



Submission to the Joint Standing Committee on the NDIS: Transitional Arrangements for the NDIS

Reflecting their strong commitment to supporting people with disability, most disability service providers embrace the vision of the National Disability Insurance Scheme (NDIS):

- choice and control for people with disability and their families
- double the funding for disability support to respond to the high need for services and equipment
- an insurance approach that invests in early intervention
- increased equity and life opportunities for people with disability across Australia

Critical to realising the vision of the NDIS is the growth of a dynamic, sustainable and values-driven disability sector. Without this, people with disability and their families will not have the choice and quality of support the NDIS promises. The following comments, based on the Inquiry's Terms of Reference, are aimed at ensuring the scheme delivers on its vision.

NDS also refers the Committee to its policy paper 'How to get the NDIS on Track', published in May 2017 (attached). It makes 24 recommendations aimed at improving the operation and implementation of the NDIS. We hope that the NDIA will respond to some of our key concerns through its current review of the provider and participant pathway experience and through the Independent Pricing Review announced in June. However, neither of these reviews has yet reached a conclusion.

Mainstream interfaces

The COAG principles that govern the interface between the NDIS and other service systems are sound, but their application has generated areas of dispute and uncertainty. Developing effective interfaces between the NDIS and mainstream services is a work in progress. In particular, greater clarity is required for interfaces with health, education, transport, child protection and mental health.

Work is needed on how to ensure people with disability and complex health conditions and children with disability who have regular hospital admissions will receive the support they require. At present, there is variation in how services to people on ventilator support will be funded; and what equipment or therapy will be funded and by which system for an NDIS participant following discharge from hospital. Also problematic are expectations by hospitals that disability support workers will assist NDIS participants while in hospital. While people may need this assistance, the responsibility for funding it needs to be clear.

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Families of school-aged NDIS participants are placing demands on their child's school to provide facilities for therapy sessions, even when this therapy is not related to the curriculum. This is resulting in children being withdrawn from lessons and an expectation that the school will make scarce rooms available for therapy. Workable arrangements for the provision of personal care to some students who are NDIS participants also need to be established.

Transport in the NDIS needs urgent attention. Unresolved questions include: how much funding should be provided by the NDIS to assist participants with transport if they cannot use public transport? What responsibility do state and territory governments have in providing accessible transport for residents with disability, including in regional areas? Should the transportation of children with disability to school be the responsibility of the NDIS? Where does the funding responsibility lie for transporting people with disability to and from medical appointments?

Emerging transport problems are compounded by the fact that service providers are considering divesting themselves of their transport fleets. If this occurs, participants will be severely disadvantaged - or the expenditure on transport will substantially increase. This requires urgent attention. Once these transport fleets are gone, they will not be re-established and adequate alternatives are not yet available.

The interfaces between the NDIS and child protection services need further negotiation, particularly on how case management for at-risk families should be delivered and funded. Disability service providers are currently undertaking substantial unfunded work with these families to help ensure the wellbeing of the child with disability and are often unclear about where responsibilities actually lie.

There is useful work by the NDIA and the Victorian Government to articulate some of these interfaces (with confidential draft documents under discussion). The Intensive Team initiative—to assist NDIS access for complex clients with disability living in Victoria who are known to other services such as child protection, justice and domestic violence services—warrants consideration for wider implementation.

NDS supports the draft recommendation in the Productivity Commission's position paper on NDIS Costs (June 2017) to include a standing item on the agenda of every COAG Council that has responsibility for a service area that interfaces with the NDIS. This would foster regular discussions to resolve uncertainties about service gaps, responsibilities and other boundary issues. NDS also supports the recommendation that review points of National Agreements and National Partnership Agreements should include specific commitments and reporting obligations consistent with the National Disability Strategy (including how boundary issues are being dealt with)¹.

Planning and services

Over the past year, the inconsistent quality of participant plans has required substantial—and unfunded—intervention by providers to assist participants to have plans amended.

