



Melbourne
Disability
Institute

Joint Standing Committee on NDIS

Inquiry into Scheme Implementation and Forecasting
Answers to Questions on Notice

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Answers to Questions on Notice – Response from MDI

MDI's submission refers to a discrepancy in the original recommendation for the NDIA's administrative resourcing, which was placed at 10 per cent of scheme costs but is currently only four per cent. Do you think this is causing the NDIA to make "poorly considered and ill-informed decisions more quickly" and would be increasing administrative costs – due to high rates of appeals and "double handling" of decisions? Do you think that increasing the staff cap would have a neutral effect or actually bring costs down?

According to the most recent Quarterly Report provided to Disability Ministers (Q2 2021-2022) the NDIA's operating expenses have grown from \$906 million in 2017/18 to \$1.48 million in 2020-21. This represented 15.7% of participant costs in 2017/18, down to 6.3% in 2020/21. Costs for 2021/22 are projected to fall further to 5.9%¹. Operating expenses were always expected to decline as a proportion of participant costs, because there is a significant fixed element, but in the 2021/22 Commonwealth Budget operational costs were projected to fall even further to just 4% of total scheme costs.

People with disability, their families and their representative organisations rightly expect that the bulk of scheme funds should be spent on participants. When advocating for the NDIS, people wanted an independent, nimble, flexible organisation that would be committed to operating the scheme effectively and efficiently.

This aspiration was clearly reflected in the initial NDIA annual and strategic plans. For example, the initial Corporate Plan 2013-2016 enunciated four key principles including: "build trust with the community by ensuring the Agency is accessible, its processes are timely, communication with clients are transparent and application of eligibility criteria is consistent"². Unfortunately, this is not the situation today.

What we have is an incredibly complex bureaucratic scheme that is not only extraordinarily difficult to navigate but also provides limited assistance to participants and their families. That is due in part to the cap on the number of staff the NDIA can directly employ, as well as the focus of partner organisations on planning rather than helping people navigate the scheme, effectively use their funding or connect to mainstream supports, services and activities. Or even help build community capacity for inclusion - something Local Area Coordinators were originally expected to do but have not been able to do given the focus on planning and reviews.

As a result of the staff cap there is also an over-reliance on labour hire and expensive consultants. Neither help build organisational capacity or corporate knowledge and expertise.

As we pointed out in our previous submission, we are concerned that the introduction of the Participant Service Guarantee (PSG) without an appropriate increase in resourcing has the potential to lead to perverse outcomes. As we have pointed out a number of times, participants will not benefit from the PSG if NDIA staff simply make ill-considered decisions more quickly. If the PSG is to be effective and result in better outcomes it must be appropriately resourced.

Whether increasing the staff cap would result in decreased costs is untested. But what is certainly evident is that limited numbers of ongoing staff, poor morale, overreliance on expensive consultancy firms, high turnover within partner organisations, a lack of trust of staff, partners and participants, a lack of attention to effective training and poor co-design and co-production practices does not make for a strong principled organisational culture and, as a result, certainly makes for a poor experience for participants and their families. The measure of the scheme's success should be the outcomes participants are able to achieve as well as their experience of the operation of the scheme, rather than how low the NDIA is able to keep their administrative costs.

¹ Quarterly Report to Disability Ministers (2022). Quarter 2 2021-2022, page 105.

² National Disability Insurance Agency, Corporate Plan 2013-2016, page 5.

It was recently revealed that appeals of NDIS decisions to the administrative appeals tribunal have increased by 400% in the last six months. Do you think this has happened because of the “poorly considered and ill-informed decisions”? Are you aware whether over 3,500 appeals over a six month period is consistent with original projections for the application of the NDIS Act in decisions, at this point in the scheme’s rollout?

We would suggest the dramatic increase in appeals is a result of a number of factors. The first is that it is clear that the NDIA are committed to reducing scheme costs. National average plan sizes are tracking downwards as evidence by the tables below³.

Table 1: National average plan size - all participants

2018	2019	2020	2021
\$60,100	\$65,900	\$71,200	\$68,500

Table 2: National average plan size – participants in SIL

2018	2019	2020	2021
\$263,500	\$317,200	\$351,600	\$346,100

This trend is also confirmed in a recent interview with NDIA CEO Martin Hoffman for a podcast with the Summer Foundation. In the interview he noted that, on average, plan sizes were changing 1-2% on review. This is also noted in the letter Mr Hoffman recently provided to the Committee.

This is also reflected in the figures provided in the latest Quarterly Report on page 102. From July – Dec 2021:

- 37% of plans increased by more than 5% at review
- 34% decreased by more than 5%
- 28% stayed within 5 %

Compare this to 2019-2020:

- 60% of plans increased by more than 5% at review
- 24% decreased by more than 5%
- 15% remained within 5%

Mr Hoffman’s letter to the Committee says that a “target” does not appear in the Quarterly Report. But he does not clarify whether the decrease in average plan sizes is part of an overall strategy to reduce scheme costs. Some additional insights are evident from Mr Hoffman’s interview with the Summer Foundation in response to a question about plans being cut:

George: There’s been a lot of stuff in the media, it’s all on the 7:30 Report about people’s plans being drastically cut and I was very concerned to see - there was a story where the person had the plan - I think it was cut by 30% and this led to them not being able to leave the house. I’m hearing lots of these experiences. What do you have to say about that?

