

RESEARCH ARTICLE

Where specialist and mainstream service systems collide: The National Disability Insurance Scheme in prisons

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Abstract

The coordination of specialist with mainstream service systems is prone to role delineation and implementation difficulties worldwide. In the case of the National Disability Insurance Scheme (NDIS), this specialist/mainstream interface is complicated by federalism and funding responsibilities held by different levels of government. People with disability, especially cognitive or intellectual disability, are over-represented in Australia's prisons. Through semi-structured interviews with professionals working at the interface of disability and criminal justice, we explore some of these interface issues with regard to NDIS services (specialist) in prisons (mainstream). We find that policy permits some NDIS-funded services to be delivered inside prisons, such as transition services related to a person's disability, but in practice there is significant variation in how policy is understood and implemented, leading to exclusion and service gaps. This case study shines light on longstanding debates about service coordination across organisational and jurisdictional boundaries.

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KEYWORDS

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One challenge for public policy is that people do not live their lives according to the neatly delineated organisational silos within the public sector. As such, practitioners and scholars of public administration have long recognised that organisations and sectors must work together if policies are to be effective, with considerable effort expended in an attempt to better coordinate across organisational boundaries (McGuire, 2006; Scott & Bardach, 2019; Wilkins et al., 2016). These efforts reflect the challenges with inter-organisational coordination, particularly in federal systems where individuals may receive services from several levels of government (Twomey, 2009). People with the greatest levels of need are more likely to simultaneously require services from multiple agencies at different levels of government. This article investigates a case study of coordination in care services: whether and how people with disability can receive services funded by the National Disability Insurance Scheme (NDIS) in state- and territory-run prisons.

People with disability, particularly cognitive disability, are over-represented within criminal justice systems worldwide (Dias et al., 2013; Hellenbach et al., 2017). Indeed, many people are criminalised as a direct result of their impairment (Sotiri & Russell, 2020). Despite this, disability services can be difficult to access in prison and are often inadequate for people's needs (Human Rights Watch, 2018; OPA, 2021). The NDIS represents a substantial investment in disability services, intended to fund individualised supports purchased through a market-based model for those with the highest support needs (currently 12% of Australians with disability). However, there is confusion and lack of consistency regarding the availability of NDIS services to people in prison (Joint Standing Committee on the National Disability Insurance Scheme, 2020). Significant delays have also been reported in the reinstatement of NDIS packages following release from prison, leaving people without support during the critical period immediately following their release (ACT Government, 2019). Consequently, people with disability are often left without sufficient disability support while incarcerated and immediately afterward, whereas adequate support might help divert them from further criminal justice contact or assist them with securing bail or parole (ACT Government, 2019).

Despite the importance and prevalence of these issues, there has been limited academic research in Australia on the intersection of disability and correctional services (see Dias et al., 2013; Hellenbach et al., 2017; Young et al., 2017). We address this gap through tackling a seemingly simple question that nonetheless does not have a simple answer: can people with disability access NDIS services while incarcerated? By incarcerated, we mean people detained on remand and those serving custodial sentences following sentencing. We begin by setting out the background of the NDIS, describing the NDIS-corrections service interface, and noting the general lack of support provided to people with disability in custodial settings. We describe our methods, outlining that this paper draws on data from a larger study investigating professionals' views on disability services in Australian criminal justice systems. We then discuss our findings, which show there is variability in both knowledge and implementation of policy. While there are some promising signs of recent improvement, there are many barriers to NDIS service delivery in prisons. This gap between federally administered NDIS services and state-administered prison disability services mirrors previously identified gaps between the NDIS and other mainstream services such as

health and education (Joint Standing Committee on the National Disability Insurance Scheme, 2018; Wallace, 2018; Yates et al., 2021).

This paper contributes to the disability and public administration literatures in several ways. Firstly, it provides practical information about policy implementation and contributes to the evidence base about gaps between the NDIS and mainstream services. Secondly, it adds to the scant literature on the intersection between disability and correctional services in Australia. Thirdly, it contributes to more longstanding debates about service coordination across organisational and jurisdictional boundaries.

