



Purple Orange

**Submission to the Joint Standing  
Committee on the National Disability  
Insurance Scheme (NDIS)  
about NDIS Planning**

October 2019

## About the Submitter

JFA Purple Orange is an independent, social-profit organisation that undertakes systemic policy analysis and advocacy across a range of issues affecting people living with disability and their families.

Our work is characterised by co-design and co-production, and includes hosting a number of user-led initiatives.

Much of our work involves connecting people living with disability to good information and to each other. We also work extensively in multi-stakeholder consultation and collaboration, especially around policy and practice that helps ensure people living with disability are welcomed as valued members of the mainstream community.

Our work is informed by a model called *Citizenhood*.

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## 1. Summary of recommendations

This submission includes the following recommendations:

### **Recommendation 1**

That instead of attempting to build a diversity of planning expertise within NDIA, the NDIS arrangements include a mechanism that better harnesses the existing planning expertise within Australia's communities

### **Recommendation 2**

That in building planner capacity for people living with high or complex needs, NDIS arrangements ensure these planners maintain a strengths-based view of the participant, with a firm expectation that participants living with complex needs can move into rich and fulfilling lives characterised by choice and control and by valued active membership of mainstream community life

### **Recommendation 3**

That the NDIS arrangements include an auditable mandatory mechanism for continuing professional development of planners, where a given volume of development time is undertaken by each planner in order to maintain their eligibility to provide a planning service.

### **Recommendation 4**

That NDIS arrangements include the piloting of alternative approaches to planning, including one where planning services are purchased on a per-person basis (instead of the per-population basis in current LAC commissioning arrangements) from accredited community agencies and individuals.

### **Recommendation 5**

That people living with disability are authentically involved in the system decisions about how to evolve planning within the NDIS, in line with the Convention on the Rights of Persons with Disabilities.

## 2. Introduction

We thank the Committee for the opportunity to offer commentary on this important issue; effective personalised planning is critical to NDIS outcomes and sustainability.

We apologise for the lateness of this submission, noting that it is less complete than we would prefer due to limited resources available in the timeframe. Because of this, we request an opportunity to meet with the Joint Standing Committee on the NDIS, to provide further depth to the ideas within this submission.

We have structured this submission to reflect the Inquiry elements below:

- a. the experience, expertise and qualifications of planners;
- b. the ability of planners to understand and address complex needs;
- c. the ongoing training and professional development of planners;
- d. the overall number of planners relative to the demand for plans;
- e. participant involvement in planning processes and the efficacy of introducing draft plans;
- f. the incidence, severity and impact of plan gaps;
- g. the reassessment process, including the incidence and impact of funding changes;
- h. the review process and means to streamline it;
- i. the incidence of appeals to the AAT and possible measures to reduce the number;
- j. the circumstances in which plans could be automatically rolled-over;
- k. the circumstances in which longer plans could be introduced;
- l. the adequacy of the planning process for rural and regional participants; and
- m. any other related matters.

In considering these, we note they appear to be framed in the context of the current NDIS pathway arrangements and roles. In contrast, the essence of our submission is that there is a pressing imperative to consider a more substantial rethink of the nature of individual planning within the NDIS and where that planning takes place, which can then resolve the above elements in a more systemic and integrated way.

In preparing this submission we have drawn on the following sources:

- *About pre-planning: An advisory report to the National Disability Insurance Agency on how people can best be assisted to prepare for the NDIS* (JFA Purple Orange 2015)
- *Pathway and Community – rethinking the roles of NDIS planner and LAC* (JFA Purple Orange 2017)
- team member longstanding experience in planning and LAC-type mechanisms

Note that our response to the first inquiry element below serves as context all other content in this submission.

### 3. Key planning principles

The planning policies and practices of the NDIA must uphold the following key principles:

- Participants should have choice and control in planning their supports;<sup>1</sup>
- There should be a nationally consistent approach to the planning of supports<sup>2</sup>; this does not mean that approach cannot reflect a diversity of planning preferences
- Support should be provided to participants in all dealings and communications with the Agency to maximise their capacity to exercise choice and control;<sup>3</sup>
- Participants have the right to determine their own best interests, including the right to exercise choice and control, and to engage as equal partners in decisions that will affect their lives, to the full extent of their capacity;<sup>4</sup>
- People living with disability are entitled to respect for their inherent dignity, individual autonomy (including the freedom to make their own choices) and their independence;<sup>5</sup>
- People living with disability have legal capacity on an equal basis with others.<sup>6</sup> If a person requires assistance to exercise this capacity, governments must do what they can to support those individuals and introduce safeguards against abuse of that support;<sup>7</sup>

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<sup>1</sup> *NDIS Act (Cth) 2013* s3(1)(e).

