

## **National Disability Insurance Scheme (NDIS) Costs Inquiry**

### **CPSU submission**

This submission has been prepared by the joint divisions of the Community and Public Sector Union (CPSU), the primary union covering public sector workers in the Commonwealth, State, and Territory governments. Our members work in the government disability services sector in the National Disability Insurance Agency (NDIA), and in state government disability services departments in roles directly working with and supporting clients (eg. social trainers, disability support workers, local area coordinators, community support teams), and policy, planning, management and administrative roles. The CPSU supports the principles of NDIS, but we do not support NDIS being used as a Trojan horse by governments for privatisation and the erosion of employment security, pay, and conditions.

### **Selling out the NDIS**

As an insurance scheme, the NDIS takes a lifetime approach, investing in people with disability early to improve their outcomes later in life. The NDIS helps people with disability to: access mainstream services and supports, access community services, maintain informal support arrangements, receive reasonable and necessary funded supports. The scheme, which commenced on 1 July 2013<sup>1</sup> and is currently in the trial stage, proposes the use of person-centred planning and individualised funding to identify and meet the needs and preferences of the individual. A guiding principle of the NDIS recognises that individuals with a disability “... have the same right as others to develop, pursue their goals, participate in society, have respect and dignity, exercise choice and control, be equal partners in decisions that affect their lives”.<sup>2</sup>

It is this choice and control – the core pillar of NDIS – that we argue is being denied to people with a disability who wish to stay with their government-run service. State governments are selling out the NDIS by using it as an excuse to privatise public disability services. Our submission will go on to examine the privatisation of disability services in NSW and WA. We support real choice for people with disabilities and their families to stay with their government service provider if they wish. Privatisation is not fundamental to the implementation of NDIS – state governments could integrate their disability services with the NDIS – but state governments instead have seen NDIS as an opportunity to privatise public services and wash their hands of responsibility for some of the most vulnerable people in our society.

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<sup>1</sup> NDIS (2014) Annual Report 2013-14, <https://www.ndis.gov.au/ndia-annual-report-20132014.html>.

<sup>2</sup> *National Disability Insurance Scheme Act 2013*(Cth), 4(8).

At the Commonwealth and State level, NDIS is ushering in further job insecurity to the disability services sector. Our submission will show the increase in insecure work through labour-hire and short-term contracts and outsourcing at the NDIA, and the privatisation occurring at the state level which will shift thousands more workers into precarious employment. We believe there are looming funding shortfalls with the NDIS which will precipitate a workforce crisis. In NSW, public sector workers can be forcibly transferred to a non-government provider. Yet many have indicated they are likely to leave the sector rather than face insecurity and a potential 30% pay cut to work in the non-government sector. As our submission will explain, the NDIS must provide more regulation to ensure workers who are employed through NDIS funds have security, superannuation, and safety at work.

### **Poorer outcomes for workers**

The NDIS will clearly benefit many people with a disability who are able to plan and choose how they receive support. We are concerned, however, about the impact of NDIS on disability support workers. NDIS presents new challenges for regulating and upholding the rights of low-paid and mostly female workforce. Macdonald and Charlesworth, in their recent preliminary study on the workforce implications of the NDIS<sup>3</sup>, found that “the factors implicated in poor outcomes for care workers in other countries are present to some extent in the design and trial implementation of the NDIS.”<sup>4</sup>

Macdonald and Charlesworth note the workforce profile of the sector: the disability workforce is an estimated 68,700 employees, and includes managers, health and social professionals, and the non-professional personal carers, homecare workers, community care workers and other support workers. Of these workers, 73% are in the not-for-profit sector, 21% are in the public sector, and 6% are in the private for-profit sector. Most are direct care and support workers and over 80% are women. Non-standard employment is the norm for direct support workers, with over 55% employed part time and a further 31% employed as casuals – a total of 86% in non-standard employment compared with 50% of the Australian female workforce. Some work is very short-hours work and there is a high level of multiple job-holding, suggesting inadequate hours may be a problem for workers.<sup>5</sup>

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<sup>3</sup> Fiona Macdonald and Sara Charlesworth, ‘Cash for care under the NDIS: Shaping care workers’ working conditions?’ *Journal of Industrial Relations*, Vol 58(5) 2016, pp. 627-646.

<sup>4</sup> *Ibid.*, p. 641.

<sup>5</sup> *Ibid.*, p. 633.

