest, beyond sitting on the Ministerial Council created by the NDIS Act 2013 (Cth), one can't see anything else the NSW

in receipt of State funds. However, despite many services already being rapidly outsourced to NGOs, none of the Treasurers will commit to implement the PAC Committee's recommendation. This places NSW out of step with all other Australian jurisdictions, which given the extent of outsourcing in NSW, shows a reckless disregard for proper governance and oversight by the O'Farrell, Baird and, Berejiklian Governments.

² This is meant as a reference to the Commonwealth and the state of NSW

³ See My Voice <https://myvoice.net.au/welcome> as at 7 July 2018

⁴ See generally, my submission to the 2018-19 Pre-Budget Consultation at https://consult.treasury.gov.au/budget-policy-division/2018-19-pre-budget-submissions/consultation/download_public_attachment?sqlId=question.2017-09-12.3768452384-publishablefilesubquestion&uuld=519819481. as at 7 July 2018

⁵ For some critical disability theory guaranteed to cure insomnia see e.g.: Simo Vehmas & Nick Watson (2014) Moral wrongs, disadvantages, and disability: a critique of critical disability studies, *Disability & Society*, 29:4, 638-650, DOI: 10.1080/09687599.2013.831751 To link to this article: <https://doi.org/10.1080/09687599.2013.831751> as at 7 July 2018

Minister for Disability Services has to do, as the ADHC website says Homecare was transferred to Australian Unity.⁶

As a client of Australian Unity, I know that it took a matter of months for the Homecare brand to quietly disappear from clothing, paperwork, and emails. It has taken only slightly longer for burdens of administration to be outsourced to the client/NDIS participant. Now Australian Unity rings or emails me when they cannot cover a service shift, expecting me as the client to somehow make alternative arrangements.⁷ I am fortunate that my mother (in her 70s) is still able to step in when providers fail. However, we have had to take a very hard line with Australian Unity that regardless of what the NDIS contractual “small print” says, my mother and I expect the provider to manage its own staff and, not outsource its own internal personnel problems to us, in the name of my choice and control. This is the real results that come from theoretical constructions of rights, choice and control applied in a parallel universe far, far away by advocates and academics, many of whom probably won’t have a disability or similar experience.

Under the much maligned old-system, there was a Parliament, a Minister, and an Ombudsman to complain to if things really went wrong. Now, there’s ‘the provider’s’ code of conduct or grievance policy; the application of which may be overseen by the State Ombudsman (if you the client write to them and complain and, if the Ombudsman, at his unfettered discretion, deems your case worthy). Gone is Ministerial or Parliamentary input at the State level and, as all Ombudsman inquiries must by law be conducted in the absence of the public, in truth much public scrutiny, transparency and accountability for providers has been removed too. Under the Commonwealth NDIS Act, there is a Ministerial Council, but as it is barred from looking into individual cases, so its presence can provide no reassurance to individual participants or their families. Similarly, the Joint Parliamentary Committee which oversees the NSW Ombudsman can exercise a general oversight but is barred from looking at the Ombudsman’s handling of individual cases. Unless NDIS participants and their families want to take the financial risk of lodging a court case, after internal review, neither providers, the NDIS Agency or oversight bodies can be publicly challenged.

The Joint Parliamentary Committee should be able to look more closely into the Ombudsman and examine its officers over the thoroughness of their casework, both in camera and in public. Similarly, why should we have a Ministerial Council that can’t look at individual cases to judge the performance of the NDIS Agency? While some may call it interference, I want Ministers and MPs who will regularly rebuke, challenge, criticise, belittle, demand, deride and denounce bureaucrats, NGOs, contractors, and others in their constituents’ interests. It’s called representative democracy and there should be more of it; instead we let agencies operate in secret and, bar duly elected officials from seeing files. This is hardly transparent or accountable and, may well provide dark places to hide misbehaviour, or even have it flourish. I recall former Prime Minister the Honourable John Howard AC, once saying something to the effect of “Why elect Ministers, if so many

⁶ See FACS website Transfer of New South Wales disability services at <http://ndis.nsw.gov.au/about-ndis-nsw/transfer-of-nsw-disability-services/> as at 7 July 2018

⁷ This reprehensible state of laissez-faire DIY disability support services was confirmed to me in an email, provided to this committee as Appendix 2. It is an exchange with a _____ then of Australian Unity. _____ should not be blamed for the operational indifference of the NDIS and it’s Agency to day-to-day client outcomes. Rather State and Federal Governments and successive Parliaments

substantive decisions are delegated to others?”. Over the years, I’ve grown more sympathetic to such a view, particularly when the supposed independent experts of the Productivity Commission gave us the NDIS; a scheme comparable to ALP Minister Laurie Brereton’s famous description of Australian National Line (ANL) which he said was “in such bad shape, you couldn’t give it away!” With my experience of NGOs generally and, those various supposed ‘experts’ in the disability sector (including the ones who brought us the NDIS), I now pay little or no heed to their views and, would recommend the Committee do likewise.

