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REVIEW



Barriers to the NDIS for people with intellectual disability and/or complex support needs involved with the criminal justice systems: The current state of literature

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ABSTRACT

Background: This study synthesises current literature concerning the barriers to the National Disability Insurance Scheme (NDIS) faced by people with intellectual disability and/or complex support needs who are involved with the criminal justice system, or at risk of (re)involvement.

Method: Through targeted searches of key databases, 41 publications were identified from the scholarly and grey literature.

Results: Collected literature raises three main barriers to the NDIS. First, there are (mis)identification and diagnostic tensions hindering eligibility. Second, there are problems with the planning process, including the impracticality of “planning for” chaotic situations. Third, there are market and workforce deficits.

Conclusions: Research into the NDIS experiences of justice-involved people with intellectual disability and/or complex support needs is nascent and developing alongside an evolving NDIS landscape. Future research should focus on the effects of forthcoming developments designed to reduce the barriers facing these populations, including the Complex Support Needs Pathway, and workforce capabilities and market strategies.

KEYWORDS

NDIS; intellectual disability; complex support needs; criminal justice contact; barriers to support

Introduction

Research suggests people with intellectual disability may be overrepresented in criminal justice systems around the world (Fazel et al., 2008). In Australia, it is estimated that between two and 40 percent of prisoners have an intellectual disability (see Dias et al., 2013, 2014). Justice-involved people with intellectual disability often have “complex support needs,” that is, they have:

- A *breadth* or range of issues that are interconnected, in conjunction with a *depth* or intensity in one or more domains including disability, health, social and economic issues;
- *multiple* service use, with frontline agencies sharing clients but addressing different domains of need;
- A *disjuncture* between the support needs of the individual and the support services available or the absence of appropriate simultaneous, integrated, multiple supports;
- Needs that are not static or permanent but *change* throughout the individual’s life course and are more likely to arise in certain situations, episodes or life stages and at key transition points or in times of crisis;

- Needs that arise in the interaction between the individual and their potential or actual support systems – reflecting the relationship between individuals, service agencies and systems. (Dowse et al., 2019, pp. 5–6, emphasis original)

In recent years, questions have been raised about how well justice-involved people with intellectual disability and/or people with complex support needs will fare under the National Disability Insurance Scheme (NDIS) in Australia. This article contributes an answer to these questions by reviewing what is known about the barriers facing people with intellectual disability and/or complex support needs who should be eligible for the NDIS, and who are involved with the criminal justice system, or at risk of (re)involvement.

Method

Following the guidelines of Arksey and O’Malley (2005), a scoping review and rapid evidence assessment was conducted in the months of July through to September 2019, with a follow-up search and analysis conducted in October 2020. Papers were identified from the OVID,

PsycInfo, *MedLine*, and *Google Scholar* databases, using the following search statements:

- (1) (“NDIS” OR “NDIA” OR “National Disability Insurance”) AND (“criminal justice” OR prison OR police OR crim*)
- (2) (“NDIS” OR “NDIA” OR “National Disability Insurance”) AND (“complex needs” OR “complex support”)

In relation to scholarly work, only peer-reviewed, English language items with a publication date within the last 15 years were selected. The above search criteria yielded over 400 papers, with many duplicates and irrelevant studies. Following manual inspection of titles and abstracts, 28 journal publications and 13 “grey” publications were identified as relevant.

The following data was then extracted from each relevant publication: (a) citation details; (b) publication type (i.e., journal article, commentary, report, etc.); (c) aims of the study/paper; (d) methodology (if provided); (e) important results.

Appraisal of the literature

Three limitations impact current literature concerning the barriers facing justice-involved people with intellectual disability and/or complex support needs who should be eligible for the NDIS. First, there is a lack of scholarly literature on this topic. As [Table 1](#) below indicates, although 41 publications were identified as relevant to this review, only 28 were published in a scholarly journal. Only eight of these “scholarly publications” reported findings from new studies. The remaining journal publications comprised non-research-based commentaries and/or editorials ($n = 10$), or articles summarising existing research and/or reflecting on current practice ($n = 10$).

