

# Chapter 1

## Introduction

1.1 The Parliamentary Joint Standing Committee on the National Disability Insurance Scheme ('the committee') was established on 2 December 2013 following the passing of a resolution in the Senate and the House of Representatives. The committee, composed of six Members and six Senators, is tasked with reviewing the implementation, administration and expenditure of the National Disability Insurance Scheme (NDIS).

1.2 The committee's establishing resolutions require the committee to present an annual report to the Parliament after 30 June each year on its activities during the year. The resolutions direct the committee to include in its report reference to the National Disability Insurance Agency (NDIA) Board's quarterly reports to the Ministerial Council and the Board's Annual Report to the Standing Council on Disability Reform.<sup>1</sup>

1.3 Section 172 of the *National Disability Insurance Scheme Act 2013* ('the Act') requires the NDIA Board to provide an Annual Report on the NDIA's activities to the Minister and the Ministerial Council. Section 174 of the Act requires the NDIA Board to prepare a report on the operations of the NDIA for each period of three months starting on 1 July, 1 October, 1 January and 1 April.<sup>2</sup>

### The first 12 months

1.4 This is the committee's first report to the Parliament. Although it comes only eight months after the committee was established and before the first NDIA Annual Report, there has been a considerable amount of activity on which to report progress over the past year:

- since 1 July 2013, four States—New South Wales, Victoria, South Australia and Tasmania—have operated NDIS trial sites;
- the NDIA Board has provided three quarterly reports to the Ministerial Council presenting data on the progress of these trial sites, and is due to present the final quarterly report for 2013-14 as well as its inaugural first report to the Minister and the Ministerial Council in the coming months;

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1 As of 13 December 2013, COAG agreed to streamline the COAG Council system and refocus on COAG's priorities. There is no longer a distinction between Standing and Select Councils, as all Councils are time-limited as such, the former Standing Council on Disability Reform is now referred to as the Disability Reform Council.

2 Section 172 of the National Disability Insurance Scheme Act 2013 sets out the requirement for the Board to provide an Annual Report on the NDIA's activities to the Minister and the Ministerial Council. Section 174 of the Act requires the NDIA Board to prepare a report on the operations of the NDIA for each period of three months.

- the committee has visited the four trial sites and conducted meetings with NDIA staff, state and federal officials, key stakeholders and service providers, and NDIS participants, their carers and family members;
- three other jurisdictions have also launched new NDIS trial sites. On 1 July 2014, Western Australia, the Northern Territory and the Australian Capital Territory commenced NDIS trials. As with the other States' trials, the WA and NT sites are geographically focused. The ACT, on the other hand, is the first site to operate the Scheme across the whole jurisdiction for all age groups up to 65 years;
- the committee has yet to discuss or visit Western Australia, Northern Territory or the Australian Capital Territory to examine the implementation of their NDIS trial sites; and
- in terms of the administration of the Scheme, the NDIA has managed significant change since its launch only 12 months ago; its headquarters were moved from Canberra and officially opened in Geelong on 29 April 2014. There has also been significant activity within the Agency in terms of recruiting staff, developing information technology to support the Scheme and internal administrative processes including devising material to inform the Australian community on the progress and operation of the Scheme.

### **The committee's report to the Parliament**

1.5 In compiling the committee's report to the Parliament, the committee is mindful of the nature of the advice provided to the Parliament and the Agency. The committee has listened to many stakeholders and is aware of the significance of the task ahead for the NDIA, governments, the disability sector and the whole community. The evidence identifies challenges facing a wide cross-section of organisations and stakeholders. As Mr Kurt Fearnley, a member of the Independent Advisory Council, told the committee at the conclusion of the participants' section at the public hearing in Newcastle:

The challenges that we have been listening to today have been, in my opinion, extremely positive. I think there are challenges for the NDIA, and I would like to stress my support and admiration for what they are doing. I think it is a challenging job for them, it is a challenging job for people with disabilities, it is challenging for DSPs, it is challenging for carers and families, but that is kind of the purpose. The NDIS was brought around to challenge people so that we could decide what level of life was going to be lived for people with disabilities.<sup>3</sup>

1.6 The committee's intent in outlining these various challenges is to assist the Agency, all governments, stakeholders and the wider Australian community to understand the nature and the complexity of these challenges as identified by various witnesses and to address them effectively.

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3 Mr Kurt Fearnley, *Committee Hansard*, 5 May 2014, p. 30.

