

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

Organisation: Sylvanvale Foundation

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INQUIRY INTO THE IMPLEMENTATION OF THE NDIS AND THE PROVISION OF DISABILITY SERVICES IN NEW SOUTH WALES

Sylvanvale Foundation (Sylvanvale) has been a provider of supports to people with disability for more than 70 years in NSW. It began as a grass roots parent run organisation when a group of Sutherland Shire parents came together because they had a mutual interest in better outcomes for their children. In this case it was educational outcomes for children with intellectual disability, with the parents starting a school. Though Sylvanvale no longer runs a school it does provide a range of services and supports for children and adults including an inclusive long day-care service.

While our heartland is in the Sutherland Shire our footprint extends across Sydney and up into the Blue Mountains. We provide a range of supports for people with moderate to severe intellectual disability who may also have complex health or behavioural needs. These supports are delivered in the community, at home or at one of our sites and include accommodation, therapy; both physical and clinical, community access, employment opportunities at a range of Sylvanvale businesses, and skills and capacity building supports.

We have worked tirelessly with government and other organisations to improve the opportunities for people with disability to be connected to and physically part of their communities. This has included transitioning people from boarding houses and government operated accommodation facilities into the community. We are currently working with a range of young adults who while they have an intellectual disability also have complex support needs because they have a psycho-social disorder, have experienced trauma in their lives, or have had contact with the criminal justice system. Regardless we have worked alongside them to create the best opportunities for them to become part of the local community and to acquire the skills they need to lead 'an ordinary life.'

Because of this Sylvanvale has been an ardent supporter of the NDIS given its very real potential to put people with disability at the front and centre of their own lives. This coupled with individualised funding presents the opportunity for participants to gain real purchasing power in order to exercise choice and control over the provision of supports delivered to them.

As part of its philosophical underpinnings the NDIA espoused the view that no-one would be 'worse off.' This was reasonably interpreted by providers to mean that even if the supports funded and delivered under the NDIS were somewhat different to those previously delivered under state and territory government's people's lives would not be changed or reduced in a material sense. This was coupled with the idea that the 'reasonable and necessary' support needs of people with disability would be funded by the NDIS.

As part of the mechanisms designed to both 'smooth' the transition process and allay the very real fears held by families and advocates an undertaking was given by the NDIA that all those currently receiving supports funded by government and delivered either by government or non-government organisations would be deemed eligible to become 'participants' in the NDIS.

It is within these lenses that further commentary about the initial roll out and subsequent delivery and responsiveness of the NDIS both as a system and an agent of dramatic change to the disability landscape will be made.

With any major change there always levers to be considered by the architect of the change with each lever opening a pathway the full implications of which can't be determined in advance, and so it has been with the NDIS.

From the outset it wasn't fully formed, hence not immediately fit for purpose but NSW had agreed to full scheme roll out commencing in 2015 so two critical levers that were deployed and continue to be deployed are 'pace' and 'timing' of the change.

BACKGROUND

Initial Transition

Providers are aware that transitioning existing clients into the NDIS so that they become 'participants' is dependent upon their current funding accompanying them because the movement of existing clients into the Scheme is predicated on using current dollars allocated to that person. Hence the NDIS needed to move apace to transition people in the Scheme to meet targets (numbers) as per the Bilateral Agreement, and to access funds and NSW was keen to ensure that it didn't transfer any funds as part of the Bilateral that weren't attached to clients it already funded.

From the outset this pattern meant that known and funded clients needed to move into the NDIS regardless of whether the new system was ready to receive them, they had received adequate pre planning to assist them with the formal planning process, or that the newly recruited planners understood enough about the needs of the person or indeed disability to ensure that drafted plans left no-one worse off and met 'reasonable and necessary' support needs. It is Sylvanvale's view that a number of initial plans didn't contain all the required (currently provided) supports, and at times failed to capture identified gaps and goals. This set up what is an ongoing process of the need for 'plan reviews' for some participants because their initial plan was inadequate/incorrect, the person's circumstances had changed, or they were in crisis. The Agency's ability to flex and tack in response to the changing needs of people with disability has not improved, and there are no indicators that this will occur in the foreseeable future.

