**NDIS Consultation Paper – Supporting you to make your own decisions**

**DCJ Youth Justice Response – Strategic Projects Unit**

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**3.3 - Issues we have heard.**

Youth Justice agrees with the issues raised in 3.3 and notes that for a youth justice cohort there are even further complexities which impact on these issues.

For a youth justice cohort:

1. **People with chronic disempowerment**

Chronic disempowerment does not purely result from disability. Many young people involved with youth justice come from disadvantaged backgrounds. Young people with disability in the youth justice system have increased likelihood of developmental trauma, homelessness or involvement in out of home care, disengagement from school, co-morbid physical and mental health conditions. Often these young people experience complex levels of disempowerment and distrust of the support system as a result. This chronic disempowerment is magnified in the lives of young Aboriginal people. Over 40% of young people in custody are Aboriginal, and young Aboriginal people are twice as likely to have a disability compared with the general population. When these young people face not only the issues mentioned above, but generational disadvantage, a distrust of government agencies and systems, and a deficit based service system that is not culturally sensitive in its approach, we see significant chronic disempowerment and very vulnerable young people falling through the cracks in our support system.

1. **Formal decision-making supports are not consistent**

Young people in youth justice often come from families that lack the insight or capacity to undertake a support role, leaving them unsupported, or reliant on support workers who may not know them well, or who may not be mandated to provide long term support. Where young people are released from custody without mandated community supervision, there is often a lack of continued support. NDIS support coordinators need to be equipped to continue support in these circumstances.

1. **Life transitions are not well supported**

Young people exiting custody often experience inadequate support from NDIS during this transition, leading to increased risk of re-offending behaviours. It is sometimes difficult for Youth Justice staff to assess the functional capacity of a young person within the structured custodial environment; and/or young people may be in custody for insufficient time to undertake these assessments.

NDIS transition supports need to commence before a young person exits custody or ceases community supervision to allowing for relationship and trust building.

1. **Some participants have no informal supports to help them make decisions**

See comments under point 2 above.

1. **Advice from NDIA staff and partners is not consistent**

Youth Justice staff often experience barriers getting young people with complex disability needs approved for NDIS support due to inconsistent responses from NDIS staff and assessors. Young people may present with a level of chaotic functioning that makes them incapable of sitting for assessment. Or they may have a suite of diagnoses which, in isolation, are considered insufficient evidence for NDIS support (e.g. a primary diagnosis of ADHD), however when combined with a series of other diagnoses or suspected diagnoses (e.g. FASD, for which it is difficult to obtain a formal diagnosis), trauma, emotional dysregulation, etc, the young person requires significant levels of support to build positive life skills and habits. When this support is not provided, the young person is at risk of becoming entrenched in the criminal justice system.

In relation to the NDIS consultation questions, there are some key issues impacting the decision-making capacity and support needs for a youth justice cohort.

1. **How can we help people with disability to make decisions for themselves?**

**Youth Justice recommends changing the NDIS age of consent** **to 16**

* Current NDIS guidelines state that young people require consent from a parent or guardian until the age of 18. This adversely impacts the majority of the youth justice cohort. Due to the complex nature of many young people’s family dynamics, NDIS access and service is often delayed or denied because of difficulties locating an appropriate adult to provide consent on behalf of the young person, or getting them to understand the importance of disability services and gaining agreement to provide consent.
* Young people’s key support is often their youth justice case worker, so while the young person may have been supported to understand the value of NDIS supports and be keen to engage; families who need to provide consent may not, or may be influenced by community attitudes of shame and fear, which can lead to avoidance and denial. These delays in obtaining consent have a significant negative impact on the young person’s access to vital supports.
* The NDIS age of consent is contradictory to the NDIS principle that ‘people with disability have choice and control over matters that affect them’. Many systems provide young people over 16, and some over 14 years old, with choice and control over matters that affect them. For example, Youth Justice NSW allow young people to provide consent from age 16. Youth Justice NSW is also working in the disability space to improve processes for informed consent, ensuring young people understand what they are consenting to.
* The legal age of consent in Australia is 16, young people can consent to receiving medical treatment from age 16, or in some cases from age 14. The UN Convention on the Rights of the Child: Article 12 states - Children have the right to say what they think should happen when adults are making decisions that affect them and to have their opinions taken into account.

1. **Who are the best people that help you (or a person with disability) to make decisions? (We call them decision supporters)**

**NDIS support workers need to provide support where there is no mandated support agency acting for the young person.**

Ideally, family will help young people make good decisions but often within a youth justice cohort, families do not have the insight or capacity to undertake this role, leaving young people unsupported or reliant on support workers who may not know them well, or who may not be mandated to provide long term support to the person.

Chaotic families lack the resources to maintain engagement with services. Closing a case due to non-responsive family is not appropriate. Rather, more intensive support is needed to secure and maintain engagement.

