



COMMITMENTS SOUGHT FROM NSW POLITICAL PARTIES ELECTION MARCH 2019

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KEY COMMITMENTS

Putting people with disability at the centre of Government

The issue - With NDIS implementation and the withdrawal of the NSW Government from disability service provision, there remain many issues to be addressed in relation to continuity of support for people with disability and the interfaces in responsibility between the NDIS and State Government agencies.

More fundamentally, the NSW Government has ongoing responsibility for a fully inclusive life for people with disability and fully inclusive mainstream services in accordance with the UN Convention on the Rights of People with Disability, the COAG National Disability Strategy and the Disability Inclusion Act NSW.

CID's ***Getting around to Inclusion*** roundtable report emphasised the need for leadership of disability inclusion by a central agency and a senior minister.

www.nswcid.org.au/images/Resources/Getting_Around_to_Inclusion_Report_310717.pdf

To date, the comparatively junior Department of Family and Community Services has had responsibility for leading cross Government action on disability inclusion.

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However, with NDIS implementation, we have seen an elevated profile of disability issues across Government with the creation of the NDIS Reform Unit in the Department of Premier and Cabinet.

Commitment sought - The incoming NSW Government will create a permanent Disability Inclusion Unit in the Department of Premier and Cabinet with responsibilities for:

- Inclusion of people with disability in the NSW community.
- NSW implementation of the National Disability Strategy.
- Disability inclusion plans under the Disability Inclusion Act.
- Issues arising from NDIS implementation including interface issues with mainstream services.
- The Disability Council of NSW.
- Funding of disability advocacy.

The Premier or another very senior minister will be Minister for Disability Inclusion.

The above proposals have been endorsed by NCOSS, the Physical Disability Council NSW, People With Disability Australia, First Peoples Disability Network, Multicultural Disability Advocacy Association and Down Syndrome NSW.

Mental health of people with intellectual disability

The issue - People with intellectual disability have high rates of mental health problems but poor access to appropriate mental health services. Assessment and treatment of mental health problems for people with intellectual disability is challenging due to factors including impairments in verbal communication.¹ This leads to great cost for the NSW health system including mental health admissions occurring twice as often for people with intellectual disability, each admission being twice as long and being twice as likely to be frequent users of mental health services.²

For want of an adequate response by NSW Health, the Department of Family and Community Services funded regional specialist intellectual disability psychiatry clinics around the State. These clinics have been maintained on an interim basis pending resolution by NSW Health of new arrangements.

The NSW Government has committed to full implementation of the 10 year State mental health plan prepared by the NSW Mental Health Commission. This includes a focus on ensuring adequate training across the mental health workforce and increasing the specialist capacity in intellectual disability mental health. ³

The Royal Australian and New Zealand College of Psychiatrists has called for the NSW Government to fund a Statewide network of specialised intellectual disability mental health services.⁴

While successive Governments have taken valuable steps towards better health care generally for people with intellectual disability, more specific action is now needed in relation to mental health.

Commitment sought - The incoming NSW Government will provide ongoing funding for a specialist capacity in intellectual disability mental health across all local health districts.

Disability support for people with justice system involvement

The issue - There has been long-standing acknowledgement of the over-representation of people with intellectual disability in the juvenile and criminal justice systems and that this over-representation is related to the lack of adequate human services to support people to lead positive lives.⁵

The NSW Government funded CID and the Intellectual Disability Rights Service to produce ***The Framework Report*** on the human service needs of alleged offenders with intellectual disability.⁶

In 2005, the NSW Government responded by establishing the groundbreaking Community Justice Program (CJP) which has provided tailored support and supervision to over 300 people with intellectual disability with serious histories of offending.

The NDIA has been reluctant to fully fund the support packages for people in the CJP arguing that large parts of the necessary support are related to people's offending rather than their disabilities and is therefore the responsibility of the NSW justice system. As an interim measure, the NSW Government has responded by continuing funding for the CJP until June 2020. ⁷

If the NSW funding for the CJP stops in 2020 without the NDIA having accepted full responsibility, the prospects of a continuing positive life in the community rather than further incarceration will be considerably decreased for consumers of the CJP.