¹ Productivity Commission, 2017, Position Paper on National Disability Insurance Scheme Costs, Productivity Commission, Canberra, p.57

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NDS is aware that the Agency has limited information about the services that people entering the scheme receive from state and territory-funded systems. Existing providers have a good understanding of what services people currently receive.

The NDIA should develop a template, asking participants and providers to complete it prior to attending a planning meeting. While approved NDIS-funded supports may differ from those currently received, the list of existing services should be used as a check to ensure that new plans don't contain inadvertent omissions.

The Productivity Commission's position paper on NDIS Costs makes several suggestions (within draft recommendations 4.1 and 4.2) on how to improve planning. NDS supports the implementation of these actions. We also agree with the draft recommendation that would have the NDIA report on the number of unexpected plan reviews and reviews of decisions, review timeframes and the outcomes of reviews.

Participants should always remain at the centre of the planning discussion. But the NDIA should also use the knowledge of NDIS-funded support coordinators to undertake plan reviews and allow participants to undertake planning with specialist disability providers if that is their choice. Providers often have the experience and knowledge of disability supports and personal knowledge of the participant that NDIA and LAC planners lack.

- **Continuity of support**

Some people who receive support from State, Territory or Commonwealth-funded programs, including Partners in Recovery, Personal Helpers and Mentors and Mental Health Carers Respite, will not be eligible for the NDIS. Support should continue to be available for those who need it.

One state-based program with an uncertain future is described below.

In 2002, the Victorian DHHS funded the establishment of a shared care house to support the growing number of families at risk of relinquishing care of their child with disability. The target group is children and young people aged 6–18 years who require intensive positive behaviour support. Up to 15 families use this service per year. Two evaluations of the service have concluded that it is effective.

As these children have transitioned to the NDIS, plans have included funds for short-term accommodation and assistance but not for specialised and intensive behaviour supports and therapeutic interventions. Without intervention, the funding shortfall will force the closure of this service and some children will be relinquished to the state (and eventually to the NDIS).

One difficulty is the average stay is 94 nights per year, which is well in excess of the NDIA's preferred upper limit of 28 nights.

A solution for the ongoing shared care of these children is urgently required.

The bilateral agreements between the Commonwealth and the states and territories require that service recipients are not disadvantaged during the transition to the full

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NDIS. The Department of Health's Continuity of Support Programme for people over 65 years who currently receive state or territory-funded disability support has developed well (the only remaining matter is to develop a payment equivalent to the Specialist Disability Accommodation payment for people in disability housing). Continuity of support arrangements for other groups need to be released as soon as possible. NDS urges governments to work with providers as they establish these arrangements.

- **Emergency or crisis services**

Many emergencies result from a family carer being unable or unwilling to continue to support a person with disability (whether for a short or longer term). This may be because they become unwell, sustain an injury or feel over-burdened by their caring responsibilities. Emergencies also arise due to the person with disability having escalating challenging behaviours or because they unexpectedly need additional personal care or household assistance.

Emergencies will arise for participants of the NDIS, for people who will become participants of the NDIS, or for people with disability who have a temporary need for assistance but who do not become participants of the NDIS at this time.

State and territory governments have processes to implement emergency responses but these will cease as the NDIS is implemented.

Arrangements for managing emergencies that will arise as the NDIS is implemented are currently poorly articulated and are inadequate. This needs to be addressed, ideally through the NDIA establishing emergency response agreements with a number of disability support providers across the country.

Information, Linkages and Capacity (ILC) initiatives

NDS supports the draft recommendation in the Productivity Commission's position paper on NDIS Costs that investment in Information, Linkages and Capacity Building during transition be increased.

We have some concerns about the NDIA's approach to the commissioning of ILC. We had recommended that the Agency seek to enhance the existing map of ILC-type services, rather than beginning from a blank slate. The nature of the community sector reflects its organic growth: it is 'messy' and diverse. Instead, the NDIA is using a competitive grants process which could result in the dismantling of some great support services that are currently improving the lives of people with disability. Effective social inclusion pathways for many people with disability could be diminished.