With state governments privatising disability services and the introduction of person-centred funding, there will be an increase in workers employed by private (not-for-profit and for-profit) organisations that enter the market, and an increase in workers employed directly or contracted by individuals with disabilities or their families.<sup>6</sup>

Some workforce changes are already evident, as noted by National Disability Services (NDS, the peak body for disability non-government organisations) own review of the Victorian NDIS trial: “increasing back office [work], more casuals employed, different types of workers employed, disputed relevance of formal qualifications, increased demands of staff, less ability to offer training and professional development, weaker supervision [and] increasing workplace health and safety risks.”<sup>7</sup>

Macdonald and Charlesworth note that international evidence shows that employment through self-directed funding leads to poorer outcomes for workers – although this same evidence has been dismissed by the Productivity Commission.<sup>8</sup> A review of this international evidence finds that “under individualised funding, many of the risks associated with increased flexibility are passed from organisations to workers and that the risks associated with contracting and direct employment are substantial...UK research has also identified multiple negative impacts on workers’ pay and conditions under direct payments and personal budget schemes.”<sup>9</sup>

It appears that little attention has been paid to the potential negative outcomes for workers employed with NDIS funds. In the Productivity Commission’s *Disability Care and Support* review (2011), it is suggested that “in many instances, self-directed funding would involve no superannuation, tax withholding or OH&S obligations.”<sup>10</sup> This philosophy of encouraging users of NDIS to circumvent proper employment practices is expressed in an NDIA guide to service-users engaging their own employees. The guide suggests that a person with a disability can structure their support so that it is provided by multiple part-time workers in their home rather than a single worker to ensure that each worker is engaged for 30 or fewer hours a week – in order to avoid paying superannuation.<sup>11</sup> There is little regulation and oversight of workers engaged through NDIS funding. A worker must be registered with the NDIA only if a person with disability has their funding

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<sup>6</sup> Macdonald and Charlesworth, p. 634.

<sup>7</sup> Quoted in Macdonald and Charlesworth, p. 639.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*, p. 635.

<sup>10</sup> Productivity Commission (2011) *Disability care and support: vol 1 & 2*, p. 379.; cited in Macdonald and Charlesworth, p. 636.

<sup>11</sup> Macdonald and Charlesworth., p. 641.

and support managed by the NDIA. However, if a person manages their own funding, the NDIS places no restrictions on who can provide services.<sup>12</sup>

Macdonald and Charlesworth found that “there are no particular safeguards built into the new system addressing work quality and there is some early evidence of pressures eroding working conditions. In addition, [they found] that the light touch regulation of care delivery and a focus on containing costs may also serve to undermine care workers’ pay and working conditions.”<sup>13</sup>

Many of these concerns about job security and pay are echoed by the non-government sector. NDS note that “compared to the Australian labour force as a whole, jobs in disability are less likely to offer either a living wage or job security. Jobs in the disability sector are more likely to include fewer hours with the average at 22 hours per week...A significant proportion of disability workers earn a living by combining two or more short-hours jobs together. This can adversely affect the quality of service, with a worker’s commitment and focus split and their responsiveness to each individual employer constrained. For people with disability, being supported by the same person(s) tends to correlate with high-quality care.”<sup>14</sup>

It is clear that much more regulation of employment through NDIS funding is needed to safeguard the rights of workers. It is little wonder that 60% of our NSW members who currently work for ADHC have stated they would prefer to leave the sector altogether than transfer to the non-government disability sector. Unless there is regulation to guarantee security, pay, and conditions in the sector, there is the potential for a workforce crisis. One non-government provider expresses these concerns: “meeting client demand is heavily reliant on the adequate supply of a suitable workforce which is becoming increasingly difficult to attain. The barriers to adequate workforce supply is dominated by low wages for support workers.”<sup>15</sup>

Commonwealth and State governments must work together as a matter of priority to ensure the disability sector is an attractive place to work, and that workers receive the pay, conditions, and security they deserve. This is the only way to ensure that the NDIS can successfully meet demand and provide quality support to people with disabilities.

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<sup>12</sup> Macdonald and Charlesworth, p. 638.

<sup>13</sup> *Ibid.*, p. 637.

<sup>14</sup> National Disability Services, ‘State of the Disability Sector report’, Centre for Applied Disability Research, 2016. [https://www.nds.org.au/images/news/sods2016/State\\_of\\_the\\_Disability\\_Sector\\_report\\_2016.pdf](https://www.nds.org.au/images/news/sods2016/State_of_the_Disability_Sector_report_2016.pdf), p. 38.

<sup>15</sup> *Ibid.*, p.40.

### **Disability providers are not ready**

While NDIS will expand service provision to people who have previously not been able to access the supports they need and desire, it will not mean particular services will be better funded.<sup>16</sup> With funding allocated to individuals, providers face much less certain and potentially reduced income. This has implications for both the workforce, as explained above, and the quality of service clients will receive.