The second limitation of current literature relates to publication timelines. It is not uncommon for twelve or more months to pass between an article’s submission and publication date. Accordingly, what appears as “current” in the literature may not be current in

Table 1. Publication type.

Publication Type	Count (%)
Journal Publication	28 (68%)
Article reporting new findings	8 (20%)
Article providing overview of existing research	10 (24%)
Opinion/Perspectives/Commentary/Review/Editorial	10 (24%)
Grey Literature	13 (32%)
Magazine Article (e.g., Parity)	3 (7%)
Research Reports/Research Briefs/Discussion Paper	6 (15%)
Report from Government or Community Organisation	4 (10%)

practice. Indeed, while 22 percent of all papers collected for this review ($n = 9$) were published in 2013 and 2014 – that is, within the first two years of the NDIS’s trial period – these publications typically only refer to *potential* areas of concerns because they were predominantly written before the trial period commenced.

A final limitation of the literature collected is its heterogeneity. [Table 2](#) below provides a breakdown of the various populations and/or primary issues considered within each publication.

As [Table 2](#) indicates, although the majority of literature collected (63 percent) concerned NDIS considerations for people with intellectual disability who were either in contact with the criminal justice or at risk of (re)involvement, only nine papers (22 percent) within this collection explicitly focused on the intersection of the NDIS with state-based criminal justice systems. There were a further 17 papers (41 percent) pertaining to people who may be perceived as being at risk of (re)involvement with the criminal justice system, 14 of which (34 percent) concerned people with complex support needs and the NDIS. The remaining 15 papers collected focused on populations who often experience complex support needs and/or criminal justice contact, such as Aboriginal and Torres Strait Islander peoples ($n = 5$), and people experiencing homelessness ($n = 2$).

Results

Current literature raises three key points of tension frustrating the ability of justice-involved people with intellectual disability and/or complex support needs from receiving the full benefits of the NDIS. First there are (mis)identification and diagnostic tensions that hinder these populations from meeting the eligibility criteria for the Scheme. Second there are problems associated with the planning process, including the impracticality of “planning for” chaotic situations. Third, there are market and workforce concerns, including questions about the capabilities of service deliverers to work well

Table 2. Population/primary issue considered.

Population	Count (%)
NDIS and people with criminal justice contact, or at risk of criminal justice contact	26 (63%)
NDIS and people involved in the criminal justice system	9 (22%)
NDIS and people with complex support needs	14 (34%)
NDIS and people with behaviours of concern	3(7%)
NDIS and other relevant populations	15 (37%)
People with ATSI backgrounds and the NDIS	5 (12%)
People experiencing homelessness	2 (5%)
People with ID and the NDIS (in general)	3 (7%)
Other	5 (12%)

with this particular cohort. These three points of tensions are presented in greater detail below.

The diagnostic-related tensions facing a “hidden” cohort

As Table 3 below indicates, 25 of the 41 papers collected (61 percent) raised diagnostic-related tensions, which hinder justice-involved people with intellectual disability and/or people with complex support needs from meeting the eligibility criteria for the NDIS. Much of this literature was based on existing data ($n = 14$), published within the scholarly literature ($n = 13$), and published in the years 2016 ($n = 5$) and 2017 ($n = 7$).

Within this sub-collection of papers, eight focused on people with intellectual disability who have complex support needs, and seven focused on people with intellectual disability who were involved with the criminal justice system. The remaining ten papers focused on populations that are often identified as either having complex support needs or perceived as being at risk of criminal justice (re)involvement (e.g., people experiencing homelessness, Aboriginal and Torres Strait Islander peoples).

The overarching barrier to emerge from this collection of literature was the “hidden” status of justice-involved people with intellectual disability and/or complex support needs. That is, these populations are presented as “hidden” from the criminal justice system (Young et al., 2017), and as a result, remain “hidden” from the NDIS (Clift, 2014).

At play here are several dynamics within the broader environment of people with intellectual disability and/or complex support needs that limit these individuals from accessing the supports and services necessary to flourish within their communities.