The mapping process undertaken could have been used to identify necessary ILC services and a mechanism for directly funding them. There is no need to have a competitive grants round for activities that are essential and are being provided by organisations that are performing well, have strong track-records and have the confidence of funding departments. Initially, this type of organisation should receive funding outside the competitive grants process. Their performance could be tracked and their funding modified accordingly over time. If their performance is less than expected, a competitive process could be used to find a replacement.

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The contracts for the first competitive ILC round were for one year only (with a vague reference to extending some contracts to two years). Short-term contracts make it difficult to deliver quality and sustainable services to people with disability. In its inquiry into introducing more choice and competition into human services, the Productivity Commission has recommended the use of 7-year contracts for family and community services². The NDIA's use of one-year contracts falls well short of this recommendation.

NDS notes that the NDIA invited both not-for-profit and for-profit organisations to apply for ILC funding. Not-for-profit organisations are in the unique position of being able to attract volunteers and philanthropic funding to support their ILC-type work. It would diminish the NDIS to lose this social capital contribution.

Pricing of supports

Service providers are losing money on delivering one-to-one supports, particularly for supporting a person to participate in the community. This situation is not sustainable. The NDIS maximum price is significantly lower than the comparable community aged care price.

Providers are also reporting a growing reluctance to support people with complex conditions (in all service types). The NDIS has some higher prices for complexity but they are inadequate. Without a price increase, a high-needs group of participants is at significant risk of not getting the supports they need.

Prices for one-to-one support are set too low

During negotiations with the NDIA during 2014, the Reasonable Cost Model (RCM) was developed to provide a transparent and evidence-based method to set realistic one-to-one support prices. Unfortunately, in mid-2014, the NDIA announced price increases which were lower than the prices generated by the RCM.

The use of the RCM was hindered by poor data on the actual costs of service delivery. While the NDIA agreed to independent data collection to test and adjust assumptions in the RCM, this has not yet occurred.

NDS believes several of the assumptions on which the one-to-one support prices are based are highly dubious, including:

- average pay rate used for worker and supervisor is lower than the sector pays
- productivity expected of workers is set too high (with the expectation that 95% of their work hours will be with clients)
- 5 days per year allowance for personal leave is far lower than actual usage
- 2 days per year EFT allowance for training is inadequate to ensure a skilled workforce (particularly as the majority of the workforce is part-time or casual)

Concerning are statements by the NDIA that, in the future, real prices for these supports will be decreased further. NDS rejects this approach.

² <http://www.pc.gov.au/inquiries/current/human-services/reforms/draft/human-services-reforms-draft.pdf> viewed 7 July 2017

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There are other problems with NDIS prices, including the price for short-term (respite) accommodation (which effectively excludes penalty-rate loadings for service provision during evenings, weekends and public holidays). Some providers have already closed short-term accommodation services and other closures are planned. The loss of these important respite services for families will increase the number of people moving into Supported Independent Living, at a greatly increased cost to the NDIS. In addition, the homes used for these services do not attract a Specialist Disability Accommodation payment to help cover the cost of capital. Unless addressed, this could see respite houses converted to long-term accommodation, further reducing respite options for families.

Without resolution of pricing issues, and particularly an increase in prices for some supports, the market will not grow to meet the increase in demand under the NDIS. The recent National Benchmarking Survey undertaken by The University of Western Australia indicated about three-quarters of providers experienced increased demand for their services in 2016 but one-third were not able to meet the demand. Providers were forecasting a similar situation for 2017.

NDS's State of the Sector Report 2016 reported survey findings that 67% of service providers doubted their capacity to provide services at NDIS prices.

In-kind supports

In-kind arrangements outlined in bilateral agreements allow governments to fund their group homes at a higher rate than the NDIA pays non-government providers, perpetuating a disparity in public funding between government providers and non-government providers. In-kind arrangements limit participant choice and contradict the principle of competitive neutrality. They should be phased out quickly.