The CPSU is concerned the non-government sector is not ready for the roll-out of NDIS, and the non-government sector appear hold this same concern. A report released in 2016 by NDS confirms that the non-government providers are not ready for the full roll out of NDIS:

71% of service providers have reported increased demand for their services over the last year, and 75% expect demand to increase further in 2016-17. While not all respondents are yet operating in the NDIS, its introduction is increasingly being felt across the sector. Despite their expectations that demand will grow further, only 60% of organisations are planning to increase the scale and range of services they provide...Only half (53%) expect to be able to satisfy demand – as such the amount of unmet client need is expected to grow...Approximately one in five organisations (22%) believe that the clients they turn away will receive no service at all and 43% believe that other providers will only partially meet their needs.<sup>17</sup>

Stories from clients at NDIS trial sites back this up. For instance, in Tasmania the scheme has only been available to people aged 12 – 24 years old, and already demand is exceeding supply. Another age cohort, 25 – 28, were given access to the scheme in January 2017, with the full roll-out to be completed by 2020. Families claim the NDIS is difficult to navigate and have not been able to access services they were promised.<sup>18</sup>

### **Quality of service will diminish**

The privatisation of state government disability services has led to fears among clients, their families, and public sector workers that clients with complex needs may be turned away from non-government providers. This problem is also recognised by non-government service providers. One organisation said: “The NDIS does not adequately fund services for clients with complex needs and

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<sup>16</sup> Macdonald and Charlesworth, p. 637.

<sup>17</sup> National Disability Services, pp. 7-8.

<sup>18</sup> ABC News, Annah Fromberg, ‘Tasmanian families living NDIS “nightmare” fear problems will worsen as scheme expands’, 1/1/17 <http://www.abc.net.au/news/2017-01-01/families-living-in-an-ndis-nightmare/8156342>

high risk behaviours. We have to turn away clients.”<sup>19</sup> Without a government service provider as a safety net, what will happen to these clients?

Providers are also concerned that they will not be able to provide services at the prices being offered under the NDIS (67%) and that they will have to reduce the quality of services in order to deliver at the current prices (46%).<sup>20</sup> Given the research above into workforce implications, we suggest that cost pressures may lead to added downward pressure on wages and conditions in the sector.

### **Outsourcing and insecurity at the NDIA**

The National Disability Insurance Agency (NDIA) is an independent statutory agency whose role is to implement the NDIS.<sup>21</sup> The purpose of the agency is to implement a NDIS that provides individual control and choice in the delivery of reasonable and necessary care and supports to improve the independence, social and economic participation of eligible people with disability, their families and carers, and associated referral services and activities.

We are concerned that the continued growth of insecure work at the NDIA and the steady privatisation of the NDIA’s functions will undermine this goal and will affect outcomes for people with disability.

### Staffing Numbers

The proportion of non-ongoing and irregularly employed staff has increased significantly as the NDIA has grown. The proportion of staff employed on a non-permanent basis has more than tripled in two years.

In 2013-14 there were 516 staff, 92.2 per cent of whom were ongoing employees. Just one was classified as casual, and the remaining 7.6 per cent were employed on a non-ongoing basis. The table below shows the number of staff employed at the NDIA in 2013-14.<sup>22</sup>

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<sup>19</sup> National Disability Services, p. 8.

<sup>20</sup> *Ibid.*, p. 20.

<sup>21</sup> NDIS, <https://www.ndis.gov.au/about-us>

<sup>22</sup> NDIS (2014) Annual Report 2013-14, <https://www.ndis.gov.au/ndia-annual-report-20132014.html>, p.93.

Staff	Headcount	FTE
<b>Total</b>	<b>516</b>	<b>497.04</b>
Ongoing	476	458.96
Non-ongoing	39	37.08
Irregular/intermittent/casual	1	1.00
SES*	23	23.00
EL 1 and 2 equivalent*	148	145.29
APS 1-6 equivalent*	345	328.75
Average age	41	n/a
Average length of service in Agency (months)	8.69	n/a
Average length of service in APS (years)	4.30	n/a
Female (per cent)	75	n/a
Proportion Male (per cent)	25	n/a
Proportion Part-Time (per cent)	12	n/a

\*Classifications based on substantive positions

In 2015-16, the annual report shows<sup>23</sup> that there were 378 non-ongoing staff and a further 9 staff employed on an irregular or casual basis – more than one third of the NDIA workforce (34.6%).