1 | BACKGROUND

1.1 | The NDIS

While Australian disability services have historically been predominantly block funded, the introduction of the NDIS in 2013 brought them closer to much of Western Europe and North America, where variants of individualised funding are available (Purcal et al., 2014). The NDIS is designed to offer early intervention for children with disability, community-based support for people with low support needs, and individualised funding packages for people with higher support needs. The scheme is now at full implementation and currently provides individualised funding packages for over half a million Australians with significant and permanent disability (NDIS, 2022). Once accepted to the scheme, participants work with planners to develop a plan incorporating their life goals and a budget allocation for services and supports to achieve them. Budgets are divided into the categories of core supports (for everyday support needs and consumables), capacity building (for building independence and life skills), and capital supports (for assistive technology and equipment) (NDIS, 2021a). Participants then select services from private or not-for-profit providers in a market-based model of service delivery. Participants can organise these supports themselves or use part of their funding to hire a support coordinator to plan and organise their supports. Specialist support coordinators help with managing challenges for people with complex needs, and help ensure consistent delivery of service (NDIS, 2021a).

Like any major reform, the implementation of the NDIS has been beset with structural and operational concerns, as detailed in more than 80 industry reports (Perks & Gilchrist, 2022). Administrative complexity (Carey et al., 2021) and thin markets (Reeders et al., 2019) can mean that some participants are not able to spend substantial portions of their budgets, which is a particular concern for participants from disadvantaged groups (Malbon et al., 2022). Future funding allocations may be reduced for participants who are not able to spend their budgets (Devine et al., 2022). Further, while the NDIS only provides individualised funding for around 12% of people with disability, researchers studying the implementation of the NDIS noted a reduction in services available for Australians with disability who are not NDIS participants (Dickinson & Carey, 2017).

The NDIS is not intended to replicate 'mainstream' services already funded by state/territory governments and the Commonwealth government for 'all Australians' (e.g. health, transport, education, and justice). The Council of Australian Governments (COAG) principles specify how the NDIS interfaces with mainstream services (COAG, 2015). In fact, the success of the NDIS depends on effective interface with mainstream services (Wallace, 2018), with each system doing its bit to provide a complete suite of supports and adjustments for people with disability. This requires coordination—the modification of existing services to ensure that they work better together (Scott

& Bardach, 2019). Without sufficient coordination, there is a risk that neither system provides the required services. Unfortunately, significant service gaps have been documented resulting from lack of clarity regarding what supports come under universal service obligations or reasonable adjustments required under law for mainstream services and what is the responsibility of the NDIS (Cowden & McCullagh, 2021; Foster et al., 2022; Joint Standing Committee on the National Disability Insurance Scheme, 2020; Wallace, 2018; Yates et al., 2021). This mirrors international experience regarding individualised funding schemes, where there have been difficulties in determining where the boundaries lie between particular health and social services (Dickinson & Carey, 2017; Glendinning et al., 2011). These difficulties are reflected in the interface between NDIS services and the criminal justice system, as outlined below.

1.1.1 | NDIS services in prisons

NDIS policy documents (e.g. COAG, 2015; Australian Government, 2013; NDIS, 2021b) set out that when people are taken into custody, they will remain NDIS participants. However, the state or territory-administered justice system is responsible for day-to-day care and support needs and ensuring that infrastructure and services are accessible. This includes making programs, such as those intended to prevent re-offending, accessible for people with disability. The NDIS may fund capacity-building supports to assist a person's transition back to the community (but only those that are required specifically because of a person's functional impairment), some kinds of assistive technology, and training for staff that is related to a person's disability support needs (NDIS, 2021b). Further, it is up to the justice system to decide what supports can be delivered in custodial settings. For example, the Victorian Government states that the decision about whether NDIS supports can be delivered on site sits with the direction of each individual custodial facility (OPA, 2021).

While academic research into the NDIS–criminal justice system interface is limited, there has been significant criticism of this interface from both the disability and criminal justice sectors. In 2017, stakeholders provided conflicting evidence regarding how the NDIS supported participants in custody and what types of services, if any, they could access (Joint Standing Committee on the National Disability Insurance Scheme, 2017). Similar issues were raised in a recent Victorian parliamentary inquiry into the criminal justice system (Legislative Council Legal & Social Issues Committee, 2022). Many reported to the Joint Standing Committee that NDIS funding packages ceased completely, meaning that participants did not receive even permitted supports such as transition services. Further, stakeholder submissions highlighted that while some people in custody were able to apply for the NDIS while incarcerated, once packages were developed and funded it remained unclear whose role it was to assist in the implementation of the plan and ensure supports were delivered (Joint Standing Committee on the National Disability Insurance Scheme, 2017).

