



National Disability Insurance Scheme - Review of Supported Independent Living (SIL) Price Controls

Australian Community Support Organisation

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BACKGROUND

The Australian Community Support Organisation (ACSO) welcomes the opportunity to respond to the Review of Supported Independent Living (SIL) Price Controls Issues paper. For over 35 years ACSO have worked across the community and criminal justice system, assisting people to rebuild their lives and successfully integrate into society. ACSO provide an extensive range of services including alcohol, drug and mental health assessment and referral to treatment services, outreach, clinical services and Specialist Forensic Disability Accommodation (SFDA) services across three Australian state jurisdictions.

This paper will focus on our specialist forensic disability accommodation service which encompasses nine supported accommodation facilities across Victoria and at full capacity houses more than 50 people, with the majority supported under a SIL agreement. ACSO's SFDA services are generally occupied by males aged 25 – 65 years old with a history of incarceration or custodial orders who require significant supports to increase their abilities and prosocial community participation. Our participants are those with diagnosed cognitive disabilities and a complex background of forensic/mental health histories and other needs, the majority of whom would be referred to in NDIS literature as '*participants with extreme behaviours of concern*' (NDIS Quality & Safeguard Commission 2018; McKinsey 2018).

FORENSIC DISABILITY PARTICIPANTS

The unique and 'complex' needs of people with a cognitive disability in the criminal justice system pose a significant challenge for the current NDIS model. Whilst the NDIS framework has clear objectives with regards to meeting the individual support needs of people with a disability, there is a significant gap that exists with regards to meeting the complex behavioural (including offending behaviours), supervision and health needs that many of ACSO's current participants encounter daily. The current position of NDIS and state jurisdictions in attempting to extricate a person's disability needs from their forensic risks and needs detracts from providing the participant with a holistic and integrated service approach—one that enables the person to build skills, capacity and capability while simultaneously supporting providers such as ACSO to manage and reduce their risk of harm to self and/or others.

ACSO is a leading provider of specialist housing to high risk, high needs cohorts including those with extreme behaviours of concern and we believe that our decades of experience in service design, cost modelling, and risk management should be considered by the NDIA in their timely

review of the efficacy and sustainability of SIL supports under the NDIS. ACSO believe that all people with disability must be afforded equal rights and freedom of access to supports under the NDIS and beyond. However, this is not the reality for people with extreme behaviours of concern, for those with a history of criminal engagement and those with complex needs including mental health and/or alcohol and drug misuse. This cohort's options are significantly limited in relation to provider choice, they require specialised supports delivered by more highly skilled practitioners. Further, agencies supporting this cohort require robust risk management processes and commitment to a dedicated and mature workforce willing to work with high-risk persons. Unfortunately, in many cases, mainstream disability providers will not accept our participants in their services until it can be demonstrated that the person has either reduced their level of risk or harm or is supported by another agency who will take on the risk (i.e. ACSO). Of particular concern is the small cohort of people with a disability who have a history of, and continue to present with, risk of committing catastrophic crimes such as sexual and/or violent offending and arson. The 'open disability market' does not have the specialist capability required to deliver an integrated 'disability and forensic' service and more often than not these agencies will not provide a service due to an 'organisational position' of not providing services to perpetrators of serious crimes

ACSO has made a number of recent submissions to state-based inquiries in relation to provision of disability services to complex and forensic cohorts, including the recent Queensland Productivity Commission inquiry into thin markets and also to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability, discussing the specific nature of people who fall into the 'Complex Needs Pathway' and the need for a more individualised and flexible approach to the specific circumstances they face as well as the concept of 'choice and control' and 'reasonable and necessary' for people who require specialist support framed by a forensic lens where there is lack of such services in the market.

WAGES AND COSTS

The transition from block funding to individualised packages has, for the most part, destabilised the provision of support arrangements that were in place for ACSO's specialised cohorts. Specialised forensic disability supports are more expensive to deliver than mainstream disability supports due to the necessity of a number of unique or enhanced elements including robust risk management framework and resources to address the greater likelihood of risk, a higher calibre of staff who possess the knowledge and skills to work with complex people in challenging

settings, and the greater needs of the cohort in terms of care and support particularly as this cohort require support across a broad range of services (e.g. AOD, mental health, housing, criminal justice, relationship management and so on.) and experience a greater level of crisis.