Staff	Headcount 2014-15	Headcount 2015-16	FTE 2014-15	FTE 2015-16
Ongoing	748	1118	714.20	1072.08
Non-ongoing	104	378	94.64	364.73
Irregular, intermittent, casual	2	9	0	0
SES*	22	44	22	44
EL 1 and 2 equivalent*	202	280	195.91	275.86
APS 1–6 equivalent*	630	1181	590.93	1125.96
<b>Total</b>	<b>854</b>	<b>1505</b>	<b>808.84</b>	<b>1436.81</b>

\*Classifications based on substantive positions, as at 30 June 2016

According to members, the National Disability Insurance Agency (NDIA) has a strategy of only employing ongoing staff members in new sites that will be permanent after 2020. The rest of the positions are being made non-ongoing (mostly 18 month contracts) or are being contracted out to recruitment agencies. The final full time equivalent staffing level at the end of 2020 is expected to be

<sup>23</sup> NDIA (2016) Annual Report 2015-16  
<https://www.ndis.gov.au/medias/documents/ha5/h04/8798853726238/NDI7040-AnnualReport2016-vFaccesible.pdf>, p.85.

a maximum of 3,000 employees across Australia located over 100 sites nationally. This is down from the NDIA's initial estimate of 10,595 in 2018-19.<sup>24</sup>

This increase in non-permanent employment significantly affects the level and quality of service provided. Given the focus of the current government on employment in regional areas, it is concerning that these jobs are not secure, full time positions that not only provide certainty to the employee but also to the community they serve.

Of the 516 staff in 2013-14, 16 were classified as SES. In some ways, this proportion is expected given the establishment of the Agency. However, over time, the proportion of SES staff has increased. The 2015-16 annual report shows that 44 ongoing staff are classified as SES. The disproportionate increase in the number of SES staff is concerning, particularly as staffing levels at the NDIA will be a maximum of 3,000 employees.<sup>25</sup>

### **Concerns about Outsourcing NDIA work**

We are deeply concerned about the contracting out of NDIA functions in response to inadequate resourcing. The processes utilised today are being broken into components and slowly outsourced. The staff who undertake this outsourced work do not receive adequate training or have the specialist skills required. A prime example of work being outsourced and the problems generated are Local Area Coordinators (LACs).

#### Local Area Coordinators

LACs are designed to connect people with disability to services in their communities and to improve how services support them. Many NDIA employees were hired as LACs in 2013-2014 and had the responsibility to meet with participants, ensure that they had adequate links to support within their informal, mainstream and funded networks. They would work with vulnerable families and those struggling to implement their plans to ensure a good outcome and worthwhile expenditure of their National Disability Insurance Scheme (NDIS) budget to achieve the goals that they had set. They would also monitor the plan to ensure that the money was being spent the right way, for the right things, and that it was actually being utilised.

This model was phased out throughout most states in 2015 to the point where NDIA employed LACs became Plan Support Coordinators (PSC) with little to no training and were asked to complete the

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<sup>24</sup> Commonwealth Government (2016). 2016-17 Budget Paper No.4 – Part 2: Staffing of Agencies.

[http://www.budget.gov.au/2016-17/content/bp4/html/09\\_staff.htm](http://www.budget.gov.au/2016-17/content/bp4/html/09_staff.htm)

<sup>25</sup> *Ibid.*



LAC role as well as the Planner role. When LAC roles were converted to that of a PSC, there was no consideration of their caseload or any consultation with staff about how they might manage the increase. LACs were effectively asked to do the work of two people. It must also be noted that it has been difficult for NDIA to map what an LAC does. No KPIs to effectively measure their work were employed.

In late 2015, LAC numbers were further reduced by effectively outsourcing the implementation and monitoring of a Participant's NDIS Plan to a Support Coordinator (SC). A SC is funded through a participant's plan similar to respite or therapeutic services. Their role is to implement and monitor the participant's NDIS plan.

With the end of the Trial Phase of the NDIS and the beginning of the Transition Phase in mid-2016, a new computer system came into use that was designed to simplify the way the NDIA communicated with providers, participants and the community. It had strong integration with MyGov for participants of the Scheme and MyPlace for providers. With the new system came a new way to assess participants for funding allocations in the planning phase. It is designed to measure a participant's functional capacity using a range of questionnaires and assessments.

These questionnaires and assessments were designed to be administered by call centre employees with no prior knowledge or experience with disability. It was designed in this manner in order to increase the number of new plans to be approved due to the high number of plans that are required to be completed. These numbers can be found in the bilateral agreements between the Commonwealth and states and territories. However, the NDIA was not adequately staffed to perform the functions of reviewing, creating and approving the influx of new plans. The NDIA underestimated the amount of participants applying to the scheme and how many participants required a review.