More reform needed

In an inquiry about Recall Elections in NSW, I called for any entity receiving public funds in NSW to be able to have its officers called to Parliament to explain themselves, just like any Department of State.⁸ Like recall elections themselves, the idea was not taken up. Then again, neither has the clear and repeated recommendation of the NSW Public Accounts Committee, that the Auditor-General be given power to audit the books of NGOs in receipt of public funds.⁹

It pains me as a Liberal to find NSW Labor Leader Luke Foley supporting the measure,¹⁰ while Premier Gladys Berejiklian remains strangely and implacably opposed. Perhaps the Premier, like me, suspects (or knows) a ‘can of worms’ would be opened, fundamentally exposing the charitable sector as one riddled with corruption, intrigue and the abuse and neglect of vulnerable people. We only have to look to the Wood Royal Commission in NSW (in its examination of child protection) and the McClelland Royal Commission into Institutional Responses to Child Abuse on a national level, as well as the inquiry launched by NSW Fair Trading into the RSL, to see the moribund state of charity in Australia.¹¹

⁸ See generally, my Submission to the Panel of Experts on Recall Elections at:

http://www.dpc.nsw.gov.au/_data/assets/pdf_file/0008/131120/06_Johnston.pdf as at 26 October 2016

⁹ See e.g.: NSW Government scraps ‘follow the dollar’ reform despite Sharobeem, Ella cases, <https://www.smh.com.au/national/nsw/nsw-government-scraps-follow-the-dollar-reform-despite-sharobeem-ella-cases-20170723-gxgzqj.html>; see also Editorial: NSW government wrong to scrap ‘follow the dollar’ reforms, <https://www.smh.com.au/national/nsw/nsw-government-wrong-to-scrap-follow-the-dollar-reforms-20170724-gxhgf5.html> as at 8 July 2018. The State Government continues its annoyingly non-committal approach to follow the dollar. The Cabinet enforces solidarity on the point, to the extent that my MP (now a Parliamentary Secretary, but formally the Chair of the PAC) is still barred from presenting what I recommended to him as a Committee Chair (and was endorsed by the Committee) as Government policy. (See “Correspondence with the NSW Government” – ‘Recent letters,’ attached

I am not constrained by principles of Cabinet Government and can say that follow the dollar legislation is essential the accountability and transparency of NGOs. They cannot and should not be trusted with public money, nor the lives and welfare of particularly vulnerable people. I would not class myself as especially vulnerable but would say that I don’t feel safe under the NDIS and, the NSW ‘outsource to charity’ model enhances my fears of being abused, neglected, or defrauded at a point of need. See my submission to the PAC Audit inquiry at <https://www.parliament.nsw.gov.au/ladocs/submissions/48395/Submission%20No%207.pdf> and the Report at <https://www.parliament.nsw.gov.au/ladocs/inquiries/1995/Efficiency%20and%20effectiveness%20of%20the%20Audit%20Office%20o.pdf> as at 20 July 2018.

¹⁰ See e.g. Labor promises to introduce ‘Follow the Money’ laws, <https://www.smh.com.au/politics/nsw/labor-promises-to-introduce-follow-the-money-laws-20180420-p4zats.html> as at 8 July 2018

¹¹ This was why I wrote to the Fair Trading Commissioner and Minister the Honourable Matt Kean, trying to convince them to launch a wider Royal Commission into charities, and a specific investigation into the Cerebral

- (d) the effectiveness and impact of privatising government-run disability services,**
- (e) the provision of support services, including accommodation services, for people with disability regardless of whether they are eligible or ineligible to participate in the National Disability Insurance Scheme,**
- (f) the adequacy of current regulations and oversight mechanisms in relation to disability service providers,**

From financial mismanagement and misappropriation of funds, to abuse of clients and, personal enrichment of executives; the church and charitable sector has had it all. Despite all of this damning evidence,¹² governments at all levels continue to cede funds and the lives of their citizens to these bodies. If contemporary human rights doctrines had any true value, then real questions would be asked about how government can meet human rights obligations yet continue to use charitable entities as service delivery agents, when many NGOs have such tarnished reputations.

