

Submission  
No 278

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

**Organisation:** Women's Legal Service NSW

**Date Received:** 16 August 2018

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16 August 2018

The Hon Greg Donnelly MLC  
Chair  
NSW Legislative Council  
Portfolio Committee No.2 –  
Health and Community Services

By email: [portfoliocommittee2@parliament.nsw.gov.au](mailto:portfoliocommittee2@parliament.nsw.gov.au)

Dear Chair,

**Inquiry into the implementation of the National Disability Insurance Scheme and the provision of disability services in New South Wales**

1. Women's Legal Service NSW (WLS NSW) thanks the Portfolio Committee No.2 - Health and Community Services for the opportunity to comment on the Inquiry into the implementation of the National Disability Insurance Scheme (NDIS) and the provision of disability services in New South Wales.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims support, care and protection, human rights and access to justice.
3. Our submission focuses on the need to ensure appropriate services and support are available for women with disability who have experienced violence.

**General comments**

4. It is our experience that some women who are eligible for NDIS who, for example, have an intellectual disability, as well as a psychological disability as a result of significant trauma, such as child sexual abuse and domestic violence, are receiving an NDIS response related to their intellectual disability without adequate consideration given to their psychological disability. This may be because the violence and/or psychological disability has not been identified. Such women express frustration at a lack of a holistic response to their issues.



Women's Legal Service NSW  
PO BOX 206 Lidcombe NSW 1825  
Admin (02) 8745 6900  
Fax (02) 9749 4433

[www.wlsnsw.org.au](http://www.wlsnsw.org.au)  
Women's Legal Resources Ltd.  
ACN 002 387 699  
ABN 88 002 387 699



5. Some women have also told us that they find the NDIS system confusing even when one organisation is appointed to co-ordinate the services provided to them, as they are working with multiple providers.
6. We are concerned about the accessibility of the NDIS assessment for women in prison.
7. It is important that NDIS services are: culturally safe with respect to working with Aboriginal and Torres Strait Islander clients, culturally and linguistically diverse (CALD) clients and lesbian, gay, bisexual, transgender, intersex, queer (LGBTIQ+) clients; and domestic violence and trauma informed.

### Violence against women with disability

8. Women with disability are 40% more likely to experience domestic violence than women without disability.<sup>1</sup> Further the violence they experience is “more extensive and diverse in nature”.<sup>2</sup>
9. We acknowledge the need for better disaggregated data relating to violence against women, including women with disability, a recommendation made by several United Nations committees.<sup>3</sup>
10. While there is a need for better disaggregated data, we note there is a study which found 90% of women with intellectual disabilities have been sexually abused; and 68% of women with an intellectual disability will experience sexual abuse before 18 years of age.<sup>4</sup>
11. There are many barriers to women with disability disclosing violence. For example, they may not identify their experience as violence; they may fear being disbelieved; they may not have the opportunity to disclose violence as their abuser may be their carer who accompanies them to appointments.
12. We understand that only a small proportion of people with disability will be eligible for the National Disability Insurance Scheme.
13. While the NDIS has a role to play in responding to violence against women with disability, other supports are also required. We outline some of these additional supports below.

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<sup>1</sup> Didi, A, Soldatic, K, Frohmader, C, & Dowse, L. (2016) 'Violence against women with disabilities: is Australia meeting its human rights obligations?' *Australian Journal of Human Rights*, 22:1, p161.

<sup>2</sup> Healey cited in Didi et al, *ibid*.

<sup>3</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on the eighth periodic report of Australia, CEDAW/C/AUS/CO/20 July 2018; Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Australia, adopted by the Committee at its tenth session (2-13 September 2013) CRPD/C/AUS/CO/1 , 21 October 2013 paragraph 54

<sup>4</sup> Cited in S Salthouse and C Frohmader, 'Double the Odds: Domestic Violence and Women with Disabilities', Home Truths' Conference, Sheraton Towers, Southgate, Melbourne 15 -17 September 2004 accessed at: <http://wwda.org.au/issues/viol/viol2001/odds/>

*Disability and Domestic and Family Violence Crisis payment*

14. We understand that the NDIS does not provide a crisis response for people with disability, including people with disability escaping violence.
15. We are concerned that the costs of disability support, for example, for attendant care in a refuge or for a Auslan or sign interpreter, are expensive and may be a barrier to leaving situations of domestic violence.
16. Victims of violence with a disability may currently be able to claim such expenses as immediate needs. However, this means they would likely have to choose between these expenses and, for example, clothing and furniture.
17. People with Disability Australia recommend a new victims support payment called a Disability and Domestic and Family Violence Crisis payment.
18. The proposal is modelled on the Victorian Family and Domestic Violence Crisis Response Initiative which includes:
  - 18.1 A maximum of \$9000 over 12 weeks;
  - 18.2 Available for women with disability and/or women whose child/ren have disability (however, this should be guided by self-identification of disability in collaboration with a domestic and family violence service provider, in line with World Health Organisation definition);<sup>5</sup> (though PWDA recommends this should extend to all victims of domestic violence with disability where act of violence took place in NSW)
  - 18.3 Covers the standard array of disability supports, including: personal care, Auslan or sign language interpretation, assistance providing care for children, assistance with meal preparation, shopping, etc
19. We support the establishing of this new victims support payment. We note Community Legal Centres NSW, of which Women's Legal Service NSW is a member, supported this recommendation in its submission in response to the statutory review of the Victims Rights Support Act 2013 in 2016.<sup>6</sup>
20. Further, if the NDIS is unable to provide the required assistance before the end of the 3-month period, we recommend the Disability and Domestic and Family Violence Crisis payment be available for an additional 3 months.
21. It is important that this payment be a separate payment and not included in the \$5000 maximum for immediate needs or up to \$30,000 for economic loss or in the recognition

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<sup>5</sup> World Health Organisation, Definition of disabilities accessed at: <http://www.who.int/topics/disabilities/en/>

<sup>6</sup> Community Legal Centres NSW, Submission in response to the statutory review of the Victims Rights and Support Act 2013, 29 July 2016 accessed at: <http://www.wlsnsw.org.au/wp-content/uploads/CLCNSW-Review-of-VSRA-sub-12-month-sub-fa.pdf>

payment. Victims of crime with a disability should not be required to choose between needs. Rather, their different needs should be adequately addressed.