A NDIS plan review happens at the end of each plan. A first plan usually lasts around 12 months. Following a first plan the plans may last two to three years depending on the participant's circumstances and complexity of their needs. To relieve the pressure on staff the reviews of the existing plans were extended a number of times for three to twelve months depending on their urgency. For clients, it meant that they did not get the services they need. Providers became confused and could not prepare adequately for the plan review. Participants' data was also mixed up and providers do not know what service they can provide or what is funded under the extended plan

because the funding allocations are no longer budgeted according to participant's needs but are combined, causing confusion for participant, providers and the NDIA as no one understood how the money was to be allocated.

The function to review plans was then outsourced to Department of Human Services (DHS) staff in a number of locations across Australia. This work was completed through call centres. This caused major issues as DHS staff did not understand the computer system, had limited training and conducted all of their business over the phone which is not entirely accessible to people with disability. While we believe the NDIA should remain a stand alone agency because of the specific needs of the clients and the specialist skills needed by staff to properly assist the clients participate in the community, should the government decide to disband the NDIA, the work must remain in the APS and DHS could be placed to undertake this work – provided there were staff allocated and they were properly trained.

Again, to relieve the pressure of the influx of participants requiring plans, the assessments and questionnaires, goal setting and funding allocations (preplanning) were outsourced to a number of organisations with the bulk load of work going to Australian Healthcare Associates (AHA). This has caused a large amount of discord and increased the costs of plans significantly due to AHA not understanding the nuances of the new computer system. It has also required work to be re-done and constantly reviewed by NDIA staff. Another issue that has caused the substantial increase in cost for NDIS Plans was the algorithm used within the new computer system.

In the coming year LAC Partners (outsourced LACs) will be employed across Australia through a tendering process. It is predicted that it will result in 7,000 future NDIA staffing positions being outsourced at a value of \$550m per annum.<sup>26</sup> These LACs will complete the preplanning function of the NDIS, submit this for approval to a NDIA employed planner, and once approved will implement the NDIS Plan. This example demonstrates that due to ever changing procedures the LAC role has been completely removed from the NDIA and entirely outsourced in very distinct stages.

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<sup>26</sup> Luke Bo'sher (2015, 15 September). 7,000 NDIA jobs to be outsourced. Disability Consulting Services [http://www.disabilityservicesconsulting.com.au/resources/7000-ndia-jobs-to-be-outsourced/#\\_edn2](http://www.disabilityservicesconsulting.com.au/resources/7000-ndia-jobs-to-be-outsourced/#_edn2)

The NDIA will be paying the outsourced provider of LAC services directly for the provision of these services as the funding is not attached to participants in the same way other NDIS funding is delivered. The average funding available per participant is approximately \$1,270 per participant.<sup>27</sup> LACs are paid low wages by outsourced providers, have poor conditions, are on short term contracts and receive very little training. The attrition levels are high and the money spent by partners in constant training and retraining will eventually make it cost negative. The risk of there being no LACs in regional and rural areas willing to take on the job is high, thereby by disadvantaging regional and rural participants. A further risk is presented where, in the face of poor wages and conditions, NDIA partners begin to recruit people without the right skills and expertise for the complex role of a LAC. It is clear from this example that the outsourcing NDIA functions such as LACs is being driven by the NDIA being inadequately resourced to meet demand rather than providing people with disability with the best outcome.

#### Outsourcing in the NDIA

The below three tables illustrate the extent to which things have been, are and may be outsourced within the NDIA since its inception in 2013.

#### Previous Roles and Processes - What was Outsourced

Outsourced Completely	Partially Outsourced/Labour Hire	Not Outsourced
Call Centre	Actuaries	Planner/Financial Delegate
ICT		Local Area Coordinators
Customer Management System		Front of House Staff
		Business Support Officer
		National Access Team
		Finance teams
		Pre planning
		Plan Implementation

- Call centre staff do not have the expertise required to triage the calls.

<sup>27</sup> Evie Naufal (2016, 2 August) NDIA releases 16 LAC and ECEI tenders. Disability Services Consulting. <http://www.disabilityservicesconsulting.com.au/resources/ecei-lac-tenders>

- The customer management system before July 1 2016 was designed as a financial management system, not for case management. This caused significant issues in accessing required information and processing participant’s plans.
- All ICT systems and help is outsourced which means there are have significant delays and outsourced providers do not understand the specific issues that the NDIA are facing with their systems.

Current Roles and Processes – What is Outsourced

Outsourced Completely	Partially Outsourced/Labour Hire	Not Outsourced
Local Area Coordinators	Front of House Staff	Planner/Financial Delegate
Call Centre	Business Support Officer	
ICT	National Access Team	
Customer Management System	Finance teams	
	Actuaries	
	Pre planning	
	Plan Implementation	

- LAC – Please see above.