Systems and Processes Including the Portal

As per the planning processes the NDIA did not have all its systems and processes in place from the outset. The portal having delayed activation and then crashing as providers attempted to navigate it to engage in what has become an all too familiar process of 'back claiming.' This

process arises when for a number of reasons activating a plan and choosing providers is delayed with providers only able to legally claim a payment after a 'service booking' is made and a contract has been signed. This works in principle for participants with no existing contract with a service provider, but service providers already rendering supports have a moral obligation to continue doing so while a participant rightly decides whether they want to continue with that provider. This necessitates a 'back claim' process; as does the Agency deciding to end a plan without advice to the provider, a plan having a natural review date, a participant experiencing a change of circumstances or a crisis (with supports still required), with no revised plan in place. All of these scenarios place both a financial (Sylvanvale has for a period of time been owed a \$1M sum) and an administrative burden on providers who are expected to bear both the loss and the administrative burden of repeated use and checking of the portal to see if bookings have been made or claims paid.

There is also an administrative burden created when the NDIA changes its systems or process such as changes to the tool used for Supported Independent Living quoting, or when what is costed inside or outside of SIL changes. Such changes have been ongoing with little consultation or advice to providers. These are issues around the 'timing and pace' of change which at times has seemed unremitting and relentless as if designed to either share the burden of the unfinished Scheme architecture with providers, or downstream the resultant issues to end users again service providers.

Much of this can be sheeted home to NSW determining that it wanted to sign up to the Scheme first, divest itself of all disability services and complete the task of the transition of vulnerable people in a shortened two-year timeframe.

Pricing and Market

Pricing has been and remains largely a 'black box' issue with providers understanding little of how the pricing of line items is structured or determined within the NDIS. The provision of disability supports in NSW was previously somewhat unwieldy. Some providers had both scale and differentiation of product and an accompanying market share, with other smaller providers having a single offering limited by locale and workforce capacity and capability. Seemingly little was done in NSW to reconcile this market with all providers going forward into the NDIS anticipating retaining or expanding their market share. With the NDIA seemingly taking the stance that market forces would prevail and that the disparate players in the market meant there was real choice for participants, coupled with the view that new entrants would both stimulate and encourage competition between providers. The opposite appears to be in play with an immature market, that is receiving few signals or guidance from the NDIA lurching between ever changing policy and procedures and carrying unspecified debt on behalf of the funder; the NDIA.

Pricing has been an issue from inception of the Scheme, with providers sensitive to changes in the Price Guide and utilising those line items that require quotes to influence revenue lines, and volume for those supports that can be delivered in a group setting. It would send alarm bells through the disability sector in NSW if providers felt that the NDIA was using its ability regarding the Scheme's pricing to influence or constrict the market. Or to provoke an unintentional 'race to the bottom' by using pricing levers in an effort to constrain Scheme costs. This in turn distorts the

market as providers attempt to deliver the most efficient price per hour of support thereby potentially forcing less efficient or smaller providers out of the market and thereby limiting choice.

CURRENT ISSUES

Workforce

With the commencement of the Scheme came the knowledge that accompanying the enhanced buying power of participants would come a labour shortage estimated to be around 25,000 in NSW. What was hailed as a boom for direct support workers in that their skills would become highly marketable and sought after has in effect meant that the market is very fluid with workers moving between service providers, with less skilled workers entering the marketplace. Labour hire companies have expanded as both established disability providers and others seek to fill gaps in their rosters. They in turn have had difficulty sourcing quality staff and appear to be struggling with the aftermath of life after 'block funding,' and the impost the NDIA and subsequently the Quality and Safeguards Commission will have on their business. There is a risk that labour hire companies have brought a pipeline of less skilled workers into the labour market with no evident plan as to how minimum practice requirements will be met other than instituting an on-line code of conduct process.