³ Quarterly Report to Disability Ministers (2022) Quarter 2, 2021-2022, page 99.

Martin: George, I hope you're also hearing about the experiences of the plans that are increasing by 30% and by 50% because those stories are just as many and I think that's the point where the scheme is at now. We've been very open about the facts, about the data in our quarterly reports that show that the average plan change at review is now about 1 or 2%, so consistent with inflation. So, on average, plans are going up at review by 1 or 2% but there's a big variation around that average. Some plans, yes, are going down and just as many plans are going up by small and large amounts..."

As we indicated in both our previous submission and in our evidence, understanding the causes of both the increase in scheme participants over and above the projections from the Productivity Commission as well as the growth in the volume of supports is essential **before** any policy or operational response is implemented. Failure to do so risks leaving participants without essential support and further traumatising the very people the scheme was set up to support.

Finally, it is important to note that the numbers of AAT appeals does not provide a complete picture of the number of people who may not be satisfied with their NDIS plan or the funding they have received. It takes extraordinary courage and resilience for participants and their families to request a review or decide to take their case to the AAT. In many cases the toll is enormous, causing considerable stress and anxiety and carries the risk of individual or family breakdown, relinquishment or worse. Further, we have been made aware of cases where the NDIA appears to have engaged in deliberately intimidatory tactics through engaged lawyers such as seeking to lengthen the processes through delaying activities or through issuing a Statement of Issues right before the first case conference.

From our experience claims that the NDIA is always a "model" litigant are not always accurate. Statements by senior leadership at the NDIA that people can always appeal their plans if they are unhappy with the support they have been provided do not recognise the emotional, physical and financial toll of running an appeal case. They do not acknowledge the considerable power differential in proceedings where participants face off against experienced and well-resourced legal firms. The recently released Senate Order shows just how many legal firms have been engaged by the NDIA and the large amounts they have been paid. Some of the names include such well known firms as Clayton Utz, Ashurst Australia, Minter Ellison and Maddocks⁴.

In contrast participants rely on their own self-funded legal assistance or, if they are fortunate enough, a funded appeals advocate. This will only occur if they have been lucky enough to get to the head of the queue for assistance. The advocacy organisations we speak to have closed books and lengthy waiting lists for help. This means that in reality people are often left to fend for themselves. In fact, this is such a problem MDI has helped to establish the NDIS Law Clinic at the University of Melbourne to assist people with disability and their families with NDIS applications and now appeals. This clinic is doing some excellent work but its very existence is an indictment on the system.

Your submission says in relation to AAT appeals, "The current approach of the NDIA to AAT appeals, in which they push participants to the limit and then agree to a confidential settlement at the last minute, often because they know the case has merit and do not want details to become public, amounts to completely unconscionable behaviour. It must stop immediately." In the six months from June to December 2021, the NDIA spent \$19 million on external lawyers

⁴ A copy of the most recent Senate order can be found here - <https://www.ndis.gov.au/about-us/policies/senate-order-13-entity-contracts>

fees fighting AAT appeals, more than doubling compared to the entire year prior. Is this spending concerning?

Please see our response above. We would further suggest that the NDIA should publish data on appeals in relation to reasonable and necessary supports, including a comparison between the initial request and the final outcome so deliberations and outcomes are transparent to all.

The NDIA says that plan cuts are not part of an Agency-wide directive to get scheme costs down. However, the most recent quarterly report showed that average plan budgets have gone down by \$1,800 – from \$55,100 in 2020 to \$53,300 in 2021. Is reducing participant plans consistent with insurance/investment principles of the NDIS?

The relationship between plan size and the NDIS insurance principles is very clear and unambiguous in the long term – the aim is to maximise lifetime outcomes and minimise lifetime costs. As a result, in the short-term costs can rise as part of the investment philosophy. Or costs may rise as a result of life course transitions, such as leaving school or home, or because of ageing or the impact of a progressive condition. Similarly, costs can decline due to the benefits of early intervention or capacity building or the development of more informal supports or increased community involvement. As noted above, it is therefore essential in the short term to understand the causes of any changes in costs. This is particularly true when changes are large and/or sharp in order to gauge whether they are appropriate. We must ensure any changes do not leave people without the critical support they need and are entitled to.

It is essential that a short-term focus on costs does not undermine the insurance principles of the NDIS or lead the disability community back to the days when people with disability and their families had to reach crisis point before appropriate support was provided. This is both traumatic for people as well as costly for the scheme in the medium to long term. This is because without adequate support people's needs can rise, sometimes dramatically. When an insurance scheme is operationalised well there is a natural alignment between the needs of the participant, their families and scheme sustainability. This alignment was one of the most important reasons why people with disability and their families fought so hard for the NDIS. People wanted a scheme that would take a long-term investment approach to support, rather than a rationed, crisis-driven approach. We are very concerned that the NDIA and the government have fallen into some very short-term thinking when it comes to scheme costs. In the time since we appeared before the Committee we have been made aware of number of participants who have been pushed to breaking point by their dealings with the NDIA. This is completely unacceptable.



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