Despite the 2020-21 NDIS price review, ACSO continues to find it challenging to provide best practice to this cohort within the price guide available. The organisation is currently absorbing several costs that are characteristic of the complex cohort we support but which are not adequately funded under the NDIS including any disability support that is related to the person's forensic orders, incident management, quality, legislative compliance and facilities management. The NDIS model continues to assert that the forensic needs of the person are state funded (when, in reality, much of this is not funded at all), whilst the disability needs are funded under the federal NDIS system. Over the long-term this does not lead to a sustainable business model for providers such as ACSO who will continue to prioritise people with extreme behaviours of concern, a history of criminal justice engagement, and who face significant exclusion and isolation from the community support sector.

As an example, ACSO's best-practice support model provides the opportunity for new participants to undertake a staged transition into their new residence; this process can take between 4-12 weeks, dependent on the needs of the person and provides the optimal opportunity for the client to succeed in their residential placement. The primary reason for this process is one of safety for the community, any co-residents and ACSO employees. People with extreme behaviours of concern entering ACSO's residential often pose significant risk of harm and utilising a staged transition is a key mitigation that reduces or prevents this risk. As occupational health and safety laws evolve and strengthen nationally, ACSO is legally obligated to remove safety hazards and prevent harm to our employees. SIL arrangements do not currently fund clients in their transition phase. In order for organisations to continue to improve practice and provide a best practice and evidence based response, particularly where the risk of harm to others and to organisations and the Government, is high, a greater degree of flexibility, particularly around wages and approved costs, must be considered.

ACSO considers the current pricing model to be insufficient to deliver services of a reasonable quality. ACSO is currently making a loss on all services that are reimbursed at the NDIS price for SIL supports. This loss has been estimated to be approximately 36% for services where ACSO accepts NDIS prices and that is not considered sustainable over the long term. ACSO has undertaken considerable internal work to carefully assessed our unit costs against the NDIS price guide and while there may be opportunities for improvement in efficiency, it does not

appear to be possible to provide services for our cohorts at the NDIS prices. ACSO would like to respectfully refer you to Section 4.3.2 “Participants with extreme behaviours of concern” (pages 52 – 55) who are defined specifically as ‘forensic disability participants’. The report highlights concerns that this group represents a ‘thin market’ with providers such as ACSO minimising their risk exposure by not providing services in the NDIS due to inadequate funding and also the inability to place the necessary controls around the services delivered. The report also notes and qualifies that agencies providing services to this group are justified in advocating for changes to the current NDIS model, hence the inclusion of Recommendation 8 on page 54 of the Independent Pricing Review (IPR). Specifically, IPR Recommendation 8 states:

“The NDIA should develop a consistent process for participants with extreme behaviours of concern that acknowledges the specialised needs of the participant cohort, and the environment providers operate in. Providers serving this cohort should quote on the delivery of services to these participants...”

Whilst this recommendation was accepted by the NDIA, in reality it has not been activated and ACSO continues to be disadvantaged by ongoing lengthy pricing negotiations between the Victorian State Government and the NDIA, which are not meeting the real costs of this work. . The ability to quote for services would reduce the likelihood that systemic processes such as a transition to placement within a participant’s journey is not caught up in red tape due to inflexible funding rules.

SALARY ON-COSTS

The starting point for the calculation of the hourly rates for personal care and support workers is the award classification.

“Identifying the reasonable minimum qualifications and experience level provides a simple and transparent base for calculating reasonable direct staff costs.” NDIS (2014)

The NDIS states that the SCHADs level 2 award is identified as the minimal qualification and bases funding on this minimal level. Thus, if the service provider chooses to provide services at anything other than minimum level, the shortfall between SCHADs level 2 and the appropriate SCHADs level for workers dealing with the level of complexity common in the ACSO participant cohort is not be funded. ACSO’s workers average in at SCHADs level 4.3 which is an unfunded disadvantage of 22% in salary costs. ACSO’s service benchmark continues to be forensic clients and the funding from NDIS is not considered appropriate for the level of risk and service

requirements needed to ensure workers have the appropriate experience and training required to best support participants with a forensic disability and/or participants with 'extreme behaviors of concern'.

Paid non-work time is also not currently considered in the funding model. This time defines the total number of at-work hours out of the total paid hours in a full year. It includes:

- Paid public holidays of 2 weeks;
- Annual Leave of 4 weeks (shift workers are entitled to 5 weeks in the award but the modelling has conservatively applied 4 weeks);
- Sick leave is assumed to average 2 weeks;
- Formal training has been conservatively estimated at 1 week per year.