First, some people with intellectual disability and/or complex support needs are “hidden” from systems because they have been misidentified in the past. For example, non-Indigenous people with cognitive disability are regularly misidentified as having a mental health disorder (McCausland et al., 2017). Likewise, Aboriginal and Torres Strait Islander peoples may go undiagnosed as children due to incorrect perceptions by teachers and other authorities that they are instead, “disruptive” or “disengaged” from school (McCausland et al., 2017, p. 2).

Second, some people with intellectual disability and/or complex support needs remain “hidden” from systems because they do not necessarily want to be “found.” That is to say, some avoid being identified as disabled out of a concern that there will be negative impacts attached to receiving this label in an environment where disability is still stigmatised, and/or

responded to through negative government intervention.

For example, in the case of culturally and linguistically diverse (CALD) communities, some families avoid having their child diagnosed due to concerns that such a diagnosis would impact the family’s relationship with the rest of their community. There are concerns that the stigma associated with their child’s disability may lead to the whole family being excluded from the community. Such a separation is perceived as particularly detrimental for CALD families who often have strong ties to their communities and rely heavily on their communities for support when raising children (Soldatic et al., 2014).

In the case of Aboriginal and Torres Strait Islander peoples, some families are said to avoid having their child diagnosed due to concerns about potential governmental intervention. Of concern for these families is the settler-colonial history of child removal policies in Australia. These families are worried that Aboriginal and Torres Strait Islander children will once again be removed from their parents if their parents are perceived as having insufficient skills or supports to provide for their child’s additional needs (McCausland et al., 2017).

Finally, Churchill et al. (2017) indicate that broadly speaking, many justice-involved people with intellectual disability, regardless of their background, will attempt to avoid being identified as disabled. Churchill et al. (2017, p. 10) explain that after being “ridiculed, stood over or moved into areas of the prison that further limit freedoms,” justice-involved people with intellectual disability have learnt to avoid being labelled disabled in order to “survive” the various institutional settings they have been subject to across their lifespan.

Under the above described disabling and harmful conditions, it is not surprising that some justice-involved people with intellectual disability and/or complex support needs may be deterred from seeking or disclosing a diagnosis. Yet, it is worth clarifying here, that even if these populations were actively seeking a diagnosis, they would likely still face some additional, environmental barriers.

For example, in the case of Aboriginal and Torres Strait Islander peoples, there is a documented lack of appropriate assessment tools available (Bohanna & Catherall, 2013). There is also a lack of trained specialists in remote and regional areas where many Aboriginal and Torres Strait Islander peoples reside (Bohanna & Catherall, 2013).

In the case of people with complex support needs, there are issues to do with connections to mainstream services, such as accessing a General Practitioner (GP). Many people with disability who experience homelessness, for

Table 3. Characteristics of papers identifying key barriers in relation to the NDIS.