In response to these interface issues, COAG set up a cross-jurisdictional Justice Working Group, which facilitated the publication of the Justice Guidelines (NDIS, 2021b), which were developed as a public-facing document, as well as the roll-out of an intended 25 NDIS Justice Liaison Officers across the country (DRC, 2021; Joint Standing Committee on the National Disability Insurance Scheme, 2020). These officers were implemented to help justice staff in prisons to understand the NDIS pathway, and work with them to ensure that potential and existing NDIS participants nearing release have appropriate disability supports in place for their transition back to the community

(Joint Standing Committee on the National Disability Insurance Scheme, 2020). However, this is a systemic function and officers do not work directly with NDIS participants (DRC, 2021).

1.2 | Disability and disability services in prisons

While it is generally agreed that people with disability are over-represented in corrections, and in all aspects of the criminal justice system, it is difficult to gain a precise understanding of the extent of this issue due to the challenges associated with conceptualising and measuring disability (Dowse et al., 2021). Australian researchers have argued that 'figures on the prevalence of cognitive disability in prisons both in Australia and internationally are unreliable' (Baldry et al., 2013, p. 223) and likely under-represent the extent of the problem (Dowse et al., 2021). An estimated 17.7% of Australians have a disability (ABS, 2019), while the most recent national prevalence estimate for intellectual disability is 3% (ABS, 2012). For the jurisdictions covered in this study, prevalence estimates of people with disability in prison vary widely, but Dowse et al. (2021, p. 4) summarise that 'up to 15% of prisoners have an intellectual disability, while 25%–30% of prisoners are estimated to have a borderline intellectual disability'.

Despite comprising a substantial proportion of the prison population, insufficient consideration is given to the presence and needs of people with disability within carceral environments (Doyle, Dodd, et al., 2022; Human Rights Watch, 2018). As a result, people with disability in prison are simultaneously everywhere and yet invisible (Thorneycroft & Asquith, 2021), helping to maintain an ableist prison environment, regime, and culture that simultaneously overlooks, compounds, and further punishes disability. Limited access to communication support and other necessary adjustments can hinder a person with disability's capacity to participate in health, education, employment, rehabilitation, and pre-release programs, leading to decreased well-being during incarceration and possibly delaying their release from prison (Australian Human Rights Commission, 2014). This long-standing service failure has implications beyond the NDIS, as it affects all incarcerated people with disability, not just the relatively small percentage of this cohort who are eligible for or enrolled with the NDIS.

2 | METHODS

This research employed semi-structured interviews with participants who have knowledge or experience working with people with disability involved in the criminal justice system. This was an appropriate method to answer the research question because we were interested in practitioner knowledge about how policies regarding the intersection of the NDIS and justice systems have been interpreted and implemented 'on the ground'. We obtained ethical clearance from UNSW HREC (#HC210578).

Participants were representatives of government and non-government stakeholder organisations that provide support or services or otherwise interact with criminal justice-involved people with disability. For this exploratory study, we targeted people from three of the eight Australian states and territories: New South Wales (NSW), Victoria, and the Australian Capital Territory (ACT). Participants represented three broad stakeholder groups: (1) criminal justice or disability advocacy services; (2) corrections agencies; and (3) disability service providers. This allowed us to capture the perspectives of stakeholders from different parts of the system, and particularly views from both inside and outside government. Using a purposive sampling strategy and drawing

TABLE 1 Overview of participant groups

Category	Areas/examples	Participants
Government departments	Corrections, human rights commissions, Ombudsman's offices, forensic disability programs, police	11
Community-based organisations	Disability advocacy and offender/prisoner organisations, forensic accommodation services	15
Legal representatives	Community law providers, barrister	3
Total		28 + 1 written submission

on the research team's existing contacts and information sourced through the public domain (e.g. organisational websites), we emailed organisations and departments who fell within each of these broad categories. Our inclusion criteria were as follows: (1) based in NSW, Victoria, or the ACT; (2) previous or current employment in corrections or with an organisation providing disability or criminal justice services or advocacy; and (3) having professional insight into the intersection between the criminal justice system and disability. Potential interviewees were asked to contact the research team directly if they wished to participate. We also employed a snowball sampling procedure (Parker et al., 2019) through asking interviewees if they knew of others who might meet the inclusion criteria and be interested in participating.

We conducted 24 interviews with 28 participants (three interviews had more than one participant) and received one written submission, which followed the same structure as our interview schedule and so provided comparable data. Fifteen interviewees were from the ACT, seven from NSW, six from Victoria, and one represented a national organisation. Interviewees came from a variety of organisations, summarised in Table 1. Interviews lasted on average an hour and were conducted between September and November 2021.