Little environmental scanning or workforce planning appears to have been done by FACS (ADHC) as to the future placement of its workforce, seemingly leaving staff to make individual decisions thereby providing no signals or certainty to a disability market calling for labour to meet predicted higher demand. The NDIA seems to have done little other than state that an expanding disability workforce is good for this sector and thus good for 'jobs and growth' and the Australian economy generally. Allied industries will need to be included and consulted in order to solve what is rapidly becoming another pressure on providers around recruiting and retaining a workforce that the NDIA deems as a cost of doing business. It doesn't allow provision for capacity building of groups of staff or the disability workforce more generally. Unions, Fair Work, and ICare appear to carry on their business as if the NDIS doesn't exist in their domain and the downstream effect of some parts of the economy doing 'business as usual' while others are buckling with the pace and impact of change must be recognised and dealt with. The NDIA as a national scheme is the only body that can bring the allied industries into the fold, brief them and commence discussion about required workforce change.

Market failure

A corollary to the workforce piece is the issue of market failure coupled with that of provider of last resort. Failure by the Agency to have discussed with providers any mechanism or levers that can be utilised either as a proxy for provider of last resort such as a demonstrated crisis response, or an ability to immediately bolster supports in a plan necessitates that there be at least a blueprint for a provider(s) of last resort. The fact that no meaningful discussion has been held with providers, or that peak bodies are silent on the issue means that in a tiered response at the individual level where support coordinators attempt to bolster supports for a participant for a time

limited period is not in play. Neither seemingly is an Agency sponsored flexing in order to deliver a 'crisis' response, nor a response by even a loose though acknowledged coalition of a provider(s) of last response. Without these mechanisms in play the Agency exposes customers, itself and therefore government to the risk of market failure. There are threads of market failure evident in what is an immature and in places thin market. Supply not keeping up with demand for example in the area of clinical support. There being little or no supply at all in isolated regions.

Demand being created by the NDIA funding supports within market sectors in which they have neither built nor created capacity. Market signals such as those provided by changes to pricing being viewed as either insufficient or weak by both existing and new players. The question of the role of the NDIA (either intentionally or not) as a market disruptor tasked with either bringing an unwieldy disability sector to heel, or as a blunt instrument for market aggregation using the lever of 'market forces' is inherently risky. It has had the effect of seeing many providers opt for status quo, a watch and see brief (sole operators or for profits), as opposed to those seeking to amalgamate, form coalitions or take over others (not for profit disability sector). To committed providers this is no way to treat those who are partners in the roll out, who 'know' disability, who were formed out of community and continue because of it. These partners cannot be ignored as if the questions or issues they raise don't warrant an answer, sidelined for no apparent reason, or given differing advice that materially affects revenue streams within their business.

The art going forward is in meaningful well-timed conversation followed by intervention by the Agency in response to signals from providers. The risk of not doing so and thence acting is market failure. This can't be allowed to happen by governments of any persuasion to what has been billed as the greatest social reform since Medicare, a Scheme that in our modern day represents all the values our society holds true.

Interfaces

There are two separate but related issues in terms of interfaces, those related to other 'programs' for people with disability, and those related to the work of other government agencies. With regard to government agencies the NDIA is strident in its view that it will not fund the supports of other agencies. The clearest example being participants admitted to hospital and hospital staff requesting that disability support workers undertake shifts at the hospital. Even if the participant has 1:1 funding available the NDIA's view is that this should not be used to support the work of NSW Health's staff. In the area of mental health staff are seemingly more reluctant to support people with disability who have co-morbidities and seek to have our clients discharged, with service providers portrayed as 'heartless' or recalcitrant for refusing to take people back to their accommodation regardless of the evident risk factors.