Future Roles and Processes - What May be Outsourced

Outsourced Completely	Partially Outsourced/Labour Hire	Not Outsourced
Local Area Coordinators	NAT decision maker	Planner/Financial Delegate
Call Centre	Actuaries	NAT – Decision making staff
ICT		
Customer Management System		
National Access Team (NAT) information gathering		
Front of House Staff		
Finance teams		

Pre planning		
Plan Implementation		
Business Support Officer		

- NAT – Data processing and information gathering is a difficult role. Some staff do not have the proper skills to talk to clients. There have also been a number of complaints from the labour hire companies, participants and NDIA staff that they do not know what they are doing and are making significant mistakes. They are required to ask some very personal questions and gather very personal information with no consideration of the way the participant or their family may be feeling.
- FOH - Often these staff have no training in how to de-escalate situations with participants who are exhibiting aggression and who need delicate handling.
- Finance – Data handling by those who don't understand the system, security and privacy.
- Pre planning – LAC as above.
- Plan implementation – LAC as above.
- BSO – data handling, constant training and retraining is required.

The way that labour hire and short term contracts are used also does not foster growing organisational knowledge and will set the scheme back years.

#### The impact of outsourcing

The outsourcing of NDIA roles has far reaching financial and societal related negatives. Due to the majority of the implementation of the NDIS Act (2013) occurring outside the NDIA, the capacity of the governing body is weakened. This happens through the de-skilling of employees to the point that they only approve plans, having the financial delegation to approve plans but not requiring expertise in the area due to the automation of processes and decision making due to the new computer system. The de-skilling of the public service is rife not only within the NDIA but is being implemented across the nation as there is preparation for the introduction of virtual assistants and advisors as discussed in a recent APSC presentation in Melbourne. The involvement of many organisations in implementing the NDIS Act (2013) also means there will be major variations in interpretations of the Act. This in turn will create funding anomalies, increase the potential for fraud, as has occurred in the Job Network system, and create inconsistencies across what is meant to be a nationally consistent scheme. The avoidance of such inconsistencies was one of the main reasons the push for a federally managed disability scheme was required.

In terms of the far reaching effects of outsourcing on finances, the work required to rectify the problems caused by the inadequate training add a significant amount of time to approving a plan. The constant training and retraining of the outsourced partners takes time and resources that should be used to implement the NDIS more efficiently and with a more person centred approach as how it was intended when originally started. Without the person centred approach and with the major automation of many of the NDIA's functions the confidence of the public will wane.

The Commonwealth should cease the privatisation of the NDIA's functions and instead directly employ NDIA staff on a permanent basis to ensure certainty for both staff and improve the outcomes delivered for the community they serve.

### **The state government sell-off**

The privatisation of state disability services, implemented under the guise of NDIS, will lead to the erosion of some of the world's best-practice disability models, the loss of staff and the expertise they bring to the sector, and will severely impact many individuals and their families who rely on government-run disability services. This large-scale privatisation is taking place without any real consultation or debate. We believe it is imperative that state governments retain their disability services to ensure a sustainable workforce and ongoing, quality care for people with severe and profound disabilities. The NSW and WA state governments have implemented aggressive privatisation agendas which will adversely impact clients, workers, and the quality of disability care.

### **NSW**

State governments are privatising their disability services to varying degrees, however the NSW government is taking the most radical approach with the wholesale privatisation of its Aging, Disability and Homecare (ADHC) service. The government announced the sell-off in 2013 under the guise of introducing the NDIS. No other state or territory obtained the same undertaking with the Commonwealth that NSW did - that there would be no 'residual services' provided by the state. It will be the only state in Australia without a public safety-net for disability services for people with complex needs who are beyond the capacity of the private sector, of whom there are many. Instead, we fear this 'safety net' will come in the form of the public hospital system, the child protection system and possibly the courts and corrections system.

ADHC delivers 40% of the disability services in NSW, and many of those services cannot currently be delivered by the non-government sector because they lack the skills and capacity to deliver them.

The first stage of the disability sell-off has occurred, with homecare being sold to Australian Unity. The next stage of the privatisation is ADHC group homes who care for some of the most vulnerable people in NSW – including many people with severe and complex intellectual disabilities and behavioural issues.

This privatisation will impact 14,000 workers, who could be forcibly transferred to the private sector through the NDIS Enabling Act. The Enabling Act protects “the entitlements of workers and their conditions”, however this only relates to the base conditions of employment contained within their award. Many public sector conditions are contained in policy and other documents which will not be protected and transferred to a private provider. The transfer also removes workers’ fundamental right to choose who they work for. The Act states that “a transfer of employment...does not require the consent of the person transferred.”<sup>28</sup> The forced privatisation occurring in NSW treats both workers and clients as commodities to be traded off to the private sector at will.