I can ask the questions, but my answers are irrelevant. Due to my disability, I must deal with the NDIS and the NDIS Agency, because the NSW Government tore down ADHC leaving me with no government-run service provider to fall back on. This exposes the lie of those who claim the NDIS is the “biggest reform since Medicare”.¹³ Medicare provides universal healthcare and guarantees access to a publicly run hospital. The NDIS may be administered by a public body, but it is operationally reliant on NGOs to provide services. It is also far from universal, as one’s disability has to be deemed significant and permanent, amongst other indicia of misery. As I highlighted in my Pre-Budget submission cited earlier,¹⁴ this has left many people in a ‘no-man’s’ land, with a loss of service, an unfunded program, or an NDIS transition that proved so complex, withdrawing from services was easier.¹⁵ This raises real doubts over the public comments of Graeme Innes about the supposed improvements of the NDIS.¹⁶ I say to him and those self-righteous disability advocates like him: ‘Take off your ideological blinkers, see the real people hurting and losing out and, see the NDIS

Palsy Alliance (formally the Spastic Centre of NSW). See “Correspondence with the NSW Government” and footnote 22, below. Given my experience with the inner workings of the Cerebral Palsy Alliance/Spastic Centre of NSW, it deeply troubles me that they are now a major NDIS provider

¹² I found these after a quick internet search. Why would anybody put people in the care of NGOs? See e.g. In our care, ABC Four Corners, Posted Mon 24 Nov 2014, 12:00am Updated Tue 19 Sep 2017, 9:13am <http://www.abc.net.au/4corners/in-our-care/5916148>; Broken Homes: On the frontline of Australia's child protection crisis, By Linton Besser, Four Corners and ABC News Digital, <http://www.abc.net.au/news/2016-11-14/four-corners-broken-homes-child-protection/7987450>; Independent Inquiry Call Over Yooralla Abuse, Tuesday, 25th November 2014 at 10:44 am, Xavier Smerdon, Journalist <https://probonoaustralia.com.au/news/2014/11/independent-inquiry-call-over-yooralla-abuse/> as at 18 July 2018

¹³ See e.g.: NDIS introduces seismic changes in biggest reform since Medicare, <https://www.dailytelegraph.com.au/newslocal/south-west/ndis-introduces-seismic-changes-in-biggest-reform-since-medicare/news-story/702d5f029f822026c03ede0a3a64f9b9> as at 8 July 2018

¹⁴ Refer to footnote 3, above

¹⁵ See especially. Lois O’Callaghan, Chief Executive Officer, Mallee Track Health & Community Service (MTHCS) *Market Failure in Rural and Remote Areas*, http://www.pc.gov.au/_data/assets/pdf_file/0007/219067/subpp0222-ndis-costs.pdf; see also Simon Viereck, EO Mental Health Community Coalition ACT, *Submission to Costs Inquiry*, https://www.pc.gov.au/_data/assets/word_doc/0006/215772/sub0135-ndis-costs.docx as at 1 January 2018

¹⁶ Refer to footnote 23, below

and its NGO partners (the usual suspects) for the significantly flawed bodies they really are and always have been!’

I too have considered leaving the NDIS and, at times being sorely tempted to do so. But, the extent of my disability does not afford me that luxury and, the impact on my mother would kill both of us in a short period of time. It is from this perspective that you should assess my access to and experience of ‘choice and control’. As a slave may be tethered to his master, I and many others are tethered to the NDIS and its attendant NGOs, many being church based ones who appear to have forgotten they were supposed to preach deliverance to the captives,¹⁷ not become their gaolers. However, it is not just me saying this. Writing on the ABCs RampUp blog, Heike Fabig (the mother of three school-aged children, two of whom have disabilities) has said:

So I nearly choked on my lunch when I read this week that St Vincent de Paul was named as provider of the new local coordinators for the NDIS pilot in the Hunter Valley.

Excuse me?!?

I took a deep breath and went to the [NSW Family and Community Services, Ageing, Disability and Home Care website](#) which, sure enough, confirmed that Vinnies will "provide 14 local area coordinators for the launch of the NDIS in July, helping people with disability, their families and carers plan their futures through individualised funding packages." This is only the first step towards finding the "39 coordinators [who] will work across the entire Hunter region from the middle of next year as work continues towards a fully operational NDIS in NSW in 2018."

...Then, NSW hands the first coordinator positions to a charity - the very thing we were trying to leave behind!

Wasn't the whole point of the NDIS precisely to get the charity out of disability? To have services provided by independent people who are trained in a person-centered, rights-based approach to disability services?

