

20 August 2024

The Hon Bill Shorten MP

Minister for the National Disability Insurance Scheme

Via email: [minister.shorten@dss.gov.au](mailto:minister.shorten@dss.gov.au)

**Meeting request to discuss gaps in expertise within new panel of justice experts  
examining access to NDIS**

Dear Minister Shorten

I would like to take a moment to reintroduce myself. I'm Joanne Yates, Chief Executive Office of the Intellectual Disability Rights Service (IDRS). We met on 26 June on the NDIS, then while I was PWDA's interim deputy DEO. IDRS is a unique organisation, hosting both a community legal service (which provides free legal assistance for people with disability living in NSW, prioritising those with intellectual disability, and it hosts an NDIS appeals team). We also offer individual advocacy for those with intellectual disability who come into contact with the criminal justice system.

IDRS is the only service of its kind in Australia.

I am writing about recent commentary about access to the NDIS for people who have been involved in the justice system, and especially those who have been in custodial settings and those on release from custody.

As we heard during the Disability Royal Commission NDIA planners do not always have the necessary expertise in, or understanding of, the needs of people with disability, especially those with an intellectual disability. As you would be aware, the majority of NDIS participants are people who live with an intellectual disability, and further, that people with intellectual disability are overrepresented in the criminal justice system.

To deny or to restrict access to much needed life saving support and assistance is contrary to the spirit and intent of the NDIS and to upholding the human rights of people with disability. Statements that suggest any member of society is unworthy of care, and using these to justify restricting access to the NDIS, may render some of our community's most vulnerable people without the necessary support they need to live meaningful and fulfilling lives outside of prison and forensic health facilities.

IDRS welcomes the establishment of the NDIS Justice Panel comprised of three eminent people including one member with considerable professional disability experience.

However, IDRS is extremely concerned the Panel lacks insight and perspective from professional or lived experience of the specific challenges and systemic discrimination faced by people with an intellectual disability who intersect with the criminal justice system who have or who require NDIS supports. IDRS is available to the Panel to provide a much needed NSW perspective, coming as it does from our unique service and lived experience perspective.

Given the proposed changes to definition of both NDIS and foundations supports, we welcome the opportunity to brief you about how the needs and experiences of people with an intellectual disability might continue to be incorporated into the rules determining NDIS access and/or support including across the entirety of the mainstream and disability-specific service and support infrastructure.

IDRS's advocacy and legal advisory work is preventative and restorative. While the overrepresentation of people with an intellectual disability in Australia's prisons and the overrepresentation in their intersection with the criminal justice system was raised at the Disability Royal Commission, responses indicate this is not a high priority area for reform and will likely result in increased intervention, compliance regimes and restricted access and .

The implications of treating people with criminal records differently from other NDIS participants, will have a deleterious effect, and cause increased strain on our services. For example:

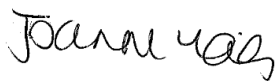
- people with an intellectual disability are overwhelmingly sentenced for non-violent offences but are more likely to be victims of crime than perpetrators. Hard to access support will increase people with intellectual disability's contact with, and ongoing attachment to, the criminal justice system.
- systems that are meant to be integrated and offer wrap around support often fail people with intellectual disability, which in turn, underpins their contact with the criminal justice and forensic health systems. Making the NDIS difficult to access will lessen their ability to receive appropriate wrap around services.
- IDRS offers specific support for people with an intellectual disability at certain touch points with the criminal justice system. Our success in diverting people from prison and into support is profoundly impactful at an individual level. We are dedicated to continues delivery, as we have continuously, for decades. Regrettably, we are not resourced to engage in nation-wide service delivery or to undertake system advocacy

There are many other interrelated issues that contribute to the high rates of recidivism and contact with the criminal justice systems for people with intellectual disability, including:

- the lack of supported decision making for people with intellectual disability
- fitness to plead and stand trial, expending their time in detention or indefinite detention
- lack of appropriate court supports and alternative courts proceedings that deny people with intellectual disability a right to be heard
- the use of prison as a form of restrictive practice that has complex and negative implications for the people we serve (noting the DRC recommended a phase out in the use of restrictive practices)

I look forward to discussing these matters with you, noting the time pressures associated with the passage of the NDIS Amendment Bill (as it currently is before the Senate).

Your sincerely



Joanne Yates  
Chief Executive Officer