<sup>2</sup> *NDIS Act (Cth) 2013* s3(1)(f).

<sup>3</sup> *NDIS Act (Cth) 2013* s4(9). See also s4(4).

<sup>4</sup> *NDIS Act (Cth) 2013* s4(8).

<sup>5</sup> Convention on the Rights of Persons with Disabilities, Art 3(a).

<sup>6</sup> Convention on the Rights of Persons with Disabilities, Art 12.

<sup>7</sup> UN Office of the High Commissioner for Human Rights, Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities, 2007, Chapter Six, available at:

<https://www.un.org/development/desa/disabilities/resources/handbook-for-parliamentarians-on-the-convention-on-the-rights-of-persons-with-disabilities/chapter-six-from-provisions-to-practice-implementing-the-convention-5.html> (accessed 5 September 2019).

- People living with disability should be involved in decision-making processes that affect them, where possible making decisions for themselves;<sup>8</sup> and
- There is an assumption that people living with disability have capacity to determine their own best interests and make decisions that affect their own lives.<sup>9</sup>

#### 4. About the experience, expertise and qualifications of planners

Given the purpose of the NDIS in delivering an individualised budget and associated supports, it is understandable that attention might be drawn to how best to equip NDA frontline personnel to be highly effective planners

However, we argue that the role of NDIA frontline personnel is less about individual planning and more about negotiating a signed-off package of supports, driven by the need for effective stewardship of the Scheme's parameters.

Because of this, the NDIA planners are actually agents of the Scheme, its values, and the social insurance financial model underpinning it. As agents of the Scheme, their skill set needs to be about the Scheme and its parameters, and how to negotiate and sign off a package of supports. This means the actual planner function can be exported outside the Scheme and into community.

This view is supported by the findings of our 2015 report into pre-planning<sup>10</sup>, driven by a co-designed, co-produced consultation with hundreds of people living with disability and their families around Australia. It signalled three elements considered central to a successful planning experience:

- Planning assistance from someone the person trusts
- A planning timeframe that suits the person
- A planning methodology that suits the person

Given the diversity of experiences of disability, and given the diversity of preferred timeframes and methodologies that people have, we need a planner population that collectively can meet this diversity. The Scheme has had limited success on this to date and, because of the overall nature and imperatives of its gatekeeping role for NDIS resources, it

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<sup>8</sup> *NDIS Act (Cth) 2013* s5(a). The Preamble to the Convention on the Rights of Persons with Disabilities also recognises 'the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices': see Preamble, para (n).

<sup>9</sup> *NDIS Act (Cth) 2013* s17A(2).

<sup>10</sup> *About pre-planning: An advisory report to the National Disability Insurance Agency on how people can best be assisted to prepare for the NDIS* (JFA Purple Orange 2015)

will continue to struggle to find inroads to deliver the type of planning characterised by the above three elements. This isn't a criticism of the NDIA or specific personnel. Rather, it is the reality when a system attempts to combine a more longitudinal planning and community-connecting role with a formal resource pathway role. We have experienced examples of this struggle in other jurisdictions.

Collectively, Australia's communities carry significant expertise and experience in assisting people to plan. This can come from individuals, third party planner agencies, demographic peak bodies, and others. There are examples of other jurisdictions that have given participants the option of getting community-based assistance with their planning, and from a person/agency they choose themselves. This creates a more diverse market, and one more likely to reflect the range of expertise and experience needed to serve this diverse participant population.

Importantly, it saves the NDIA from trying to build a facsimile of this capacity inside the agency, and instead to commission the planning function through, for example, a range of accredited planners from which the participant can then select the planner that offers a set of experiences and expertise that best matches what the participant seeks, and for which a capitated fee is paid. The only common skill this population of planners then need is the capacity to translate the participant's plan into an NDIS format for the negotiation process with the NDIS agent.