On its website, Vinnies describes itself as "a caring Catholic charity offering 'a hand up' to people in need... encouraging them to take control of their own destiny" and an "organisation that aspires to live the gospel message by serving Christ in the poor with love, respect, justice, hope and joy, and by working to shape a more just and compassionate society."

Holey moley! My kids are NOT people in need who need 'a hand up'!¹⁸

¹⁷ Luke 4:18 King James Version (KJV)

¹⁸ *The Spirit of the Lord is upon me, because he hath anointed me to preach the gospel to the poor; he hath sent me to heal the brokenhearted, to preach deliverance to the captives, and recovering of sight to the blind, to set at liberty them that are bruised,*

<https://www.biblegateway.com/passage/?search=Luke+4%3A18&version=KJV> as at 8 July 2018

¹⁸ Heike Fabig, NDIS: rights-based paradigm shift or same old charity?, Ramp Up, 11 Apr 2013

<http://www.abc.net.au/rampup/articles/2013/04/11/3734962.htm> as at 9 July 2018

I could not agree more. People with disabilities have been conned, every Australian taxpayer has been fooled and, all the nation's parliamentarians fell over themselves to vote for something where the biggest financial winners are the churches and charities. These bodies already pay next to no tax, are continually offered grants, subsidies, and other gratuities (before and after the NDIS), while having an appalling record of covering up the abuse and neglect of those unfortunate enough to be in their care. And, if you think a Quality and Safety Commission will do anything more than see the tip of a large iceberg of abuse and neglect, you are being extremely naive; as I explained during a consultation about the proposed Commission.¹⁹

Yet, our entire economy and social structures seem geared to many people and charitable organisations receiving tax expenditures.²⁰ These are designed to encourage people and organisations towards certain activities or behaviours (as State and Commonwealth Governments provide subsidies and rebates), causing some to label this policy "universal welfare by other means".²¹ However, the inherent negative of this policy is that governments (and taxpayers) now have to go cap in hand to these NGOs, who have the money, influence and infrastructure (which our governments have readily given to them²²) for basic goods and services.

In my view, governments at all levels have given away far too much revenue in tax expenditures and other indirect spending. This has denuded the State of the ability to directly provide services and, it did not surprise me that when the Gillard government introduced the NDIS, then Treasurer the Honourable Wayne Swan put the fiscal impact of the scheme beyond his forward estimates. While he might deny it, this was a clear concession that the NDIS was unaffordable from day one.

¹⁹ See my submission to the Safeguards Inquiry at <https://engage.dss.gov.au/ndis-qsf-submissions/1430713127-2/> as at 17 July 2018. The whole process was underwhelming, as I understand it there was no proposed reversed onus of proof against providers, and without this (amongst other things), I predict that few people with disabilities will have the confidence to complain to the Commission. This may well suit all levels of government.

²⁰ See e.g.: Dr Anne Holmes and Hannah Gobbett, Economics - Tax expenditures: costs to government that are not in the Budget, https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook44p/TaxExpenditures as at 9 July 2018

²¹ See generally, Adam Stebbing and Ben Spies-Butcher, Universal Welfare by 'Other Means'? Social Tax Expenditures and the Australian Dual Welfare State, *Journal of Social Policy* · October 2010, DOI: 10.1017/S0047279410000267, https://www.researchgate.net/publication/231842880_Universal_Welfare_by_%27Other_Means%27_Social_Tax_Expenditures_and_the_Australian_Dual_Welfare_State?enrichId=rgreq-c7cd1f9c1bbd733f4967e34470bc757e-XXX&enrichSource=Y292ZXJQYWdIOzIzMTg0Mjg4MDtBUzoxMTQ5ODc1NDQ2MTY5NjFAMTQwNDQyNjU3NTc3Mw%3D%3D&el=1_x_2&_esc=publicationCoverPdf as at 10 July 2018

²² While this is a US book review, it raises important issues about the accountability and behaviour of contractors. Furthermore, similar questions should be raised whether we are discussing a public to private enterprise transfer or a public to NGO transfer (the NGO transfer not only resulting in government losing the asset/department, but also the prospect of tax receipts from the new operator) See Richard J. Pierce Jr, Book Review: Outsourcing Sovereignty: Why Privatization Threatens Democracy, 2008, https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1946&context=faculty_publications as at 10 July 2018; in a similar vein see Wendy Brown, *Sacrificial Citizenship: Neoliberalism, Human Capital, and Austerity Politics*, *Constellations Volume 23, No 1*, 2016. (C) 2016 John Wiley & Sons Ltd. doi: 10.1111/1467-8675.12166, <https://onlinelibrary.wiley.com/doi/abs/10.1111/1467-8675.12166> as at 10 July 2018

Personally, one is angry at having been left in this predicament by an act of craven political opportunism. The Gillard government introduced the NDIS as a strategy to divide the newly united Liberal National coalition, led by the Honourable Tony Abbott. The Labor Party sought to present what they anticipated to be Coalition opposition as heartless and cruel. With former NSW Labor MLC John Della Bosca running as slick marketing spin called "every Australian counts," they must have thought they were on a winner.