Overall, this leaves 43 effective working weeks out of 52 or 83% of total time. It is ACSO's considered opinion that the current assumption that 95% of available time is billable is excessive and unrealistic. This premise means that only about 22 minutes per day are unbillable. The 95% modelling also does not take into consideration staffing levels in programs. If the program has a mix of clients with different required staffing ratios, the NDIS strictly pays the ratio price. For example, if a staffing roster requires 3.6 staff, it would infer that the NDIA would need to put in 4 staff, as although numbers may be divisible, staff are not. Which means the utilisation would drop to 72% overall. This does not take into consideration any planning or preparation for the program.

Organisational Overheads

Although the NDIA state that the 15% used is a benchmarked rate, falling to as low as 9%, there is no evidence to support this. ACSO sits on a number of NDIS Communities of Practice (CoP), including the Victorian Finance CoP, and we are aware that most service providers in these forums are operating at a much higher rate. At a conservative estimate, ACSO overheads within a SIL service model have used a rate of 20% for budgeting requirements however in real costs it is approximately 22%.

Administrative tasks

The additional compliance implemented with the rollout of the NDIS has been difficult to gauge due to the shifting and rapid changes service providers have needed to adapt to during the first few years of NDIS implementation. The ongoing impact of additional compliance requirements

set by NDIA are not able to be funded from other means and are not supported with funding from state governments or able to be offset which means the balance between being able to support a participant and responding to compliance is a constant juggling act. By enabling a complex price structure that expects providers to find best value, the NDIA is in effect increasing our operating costs.

We have approximately 21 participants who have rolled over to a SIL agreement in the past 12 months. On average the completion of a SIL submission for an individual client takes approximately 10 hours in total—the cost of which is borne by ACSO. Due to the lack of consistency between NDIS planners, ACSO has experienced a variety of processes, costs, and response rates and little rationale to explain the underlying decision-making behind each SIL plan. To date the processes has been that ACSO has submitted SIL's and NDIA has assessed those SIL's and applied a 'reasonable and necessary' criteria. No information has been provided to ACSO on what constitutes the 'reasonable and necessary' criteria despite requests for clarification. On that basis NDIA provides 'counter-offers' to ACSO. These counter-offer amounts are often less than what was originally submitted. No rationale and transparency is provided other than that the above criteria is applied with no further detail. Subsequently it has been difficult for ACSO to develop an effective and efficient SIL development process internally.

Furthermore, ACSO have found it common that in practice NDIS packages have been approved at a lower value that was originally submitted (at NDIS rates) even though the participant's NDIS plans are approved for the higher level of care. Attempts to re-negotiate levels using a plan review has proven in our experience to be both arduous and time consuming. ACSO is a values-based organisation and we strongly believe that the people we work with should never be disadvantaged due to funding delays. In cases where our concern around a person's SIL package has led to a plan review, the result has been funding gaps between the review and the new NDIS agreement which can be upwards of nine months. These are durations where the person is receiving little and sometimes no service. In some cases, ACSO remains funded at the lowest value during this time whilst attempting to provide the approved plan requirements leading to a funding gap.

ACSO has had to appoint several specialist positions to support the administrative load required to support and assist clients. We have appointed at least 1.5FTE in the last 6 months to meet the administrative requirements including reporting and administration around risk management and meeting NDIS accreditation requirements and adapting to every new iteration of the price guide. This does not account for the time spent in existing positions on invoicing, administration,

and completion of paperwork on behalf of clients and the organisation for existing staff within their current workloads. For some staff, up to 20 – 30% of their time is now dedicated to administration surrounding NDIS service provision and coordination, supervision and training for employees.

Supervisory Costs

At present, the NDIS cost model allows for a ratio of 15 workers to one supervisor (NDIS PB Cost Model, Pg. 12). ACSO's disability support workers are regularly required to respond quickly to participants needs, specifically with regards to forensic supervision requirements or during times of client crisis where rapid responses are required to mitigate risk to the participant, staff and community. Working with forensic cohorts and participants with high risk and need requires ACSO staff to exercise their initiative and judgement at a significantly higher level than a standard disability support worker working with a non-forensic/complex population. ACSO is of the opinion, considering its specialist client cohort, that any increase in the current worker to supervisor ratios would open ACSO up to significant risk in terms of its workplace health and safety. ACSO is also subject to state-based requirements where staffing supervision ratios are required to be much lower for forensic clients. For this reason, ACSO's current supervision level is one supervisor with no more than six workers. As such this places ACSO at a further financial disadvantage relative to service providers with less complex client populations. Given the level of risk inherent in supporting this population, best practice is demonstrated through a level of supervision (supervisor to staff contact hours) that is higher than that required in the general disability population. This model is considered best practice by the Australian Counselling Association. The Australian Psychological Society supervision requirements assert *weekly to fortnightly* sessions at a minimum which under the current NDIS funding model is unsustainable.