Most interviews were conducted via Zoom or Microsoft Teams ($n = 22$) and two by telephone. Interviews followed a semi-structured interview guide. Questions covered the work of their organisations, their current role, and relevant professional history. Depending on the interviewee and their organisational type, we asked about their processes for identifying people with disability and views on the adequacy of services for this group as they navigated the criminal justice system. Questions regarding the NDIS focused on whether people with disability could receive NDIS services in prison (and if so, what types), whether they were aware of this having happened in their jurisdiction, and what challenges there might be with delivering NDIS services to a person in prison. Participants were assured their contributions would be de-identified.

Our analysis draws on the verbatim transcripts of the 24 interviews and one written submission, which were imported into NVivo. We aggregated data from all three jurisdictions rather than conducting a comparative analysis, due to concerns regarding anonymity (particularly in the small jurisdiction of the ACT) and because the sample size was not large enough to allow for a robust comparison. We conducted a thematic analysis, whereby we organised the data into topic-level codes (Richards, 2015) and then thought through how those codes could be organised into themes that represented 'patterns of shared meaning, united by a central concept or idea' (Braun & Clarke, 2021, p. 341). Below, we present data according to both topic codes and thematic codes as appropriate (e.g. for practical issues such as level of service delivery possible, a topic code is most appropriate).

The limitations of this study include that we were informed only by the perspectives of individuals who work at the intersection of the criminal justice system and issues of disability. While these findings from exploratory research constitute a valuable first step, this must be complemented in future by the voices of people with disability as they navigate the criminal justice system. As Gormley (2022) argues, there is currently limited academic research that makes central the voices of people with disability, thereby leading to misconceptions about their experiences with various aspects of the justice system.

Further, while we invited corrective services from our selected jurisdictions to be interviewed, we only received one written submission from a corrections representative in one jurisdiction. Future research would benefit from their perspective on the steps taken to identify and accommodate prisoners with disability. Finally, our sample size was impacted due to the timing of this study during the pandemic, with some community-based organisations or service providers unable to contribute.

Below, we present our findings and interview quotes to illustrate patterns identified in our analysis. For interviews with more than one person, we used a lettering system to attribute the quotation to the specific interviewee (e.g. P11b). To help contextualise their quotes, we also provide a brief description of the interviewees' role.

3 | FINDINGS

While most interviewees agreed that minimal NDIS support is available for incarcerated people, responses on what is possible varied considerably. Some were not sure what NDIS services were available in prison or said it was a grey area, others said no NDIS services were available, and some described various arrangements that were possible. Below we set out participant concerns regarding inadequate disability supports, the variability in what was possible, and barriers to arranging NDIS services in prisons.

3.1 | Disability supports in prisons considered inadequate

Disability supports and services provided by corrections were largely considered to be inadequate, both in general and as a replacement for what could be provided by NDIS plans (for more detail on these findings, see Doyle, Dodd, et al., 2022). For example, programs designed to address offending behaviour were often not accessible for people with intellectual disability. People with disability were not provided with enough assistance to navigate the prison environment. Senior government disability adviser P23 reported that the disability service shortfall meant that daily living support such as showering was often provided by other inmates. Likewise, a representative from a justice advocacy organisation commented:

P11b: So they rely on peer support, untrained, unfunded, whatever, to do those basic daily tasks. That was something that kept getting raised over and over but nothing was done about that . . . and then on the other hand you have [people with] intellectual disabilities, they can't read or write, whose responsibility is that? Nobody's.

P25, representing a criminal justice reform organisation, summarised that 'on the whole, there's incredible support that people in prison give to people with disabilities that isn't necessarily

replicated by staff. For the most part, however, interviewees felt it was an inappropriate and potentially dangerous situation for people in prison to have to rely upon peer support for their disability needs.

3.2 | 'It's a bit opaque'

Regarding what NDIS supports could be accessed from prison, six participants were not sure what was permitted or possible:

P11c: ... that's an area that's not very clear to us. It's a bit opaque.

P14: ... to be honest, I'm not quite sure what services there are that go into [the local prison] to do with NDIS.

Some noted this was due to the interplay of state and federal responsibilities, but that they did not understand precisely how this worked, for example P06 (senior staffer, government oversight agency): 'It's that interaction that seems to be quite complex in what's available and when NDIS services actually can be delivered'. P20 had unsuccessfully attempted to gain clarity on this issue:

I think it's a really unclear area currently. From the commencement of NDIS, I think there was this understanding that if a person is in the hospital or prison system, NDIA [National Disability Insurance Agency] will not intervene with that. Which now seems to have changed... I find it hard to have higher level established connection about this. I've raised it.