The NDIS also provides an opportunity for diversion of comparatively minor offenders from the justice system into disability support prior to patterns of offending becoming entrenched or very serious. The NSW Law Reform Commission recommended enhanced diversion mechanisms for alleged offenders with disabilities and the NSW Government responded with a current pilot of a Cognitive Disability Diversion Program in two local courts. This program is currently being evaluated.⁸

There are considerable cost savings to Government in supporting diversion into the NDIS and other human services and thereby minimising justice system costs – police, courts, legal aid, juvenile justice and corrective services.

Commitment sought - The incoming NSW Government will:

- Continue to negotiate for greater NDIS responsibility for support services for offenders with intellectual disability.
- Maintain the funding of the Community Justice Program to the extent that there is a shortfall between NDIS funding for people with histories of offending and funding previously available from FACS.
- Subject to the evaluation of the Cognitive Disability Diversion Program, fund a permanent and robust statewide program for diversion of people with intellectual disability from the courts into the NDIS and other community supports.

Continuation of advocacy funding

The issue - The continuing vital role of State funded individual and systemic advocacy for people with disability has been explicitly stated in various authoritative reports including the recent NSW Parliamentary inquiry into the NDIS⁹ and the Productivity Commission Report on NDIS Costs.¹⁰

For CID, the importance and quality of our systemic advocacy and the development and support of people with intellectual disability as leaders in our advocacy has been strongly emphasised by the recent review carried out by Professor Christine Bigby and Doctor David Henderson.

www.nswcid.org.au/images/Advocacy/Raising_the_voices_of_people_with_intellectual_disabilities.pdf

The current NSW Government decided that it would cease funding disability advocacy in June 2018. In 2018, the Government changed its stance and continued funding of \$13 million a year but only until June 2020.

The Labor opposition has already committed to continuing disability advocacy funding “in perpetuity”.¹¹ The Greens, the Christian Democrat party and the Shooters and Fishers party have also supported continuation of advocacy funding.

Disability advocacy funding not only needs to be maintained but in fact increased. The supply of advocacy has never gone close to meeting the need for it. Just as the NDIS is intended to take disability support from a rationed and queue based system to a needs based system, so it should be with advocacy funding.

Commitment sought - The incoming NSW Government will continue disability advocacy funding permanently at a level of at least \$20 million a year.

OTHER COMMITMENTS

Implementation of the review of the Guardianship Act including establishment of a public advocate

The issue - The Guardianship Act 1987 is out of date with its paternalistic “best interests” focus and very limited focus on the right of people with decision-making disability is to make their own decisions in as many situations as possible.

The NSW Law Reform Commission (LRC) has recommended thorough reform of the Guardianship Act with a new Assisted Decision-Making Act and much greater focus on decisions based on the “will and preferences” of a person with decision-making incapacity.¹²

The LRC also recommended the establishment of a public advocate which could promote supported rather than substitute decision-making, assist individuals without the need for a guardianship order and with robust powers to investigate situations of suspected abuse and neglect. The LRC emphasised that a public advocate would be a complement to rather than a replacement of existing community advocacy.

The Government has responded with a commitment to establish an Ageing and Disability Commissioner focused on some of functions the LRC proposed for a public advocate, particularly the investigation of abuse and neglect.

Commitments sought - The incoming NSW Government will:

- Establish a working party of governmental and community representatives to guide the Government on action from the report of the Law Reform Commission including
- Establishing a fully independent public advocate that would absorb the existing Public Guardian

See our position in relation to a public advocate endorsed by 14 leading disability, older people and mental health organisations.
www.nswcid.org.au/images/Resources/Open_letter_calling_for_Public_Advocate_for_NSW.pdf

Transport

The issue - Disability standards for accessible public transport mostly relate to physical accessibility.¹³ Physical access in fact is way short of what these standards require. For example, only 44 percent of NSW train stations are physically accessible despite the standards calling for full accessibility by 2022.

The particular access needs of people with intellectual disability also need to be understood and addressed.

Being able to use transport is necessary for social and economic inclusion. Access barriers facing people with intellectual disability include difficulties with electronic ticketing systems, contact with transport enforcement officers, unclear announcements and information during service disruptions, lack of accessible information, the expectation to use smartphone apps, experiences of bullying and harassment, reduction of station staff and lack of appropriately trained staff.

Commitment sought – The incoming NSW Government will:

- Conduct a review of the barriers to access to public transport for people with intellectual disability and implement the recommendations of the review.
- Provide disability awareness training of all public transport staff.

- Enact and implement a fully funded plan to make all train stations fully accessible.