Workforce Mix

Due to the advanced skillset, knowledge and resilience required to work with this cohort, ACSO strive to maintain a balance of permanent and casual staff within our workforce. ACSO currently employs 54 casual employees across its 11 supported accommodation properties (9 of which are SFDA properties). The funding structure for NDIS is more suited to a casualised workforce, however, it is ACSO's position that due to the high risks and needs presented by the forensic client population, a casualised workforce presents a significant risk to the appropriate

management of the types of behaviours of concern and very high supervision and support requirements for significantly complex clients, as is required.

Consideration should be given by NDIA to revise funding structures to ensure the sustainability of a permanent workforce. This included remuneration for training, supervision; workforce development and adequate funding to ensure providers of services to complex cohorts possess the long-term capacity and capability to managed such clients and their specialist level of need in a manner that is consistent with best practice and alignment with the evidence base in supporting these cohorts. Due to the intensive positive behaviour support our participants require, it is difficult and potentially risky to allow temporary NDIS staff to work in our services. Our experience trialling such attempts have led to instances of risk to clients or other workers and resulted in poorer outcomes for the client group and as such ACSO no longer supports the use of 'agency' staff in our accommodation programs.

Vacancy management and costs

Currently ACSO have four beds dedicated to COVID-19 isolation in the event of a positive case; three beds are currently offline due to maintenance, safety requirements and not currently being fit for purpose of high support forensic disability needs support. The way in which ACSO receives its referrals from the Victorian Department of Health and Human Services and Department of Justice currently drives ACSO's vacancy management. All SFDA referrals come through the DHHS Forensic Disability Statewide Access Service (FDSAS). By servicing this cohort ACSO is required to support a fully costed standing capacity with only partial NDIS funding available. DHHS currently provide a proportion of additional funding. As clients are approved DHHS reconcile accordingly however upfront costs and the gap in time whilst this occurs required ACSO to support the gap in funding.

ACSO is also impacted by the system pressures and operations within the criminal justice system more broadly. For example, we have a current client who has been in custody for 7 months and we have had to hold his vacancy as his court date has been rescheduled multiple times. Further, for clients who receive short sentences (3 months or less) which is not an unusual scenario for our cohort, holding a placement, as well as their property, ensures stability, safety for the person and the community, and enables a seamless return to their residential placement program; however this model puts ACSO at a financial loss as the NDIS will not fund unoccupied beds for this period of time.

The complexity of ACSO's forensic disability cohort mean that there are times when we cannot declare and fill a vacancy due to safety concerns for other residents currently residing at the property. ACSO is mindful of its duty of care to all residents and the layout and management of beds is carefully considered to ensure optimal mental health and safety of residents. This means that there are occasions where filling every vacant bed is not in the best interest of the residential program and its residents. This has a significant impact on the viability of supported accommodation for these clients. With the forensic disability cohort, our initial focus is on risk-identification and management.

As part of the SFDA's intake process, ACSO consider the overall household profile and the potential impact of a new tenant moving into an established residence. In addition to the person's identified support and other needs, they are also likely to have a range of legal or other conditions which need to be considered in any planning undertaken by our staff. ACSO's operational model is well established to respond to this. To ensure the provision of seamless transition from custody to our accommodation services, ACSO require a minimum of 12-week transition. This allows for rapport building, connection, and role clarity to be developed to ensure we understand the person's needs and to ensure, before moving to the program full-time, the participant understands what is expected from them. However, whilst this leads to better participant outcomes in the long term, it unfortunately means that ACSO experiences financial loss as NDIS payments are calculated per occupied bed. NDIS treats each client's package separately, while in a house ACSO must manage a roster of care. Whether we have 1 client or 5, our roster of care remains at the minimum of a 24 hour rostered house. Whilst this changes within each scenario, the delays in intake cause our vacancy rates to fluctuate specifically because of the complexity of the participants. Faster or truncated transition process have been trialed and ceased as they resulted in increased behaviors of concern and caused distress for the participant, families and support networks and the residential support workers. The increase in such behaviors also creates significant increased community risk in some cases which in turn can lead to a cycling in and out of correctional custody creating further disruption and risk of harm to self and others.