The PSA has approximately 2700 members employed either in group homes as Disability Support Workers (DSWs) or in para-professional roles in Community Support Teams (CSTs), who provide services such as therapy, case management, and behaviour supports. There has been a lack of consultation from the government about employment entitlements, job guarantees, and transfers for existing staff. Under the transfer package, workers have been guaranteed employment for two years and eight weeks transfer pay. This lack of consultation and the meagre transfer package reflect the undervaluing of disability care work by the NSW government. In contrast, electricity workers from state to private employers under the ‘poles and wires’ sale in 2015 had their entitlements protected, receiving a guarantee of employment for five years and 30 weeks transfer pay. Electricity workers’ entitlements are guaranteed through legislation, with an external body enforcing their rights with new employers: disability workers have been given none of these rights. The job guarantee ADHC workers have been offered doesn’t guarantee terms and conditions, which are lesser in the non-government sector. It is worth noting the gender makeup of these sectors: ADHC has a predominately female workforce, while the electricity sector is a predominantly male workforce. Sydney Ferries, which was privatised in 2012, also has a predominately male workforce; these workers received 30 weeks transfer pay.

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<sup>28</sup> New South Wales, *National Disability Insurance Scheme (NSW Enabling) Act 2013*

<b>Reporting Entity</b>	<b>F#</b>	<b>M#</b>	<b>F%</b>	<b>M%</b>
Ageing, Disability and Home Care (WFP 2014)	4,418	1,909	69%	31%
Home Care	2,322	270	90%	10%
Sydney Ferries (WFP 2011)	75	467	14%	86%
Ausgrid (WFP 2014)	895	4,784	16%	84%
Endeavour Energy (WFP 2014)	417	2106	17%	83%
Essential Energy (WFP 2014)	649	3401	16%	84%

It is clear the privatisation of ADHC diminishes the choice and the rights available to workers. Despite the rhetoric, privatisation is also meaning less choice for ADHC clients and their families/guardians. In February 2017 the privatisation of group homes progressed: the homes have been divided into 15 regions, with a shortlist for tenderers announced for 10 of them. Parents/guardians of clients were advised that community consultation forums would be held for them to decide on their preferred tenderer, but were given as little as 48 hours notice of the forum. For eight of the 10 regions, the 'shortlist' consisted of just one possible tenderer. In four of the 10 regions, the tenderer was a consortium of smaller NGOs, hastily created to take over a massive contract, despite having no corporate record to demonstrate their capacity to do so. Tenderers have not yet been identified for the other five regions. Much has been made about the 'choice' that privatisation offers service-users, and yet the number of service providers in the field from which to choose – let alone service-providers with a good record of providing services of this nature and scope – is limited.

The privatisation also has the potential to put centre-based respite at risk. The NSW Government has slowed and in some areas stopped referrals to ADHC Respite Centres which, along with clinical services and group homes, provide a 'wrap-around' service for people with disability. ADHC currently operates approximately 60 Respite Centres across NSW which will possibly be converted to group homes before being privatised. It is still unclear what will happen to government respite centres and as a result centre based respite. Many families rely on centre based respite as in-home respite does not always provide people with disability, their carers and families with the required level of support.



Ultimately, many clients and their families are not being offered the one choice they actually want: to remain with ADHC. Parents like Sonia Facey from Wollongong are terrified about the impact privatisation will have on her high-needs teenaged son, Nathan. She says:

He took a year to settle into the Dapto Respite Centre, which has provided a lifeline to our family for the past six years. We've been told nothing about the NDIS, I don't know who to speak to. My son has high needs autism which deteriorated after he was hit by a car so needs to be watched around the clock. He has built strong connections with his carers and any change would be catastrophic to our family.<sup>29</sup>

The CPSU urges the NSW government to listen to the pleas of parents like Sonia, and the thousands of skilled and dedicated ADHC workers, and immediately halt and reverse the privatisation of ADHC to ensure this service remains available to those who rely on it.

## **WA**

The WA government announced in 2013 their intention to privatise 60% of the state's group homes, under the cover of implementing the NDIS. The group homes would be transferred to non-government providers, affecting 300 residents and 500 public sector jobs. Transitional and emergency accommodation services, and a smaller supported community living service, would continue to be provided by the Commission.<sup>30</sup> The privatisation of group homes began in September 2014.