	Author(s) (year)	Publication Type	Primary Population/Issue Considered	Data	Issue Identified		
					NDIS Eligibility Issues	NDIS Planning Tensions	Workforce or Workplace Issues
1.	Bevan (2015)	Magazine Article	Other (Deinstitutionalisation)	Existing		X	
2.	Bhandari et al. (2015)	Journal Article	Other (Substance Use)	New	X	X	
3.	Bigby (2013)	Editorial	Other (challenges for social work)	Existing			X
4.	Bohanna and Catherall (2013)	Letter	ATSI population	Existing	X	X	
5.	Churchill et al. (2017)	Report	Criminal Justice Contact	New	X	X	
6.	Clift (2014)	Commentary	Criminal Justice Contact	New	X	X	
7.	Collings et al. (2016)	Perspective	Complex Support Needs	Existing	X	X	
8.	Collings et al. (2017)	Journal Article	Complex Support Needs	New		X	X
9.	Cortese et al. (2020)	Journal Article	Other (socio-economic disadvantage)	New		X	
10.	CID (2018)	Submission	Complex Support Needs	New	X	X	X
11.	Didi et al. (2018)	Journal Article	Complex Support Needs	Existing	X		
12.	van Dooren et al. (2016)	Research Report	Criminal Justice Contact	New	X		
13.	Dowse (2020)	Commentary	Criminal Justice Contact	Existing			X
14.	Dowse et al. (2014)	Journal Article	Complex Support Needs	Existing	X		
15.	Dowse et al. (2016)	Perspective	Complex Support Needs	Existing			X
16.	Dowse, Wiese, and Smith (2016)	Journal Article	Complex Support Needs	Existing			X
17.	Dowse et al. (2017)	Discussion Paper	Behaviours of concern	New	X	X	
18.	Dowse et al. (2019)	Commentary	Complex Support Needs	Existing	X	X	X
19.	Dowse and Dew (2016)	Commentary	Complex Support Needs	Existing		X	
20.	Dreyfus and Dowse (2018)	Journal Article	Behaviours of concern	New		X	
21.	Ellem (2019)	Journal Article	Criminal Justice Contact	New			X
22.	Gilroy et al. (2016)	Journal Article	Other (ATSI population)	Existing		X	X
23.	Green and Mears (2014)	Journal Article	Other (NDIS and Intellectual Disability)	Existing			X
24.	Hamilton (2016)	Review Article	Complex Support Needs	Existing	X	X	X
25.	Hinton (2015)	Research Report	Behaviours of concern	New	X	X	X
26.	Judd et al. (2017)	Journal Article	Other (Disability Support Workers)	New			X
27.	Laragy and David (2015)	Journal Article	Other (NDIS and Intellectual Disability)	Existing	X		
28.	McCausland et al. (2017)	Brief	Other (ATSI population)	Existing	X	X	
29.	OPA (2018)	Report	Complex Support Needs	New	X	X	X
30.	O'Reilly et al. (2018)	Journal Article	Other (NDIS and Intellectual Disability)	Existing			X
31.	Patterson (2017)	Magazine Article	Other (homelessness)	Existing	X		
32.	Phuong (2017)	Journal Article	Other (ATSI population)	Existing	X	X	
33.	Simpson (2014)	Summary	Criminal Justice Contact	Existing	X	X	
34.	Smith-Merry (2017)	Magazine Article	Other (homelessness)	Existing	X		
35.	Soldatic et al. (2014)	Journal Article	Complex Support Needs	Existing	X		
36.	Stephens et al. (2014)	Perspective	Other (ATSI population)	Existing	X		
37.	VLA (2019)	Submission	Criminal Justice Contact	New	X	X	X
38.	Wilson et al. (2020)	Journal Article	Complex Support Needs	New			X
39.	Windsor (2016)	Commentary	Complex Support Needs	Existing			X
40.	Young et al. (2017)	Journal Article	Criminal Justice Contact	New	X	X	
41.	Young et al. (2016)	Paper	Criminal Justice Contact	New	X	X	X

instance, may not be connected to a local GP, and may require significant assistance from dedicated support services over time in order for this connection to be formed (Patterson, 2017; Smith-Merry, 2017). Once connected, an undiagnosed person with complex support needs still requires their GP to refer them on to a neuropsychologist or mental health specialist for further assessment and

diagnosis. Obtaining these additional, specialist assessments often requires long wait periods, and can further delay a person's application to the NDIS (Patterson, 2017; Smith-Merry, 2017).

It is also worth noting that people with complex support needs who have a mild intellectual disability may still fail to meet the NDIS's significant and permanent

disability test. This is because this assessment of disability may incorrectly identify these individuals because it focuses on a narrow conception of impairment, and as such, does not take into account the range of systemic and functional disadvantage that people experience as a result of, or in concert with, their intellectual disability (Collings et al., 2016; Cortese et al. 2020).

Finally, even if all of the above issues of assessment and diagnosis were addressed, some people with intellectual disability and/or complex support needs may still remain “hidden” from the NDIS, or at least, find that their support needs are partially obscured. This is because the NDIS eligibility process anticipates that those who seek access to the Scheme will be able to prove their eligibility and navigate a range of complex administrative rules. As Soldatic et al. (2014, p. 9) state, many people with complex social needs may lack the “sociocultural literacy” to undertake these tasks to their advantage.