Additional Hidden Costs

ACSO experiences increased costs resulting from the greater rate of incident management that is inherent in supporting high risk, high need, and complex cohorts. A significant number of incidents happen on Friday nights or weekends as participants are usually less engaged in

structured tasks (i.e. day programs, work, appointments) and therefore have more free time on their hands or are spending more time with their co-residents. Usually there is a greater ratio of clients in the house during these periods which increases the likelihood of conflict. Thus ACSO often requires additional staff to support and assist with the management and resolution of incidences and these staff incur penalty rates.

ACSO notes that the supply and recruitment of workers is impacted by regional and remoteness of location of service delivery. Regional markets tend to have less skilled workers that are required to manage the high need of this cohort and as such ACSO incurs additional costs in travel and relocation expenses, increased supervision requirements due to developing capabilities of the workforce and often different facilities required at the houses due to further specialist requirements in regional locations around issues such as bushfire management and relocation planning—particularly in terms of staffing.

Due to the varied risks associated with ACSO's SFDA services we operate a structured 24/7 after hours on call service with 3 tiers of support: (1) First Response, (2) Duty Management and (3) Incident Management. This is a key risk mitigation factor in preventing safety hazards for ACSO employees and residents and costs \$248,620 per year which is not funded by NDIA pricing.

There is no planning or funding for disaster management within the current NDIA funding models and the hidden costs for relocation in the event of a disaster or pandemic and the increased need for supports for clients during these periods given the disruption they are experiencing increasing their need for supports, is not factored into the current funding models. Given recent events within Victoria and Australia around bushfires as well as the isolation requirements due to Covid-19, this is likely to continue to be a significant requirement on administrative costs and vacancy and bed management for all service providers and must be addressed.

ACSO also note concerns with the capping of the provision of "Irregular supports" within current models. As with most of the issues raised within this submission the health and behavioral complexity of forensic clients—particularly medical emergencies occur at a higher frequency than for less complex disability client populations. The support requirements for supervision and support during these events is also significantly higher for these clients—in some cases there are requirements from state departments for at least two staff to accompany a client if they leave the property. There is little transparency and co-ordination between state and federal agencies as to the responsibility for funding of such supports and there remains a significant

lack of clarity in relation to participants whose disability is intertwined with their offending behavior and which cannot be easily or neatly separated into “disability” versus “offending behavior” boxes.

Recommendation

ACSO is seeking increased engagement with the NDIA in developing greater transparency and certainty around SIL funding for high risk, high need and complex cohorts, and those on forensic orders. This includes greater detail from NIDA on how plans and funding is matched for such clients and the definition of ‘reasonable and necessary’ as applied to participants on the complex client pathway or who have behaviours of extreme concern.

It is our considered opinion that this cohort will continue to fall between the cracks particularly as the NDIS only funds a portion of their support, and the reality that many of our clients are not serviced by the wider NDIS service provider market nor the broader community sector owing to the level of risk they present and the stigma that accompanies them. It is clear that services for people with extreme behaviours of concerns are subject to a ‘thin market’. ACSO strongly recommend that NDIA and State Governments invest in financially supporting the market development of services for forensic cohorts and consider a range of specialist funding for agencies such as ACSO to support the additional overheads and administrative requirements required by agencies undertaking this type of disability support. There is only a very small cohort of capable and willing organisations with the risk appetite to support this group of individuals. Improved financial viability over the long-term will ensure an improved market and service choice for forensic clientele within current markets.

In ACSO’s opinion the NDIA and State Government’s should negotiate a specialist response to forensic clientele that clearly articulates the responsibilities around funding for such clients. ACSO notes that the NDIA has commenced roll out of the “complex case pathway” however in our opinion this solution still does not clearly address the gaps created by the lack of clarity on who should be funding the management of support for behaviours of concerns and requirements for supervision for this very specific, high need (and high risk of harm to self and others) cohort. The intersection of disability and offending behaviour is not clear and cannot be extricated as neatly as assumed under current funding and management models between state and federal governments.

References

McKinsey & Company (2018) Independent Pricing Review - National Disability Insurance NDIA, February 2018.

National Disability Insurance Scheme (NDIS) Disability Support Worker Cost Model (2020)

National Disability Insurance Scheme (NDIS) NDIS report on the methodology of the efficient price (2014)