In this model, the need for a planner to carry specific qualifications is arguably less important than that planner being able to demonstrate a particular set of planning skills and specific insights relevant to various elements of the NDIS participant population.

Our workload modelling<sup>11</sup> of a shift in roles of this nature, suggests it creates no greater resource burden on the Scheme compared to the existing arrangements, and holds the prospect of giving participants a definitive choice about who their planner is, and creating a market for planning assistance that draws on the extensive skills and experiences already present within Australia's communities.

## **Recommendation 1**

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<sup>11</sup> *Pathway and Community – rethinking the roles of NDIS planner and LAC* (JFA Purple Orange 2017)



That instead of attempting to build a diversity of planning expertise within NDIA, the NDIS arrangements include a mechanism that better harnesses the existing planning expertise within Australia's communities

## **5. About the ability of planners to understand and address complex needs**

The previous section recognises the need to build a diverse market of planners, and this includes capacity for planners to understand and address complex needs.

There is every reason to expect that the shift to a different planning approach (and market) as set out in the section 3 can deliver on this. Australia's workforce includes people with significant experience and expertise in planning supports for people living with different kinds of complex needs; they just don't happen to all work for the NDIA or its community partners.

In the context of the model outlined in section 3, the NDIA can shape this part of the market by setting out a particular set of skills required for a planner to be accredited in the high and complex needs part of the market. In this way, the NDIA is able to harness the expertise that exists around Australia, and in a way that also gives the participant and their family a choice about who they use.

In terms of the skillset of planners working alongside people with complex needs, we make two points. First, that planners need to carry expertise in the nature of those complex needs and the practicalities involved in designing responsive supports.

Second, that planners place this in the context of a strengths-based view of the participant and with no discounting of the expectation that participants living with complex needs can move into rich and fulfilling lives characterised by choice and control and by valued active membership of mainstream community life. Otherwise, if planners only see people with high and complex needs in terms of their impairments and challenges, then the emerging plans are likely to reinforce those persons as recipients of service and not as active valued contributors to community life.

### **Recommendation 2**

That in building planner capacity for people living with high or complex needs, NDIS arrangements ensure these planners maintain a strengths-based view of the participant, with a firm expectation that participants living with complex needs can move into rich and fulfilling lives characterised by choice and control and by valued active membership of mainstream community life

## 6. The ongoing training and professional development of planners

With the planning function exported to community instead of residing with the agency or its current LAC commissioning model, as outlined in section 3, the NDIA could then focus on how to assist the market to deepen its contemporary, values-informed practice.

In the same way that relevant organisations offer continuing professional development opportunities to GPs, the NDIA could resolve and commission a framework for a program of professional development opportunities for planners. This would of course include updates on the NDIS's rules, parameters and pathway mechanisms, but could also include emerging planning methodologies (both generally and for particular demographic cohorts), technological supports, etc. Most importantly, it could include content on the types of plan elements known to be most effective in delivering strong outcomes in social and economic participation.

The NDIA could establish an expectation that planners access a given number of continuing professional development hours each year, to remain eligible to offer a planning service to NDIS participants.

### Recommendation 3

That the NDIS arrangements include an auditable mandatory mechanism for continuing professional development of planners, where a given volume of development time is undertaken by each planner in order to maintain their eligibility to provide a planning service.

## 7. About the overall number of planners relative to the demand for plans

Our 2017 paper<sup>12</sup> modelled the likely resources to service the revised pathway we set out in section 3, where NDIA-employed planners are reconceived as Scheme pathway agents (including sign-off delegations) whose primary role would be to signal eligibility and depth of Scheme assistance, negotiate and sign off a package, and review it to harvest impact data.

The modelling assumed a total overall workforce of 9,200 full time equivalent positions, based on our understanding of the original establishment for the Scheme's administration

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<sup>12</sup> JFA Purple Orange 2017 *op. cit.*

(10,000 including around 800 back-office personnel). Of these, our modelling estimated an optimised scenario where 2,300 personnel are undertaking the pathway agent role, leaving 6,900 full time equivalent positions available to assist people to plan and connect to community opportunities. The current LAC model attempts to provide this but the work is compromised by the role LACs have in chaperoning participants through the pathway. It is further compromised through the commissioning model, which essentially removes any participant choice about their planner and makes it far less likely those LAC agencies will have long-standing and deeply-rooted connections in the communities they serve.