Residual functions of the Ombudsman NSW

The issue - The specific disability responsibilities of the Ombudsman have been a vital part of the safeguarding of the rights of people with disability. Most of these roles are now being absorbed into the NDIS Quality and Safeguards Commission. However, the NDIS Commission is not taking on some important roles of the Ombudsman including reviewing health system responsibilities in the deaths of people with disability and auspicing the official community visitor program.

The Government has now committed to a new Ageing and Disability Commissioner whose roles would include auspicing the community visitors.

Commitment sought - The incoming NSW Government will maintain residual specialist disability functions of the NSW Ombudsman, including in relation to death review and community visitors, either within the Ombudsman or by transferring the functions to a new public advocate or Ageing and Disability Commissioner.

Legislation regulating the relationship between landlords and residents of disability supported accommodation

The issue - To date, there has been no legislation and usually no legal contract regulating the relationship between landlords and residents of disability supported accommodation. However, for people in State Government run supported accommodation, the State's public service and political obligations have meant that it has been rare if ever that a person with intellectual disability has been evicted from their accommodation without providing alternative accommodation.

The exit of the Government from disability service provision raises a concern, especially for people with complex behaviour support needs, that they may be evicted from their homes by non-Government service providers who find it difficult to meet their needs.

In 2018, the Government consulted on proposed legislation on "resident rights" in supported accommodation. The report from the consultation

shows a strong community concern on the issue of potential unfair eviction.¹⁴

Commitments sought - The incoming NSW Government will ensure that legislation to regulate the relationship between landlords and residents of supported accommodation has a strong human rights focus including a starting point that accommodation is a person's home for as long as the person wants and with robust safeguards against unfair eviction through the NSW Civil and Administrative Tribunal.

A provider of last resort

The issue - State Government disability services fulfilled a vital provider of last resort role for people the non-Government selector found it difficult to cater for. This particularly included people with complex behaviour support needs. With the closure of State disability services, there is a major gap. The NDIS has taken some steps towards establishing a provider of last resort capacity but how and whether this will adequately work remains to be seen.

While the State Government did fulfil the provider of last resort role, the nature and quality of the services it provided varied considerably. In some cases, there were individualised supports provided in the community. In other cases, support was provided in institutions or institutional style group homes.

Commitment sought - To the extent that the NDIS does not promptly establish a robust provider of last resort capacity, the incoming State Government will do so. Any State provider of last resort capacity will be not institutional and will be based on best practice for meeting individual needs.

Other issues

This paper is not exhaustive and, in particular, does not address some issues where other groups are leading disability advocacy.

For example, **inclusive education** – We support the urgent need to improve the quality of schooling offered to children and young people with intellectual disability built around the principle of inclusive rather than segregated educational settings.

¹ See research summarised in CID's Background Paper for National Roundtable on the Mental Health of People with Intellectual Disability 2013

www.nswcid.org.au/images/pdf/nrmhpwid_background_paper.pdf

² Professor Julian Trollor, presentation of research findings at National Roundtable on the Mental Health of People with Intellectual Disability 2018

³ nswmentalhealthcommission.com.au/living-well-agenda/living-well-reforms

⁴ www.ranzcp.org/Files/Branches/NSW/RANZCP-NSW-Branch-Pre-Budget-Submission-2019-20_fi.aspx

⁵ NSW Law Reform Commission, Report 135, People with Cognitive and Mental Health Impairments in the Criminal Justice System: Diversion

www.lawreform.justice.nsw.gov.au/Documents/Publications/Reports/Report-135.pdf

⁶ idrs.org.au/resources/publications/

⁷ www.budget.nsw.gov.au/sites/default/files/budget-2018-06/2_Family_and_Community_Services_cluster-BP3-Budget_201819.pdf

⁸ www.localcourt.justice.nsw.gov.au/Pages/sentencing_and_penalties/finalising_criminal/diversion_programs.aspx

⁹ www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2496#tab-timeline

¹⁰ www.pc.gov.au/inquiries/completed/ndis-costs/report

¹¹ Kate Washington Acting Shadow Minister for Disability Services

www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-101245/link/106 and tweet 3 December 2018

¹² www.lawreform.justice.nsw.gov.au/Pages/lrc/lrc_current_projects/Guardianship/Guardianship.aspx

¹³ The national legislation for access standards is at www.legislation.gov.au/Details/F2011C00213

¹⁴ www.facs.nsw.gov.au/about/reforms/future-directions/resident-rights-consultation