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## **The composition of the committee**

1.7 On 21 November 2013, the Senate and House of Representatives appointed the following members to the committee:

- the Hon. Mal Brough MP (Liberal Member for Fisher, Queensland);
- Senator Alex Gallacher (Labor Party, South Australia);
- Dr David Gillespie MP (National Party, Member for Lyne NSW);
- Ms Jill Hall MP (Labor Member for Shortland, NSW);
- the Hon. Jenny Macklin MP (Labor Member for Jagajaga, Victoria);
- Senator Bridget McKenzie (National Party, Victoria);
- the Hon. Amanda Rishworth MP (Labor Member for Kingston, South Australia);
- Mr Wyatt Roy MP (Liberal Member for Longman, Queensland);
- Senator Zed Seselja (Liberal Party, Australian Capital Territory);
- Senator Rachel Siewert (Australian Greens Party, Western Australia);
- Senator Dean Smith (Liberal Party, Western Australia);
- Senator the Hon. Ursula Stephens (Labor Party, NSW);

1.8 On 3 December 2013, the committee elected Mr Mal Brough as Chair and Senator Alex Gallacher as Deputy Chair.

1.9 The committee membership has undergone a number of changes during its first eight months. In March 2014, Victorian Nationals Senator Bridget McKenzie was replaced on the committee by Queensland Nationals Senator Barry O'Sullivan and, Queensland Liberal, Mr Wyatt Roy MP was replaced on the committee by West Australian Liberal, Mr Steve Irons MP. New South Wales Labor Senator the Hon. Ursula Stephens retired from the Senate on 30 June 2014. She has been replaced on the committee by Tasmanian Labor Senator Anne Urquhart. On 1 July 2014, West Australian Liberal Senator Dean Smith and Queensland Senator Barry O'Sullivan both left the committee and were replaced by Queensland Nationals Senator Matthew Canavan and West Australian Liberal Senator Linda Reynolds CSC.

## **The committee's activities**

1.10 The committee has been active visiting trial sites and discussing operational matters with the NDIA, the NDIA Board, the NDIS Independent Advisory Council, the Scheme Actuary and the relevant State government officials and NDIS service providers, participants, families and carers.

1.11 The committee met 23 times over the period 2 December 2013 to 24 July 2014. Of these, 13 were private meetings held each Wednesday of the joint

parliamentary sitting weeks. While the details of these proceedings are confidential,<sup>4</sup> the committee can report that it used private meetings in March and July 2014 to conduct briefings with the NDIA and its Board (see chapter 6), state government officials and key stakeholders. The committee extends its thanks to all those who attended these briefings.

### ***NDIS trial site visits***

1.12 During April and May 2014, the committee travelled to all four trial sites. Commencing with the Barwon trial site in Geelong, Victoria followed by Tasmania and in May, the committee visited the Hunter trial site in Newcastle, NSW and Adelaide, South Australia. Appendix 1 of this report provides a list of the people and agencies with whom it met.

1.13 The committee advertised its intention to conduct hearings over two days at each trial site through the national and relevant local media. The Parliamentary website also provided further advertising of the hearings and provided access for a registration process that was managed by the committee secretariat.

1.14 At each site the committee spent two days taking evidence. On day one, the committee took evidence from NDIS participants, carers and family members, service providers and peak bodies. On day two, the committee met with state officials and NDIA state managers.

1.15 The committee would like to thank the NDIA for its assistance in advertising the hearings, its staff's attendance and for providing a carer at each hearing to assist attendees.

### **The committee's focus**

1.16 In preparing this report, and in conducting its activities, the committee is mindful of what it is tasked to do and the responsibilities of those who administer and implement the Scheme.

1.17 The committee has decided that this inaugural report will concentrate on the following issues:

- the implementation of the first four trial sites in terms of the transitional arrangements at each location;
- the Agency's processes in developing the operational arrangements to administer the Scheme and assist the planners;
- the planning process;
- the associated issues that impact on the individual experiences of participants, carers, families and service providers; and

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4 The Senate, *Standing Orders and other orders of the Senate*, November 2009, SO 37.

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- the role of the Scheme Actuary whose role it is to ensure that the NDIS is financially sustainable.

1.18 The committee is of the view that the tabling of an interim report at the earliest opportunity would be of most benefit to the successful implementation and ongoing development of the Scheme.