With the role fully exported to community via for example a capitated funding model, this creates the opportunity for the market to resolve how many planners are needed, as shaped by the demand from participants themselves. It is reasonable to imagine that the diversity of planners this attracts will establish a planner population with deeper connections to local community resources and opportunities because community-based planners are more likely to have these roots and connections.

We recognise there is significant infrastructure in place re the commissioned LAC services, which would take some time to unpack, not least because of the timeframes involved in the current LAC partner contracts. However, we argue that it is entirely possible to pilot the model set out in section 3, by selecting an area or areas where the current LAC contract term is due for completion. This gives the NDIA the opportunity to test the model we've outlined, and then to stage a more systematic rollout *if* the collected evidence demonstrates stronger value compared to the current arrangements.

Importantly, this will produce data, evidence that can assist the NDIA build its body of knowledge about methods and impact.

#### **Recommendation 4**

That NDIS arrangements include the piloting of alternative approaches to planning, including one where planning services are purchased on a per-person basis (instead of the per-population basis in current LAC commissioning arrangements) from accredited community agencies and individuals.

## **8. About participant involvement in planning processes and the efficacy of introducing draft plans**

There are many stories of the frustrations participants have with the planning process, driven for example by standardised elements and time-poor NDIA planners and LACs. Upgrades to the pathway methodology are a sincere attempt to remedy these pain points, but so far the reported gains appear to be modest, with participants possibly receiving a more robust briefing about what's in their plan. But this doesn't necessarily mean the plan

contents are more likely to reflect what the participant was seeking, or give the participant greater ownership of that plan. Also, we understand the changes appear to have added cost pressures to the Scheme because of the additional labour required to administer the changed elements of the pathway.

By contrast, our outlined model in section 3 holds the prospect of participant having a central involvement in the planning processes because they choose their planner and by implication have a central say in the methodology and the timeframe for the plan's construction. As a result, it is more likely the participant will feel a central author of the draft that then reaches the NDIA for negotiation and sign off.

## **9. About the incidence, severity and impact of plan gaps**

We continue to hear anecdotal evidence about gaps in participant plans, where key wanted items are missing, and sometimes replaced by items the participant was not seeking. We trust the Committee will receive plenty of examples of this.

Again, we note that in the model outlined in section 3, and as described in our 2017 paper<sup>13</sup>, there are less likely to be gaps because of the fundamentally changed nature of the planning process where the participant is authentically placed at the centre of it.

## **10. Other matters**

Due to the lateness of this submission, we elect not to respond in this written submission to the following enquiry questions, but would welcome the opportunity to meet with the Committee if they would like to further explore the model we set out in section 3, and its potential impact on the following:

- the reassessment process, including the incidence and impact of funding changes;
- the review process and means to streamline it;
- the incidence of appeals to the AAT and possible measures to reduce the number;
- the circumstances in which plans could be automatically rolled over;
- the circumstances in which longer plans could be introduced;
- the adequacy of the planning process for rural and regional participants; and
- any other related matters of interest to the Committee.

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<sup>13</sup> JFA Purple Orange (2017) *op. cit.*

We further note we are still processing feedback from more recent survey and focus group work we have undertaken with NDIS participants about planning, and can share this with the Committee once we have completed our analysis.

## **11. The importance of the involvement of people living with disability in designing the planning process**

Finally, whatever changes are contemplated in the arrangements for planning, we assert the importance of people living with disability being centrally involved in those system design conversations. This is not just consultation, but authentic co-design, where there are people living with disability at the table and with a hand in the decision-making. Not only does this strengthen the quality of the design, it also aligns with the Convention on the Rights of Persons with Disabilities, which states that ‘persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them’.<sup>14</sup>

### **Recommendation 5**

That people living with disability are authentically involved in the system decisions about how to evolve planning within the NDIS, in line with the Convention on the Rights of Persons with Disabilities.

## **12. Concluding remarks**

We greatly value the Committee’s attention to the issue of planning, and consider there is a need for a root and branch rebuild of how planning happens in the NDIS.

We request the opportunity to meet with the Committee to explore in further detail the points set out in this submission.

For further information, please contact:

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<sup>14</sup> Convention on the Rights of Persons with Disabilities, Preamble para (o).

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