Such findings reiterate the need for justice-involved people with intellectual disability and/or complex support needs to be well supported when seeking access to the NDIS. They also reiterate the ongoing need to address the complex array of disabling dynamics that encompass and shape the lives of justice-involved people with intellectual disability and/or complex support needs.

Tensions associated with planning for complex and chaotic lives

Twenty-three of the 41 papers collected (56 percent) identified tensions relating to the NDIS planning process (see Table 3). Most of these papers were published between 2017 and 2020 ($n = 16$); that is, after the full roll-out of the NDIS began. Seven of these planning-related papers focused on people with intellectual disability who have complex support needs, and a further six focused on people involved with the criminal justice system.

The overarching barrier to emerge from this collection of literature was the disjuncture between the planning expectations of the NDIS model, and the capacity and abilities of justice-involved people with intellectual disability and/or complex support needs to meet such expectations. Once again, several dynamics were identified as contributing to this problem.

First, some justice-involved people with intellectual disability and/or complex support needs may have challenges with informed decision making, which impacts on their capacity to fully participate in the planning process. For example, people with intellectual disability who are said to require behaviour support to address

perceived behaviours of concern, may not fully understand the role of a behaviour support package when undertaking planning (Dowse et al., 2017). Similarly, people with a history of justice involvement may lack the insight necessary to self-identify some of their needs (Clift, 2014). Such individuals may also not “recognise the negative outcomes of these behaviours due to their cognitive disability” (Churchill et al., 2017, p. 4).

Second, there can also be disabling dynamics within a person’s history that further impacts upon their capacity to fully participate in the planning process. As Collings et al. (2016, p. 272) explain: “people with intellectual disability have often been denied the opportunity to identify and express their wishes and aspirations, leaving them relatively unskilled to engage in support planning.”

Third, there are also problems with the dynamics of the planning process itself. For example, there is a problem with the narrow conception of what constitutes a “disability-related” need within the planning process. Put differently, the planning process appears to privilege a notion that disability-related needs and supports can be separated out from the range of systemic and functional disadvantage that people may have as a result of, or in concert with, their disability. In the case of people with complex support needs, such a division would be “impossible” to achieve in practice (Churchill et al., 2017, p. 9). It would be very hard for people with complex support needs, especially those returning to the community from prison, to articulate and prioritise a narrow notion of disability-related needs when they are experiencing insecurity and disadvantage in relation to food, housing, safety, and a capacity to pay bills (Cortese et al., 2020; Patterson, 2017).

Finally, there is also a problem with the time allotted for the planning process. The planning process tends to occur through “one off” meetings with a planner. Such a process does not provide sufficient time for people with complex support needs who may have difficulties establishing trust with others to build rapport with NDIS planners. When trust and rapport have not been established, justice-involved people with intellectual disability and/or complex support needs are unlikely to fully engage in the process (Dowse et al., 2019; Patterson, 2017).

Given the above described complexities, it is not surprising that some of the literature concerning NDIS planning emphasises the need for NDIS planners to become competent in certain skills. Two skills in particular have been identified in the literature as being necessary for those who work with justice-involved

people with intellectual disability and/or complex support needs.

First, planners need to have “good communication skills” (Collings et al., 2017). These skills included listening to the person with disability, as well as engaging with the person with disability as an expert (Collings et al., 2017). Importantly, good communication skills also involve challenging the person with disability to think about their options (Collings et al., 2016).

Second, planners also need to have enhanced cultural competency. Here there was an emphasis on increasing the basic cultural competency skills of the whole NDIS workforce (Collings et al., 2017). There was also a proposal to diversify the NDIS workforce strategy so that it better reflects the cultural and linguistic needs of Aboriginal and Torres Strait Islander peoples (Gilroy et al., 2016).

Of course, enhancing the communication skills and cultural competency of planners is only a partial response. Much of the literature concerning NDIS planning therefore also emphasises the need for greater case management and/or support coordination for justice-involved people with intellectual disability and/or complex support needs. Churchill et al. (2017, p. 14) argue that “unless significant and highly skilled support is provided, it is often inconceivable to imagine what a non-offending, positive life might entail, or by extension, what is required to support such a life.” Collings et al. (2016) presented a similar argument in relation to people with complex support needs.