3.3 | 'The pause button has been hit'

A further 11 participants reported that NDIS service delivery does not occur inside prison. There was an understanding that NDIS plans were put on hold while people are incarcerated, with the possible exception of physical aids and occasionally pre-release service coordination. For example:

P17a: The matters I've dealt with have been about that issue about it cuts off... the person is in the custody of the state and so the state is supposed to take care of them for that period.

This pausing of services is linked to reports from many participants that service resumption could take a considerable length of time once people were released. P12 noted the grey area for people on remand who could have their plans stopped, despite not having yet been convicted or sentenced for an offence and essentially being 'free people, just locked up'. Another noted that apart from occasional visits from support coordinators, '[o]ther types of supports though, I'm completely unaware of them taking place' (P16).

One participant, who worked for a state government advocacy organisation, had been attempting to organise daily living supports through an external provider, potentially using NDIS funds, but had not yet achieved this:

P17a: We've been in ongoing discussions with Corrections for a number of years about trying to get approval for a disability service provider to provide essentially fee for service or...if somebody has got an NDIS plan to work with their provider to come in. Those arrangements certainly - over the last 12 months we've had progress and then it slows down a bit.

A state government participant from the disability area said the NDIS had refused to provide services, even for supports that are theoretically possible according to the Justice Guidelines:

P23: The NDIS has not just been variable, they've said no. There are no supports for in prison. ... They are really quite bloody minded around, well, while they're in prison, that's your responsibility ... So, we've had heaps of people who are unable to leave prison because they cannot be bailed to go somewhere else or they cannot be paroled. They've got nowhere to go. They could have an NDIS support coordinator assisting that to happen, but it just hasn't happened. The NDIS are saying, no, we won't do it.

Finally, a national advocacy organisation representative described the equity implications of not providing NDIS supports in prison:

P25: ...our experience or their experience as described to us was that the packages stopped completely, as did in fact, almost all contact with a support provider. So nothing follows people into prison ... It's a huge problem. My thoughts are that people in prison not only require the same sort of levels of support as people in the community but actually, greater levels. Like it needs to be actually a question of equity rather than just equivalence.

3.4 | Instances of NDIS service delivery inside prison

Seven participants talked about instances of service delivery they were aware of or had helped to organise. For example, P16 mentioned NDIS-funded speech therapists occasionally going into prisons, service provider P20 mentioned report writing for people who are in custody, and P03 talked of support coordination, occupational therapy, speech therapy, or psychological assessments to ensure that participants' plans met their needs in preparation for release:

P03: I haven't personally had any experiences with clients where they've received ongoing [occupational therapy] support. It really seems to be about that assessment piece ...and using that report to make sure that their plan reflects their needs at that current point in time toward release. ...support coordinators would go in and do visits. I think even some [disability] support workers have as well. But that seems to be more about preparing for release more so than providing support whilst they're in custody.

P07 mentioned that arrangements had changed 'significantly over the years' from a total 'pause' situation to now allowing for release preparation. The introduction of NDIS Justice Liaison Officers had helped streamlined these processes, and P07 felt people in this role were important boundary spanners with 'knowledge of the scheme and a passion as well'. Similarly, P24,

who worked for a provider contracted to deliver an NDIS-administered complex support needs program, reported improvements in the understanding of how to introduce NDIS services for transition to the community:

P24: I think, if you break it down into the two areas of funding and the NDIS, [your core supports], absolutely all of those cease, when a person enters into a custodial setting. The capacity-building stuff... there hasn't been a lot of understanding around how that works in a custodial setting, but some of the work we've been doing, and the resources we've been developing has been really clear to say, in a custodial setting, you can engage a behaviour support practitioner, can engage an occupational therapist or a speech pathologist, some of those capacity-building services, to start looking at that transition back out into the community.

P24 had started to see 'a couple' of NDIS participants receiving capacity-building supports in the criminal justice setting. However, planning ideally needed to happen '6–12 months before that person exits out' to get the right suite of supports ready.

P10, a senior staff member from a government oversight agency, reported that although support coordinators could be permitted to attend, this was not assured:

I'm aware that a few support coordinators have gone in, but that's really around that pre-release type planning... Not every support coordinator is going to do that, either.