### Extending Witness Intermediaries

22. WLS NSW commends the piloting of witness intermediaries for children in child sexual assault matters.
23. We note this issue was explored by the Royal Commission into Institutional Responses to Child Sexual Abuse.
24. In our submission to the Royal Commission in response to its Criminal Justice Consultation Paper (our submission), we agreed with the comments of Professor Cooper that all people have a right to participate in the justice system, and that witness intermediaries can facilitate this participation for certain vulnerable witnesses.<sup>7</sup>
25. The introduction of an intermediary scheme also plays an important role in reducing the traumatic impact of giving evidence on survivors of child sexual abuse. While intermediaries are impartial and are not to act as support people, their role should include informing the Court and legal practitioners about the witness' needs, informing the Court if the witness becomes distressed, and ensuring the witness understands what is happening. These functions are likely to make the process of giving evidence less distressing for survivors. We note that evaluation of the intermediary program in the United Kingdom found that intermediaries "helped witnesses cope with the stress of giving evidence".<sup>8</sup>
26. In our submission, we advocated for the use of intermediaries not just for child witnesses, but for adult witnesses whose ability to communicate is affected by a disability. There is no principled reason to not extend witness intermediaries to adult survivors with disabilities, especially noting the Royal Commission's findings that girls with a disability are "significantly more likely to be victims of abuse".<sup>9</sup> It is important that access to the criminal justice system is facilitated for these survivors who often do not report until they are adults. We continue to support the extension of witness intermediaries to adults with a disability.

### Additional funding for services

27. Noting that only a small proportion of people with disability are eligible for NDIS it is important that other services, including specialist women's and sexual, domestic and family violence services, are adequately funded to support those who have experienced violence, including women with disability.

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<sup>7</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Consultation Paper* (2016), 381.

<sup>8</sup> Plotnikoff, J and Woolfson, R. *The 'Go-Between': Evaluation of Intermediary Pathfinder Projects'* (funded by Office for Criminal Justice Reform UK), p60-61.

<sup>9</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Interim Report Volume 1* (2014), p 112.

28. The Law and Justice Foundation Legal Needs Survey found that people with disability have an increased likelihood of having a legal issue and a high prevalence of having multiple legal issues.<sup>10</sup> The research also found that people are more likely to tell a health professional about a legal problem than a lawyer.<sup>11</sup>
29. Health justice partnerships are where health and legal assistance services work together to provide a person with holistic early support to prevent problem escalation. Health justice partnerships recognise that addressing a person's legal needs appropriately can assist in improving their health. By basing a lawyer in a health setting such as a hospital or health centre the lawyer can train health professionals to recognise legal issues their clients may have and promote referrals for legal advice.
30. We recommend additional funding for health-justice partnerships to respond to the needs of people with disability.
31. It is also important that disability representative, advocacy, information and referral organisations are sustainably funded as they play a vital role in supporting and advocating for people with disability, as well as building the capacity of mainstream organisations to become more accessible for people with disability. For example, the People with Disability Australia Building Access for Women with Disability Project funded through the NSW Government's Domestic and Family Violence Innovation Fund.<sup>12</sup>

### Ongoing training

32. We believe it is important that all professionals working with people with disability, irrespective of whether the service is provided through NDIS or through another service should undertake regular ongoing training in:
  - cultural competency in relation to working with Aboriginal and Torres Strait Islander clients;
  - cultural competency in relation to working with CALD clients;
  - cultural competency in relation to working with LGBTIQ+ clients;
  - disability awareness;
  - the nature and dynamics of domestic violence;
  - working with vulnerable clients; and
  - trauma informed practice

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<sup>10</sup> Coumarelos, C, Macourt, D, People, J, MacDonald, HM, Wei, Z, Iriana, R & Ramsey, S (2012) *Legal Australia-Wide Survey: legal need in Australia*, Law and Justice Foundation of NSW, Sydney p 169 accessed at: <http://www.lawfoundation.net.au/ljf/app/&id=EDD640771EA15390CA257A9A001F7D08> (Ch 9)

<sup>11</sup> Law and Justice Foundation of NSW, *Legal Australia-Wide Survey: Australia Access to Justice and Legal Needs*, Vol 7, 2012, p192

<sup>12</sup> NSW Domestic and Family Violence Innovation funding grant. See: [https://www.women.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0011/417647/Building-Access-for-Women-with-Disability-V3.pdf](https://www.women.nsw.gov.au/__data/assets/pdf_file/0011/417647/Building-Access-for-Women-with-Disability-V3.pdf)

If you would like to discuss any aspect of this submission, please contact Liz Snell, Law Reform and Policy Coordinator or Carolyn Jones, Senior Solicitor on

Yours faithfully,

**Women's Legal Service NSW**

**Janet Loughman**  
**Principal Solicitor**