1.19 In addressing the committee's future work plan, the committee will focus on a range of key issues that are integral to the continuing launch and subsequent full rollout of the NDIS. These may include, but are not limited to: workforce capacity; contestable market sector; gaps in services delivery; training of individuals to work in the disability sector such as allied health workers and training of people who live with a disability to participate in the workforce; supply of adequate and appropriate housing; the supply of specialist equipment; managing complex and high needs; the provision of Tier 2<sup>5</sup> services; the provision of mainstream services, such as health and education; and community capacity building.

### **Structure of this report**

1.20 This report is divided into the following chapters that follow the committee's hearings at the NDIS trials site in order of event.

- Chapter One provides some context and background information about the development, structure and implementation of the NDIS;
- Chapter Two provides evidence from the Barwon trial site;
- Chapter Three provides evidence from the Tasmanian trial site;
- Chapter Four provides evidence from the Hunter trial site;
- Chapter Five provides evidence from the South Australian trial site; and
- Chapter Six provides discussion on the role of the NDIA, the NDIS and the committee's conclusions and recommendations.

### **The context of this report**

1.21 The following section provides an overview of the background of the NDIS, particularly the underlying national policy settings and agreements regarding the individual roles and responsibilities.

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5 Tier 2 is defined later in this chapter of the report. See pp 8 – 9.

### ***Genesis of the NDIS –what has been agreed***

1.22 The NDIS represents the biggest social reform in Australia since the introduction of Medicare in 1984. Like Medicare, the NDIS has broad-based parliamentary and community support. Both are also Commonwealth funded insurance schemes that provide the Australian population entitlement to services based on need.

1.23 Dr Bruce Bonyhady, Chairman of the NDIA describes the Scheme in the following terms:

The Scheme has the support of all governments and all political parties as it tackles the greatest shortcoming in our country's social services system – a broken system in which the essential needs of those with a significant disability are only about one-half met and which the Productivity Commission in its landmark report in 2011 infamously described as 'underfunded, fragmented, inefficient and giving people little choice'...

...Across Australia, disability spending by governments has been growing at 7% to 8% in real terms since the late 1990s, but this growth has not kept pace with growth in demand.<sup>6</sup>

1.24 Dr Bonyhady states that against this background a 'perfect storm' grew consisting of: an ageing baby boomer population of parents; increasing female participation in the workforce, and reduced family sizes impacting the available "stock" of family carers. This included the emerging dynamic of ageing parents forced to relinquish an ageing son or daughter with disability; emergency response funding is required from the state disability services resulting in a 'death spiral' where funding in an already rationed system is used for emergencies and there is no support provided for lower urgency cases–increasing risk of further crises in the future in the jurisdiction's health and disability funding systems.<sup>7</sup>

1.25 This would result in existing disability services across jurisdictions being constantly stretched to their limits leading to what the Productivity Commission referred to as a 'lottery' of access to services.<sup>8</sup>

1.26 Without the NDIS, people with disability, their carers and families will not get certainty of supports in their lives, further marginalising and reducing their wellbeing and participation in society.

1.27 Critically, the importance both socially and economically of governments agreeing to take an active role to establish a social insurance model to deal with issues

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6 Dr Bruce Bonyhady, *The NDIS-The Legacy Social and Economic Policy Reform of Our Time* Public Lecture at the University of New England, 12 May 2014.

7 Dr Bruce Bonyhady, *The NDIS-The Legacy Social and Economic Policy Reform of Our Time* Public Lecture at the University of New England, 12 May 2014.

8 Productivity Commission, *Disability Care and Support*, 10 August 2011, p. 608.

like healthcare or permanent disability is fundamental to mitigate this form of market failure where no private solution would ever come to eventuate.

1.28 The NDIS commenced operation in four trial sites on 1 July 2013: the Barwon Region in Victoria, Hunter Region in New South Wales, Tasmania and Adelaide.

1.29 The development and implementation of the NDIS was preceded by:

- a series of national multilateral agreements starting in the early 1990's;
  - in 1991, the first *Commonwealth State Disability Agreement* (CSDA) was signed;<sup>9</sup>
  - three successive multilateral agreements followed, each covering a five year period (later these agreements were the *Commonwealth State/Territory Disability Agreement* (CSTDA));<sup>10</sup>
- an inquiry undertaken by the Senate Standing Committee on Community Affairs on the funding and operations of the past three CSTDAs (report tabled in February 2007);<sup>11</sup>
- commitment from the Council of Australian Governments (COAG) to a fourth agreement (effective from 1 January 2009), the *National Disability Agreement* (NDA);<sup>12</sup>
- agreement by COAG to develop a ten year strategic policy framework—*National Disability Strategy 2010-2020* ('the Strategy');<sup>13</sup> and
- a report from the Productivity Commission on their investigation into the feasibility of new approaches for funding and delivering long-term disability care and support (PC Report) (final report presented in August 2011).<sup>14</sup>

1.30 In March 2013, the NDIS legislation passed with bipartisan support in the Parliament and the *National Disability Insurance Scheme Act 2013* was created, along with the Scheme and the NDIA.