Even more concerningly, P09—who worked for a state-government-based disability justice program—reported considerable variability on what was possible to organise for NDIS participants in custody. They commented, 'So if you guys can work out the answer, I'd really love to know [laughs]. Like, what is actually supposed to occur?':

...in our experience, it's primarily based on who the support coordinator is. ... I've had clients that have continued to receive a great level of support through their NDIS package while they're in custody. We've had circumstances where their [occupational therapist] has gone in. Their support workers have gone in twice weekly to continue that rapport building but then I've had other clients whose package completely ceases and the response of the NDIS and the support coordinator is - 'no, no, no, they're in custody so that then becomes the responsibility of the state' ... It is case-by-case.

P09 reported that the implementation of a state-based disability coordination service, where advocates coordinate interventions for people with intellectual disability in the criminal justice system, had improved NDIS outcomes for some clients in that jurisdiction: 'we do tend to find, if somebody has a [state-based disability coordinator], they are very strong advocates for what a person needs'. P13, a state-employed public advocate and guardian, also reported positive outcomes from working with a state-based complex needs panel to achieve some NDIS services for an incarcerated person with multiple physical and psychological disabilities:

So we now have a [state-based program name] case co-ordinator, then we have the specialist support co-ordinator funded by the NDIS. The [state program] one is funded by the state, and he has helped pull together a whole lot of services that wouldn't normally all work together. So both prison-based and community-based.

However, several participants noted that while specialist support coordinators had the ability to make a real difference, there were not enough to meet demand. This was also the first time P13 had encountered an incarcerated person being able to access NDIS support, and they knew of only one other:

... it's still pretty rare, but we are [now] able to get these services into the prison system and hopefully work towards supporting them so that they can be released... I don't know what the percentages are, but it would be a very small percentage I would imagine of prisoners that are getting that sort of NDIS support. I know originally when it first came out and speaking to some of the prison staff that I knew, they'd sort of say, no, we're not going to allow any NDIS workers in here. That's not our role. We're a prison.

3.5 | Barriers to receiving NDIS services in prison

Several participants noted the challenges of delivering NDIS services in a complex system, with unclear state-federal responsibilities, a risk averse culture, and many other constraints on action. Victim support officer P16 noted the clash between what a person in prison might need and the operational requirements of the prison, bearing in mind that individual facilities can decide what services can be delivered on their grounds:

...if accessing supports interferes with operational requirements while being detained then it's just not viable, it's not going to go ahead. NDIS might say no, we haven't cut anything off, but the operational side of corrections is saying, well actually, we can't accommodate that though. I don't think it's necessarily anyone saying no, so to speak, but it just actually in practice doesn't happen.

Similarly, P17a commented on the difficulties with personal care support, reflecting 'some of that is around security authorisation, some of it is just around how does that person fit in with every other program and service?'. However, '[t]echnically there isn't a barrier and that has been the advice I've had from the Corrections Commissioner'. For P19, advocacy services and 'many other voices were arguing about the need for some NDIS supports [such as support coordination] to continue during period of detention', but that 'you often need people who know that system very well, in order to... give people a chance of that working'. While Justice Liaison Officers (working at a systemic level) had good NDIS knowledge, 'the direct staff that are working with detainees won't generally have that level of NDIS exposure or knowledge'. A senior government disability adviser felt that the increasing prominence of the NDIS as the providers of disability supports had led to prisons abdicating their responsibilities to provide adequate supports, despite NDIS support workers not being allowed in prisons:

P23: There is a place for the prison to have a responsibility for people with disability. ... But the NDIS becomes the only game in town and everyone says, well, they should pay. As opposed to, if you just have staff on-board and part of their work is to either provide that personal support or support in the classroom when people are learning or these other kinds of activity.

Finally, and significantly, service provider P24 reported the challenge with disentangling what is required because of offending behaviour and what is required because of disability. While NDIS policy permits capacity-building supports to assist transition back to the community, this is only for services that relate to a person's functional impairment (OPA, 2021). Therefore, the applicant is required to distinguish disability-related behaviours of concern from criminogenic behaviours, which is not straightforward:

P24: Then, in the background, you also have the NDIA messaging now saying we're not funding services to stop people from reoffending. That's justice's responsibility. ... support services [are] trying to increase staffing ratios to manage that, and the NDIA's messaging is 'no, no, this is about their offending behaviours. It's not about their disability', not recognising that one impacts the other. ... So, that can be contributing to the confusion as well.