As history shows, Della Bosca did not save Prime Ministers Rudd or Gillard, but he did save Gillard's NDIS. A long line of politically-limp Liberals starting with Tony Abbott, followed by Barry O'Farrell, Mike Baird, Malcolm Turnbull and now Gladys Berejiklian have committed themselves to a chaotic scheme facing budget overruns, an antiquated IT system and a lack of staff. This was discussed somewhat on the ABC's Q and A TV program a few weeks ago.²³ Aiming to defend the NDIS, guests like Graeme Innes (former Disability Discrimination Commissioner) claimed that thousands more people were receiving support services and, these same people had received nothing from the prior government system. This may well be true but, it still does not remove the reality that people are more dependent on charity, not less. If they were truly citizens and the government respected that status, they should not have to access goods or services that way. I have written repeatedly and, to several similar enquiries (including ones commenced by ICAC and prior NSW parliaments²⁴), about the unsatisfactory nature of charitable provision of public services, with little success. This has included submissions to the McClelland Royal Commission,²⁵ in which I predict there will be another royal commission into abuse and neglect under the NDIS in the near future. I stand by this claim,²⁶

²³ See ABC's Q and A with Tony Jones, <https://iview.abc.net.au/show/qanda/series/11/video/NC1804H020S00>, as at 10 July 2018

²⁴ See Appendix 1, which is my submission to the ICAC "FUNDING NGO DELIVERY OF HUMAN SERVICES IN NSW: A PERIOD OF TRANSITION: Consultation paper" and my submission to the Legislative Assembly Community Services Committee inquiry "THE DEVOLUTION AND OUTSOURCING OF HOUSING, DISABILITY AND HOME CARE SERVICES TO THE NON-GOVERNMENT SECTOR".

My 19 month experience as a board member of the Spastic Centre of NSW (now the Cerebral Palsy Alliance) fundamentally changed my view of charity. When you see waste and mismanagement on a grand scale, while an organization that is supposed to care for people with disabilities fails to publicly report fraud of its own clients to save its own public image, you have cause to wonder about the organisation's true motives.

My questioning of the Executive obviously became problematic, so they found a pretext to seek my resignation. I left happily, making a point of allowing my organizational membership to lapse and, attempting (unsuccessfully) to return funds spent on a Company Directors Course which was deemed 'mandatory education'.

²⁵ See McClelland submissions, attached

²⁶ E.g. see my letter to the NSW Law Society Journal, p.10, LSJ, Issue 24, July 2016, in which I wrote:

Lessons from history

While not doubting the will of Frank Brennan or Francis Sullivan to reform the Church, the much publicised testimony of Cardinal Pell suggests those in authority have different views (*LSJ*, June). In any event, the evidence heard by the McClelland Royal Commission has extended to many churches, charities and non-government organisations (NGO) beyond the Holy See. Despite the Commission's revelations, policy makers are still prepared to put vulnerable children and adults in the care of church and charitable organisations.

The National Disability Insurance Scheme (NDIS) is a case in point. In NSW, the Baird Government has decided to outsource all the care and support services which were formally provided by the

because as you will see from several of my attachments and links in this submission, I have had the misfortune to see the inner workings of charity as a board member,²⁷ as a service recipient, as a VET student²⁸ and, as a recipient of services euphemistically referred to as "employment services".²⁹

Department of Ageing, Disability and Homecare, to NGO contractors. All service recipients, including me, have to sign up to the NDIS to retain our supports. Meanwhile, the Government has yet to act on a 2013 recommendation of the Public Accounts Committee, that the NSW Auditor General be given power to examine the accounts of NGOs in receipt of public money in this State (Efficiency and Effectiveness of the Audit Office of NSW, Tabled 18 September, 2013)

It is true to say that one no longer looks on the charitable sector with the warmth or confidence that I once did. However, it is also true to say that as someone with a disability, I never asked for an NDIS that shuffled me (and thousands of others) out of the public space and, possibly out of the public mind as well. As is said: Those who fail to learn the lessons of history ...