**Case studies: Young people with disability and lived experience of Youth Justice were asked:**

**1) Can you tell us about a time when someone helped you to make a big decision? What worked well? What could have been better?**

* *“At the end of June this year mum and my youth justice caseworker helped me decide to change schools from XXX Highschool to YYY College as I was constantly getting in trouble and suspended. They supported me to attend a meeting with YYY College principal and check out the school before I decided to enrol.”*

**2) Who is the best person to help you make decisions and what should they do to help you?**

* *“Mum is the best person to help me make decisions. The best way she helps me is when I am supported to check it out first and then allowed to make my own mind up without being pressured*.”

**3. What should they do to help with decision making?**

**NDIS support coordinators need to be upskilled to actively engage with a youth justice cohort, including**

* **Increased level of engagement support**

NDIS support coordinators need an understanding of and ability to work with young people with complexities often seen in a youth justice cohort. They need to understand young people may have chaotic lives and that pushing people away (avoidance, aggressive behaviour, etc) is usual and is a survival instinct for these young people and that they will need to be persistent and reliable in order to build rapport and be able to assist young people get appropriate supports.

More intensive work is needed to engage Aboriginal communities and provide a culturally sensitive service.

* **Improved communication targeting the young person’s communication support needs**

NDIS support coordinators working with a youth justice cohort need to communicate to the young person:

* what options are available to the young person
* what are the implications for those options in terms of access, time frames, etc. (How will it help? What will it look like for the young person?)
* How to establish measures of success – service users need to know what to expect and have planned measures so the young person can know if the decision has been a good one or not. (To avoid deciding ‘that didn’t work’ at the first road bump)
* **Improved communication around and access to the complex support team**

NDIS currently does not communicate if a young person has been allocated to the complex support team, and there seems to be no avenue to request this level of support.

**9. Are there different things to consider for people with different disabilities or cultural backgrounds?**

* **Youth justice NDIS service users -** young people in the youth justice system who are NDIS users may have to rely on support workers to assist them in decision making, as family/informal support people may be unavailable or may have limited capacity to undertake this support role. Support workers may not know the young person well, so some resources/tools to assist them in working through available options would be useful. These might include person centred planning tools, information about what options are available and the implications of accessing these options.
* **NDIS Local area coordinators** – need to be equipped to share relevant information and step people through decision making processes in a consistent way, and to assist in establishing measures of success.
* **NDIS Resources** -Young people with disability in the youth justice system often have “hidden” disabilities and/or avoid identifying as having a disability due to fear/shame. NDIS resources featuring people with obvious disability aren’t always appropriate for young people in this situation. It would be good to get resources that feature people with non-obvious disability, which take a strengths approach, (e.g. how NDIS has made things easier/better for me and the things I found difficult)
* **Aboriginal/Torres Strait Islander people** – the ‘disability’ label and deficit model of NDIS are counter-cultural for Aboriginal/Torres Strait Islander people. Therefore, it would be useful to have NDIS resources that feature Aboriginal people without an evident disability, and which focus on the benefits/outcomes for the individual.

**Support for Decision Making consultation submission**

**Name:** Department of Communities and Justice - Youth Justice (NSW)

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# **How can we help people with disability make decisions for themselves?**

* Resources: No
* Information: No
* Decision Guides: No
* Having a person help: No
* Other: No

# **Who are the best people to help you (or a person with a disability) to make decisions?**

* Family: No
* Friends: No
* Peer Support Networks: No
* Mentors: No
* Coordinators: No
* LAC: No
* NDIA Partners: No
* Advocates: No
* Service Providers: No
* Other: No

# **What should they do to help with decision-making?**

No answer recorded

# **How can they get better at helping?**

* Getting to know the participant well: No
* Doing some training on decision support: No
* By having resources and information about providing decision support: No
* Other: No

# **How can we make sure the right people are helping?**

* They are chosen by the NDIS Participant as a decision supporter: No
* They value the rights of people to make decisions with support: No
* They are a registered provider: No
* They enable the participant to take risks: No
* Other: No

# **What should decision supporters know about so they can better help people with disability make decisions?**

* Guidelines for decision supporters: No
* Scenarios or Examples: No
* Information Sessions: No
* Support Networks: No
* Other: No

# **Can you tell us about a time when someone helped you (or a person with disability) to make a big decision?**

No answer recorded

## **What worked well?**

No answer recorded

## **What could have been better?**

No answer recorded

# **What is the best way to support people with disability to make decisions about their NDIS plan?**

* Practice: No
* Peer Support Networks: No
* Information and Resources: No
* Guidance Tools: No
* Not Sure: No
* Other: No

# **Are there different things to consider for people with different disabilities or cultural backgrounds?**

**An intellectual disability:** No

**A disability that impacts how they think, a cognitive impairment:** No

**A psychosocial disability:** No

**A disability that impacts their ability to communicate:** No

**From a CALD community:** No

**From an Aboriginal or Torres Strait Islander Community:** No

**From the LGBTIQA community:** No

# **How can we help reduce conflict of interest?**

No response recorded

# **How can we help reduce undue influence?**

No response recorded

# **What are your concerns (if any) around people with disability being more involved in making decisions for themselves?**

No response recorded

# **What else could we do to help people with disability to make decisions for themselves? Is there anything missing?**

No response recorded

# **Do you have any feedback on our proposed actions in Appendix C of the paper?**

No response recorded