4 | DISCUSSION

This study explores some of the difficulties people with disability face in accessing NDIS supports while incarcerated. The answer to our overarching research question of 'can people with disability receive NDIS services in prison?' seems to be: sometimes, for some things, but they can be very challenging to arrange. The COAG NDIS Principles (COAG, 2015) and the more recent Justice Guidelines (NDIS, 2021b) have improved clarity about what is permitted, but our interviewees working at the nexus of disability and justice were often still not sure about what was possible, and there seemed to be variability in implementation across different locations, settings, and clients. In fact, one participant working in service delivery quipped that if our research team found out what was possible, they would like to know.

In focusing on NDIS services in this article, we do not mean to imply that improving NDIS access in prisons would ameliorate all the problems people with disability face in the criminal justice system, or that NDIS-related coordination issues are unique in the context of the criminal justice system. The NDIS would only ever be available to a small subset of incarcerated people with disability. Further, service failures (e.g. in relation to mental health), coordination/interface issues, and transition issues in the broader criminal justice system have long been documented (Bullock & Bunce, 2020; Dowse et al., 2009; Doyle, Yates, et al., 2022; Forrester et al., 2018; Human Rights Watch, 2018). Interviewees in our research generally agreed that services for incarcerated people with disability were far from being able to meet their needs, and that peer support often filled some of those gaps—a practice that Gormley (2022) argues can force people with disability into risky power relations with their peers. The criminal justice system needs significant reform to prevent the unjust incarceration and further disabling of people with mental health and intellectual disabilities (Dowse et al., 2009). However, it is important to interrogate how the NDIS operates in prisons, as it represents a significant investment in disability services nation-wide and is intended to seamlessly interface with mainstream service systems to meet the needs of people with significant and lifelong impairments in a variety of population settings.

Overall, participants reported that NDIS services *not* permitted according to the Justice Guidelines, such as day-to-day support services and therapies, were not available in prisons. Services that *are* technically permitted (such as pre-release support coordination, assessments, and capacity building) could sometimes be organised, but the process was often difficult and required considerable effort and coordination across multiple parties. Interviewees reported challenges relating

to confusion about which level of government is responsible for funding which services, inconsistent application of the NDIS Principles, the reluctance of service providers to enter custodial environments and to support clients with complex behaviours of concern, and the difficulties of fitting in services with rigid custodial environments. Therefore, our evidence is consistent with previous policy scrutiny processes and grey literature (e.g. DRC, 2021; Joint Standing Committee on the National Disability Insurance Scheme, 2017, 2020; Legislative Council Legal & Social Issues Committee, 2022; Sotiri & Russell, 2020) in suggesting that while policy exists relating to the division of responsibilities for disability support in prison, in practice it is too high level, inconsistently applied, difficult to interpret, and beset with implementation difficulties.

As reported by some of our participants, there is a significant issue with separating disability-related needs (the responsibility of the NDIS in some circumstances) and offending-related needs (a state responsibility):

‘In reality, the behaviours that are considered ‘criminogenic’ are synonymous with the disability-related behaviours of concern – for example difficulty regulating emotions and subsequent physical aggression. Making a distinction between the two is exceptionally difficult’ (OPA, 2021, p. 24).

This leads to disagreements between the NDIS and state agencies about the source of funding supports, resulting in exclusion and delays (see also Legislative Council Legal & Social Issues Committee, 2022; Sotiri & Russell, 2020). Internationally, boundary disputes have also been reported in research into individualised funding for social care in the United Kingdom, where difficulties emerged in distinguishing healthcare needs from social care needs (Glendinning et al., 2011).

In October 2021, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (DRC) heard evidence from several states and territories that the NDIS Principles (COAG, 2015) and the 2021 Justice Guidelines were not fit for purpose. Reasons given included lack of clarity, insufficient examples, the requirement that the Guidelines be read in conjunction with several other complex documents, and the lack of ‘logical differentiation’ between criminogenic and disability needs. Representatives of the Commonwealth Government and the NDIA rejected this proposition (DRC, 2021).

Regarding prison-based service delivery, participants reported that resistance could come from the NDIS not approving certain expenses, even though interviewees believed they could or should be allowed; from support coordinators and other service providers who decline to operate in custodial environments; or from prison authorities who do not facilitate the delivery of NDIS services on their premises. There was some evidence that where state-based government staff were employed for the purpose of coordinating interventions for clients with disability in the criminal justice system, this resulted in better service outcomes. Therefore, evidence from our interviewees indicated that for NDIS service delivery to occur in custodial environments, a combination of factors needed to align: for example a state-level (justice or corrections) employee advocating for the client, approval from the NDIS for the relevant expenses, a willing support coordinator, a facilitative prison, and other service providers who are willing to operate in a custodial environment. Further, the custodial environment itself works against the ‘choice and control’ model of the NDIS—without advocacy services, it can be very difficult for people who are told what to do at every hour of the day to get the most of a program where they must choose their own services to help them achieve personal goals (Churchill et al., 2017; Sotiri & Russell, 2020).