Adam Johnston, Davidson

²⁷ Refer to footnote 24, above. Also see my submission to the Review of the Australian Charities Commission attached as Appendix 3. Please note specifically, my view that having a Charities Commission gives churches and charities a credibility they no longer deserve; the NSW Government's policy of outsourcing services to the sector has the same effect. Also, there is a price paid by government and society when services are outsourced. Citing Sir Robert Menzies, I told the ACNC Review:

Sir Robert Menzies, founder of the Liberal Party and Australia's longest serving Prime Minister readily articulated the state's duty to the citizen. In his comments on Freedom From Want, during his Forgotten People broadcasts, Sir Robert said:

The country has great and imperative obligations to the weak, the sick, the unfortunate. It must give to them all the sustenance and support it can. We look forward to social and unemployment insurances, to improved health services, to a wiser control of our economy to avert if possible all booms and slumps which tend to convert labour into a commodity, to a better distribution of wealth, to a keener sense of social justice and social responsibility. We not only look forward to these things; we shall demand and obtain them. To every good citizen the State owes not only a chance in life but a self-respecting life. (SOURCE: Petro Georgiou, Menzies, Liberalism And Social Justice, Sir Robert Menzies Lecture Trust, 1999 Lecture (1999), 3, quoting as at 13 March 2012, quoting Robert Menzies in a 1942 radio broadcast (citation omitted) <http://www.menzieslecture.org/1999.html>; the source is: Robert Menzies, The Forgotten People: Chapter 5 - Freedom from Want, 10 July 1942, The Menzies Foundation, Menzies Virtual Museum <http://menziesvirtualmuseum.org.au/transcripts/theforgotten-people/63-chapter-5-freedom-from-want>)

Reflecting on Sir Robert's words is essential. They speak to a state with purpose and, definite duties to Her Majesty's subjects (citizens) which is sadly lacking today. Meanwhile, counsel against outsourcing the provision of public goods and services to charity also comes from a well-known man, but from a distinctly different political perspective. Oscar Wilde said:

But (charity) is not a solution: it is an aggravation of the difficulty. The proper aim is to try and reconstruct society on such a basis that poverty will be impossible. And the altruistic virtues have really prevented the carrying out of this aim. Just as the worst slave-owners were those who were kind to their slaves, and so prevented the horror of the system being (realised) by those who suffered from it, and understood by those who contemplated it...Charity degrades and (demoralises)...Charity creates a multitude of sins. Oscar Wilde, "The Soul of Man Under Socialism." - Quotation taken from <http://abetterworldisprobable.wordpress.com/2012/01/01/oscar-wilde-on-the-problems-of-charity/> as at 26 December 2013; Oscar Wilde, The Soul of Man Under Socialism, (1891), <http://www.marxists.org/reference/archive/wilde-oscar/soul-man/index.htm> as at 26 December 2013.

In all cases, goods and services were delivered in a haphazard and sometimes incompetent manner (if at all), by people who I came to conclude were employed in the NGO sector because it would have been impossible for them to hold down a job in the real economy. This is the sort of standard you are expecting people with disabilities and their families to tolerate, for the terms of their natural lives under the NDIS; the outsourced services being an eclectic bunch of indifferent NGOs, with nothing particular to recommend them. This is deplorable. Honestly, I would not put a dog in the care of some of the NGOs I have at times been required to deal with as a (sometimes) unemployed man with disabilities. Many of these NGOs receive a large part of their income from government contracts³⁰ while also embarking on regular marketing and fundraising campaigns, to which I am

In my view, Menzies and Wilde viewed together expose a debate (modern policy makers) seem incapable of conducting. It is not just a case of can charity deliver goods or services to people, nor one of simple efficacy, but should some public services ever leave the state sphere? This is a view one has not always held, but as I age and have more experience with the NGO sector, my doubts over the sector's capacity, integrity and transparency grow. (Appendix 3, p.4)

As the NDIS rolls out, I feel increasingly distant from any State-based guarantee of service, security, or accountability. The NDIS Agency may be a public bureaucracy, but it has no role in service delivery like NSW ADHC did. It is amazing that the former leader of Australians for Constitutional Monarchy and Monarchist Prime Minister Tony Abbott could vote for a scheme which put more distance between the Sovereign and some of Her Majesty's most vulnerable subjects, by placing them in the hands of charity. Charity might be fine for garden parties, but if I am a Subject or Citizen whose needs or concerns matter, then the Sovereign-in-Parliament should address them.