The problem with this proposal, however, is that it may be difficult during the planning process to anticipate the full amount of time required for such support coordination, especially when the person’s situation is chaotic (Hinton, 2015). There may also be a lack of personnel available to take on the role of support coordination for these individuals. In such situations, as Collings et al. (2017) revealed, planning practitioners may end up taking on this role, even if performing this role falls outside their original position description, and likely, falls outside of their skill set.

Findings such as those outlined above once again point to the complex array of disabling dynamics that encompass and shape the lives of people with intellectual disability and/or complex support needs. They also emphasise the key role an appropriately skilled workforce can play in minimising or at least circumventing the presence of such dynamics during the planning process. It is worth clarifying, however, that planners and support coordinators only represent a small proportion of the NDIS workforce. Most of the workforce is made up of NDIS service providers. As outlined below, there are additional tensions associated

with this workforce that will also need to be addressed if justice-involved people with intellectual disability and/or complex support needs are to gain full access to the benefits of the NDIS moving forward.

A “thin market” and an under-developed and under-supported workforce

Nineteen of the 41 papers reviewed (46 percent) identified concerns connected to the NDIS workforce (See Table 3). Most of these papers were based on existing data ($n = 10$), with nine focused on people with complex support needs, and the other 10 focused on diverse issues related to the workforce (e.g., challenges for social work). Within this workforce-focused body of scholarship, two interconnecting issues were raised.

First, there are concerns about the size of the provider “market” for justice-involved people with intellectual disability and/or complex support needs. Specifically, there are concerns that this cohort is being serviced by a “thin market.” This problem of a thin market occurs for two main reasons.

There are a limited number of mainstream services that have adapted their service provision for people with low cognition (Churchill et al., 2017). This situation is exacerbated in the case of Aboriginal and Torres Strait Islander peoples living in remote areas, where their geographical distance from metropolitan areas can further reduce the availability and scope of service provision (Phuong, 2017).

Second, some service providers are reluctant to provide services to justice-involved people with intellectual disability and/or people with complex support needs. Often this reluctance emerges from the providers’ perception that their staff will be at increased health and safety risks when working with people with complex support needs (Collings et al., 2017; Patterson, 2017).

Anecdotal evidence suggests that this problem of a thin market may contribute to, or even reinforce, a range of complexities in the lives of justice-involved people with intellectual disability and/or people with complex support needs. For example, some justice-involved people with intellectual disability and/or people with complex support needs may go without support for extended periods of time due to NDIS planners being unable to find a service provider willing and able to take them on (OPA, 2018). This lack of support can then contribute to some people with intellectual disability and/or complex support needs presenting in emergency health services, or being detained within mental health facilities (OPA, 2018).

Other justice-involved people with intellectual disability and/or people with complex support needs may

be forced to engage nonpreferred or inexperienced service providers (OPA, 2018). Being forced to “choose” from what is left can compromise the ability of the person to benefit from the supports and services provided. It can also lead to situations that exacerbate the potential for challenging behaviours to develop in response to inadequate environments (OPA, 2018). Notably, this problem of inadequate environments is connected to the second main issue raised by the workforce-focused scholarship: an under-developed and under-supported workforce.

There is concern within the literature about the high levels of workplace stress and burnout experienced by workers engaging with people with complex support needs, including justice-involved people with intellectual disability (Dowse et al., 2019; Judd et al., 2017). Such stress and burnout is said to take shape as a result of a number of dynamics, including a “lack of decision-making power, earning a low income, lack of management insight into the high expectations for care and constant pressures due to staff shortages, [worker’s interpretations of] challenging client behaviour, and the death of clients” (Judd et al., 2017, p. 1114).