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9 Senate Standing Committee on Community Affairs, *Funding and operation of the Commonwealth State/Territory Disability Agreement*, February 2007, p. 5.

10 Senate Standing Committee on Community Affairs, *Funding and operation of the Commonwealth State/Territory Disability Agreement*, February 2007, p. 21.

11 Senate Standing Committee on Community Affairs, *Funding and operation of the Commonwealth State/Territory Disability Agreement*, February 2007.

12 National Disability Agreement, <http://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/government-international/national-disability-agreement>, (accessed 5 June 2014).

13 Senate Standing Committee on Community Affairs, *Funding and operation of the Commonwealth State/Territory Disability Agreement*, February 2007, p. 21; see also recommendation 4, p. 40.

14 Productivity Commission, *Disability Care and Support*, 10 August 2011.

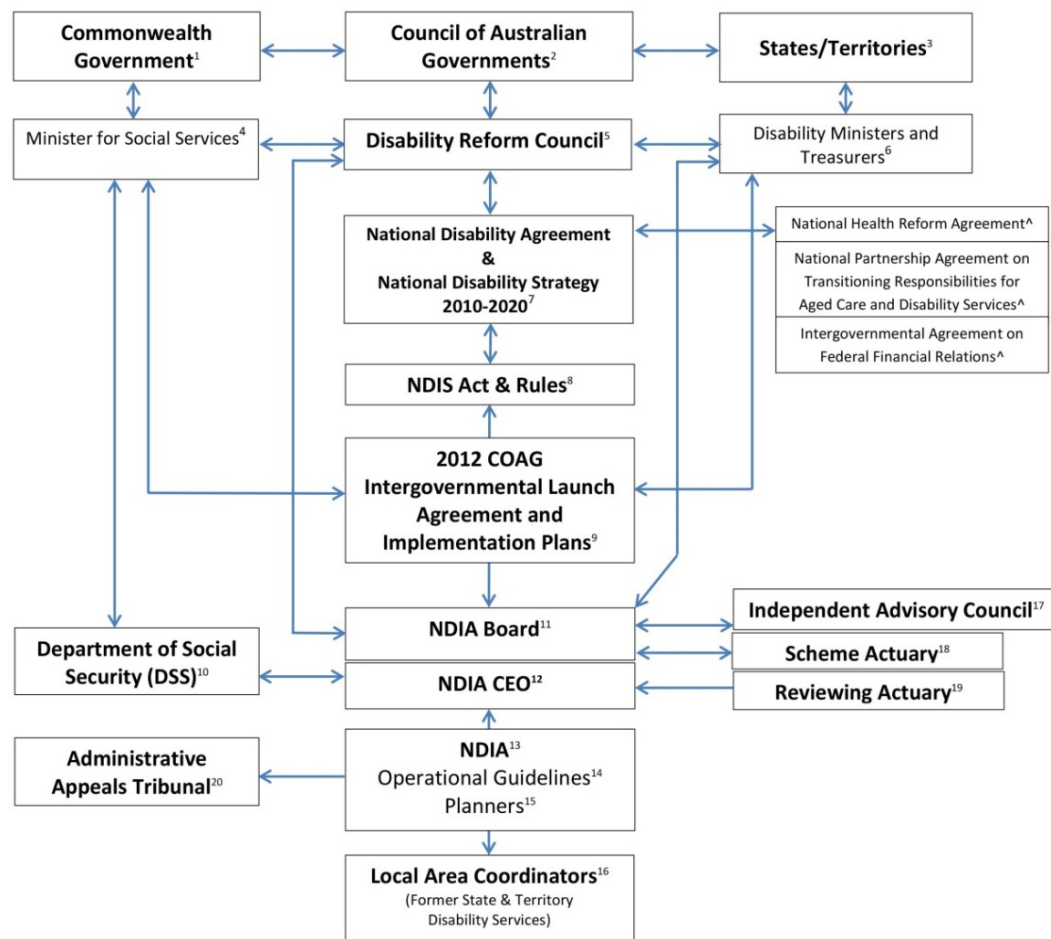
1.31 During the development of the NDIS, there was universal acceptance that the then current system was not working and was not providing adequate funding, care and support for people with disability. Many people with disability were unable to access the supports they required.