In terms of programs again the rhetoric is around the NDIA not having responsibility for programs (now called supports) that should be funded by other agencies. An example of this is the 'Community Justice Program' which the NDIA is deconstructing in order to determine which components it will fund. The success of this program for offenders who have a disability has been in its ability to offer wrap-around supports to people who have come in contact with the criminal justice system to ensure they are supported to attend court, meet their parole conditions, have suitable accommodation and receive supports that build their capacity to live an independent life as possible. The NDIA view continues to be that should participants enter the prison system their plan is suspended and can only be re-started on exit from what is a facility run by another agency.

The issues at stake here are multi-faceted as no provider can have an accommodation place that has no revenue stream attached. The loss of wrap around supports including specialist case management (sometimes delivered by government or other NGOs) places the participant at risk. Coupled with decisions made by the NDIA for recipients of such programs not to be funded for accommodation at a future plan review because such cohorts are not seen as requiring specialist disability accommodation is to place an already vulnerable cohort more at risk.

Such decisions leave participants 'worse off' and while these cohorts (including young people leaving care) have been made eligible it is hard to determine whether their 'reasonable and necessary' support needs have been met in these circumstances. It can clearly be seen as limiting choice and control if their endeavours to be independent including striking out on their own leave them unable to re-enter specialist disability accommodation if a plan review or a change of circumstance finds them with a revised NDIA plan that does not include accommodation.

The interface issue is one that remains oblique to service providers who have no lens into what conversations or indeed negotiations are being undertaken by the NDIA in regard to resolving ongoing interface issues. This leaves providers having to accept at face value that the issues will be resolved 'because they have to be,' and acting in good faith that they will be paid for 'services rendered' regardless of what future determinations are made.

Legacy work and the National Disability Agreement (NDA)

To say that NSW has fully transitioned into the NDIS and that the role of state government in the disability sphere has ended is patently untrue. There will be legacy issues around disability programs whose clients are yet to transition into the NDIS, and issues for individuals who for a variety of reasons are also yet to transition. There is also the much larger piece around the coordination of the work of other government agencies who must now respond to the needs of people with disability who require their support. The chief among these being NSW Health, Housing, Transport, Attorney General's and FACS itself (DoCS). To not coordinate this effort and to leave each portfolio to undertake a piecemeal response is to bring an already strained system to breaking point.

The existing National Disability Agreement is to be reviewed with an eye to whether such an agreement is needed in an era where there is now a national response to people with disability. The temptation to water down, replace or do without a nationally recognised agreement around disability is to weaken the structure of the system going forward. The NDA is the vehicle for picking up the threads of the disability system left behind as states and territories transition their clients, and dollars into the new system. It will be up to the NDA to sift through what remains in order to strengthen the remaining legacy structures and architecture. It is in this way that the NDIS will become woven into the fabric of Australian society as other players have their roles legitimised by agreement and by law.

To the Future

There is much more that could be said about the manner in which the NDIS came into being. Few of us had the benefit of the history of major social reform or even hindsight as we started the journey. Like true explorers we tried to take with us just what we thought was necessary for the

journey. Our maps lacked detail, our bags were carefully packed and we knew the road would be long and at times arduous. What we couldn't know was that pace and timing of the journey would be relentless, often uphill on a winding road. At times it felt we were pushed backwards, buffeted by the winds of change, left without guidance or a clear pathway as to where to go next. But like all explorers we knew we could only go forward, clearing a path for all who came next. We hope now that as we find a moment to pause and reflect, to talk among ourselves that our efforts to be part of a transformative experience in the lives of people with disability will be respected by this and successive governments. That there won't be a relentless push to drive the system to the lowest common denominator, to constrain spending and rein in costs, and that the construct of disability services and supports won't become just another behemoth among existing government bureaucracies.

For what we dreamed of as we started our journey is just this; that people with disability would become active participants in their own lives, would be known and included in their communities and could live an "ordinary life".

AFFILIATED SERVICES