Crucially, worker stress and/or burnout can lead to a number of additional negative outcomes for people with intellectual disability and/or complex support needs. It can, for instance, lead to older, more experienced staff leaving the workforce due to their experiences. When these staff members leave, they are often replaced with younger and less experienced workers who may be ill-prepared for the challenges they will face (Dowse et al., 2019). To compensate for this lack of preparation in dealing with challenging situations, younger and less experienced workers may rely on more restrictive techniques when working with people with intellectual disability and/or complex support needs (Dowse et al., 2019).

Issues such as those described above have led a few authors to call for greater recognition of the broad range of skills that are required for disability workers to properly support justice-involved people with intellectual disability and/or complex support needs (Wilson et al., 2020). There have also been calls for workers to be properly remunerated for undertaking such complex work (Hinton, 2015). It is argued that if this workforce was properly supported, valued and professionally developed, then they may be well placed to support the decision-making of justice-involved people with cognitive disabilities through “relationship-based practice” as they negotiate their NDIS requirements moving forward (Ellem, 2019; see Dowse, 2020 for a critical reading of the potential for “relationship-based practice” in this context).

Discussion

The purpose of this review was to assess what is currently known in the literature about the NDIS-related barriers facing people with intellectual disability and/or complex support needs who are involved with the criminal justice system, or at risk of (re)involvement. To date, minimal research has been conducted into the NDIS experiences of justice-involved people with intellectual disability and/or complex support needs, with only 41 publications identified as relevant to the review. Of these 41 relevant publications, less than half are full, peer-reviewed journal articles ($n = 17$), with less than half of these peer-reviewed articles based on newly conducted research studies ($n = 8$). This means that most of the insight that can be drawn from the literature about the NDIS-related barriers facing justice-involved people with intellectual disability and/or complex support needs comes from non-research-based commentaries and reflections, or other submissions that are based on anecdotal evidence.

The limitations of current literature hold implications for this review. In particular, the lack of studies undertaken in relation to the NDIS experiences of justice-involved people with intellectual disability and/or complex support needs hamper the capacity of this review to accurately identify the full range of barriers facing these populations. What this review has done instead, is synthesise the common tensions and issues currently raised within the literature as potentially hindering these populations’ ability to access and benefit from the Scheme. To this end, three key tensions have been identified.

First, there are tensions around how, by whom, and to what extent these populations are correctly identified and diagnosed. Second, there are difficulties involved in the planning process, including a disjuncture between what is expected and what may be possible in the context of “planning” for and responding to complex lives. Finally, there are limitations associated with the development of the workforce that hold direct implications for those people with disability they are meant to support. Crucially, while this article presented each of the above three points of tension as separate findings, it is important to recognise that in practice, justice-involved people with intellectual disability and/or complex support needs may encounter these tensions sequentially as they move through the assessment, planning and delivery processes of the NDIS. The impact of these tensions may, therefore, also be experienced cumulatively.

Reading across these three tensions, two further things become apparent about the barriers to the

NDIS facing justice-involved people with intellectual disability and/or complex support needs. First, it is clear there is a complex array of disabling dynamics that encompass and shape the lives of these populations. Justice-involved people with intellectual disability and/or complex support needs may be misidentified as “disruptive,” ostracised from their community, or bullied for having an impairment. They may struggle to find services to help them navigate the complex requirements of different service systems and/or struggle to build trust and rapport with key gatekeepers such as GPs or NDIS planners. If they do eventually find a pathway “in” to the NDIS, they may still find their capacity to flourish in the community disabled by a market characterised by insufficient choice. At the same time, it is clear that some of these disabling dynamics could be mitigated by the nature and level of support justice-involved people with intellectual disability and/or complex support needs receive as they navigate the NDIS eligibility, planning and delivery processes. Considering the above, it becomes necessary to ask: what is being done to address the various tensions and dynamics identified in current literature? And to what end? An answer to these questions is less clear.