### **NDIS governance structure**

1.32 While the committee has yet to go into the governance relationships of the NDIS, Figure 1.1 below provides the reader with a schematic of the interactions involved in the NDIS' governance structure. This schematic does not include the further layer of interactions of the Senior Officials Working Group, the Design Policy Group and the Funding and Governance Working Group.



**Figure 1.1 NDIS governance structure**



**National Disability Insurance Scheme Governance Diagram**

1. Commonwealth Government.

2. Council of Australian Governments (COAG) - Intergovernmental agreements are agreed and signed between the Commonwealth and the States and Territories. COAG would advise the Minister of the need for amendments to the NDIS Act 2013 following consultation with the States and Territories.

3. State and Territory governments.

4. The Minister must consult the Ministerial Council about policy matters that relate to NDIS. The Minister must also inform the Ministerial Council of appointments and resignations. The Minister may, by legislative instrument, give directions to the Agency about the performance of its functions which must be complied with (s.121 NDIS Act). The Minister may also make National Disability Insurance Scheme rules (s. 209 NDIS Act).

5. The Ministerial Council can consider NDIS policy issues and can advise the Minister about such matters including making recommendations to COAG (s.12 NDIS Act)

6. Membership of the Ministerial Council will comprise the Treasurer and Minister with responsibility for disability reform from the Commonwealth and each State (s. 9 NDIS Act).

7. Five year multilateral agreement and ten year overarching strategic policy framework for disability reform. In interpreting the objects of the Act, regard must be had to the National Disability Strategy (s. 3(2)(c) NDIS Act).

<sup>^</sup> The National Disability Agreement is to be read in conjunction with the following agreements; *National Health Reform Agreement* and specifically the revised arrangements for roles and responsibilities of the Commonwealth and states for delivering basic community care services, *National Partnership Agreement on Transitioning Responsibilities for Aged Care and Disability Service*, and the *IGA on Federal Financial Relations* and particularly directions on performance reporting and payment arrangements.

8. *National Disability Insurance Scheme Act 2013* (NDIS Act) and the *National Disability Insurance Scheme Rules 2013* comprise the legislative instruments for the NDIS. A review of the Act is to occur on 1 July 2015 (s.208 NDIS Act).

9. The Intergovernmental Agreement for the National Disability Insurance Scheme (NDIS) Launch signed on 7 December 2012 by the Commonwealth Government and each host jurisdiction for the trial sites, to be read in conjunction with the Schedules.

10. There is payable to the Agency such money as is appropriated by the Parliament for the purposes of the Agency (s. 178 NDIS Act). As a CAC body, funding is provided to the NDIA through the Dept of Social Services (DSS). Funding is provided as administered however becomes departmental when transferred to NDIA. Source: DSS

11. The Board must provide quarterly & annual reports and information related to expenditure about a jurisdiction if requested by the Minister of that jurisdiction (s.123 NDIS Act).

12. The CEO must provide the Board with any significant advice from the Scheme Actuary (s.159 NDIS Act).

13. The NDIA is the Commonwealth Agency charged with the responsibility of delivering the NDIS (s.118 NDIS Act).

14. Operational Guidelines set out some of the Agency's operational information and are based on the NDIS Act and relevant NDIS Rules.

15. NDIA planners work with participants to develop their plans and approve the statement of participant's supports under delegated powers (s.33 NDIS Act).