Provider readiness

The ANAO report on NDIS market transition (November 2016) describes a situation where implementation of the NDIS is outpacing the preparatory work required to support it. It notes the urgent need to finalise and/or publish a range of strategies and action plans to help the market develop and transition.

The report states that because service providers and participants have key roles in the successful transition to the NDIS, they should be consulted on the development of an action plan for the NDIS market, sector and workforce. It criticises the use of the \$146 million Sector Development Fund (SDF), noting that allocations from it have lacked transparency and coordination across projects and jurisdictions.

Similarly, the 'Independent Review of the Readiness of NDIS for Transition to Full Scheme' (which DSS commissioned from Robyn Kruk) flagged high risks for the NDIS market and noted the need for "both immediate and short term actions to strengthen mitigation and responses in relation to potential market failure or provider collapse; and to support provider readiness and market development."

A clear and coherent national investment plan is urgently required to support the sector's development and transition to the NDIS market. Developed with the non-government sector, a comprehensive industry plan should build on work done to

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date and include a strong focus on workforce growth and development. It should outline actions, timeframes, accountabilities and monitoring arrangements.

The SDF commenced in 2012-13 for four years, since extended by one year. The SDF should be re-funded and further extended to complete the demanding work required for a successful sector transition to the NDIS across Australia. Without additional assistance some providers will not make the transition to the NDIS, particularly small and medium-sized providers, those operating in thin markets, and those providing services to Indigenous people and people from culturally diverse backgrounds.

Market Stewardship

In a recent report on increasing competition and choice in human services, the Productivity Commission stated:

Governments' stewardship role in the delivery of human services is broader than overseeing the market...include identifying policy objectives and intended outcomes, and designing models of service provision...developing regulatory and institutional arrangements to underpin service provision that is responsive to users, accountable to those who fund the services, equitable, efficient and high quality.³

This was endorsed by the ANAO in its report released in November 2016:

During the NDIS trial period there was a lack of clarity over the roles and accountabilities of government entities for managing the market transition. In September 2016 the Disability Reform Council agreed market-related roles and responsibilities for the Commonwealth, states and territories, and the NDIA.⁴

The ANAO report notes that DSS has a draft 'Program Plan for National Disability Insurance Scheme Phase 2: Transition' which is aligned with the department's market, sector and workforce related roles and responsibilities. Service providers should have the opportunity to comment on this document.

NDS has established several data collections which it will draw together to publish a regular Industry Barometer. They include the only detailed survey-based analysis of the financial health of the disability sector and the most extensive data collection on the disability support workforce. We encourage the Government to work with NDS to monitor and respond to market risks as they emerge and recommend the establishment of disability research structure (similar to AHURI).

Support the creation of a national disability research entity

Existing research funding is inadequate to support the disability sector reforms. The 2014 Audit of Australian disability research found that the current disability research agenda lacks critical mass, is poorly co-ordinated and is disconnected from sustainable funding.

³ Productivity Commission, 2016, 'Introducing Competition and Informed Consumer Choice into Human Services: Identifying Sectors for Reform, PC, Canberra, p. 36

⁴ ANAO, op. cit., p. 25

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Existing funding mechanisms such as the National Health and Medical Research Council and the Australian Research Council have not assigned disability research a high priority and are under pressure from a wide range of research demands.

NDS has the support from a range of stakeholders for the establishment of a new entity to drive an Australian disability research agenda. A collaborative structure similar to the successful AHURI is proposed, which would aim to: co-ordinate research to stimulate service innovation; disseminate knowledge of best practice; connect researchers to industry and consumers as end-users of research; and build the capacity of people with disability to engage with research.

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National Disability Services is the peak industry body for non-government disability services. It represents service providers across Australia in their work to deliver high-quality supports and life opportunities for people with disability. Its Australia-wide membership includes more than 1100 non-government organisations which support people with all forms of disability. Its members collectively provide the full range of disability services—from accommodation support, respite and therapy to community access and employment. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Federal governments.

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