There is some promise on the horizon through the roll-out of the NDIS Complex Support Needs Pathway (the Pathway). Beginning in some areas of Melbourne and Sydney in November 2018, the Pathway was scheduled for progressive roll-out across all states and territories in Australia from March 2019. To an extent, the Pathway appears to acknowledge some of the interplay between a person’s impairment, disadvantage, and disabling environments previously described. Thus, for example, it is envisioned that people with disability who go through this Pathway will work with NDIS planners and support coordinators who have been developed and supported so as to better understand and respond to the complexities of these people’s lives (NDIS, 2018). The Pathway is also meant to enhance the capacity of the NDIS to respond to changing and developing needs of people with complex and chaotic lives through, for example, greater monitoring, review, and evaluation processes (NDIS, 2018). Finally, the Pathway may offer greater mechanisms for drawing out people who may otherwise remain “hidden” to the system. It is said to do this by strengthening connections and handover processes between the multiple services involved in these people’s lives (NDIS, 2018). The problem is, at the time of this publication, there is no data available to evaluate the effect of this intervention on the lives and NDIS journeys of justice-involved people with intellectual disability and/or complex support needs.

Even if the NDIS Complex Support Needs Pathway is proven to be operating optimally in future research, it is unlikely that this development will fully address the barriers identified in the reviewed literature. This is because the Pathway only addresses the tensions that have emerged at the “front-end” of the NDIS – that is, the journeys into the NDIS for people who may otherwise remain hidden from view, and the planning processes of the NDIS. As such, the Pathway does not appear to address the other major barrier facing justice-involved people with intellectual disability and/or complex support needs: not having a sufficiently developed and supported service delivery market and workforce to enable “choice” and “control.” In relation to this second major tension, there are three possibilities for positive change on the horizon.

First, the 2019 *NDIS Thin Markets Project* is meant to deliver a framework for addressing thin market challenges (EY, 2019). Second, the *NDIS Workforce Capability Framework* – which is expected to be developed by late 2020 – is meant to include descriptions of “core,” “complementary” and “technical” capabilities that service providers and workers delivering different services should possess (Australian Government, 2019). This Framework is also meant to provide workforce development and retention strategies, which may reduce worker stress, and thus potentially improve the service delivery environment experienced by justice-involved people with intellectual disability and/or complex support needs (Department of Social Services, 2019). Finally, both the *Maintaining Critical Supports Project* and the *Immediate Support Response* are meant to offer policies and processes for addressing “Provider of Last Resort” arrangements for “crisis” circumstances where an NDIS participant is unable to receive supports (Australian Government, 2018).

The problem with all three of these possibilities, however, is that they are even more embryonic in development than the NDIS Complex Support Needs Pathway. None of the proposed interventions in the NDIS landscape described above have been delivered at the time of this publication. Until such provisions are delivered, it remains unclear to what extent the NDIS will eventually enable justice-involved people with intellectual disability and/or complex support needs to have the “choice” and “control” necessary to flourish in the community.

Implications for future research

Currently published research into the barriers facing justice-involved people with intellectual disability and/or complex support needs who should be eligible

for the NDIS is limited in volume, quality, and consistency. These limitations are, arguably, to be expected. The NDIS is a very recent development in the Australian disability landscape, and research is in development alongside it. But, as discussed above, the landscape of the NDIS is dynamic, and the provisions that are likely to have the greatest impact on justice-involved people with intellectual disability and/or complex support needs are only just beginning to be developed or take effect. It is fundamental that this dynamism translates to research, with scholars continuing to explore, identify, assess and evaluate the experiences of justice-involved people with intellectual disability and/or complex support needs who should be eligible for the NDIS. To this end, future research, both qualitative and quantitative, should focus on the uptake and outcomes of the Complex Support Needs Pathway for these populations. The voices and experiences of justice-involved people with intellectual disability and/or complex support needs should take primacy in this research.

Greater research is also needed in relation to the capabilities and support of the service delivery workforce. It will be particularly important for future research to examine the extent to which proposed workforce development and support strategies positively impact upon the environments justice-involved people with intellectual disability and/or complex support needs, especially in the context of restrictive practices.

Finally, the state of the NDIS market for justice-involved people with intellectual disability and/or complex support needs should remain at the forefront of investigations. Future research must assess the extent to which proposed Provider of Last Resort arrangements for “crisis” circumstances can meaningfully enable justice-involved people with intellectual disability and/or complex support needs to have the “choice” and “control” necessary to flourish in the community.

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