Another implication of our findings is that the market-based model, combined with the trend towards short sentences (Rowe et al., 2017), may be exacerbating service provision difficulties for people with disability involved with the criminal justice system. We noted earlier that NDIS service provision in general is plagued with issues of ‘thin markets’. This manifests as both not enough service providers in general and not enough ‘diverse’ or specialised service providers to meet individuals’ needs (Reeders et al., 2019). As Rowe et al. (2017) argue, people with complex needs tend to cycle in and out of custody, and services should ideally support them through this process. But in a market-based model, service providers have the option to provide or deny services. If NDIS funding is withdrawn when people enter prison, private providers may decide that the cost and risk is too great to support people who frequently enter and leave custody (see also OPA, 2021). The market-based model was also noted as an issue by the ACT Government (2019), which reported that meeting the needs of people with disability in detention could be adversely impacted by the reluctance of non-government service providers to enter custodial settings. Several of our participants noted there is no ‘provider of last resort’ in their jurisdiction, meaning people with complex needs can be funded for services they cannot access because nobody can or will provide them. In other words, the market for providers with the expertise and willingness to support this client group can be described as ‘thin’. These findings are consistent with recent research suggesting that people in areas of lower socioeconomic advantage are less able to fully utilise their NDIS budgets than those in areas of higher socioeconomic advantage (Malbon et al., 2022), and also that NDIS-related administrative burdens fall most heavily on marginalised groups (Carey et al., 2021).

Interface issues have consistently been reported regarding several other mainstream services. In 2018, as the NDIS prepared for full roll-out, a parliamentary committee heard ‘significant evidence of boundary issues in the areas of health, aged care, education, transport, housing, and justice’, leading to service gaps. This was fuelled by the lack of clear delineation of funding responsibility between the NDIS and state and territory services (Joint Standing Committee on the National Disability Insurance Scheme, 2018, p. ix). Several years later, there was still evidence of boundary issues. Thompson (2021, p. 197) wrote of unclear operational role delineation in the health domain and ‘a perception among many health service providers that the NDIS planners have managed costs by defining out services that they feel can be shifted onto the health system’. Further, Yates et al. (2021) reported variability in carers’ ability to access to NDIS funding to support the remote education of students with disability during COVID-19.

Policy evidence reveals that NDIS–justice boundary issues have been a significant concern since NDIS implementation began, but it has taken several years for improved coordination arrangements such as boundary spanners (Buick et al., 2019)—in the form of Justice Liaison Officers—and public-facing guidelines to be implemented. As of mid-2021, evidence before the DRC and our own interview data indicate that there are still improvements required regarding clarity and reach of information, consistency of service arrangements, and effectiveness of interventions such as Justice Liaison Officers (DRC, 2021). While a small number of participants had found Justice Liaison Officers to be a positive reform, there were not enough people working in this role. Interpretation of policy documents and implementation of solutions and ‘workarounds’ to produce positive outcomes for people with disability were still very much reliant on the persistence of committed individuals at the local level. As Foster et al. (2022, p. 14) found with respect to NDIS funding divisions, ‘local organisational mechanisms are emerging to cope with the murky spaces of policy and inherent tensions’. Further, since the disbanding of COAG and thus the Justice Working Group in 2020 (Department of Justice & Community Safety, 2021), it is unclear whether there is an interjurisdictional governance committee operating in this area.

5 | CONCLUSION

In a recent review of the NDIS–justice interface in NSW, Sotiri and Russell (2020, p. 12) observed that while the NDIS ‘represents a remarkable opportunity for many populations to engage with supports and programs that are flexible, responsive, and personalised to individual needs, the capacity for people who are in prison to access this same level of service has diminished under the current NDIS service landscape’. Our findings suggest that in the complex authorising environment of Australian prisons, NDIS service delivery is only possible when advocates and staff are particularly persistent or when multiple factors align to facilitate a particular outcome. While some participants noted that the situation is improving, most felt there was a long way to go. This is very concerning, as people with disability need extra support to navigate the challenging prison environment and their transition back to the community. Without targeted intervention, people with disability are missing out on the very services they need to avoid returning to custody.

CONFLICT OF INTEREST

The authors declare no conflict of interest.

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