In 2014, WA reached agreement on participation in a two-year trial of the National Disability Insurance Scheme (NDIS) using two different models: WA My Way. Built upon the WA Local Area Coordination program, My Way supports people with disability to identify their strengths and needs, plus any goals or aspirations they would like to start working towards, and capture these elements in their My Way plan. Participants are supported to explore pathways and strategies to reach the goals outlined in their plan and choose the services that best suit their needs.<sup>31</sup> Group homes are being privatised in both trial sites. The existing WA NDIS trials will be extended for a further 12 months to July 2017, as plans progress for further expansion into new local government areas.<sup>32</sup>

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<sup>29</sup> Public Service Association NSW, Media Release 14/02/17: 'Show us your heart Gladys – backflip to protect NSW's most vulnerable and keep public disability services', <https://www.medianet.com.au/releases/125670/>

<sup>30</sup> Helen Morton (Minister Disability Services, Western Australia), 2013. *Restructure Is A Step Towards NDIS*. <https://www.mediastatements.wa.gov.au/Pages/Barnett/2013/10/Restructure-is-a-step-towards-NDIS-.aspx>.

<sup>31</sup> Disability.wa.gov.au, 'WA NDIS My Way Model', 2015, <http://www.disability.wa.gov.au/wa-ndis-my-way/wa-ndis-my-way/wa-ndis-my-way-model/>.

<sup>32</sup> Donna Faragher (Minister for Disability Services, Western Australia), 2016. *WA Enters Next Phase Of NDIS*. <https://www.mediastatements.wa.gov.au/Pages/Barnett/2016/07/WA-enters-next-phase-of-NDIS.aspx>.

The privatisation/transition process<sup>33</sup>, which commenced in February 2014, consists of the following six key stages:

1. Selection for transition
2. Selection of transition pathway
3. Selection of non-government provider as a house
4. Transition planning as a house
5. Selection of non-government provider and transition planning with an individualised option
6. Transition to a new provider

Although residents can remain in their current group homes, the privatisation means they will lose their current DSC carers and would need to choose a new service provider. The privatisation process so far has been fraught with difficulties.

The process has occurred with seemingly little regard for the impact of privatisation on the clients – some of whom do not cope well with change. Despite the rhetoric of ‘choice’ the NDIS is predicated on, the transition process has not been consistent in enabling choice for the clients. With the transition process well underway, our members, who deliver front-line services to people with disabilities, continued to raise concerns regarding both the consistency and implementation of decision-making for people with disabilities in WA group home accommodation. As a result, in November 2015, the WA branch of our union initiated a review into the transition process, specifically the engagement of people with disabilities in decision-making as part of the transition process.

The reviews findings, drawn from semi-structured interviews with family members of people with disabilities and where possible, their key workers included:

- Evidence of limited engagement of people with disability in decision making by the Commission.
- Examples of poor communication between the Commission’s Transition Officers’ and people with disability in group home accommodation;
- Limited information for families on whether individual decision making capacity had ever been determined;
- Inconsistency in the application of supported decision making; and

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<sup>33</sup> Disability Services Commission,. 2013. *Information About Changes To The Disability Services Commission Accommodation Services: Transition Process*. Perth: Government of Western Australia.

- Contrary to the Commission's responsibility to regard people with disabilities as de-facto decision-makers where possible, some evidence that the Commission instead primarily regarded families as decision makers.

The review made several key recommendations, including calling for greater:

- **Engagement:** In the context of the transition process, that the engagement of people with disabilities in group home accommodation be described and detailed, with people with disabilities empowered to make supported decisions where possible.
- **Transparency:** In general terms, the Commission should report when they are exempting people with disabilities from decision making and under what legal instrument.
- **Support:** The Commission reports on the supports they are implementing for people with disabilities to assist and facilitate supported decision-making.

#### **CPSU Recommendations:**

- State governments cease the privatisation of their disability services, and bring any services that have already been privatised back into the public sector;
- Commonwealth government ceases the privatisation of the NDIA, removes the maximum 3,000 employees cap on staffing and directly employs workers;
- Commonwealth and State governments put in place regulations to safeguard the job security, pay, and conditions for workers who are transferred to the private sector, including a legally-enforceable employment guarantee of at least 5 years with no diminution of pay and conditions;
- NDIA regulate all employment (direct and contract) funded through the NDIS to ensure compliance with the award, OH&S legislation, and to ensure that superannuation is paid to workers;
- NDIA regulate to ensure minimum qualification requirements and compulsory training for workers engaged through NDIS funding;

- NDIS pricing is reviewed to ensure a sustainable funding model for the provision of disability supports into the future, in order that every person requiring support for their disability is able to access quality services over their lifetime;
- Clients are able to stay with their public disability service provider if they choose;
- Where clients are transferred to the non-government sector, they be informed of their options, are engaged and supported in decision-making, and can determine the length of the hand-over period to ensure there is minimal disruption and distress to the client.