²⁸ There seems little recognition by State or Federal levels of governments that charities can often be far less than benevolent and, run by people who are far less than honest pillars of the community. Needy people who come to their doors, say for training, can be left with qualifications no-one else will recognise and, unless one is very careful, a large bill. See my submission to "Quality of assessment in vocational education and training – Discussion Paper" at <https://submissions.education.gov.au/Forms/Quality-of-Assessment-in-VET-submissions/Documents/ADJ%20Consultancy%20Services.pdf>; also note emails to Federal Education Minister Senator the Honourable Simon Birmingham at http://www.pc.gov.au/_data/assets/pdf_file/0005/209750/subpfr356-human-services-identifying-reform-attachment2.pdf as at 17 July 2018

²⁹ See generally, my submission to the McClure Welfare Review at <https://engage.dss.gov.au/wp-content/uploads/2016/06/Welfare-review-1.pdf> and in particular, footnote 9 of that document (page 5). Also note the attachment "RE: Submission to "Better Management" inquiry; the Disability Strategy inquiry and, the Modern Slavery inquiry." I have thought for a long time that Federal 'welfare to work' schemes are becoming ever more prescriptive and layered in bureaucracy, most of it outsourced to NGOs. The NGOs are the ones making the money, with the growing staff and, are becoming in my mind a 'bunyip aristocracy' to an increasingly remote Government. I have no desire to be the peasant/slave at the bottom of this pile, but I fear this is where the NDIS is leading me and many others. See my submission to an inquiry into Anti-Slavery laws in Australia at <http://www.aph.gov.au/DocumentStore.ashx?id=ff7b040b-0431-4f86-ac0d-061e6fe9fa05&subId=511149> as at 18 July 2018. It makes clear (through citing John O'Brien and Simon Duffy (eds.), *Citizenship and the Welfare State*, 'The Need for Roots,' The Centre for Welfare Reform, March 23, 2016, United Kingdom,

https://www.scribd.com/doc/305719429/Citizenship-and-the-Welfare-State#download&from_embed) that there is a clear historical rationale for a State-run welfare state. I think the same argument can be made today.

³⁰ This was identified some time ago by writer Vern Hughes. See "Not for Profits Lose Sight of Volunteer Heritage," <https://probonoaustralia.com.au/news/2011/02/not-for-profits-lose-sight-of-volunteer-heritage/>; I endorse these views, citing Mr Hughes in a submission to a review of the charitable sector by the Commonwealth Treasury at <https://static.treasury.gov.au/uploads/sites/1/2017/06/Johnston-Adam-1.pdf>; a related submission into tax concessions for the NGO sector is available at https://static.treasury.gov.au/uploads/sites/1/2017/06/001_Adam_Johnston.pdf as at 17 July 2018. I do not

careful not to give any money. However, under the NDIS, I will either be giving them money directly to obtain services or contributing to their operations through my taxes. Neither scenario pleases me. I do not wish to be beholden to a sector which journalist Adele Ferguson has described as:

(the) \$107 billion charity sector is a sacred cow, but it is also a black box. As more and more charities fight for a share of the highly competitive philanthropic pie, many are outsourcing fund raising activities to third-party entities to try to gain an edge.

It has also provided them with a corporate veil to hide behind if anything goes wrong, such as the fundraiser underpaying workers.³¹

Again, I do not want to be beholden to such people, as footnote 27 makes plain.

The State Government should never have been allowed to abandon people with disability, by closing ADHC. The department should be re-established, even if it is as an NDIS provider. I have always thought it was far too easy for then Premier Mike Baird to sign a Memoranda of Understanding with Prime Minister the Honourable Malcolm Turnbull and then, virtually ‘wash his hands’ of all responsibility for people with disabilities in NSW.

(k) any other related matter.

Many years ago, then Premier the Honourable Bob Carr invited paralyzed actor Christopher Reeve to Australia. Excitedly securing a ticket, The Making Connections conference changed how I thought about disability – it was no longer permanent! Mr. Reeve went on to establish the Reeve Foundation, committing to “Today’s care, tomorrow’s cure.”³²

It is tomorrow now, but most governments and charities still talk predominantly of care. The chronically ill, disabled and our families deserve so much better than the same old charity. Heike Fabig, quoted earlier, was so right.

I try to spend my time around stem cell scientists and, similarly innovative people. And I’ve even been a guest speaker at their conferences, trying to teach these exceptionally gifted people the truly crude arts of media management and self-promotion.³³ They should not have to do this, but governments don’t value our scientists enough. Medical researchers should be allowed to be medical researchers and, they should have the money to make that possible. It is in this light we need to ask questions about the multi-billion-dollar cost of the NDIS. What has it really brought us? A welfare and charity bunyip on steroids; and I will still be disabled tomorrow, as will many others.