16. Local Area Coordinators (LACS) work to connect people with disability with community based supports.

17. On its own initiative or at the written request of the Board, must provide advice to the Board (s.143 NDIS Act).

18. Each quarter, the Scheme Actuary must make estimates of the future expenditure and advise the CEO (s.180A NDIS Act).

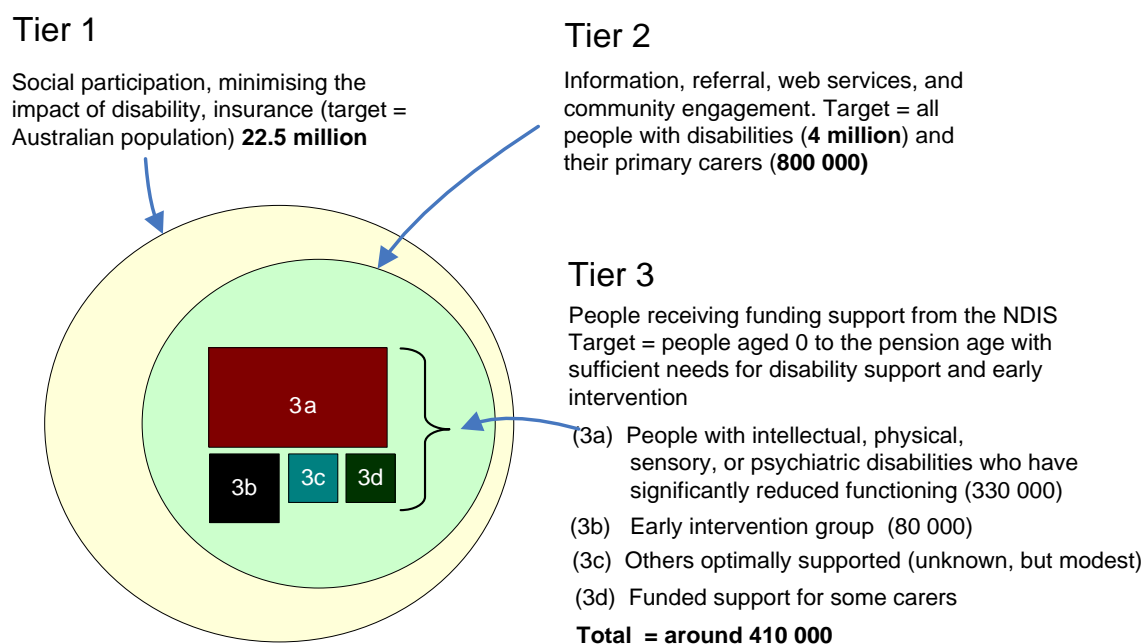
19. The Reviewing Actuary must review and report to the Board on each annual financial sustainability report and summary prepared by the Scheme Actuary. (s.180D & s.180E NDIS Act).

20. Applications to the AAT may only be made after an internal review decision has been made under subsection 100(6) (s.103 NDIS Act).

## Who is the NDIS for?

1.33 Based on the PC report, the NDIS has been established on the PC model comprising three tiers. There are three different populations of ‘customers’ and costs—with the costs inversely related to the size of the populations concerned.<sup>15</sup>

**Figure 1.2 The three tiers of the National Disability Insurance Scheme 2009 population estimates<sup>16</sup>**



1.34 The PC report provided the following explanation for Tiers 1-3 and what each is expected to consist of:

Tier 1: Everyone— every Australian, since it provides insurance against the costs of support in the event that they acquire a significant disability;

Tier 2: People with, or affected by, disability but not covered by the NDIS;

Tier 3: People with disability for whom NDIS-funded, individualised supports would be appropriate:

...[T]he critical entry requirements focus at those most in need. A person receiving funded support from the NDIS would have a disability that is, or is likely to be, permanent. The definition of ‘permanence’ would include people with long-term functional limitations who may only need episodic support. In addition, people would have to meet at least one of the following conditions. They would:

15 Productivity Commission, *Disability Care and Support*, 10 August 2011, p. 158.

16 Productivity Commission, *Disability Care and Support*, 10 August 2011, p. 158.

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have significantly reduced functioning in self-care, communication, mobility or self-management and require significant ongoing support (3a). As a result, the scheme would cover the support needs of people with major physical disabilities and cognitive impairments (mainly intellectual disability and significant and enduring psychiatric disability)

be in an early intervention group (3b). This would encompass people for whom there is good evidence that the intervention would be safe, cost-effective and significantly improve outcomes.

1.35 The majority of participants eligible for the Scheme will all come from 'Tier 3' — those receiving funded supports.

## **Conclusion**

1.36 There is support across the political spectrum for the NDIS and its overarching aim of enhancing the quality of life and the economic and social participation of Australians with disability.

1.37 There is also broad-based support to fully develop the Scheme's market-based mechanism which aims to provide greater choice and control for participants.

1.38 There are a number of critical elements envisaged by the PC that have yet to be examined by the committee that will play increasingly significant roles as the Scheme develops and transitions more participants, such as mainstream services, Tier 2, training, staffing, provider capacity and the community engagement and capacity building.

1.39 Examination of these issues together with assessing the implementation of the new NDIS trials sites in Western Australia, Northern Territory and the Australian Capital Territory, that commenced operation on 1 July 2014, and monitoring the existing trial sites, will be central to the committee's work plan over the next 12 months.