This isn’t fair, it isn’t right and, the cruelest cut of all is that it isn’t necessary. Remember, the Reeve motto – tomorrow’s cure. The NDIS is yesterday’s solution to today’s problem, inflicted on

believe there remains any compelling argument for churches or charities to receive tax relief; they are big businesses now.

³¹ [Adele Ferguson](https://www.smh.com.au/business/banking-and-finance/lawsuit-throws-spotlight-on-charity-fundraising-20161021-gs7rdf.html), Lawsuit throws spotlight on charity fundraising, Sydney Morning Herald, 21 October 2016 — 6:06pm, <https://www.smh.com.au/business/banking-and-finance/lawsuit-throws-spotlight-on-charity-fundraising-20161021-gs7rdf.html> as at 17 July 2018

³² See <https://www.christopherreeve.org/> as at 19 July 2018

³³ See e.g. <http://www.stemcellsaustralia.edu.au/News---Events/News/Stem-Cells-in-the-Hunter-Valley.aspx> as at 19 July 2018

tomorrow's taxpayers. It structurally institutionalizes disability, dependence and suffering for all time, as it inherently presumes disability will always be part of the human condition. Churches and charities rely on this presumption (even if they dare not admit it) because it secures a revenue stream.

I don't make that assumption (even if our nation's NDIS policy settings have), having met brilliant young scientists whose work offers another brighter future, truly worth living for. It's a future where many disabilities are minimized or even eliminated through cellular and genetic interventions, the way vaccinations have eliminated many diseases in the 20th and early 21st centuries. Again, Australian academics, politicians and other 'talking heads' have plenty to say about STEM in schools and 'Women in Science,' but what actually happens?

I've been an admitted solicitor since 2005. When one started going to various professional events, I met many female colleagues. As the years pass, there is a notable decline in the female presence. The legal fraternity is not alone in this trajectory. That pattern is a real worry for this wheelchair bound solicitor, who meets scientists whose work could cure his impairments and attendant chronic illnesses. These people are invariably exceptionally bright, young and by majority, female early career researchers. Where is the money for them and, why aren't politicians, media and society in general falling over ourselves to support their work? How many of them will still be in science in a few years' time? There's something that should be keeping more people in authority awake at night, if we want to see more translational medical research delivering today's cures and, the elimination of disability and chronic illness from the human condition. That will be difference between eking out an impaired existence under the NDIS, or living life to the full, restored to health by cutting edge medical interventions. And if I am medically beyond such help, I can at least ensure succeeding generations do not have to experience disability.

SUMMARY OF RECOMMENDATIONS

Before that happens, this Committee should recommend that:

1. There be significant increases in State and Federal funding of Science, aimed at promoting STEM, promoting early career researchers, and retaining female researchers in science, under a banner such as the National Disability Cures Scheme;
2. The Department of Ageing, Disability and Homecare be immediately re-established, as a direct service provider to the aged, disabled and chronically ill residents of NSW;
3. The Department have a Minister and they be accountable to the NSW Parliament;
4. The Ombudsman Act 1974 (NSW) be amended to permit complainants dissatisfied with the Ombudsman's handling of a matter (but where lodging action in the Supreme Court would cause undue hardship) to approach the Parliamentary Joint Standing Committee. The Committee may, if it finds hardship and wrong conduct by the Ombudsman, make findings against the Ombudsman. In such circumstances, the Ombudsman's secrecy provisions should be nullified;
5. The NDIS Act 2013 (Cth) be amended to allow the Ministerial Council to examine individual cases, as the Council may deem necessary and appropriate. The Council should then be able to make recommendations to the NDIS Agency, as it thinks fit. If the Agency declines to implement the Council's recommendations, it should be obliged to justify this stance to the Ministerial Council and any participants concerned;

6. The NSW Auditor-General be empowered to scrutinize the books of any NGO in receipt of State funds, as previously recommended by the Public Accounts Committee;
7. Any NGO accepting public funds be made accountable to Parliament in the same manner as a Department of State. This means their officers could be called before Parliament to explain their stewardship of public funds and their delivery of goods and services to NSW residents;
8. The NSW Government discontinue the use of charitable status and, require all churches and charities to pay tax, like any other business;
9. The Committee exercise a high degree of skepticism around anyone claiming to be an expert in disability policy or critical disability theory. In my view, they are the ones “who got us into this mess” and, they probably have more interest in perpetuating disability (and claiming impairment is somehow ‘normal’) instead of curing it.

I am happy to appear as a witness should the Committee wish me to do so.

Yours faithfully,

Adam Johnston