

Chapter 2

Scheme progress

Introduction

2.1 This chapter provides a background and overview of activities that occurred during the 2016–17 year which relate to the implementation, performance, governance, administration and expenditure of the National Disability Insurance Scheme (NDIS or the Scheme).¹

2.2 The chapter covers current developments arising from the national rollout, including the four Quarterly Reports published in the last year by the National Disability Insurance Agency (NDIA). The chapter summarises the completed Australian National Audit Office (ANAO) performance audit and future potential audits; the Productivity Commission's interim report on NDIS costs; policy and legislation development; disability sector reform; and relevant measures announced by the Federal Government in the 2017–18 Budget. Issues arising from these sources, alongside written and oral evidence received by the committee, are discussed in Chapter Three.

Background

2.3 For the first time in Australia, a nationally consistent approach to support those living with significant and permanent disability is being implemented across the country. Unlike previous welfare-based funding models, the NDIS is a new way of investing in and building the capacity of people with disability who are eligible for support to boost their social and economic participation. Broadly, the NDIS provides support to people with disability, their families, and carers through individualised packages of support. The NDIS also has a broader role in helping people with disability access mainstream and community services.²

2.4 The Scheme operates under the *National Disability Insurance Scheme Act 2013* (NDIS Act) and is jointly governed by the Commonwealth, State and Territory Governments. The National Disability Insurance Agency (NDIA or the Agency) was established when the NDIS Act came into force in 2013 and is the organisation responsible for implementation and operation of the Scheme. The Board of the NDIA is responsible for managing the strategic direction of the Agency and is advised by the NDIS Independent Advisory Council (IAC).³

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- 1 Committee Resolution, available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/Role_of_the_Committee
 - 2 Parliamentary Library, Research Paper Series 2016–17, *The National Disability Insurance Scheme: a quick guide*, 3 March 2017, p. 1.
 - 3 National Disability Insurance Agency, *Annual Report 2015–16*, October 2016, p. 126.

National rollout of the NDIS

2.5 The NDIS became operational on 1 July 2013 with the commencement of the trial sites. At the conclusion of the trial (30 June 2016), the NDIS was active in nine locations across Australia. From 1 July 2016, the NDIS commenced transition to full Scheme on a geographical or age basis. At full Scheme, approximately 460 000 people will be supported by the NDIS. The disability workforce is expected to more than double in this time, from 73 000 full time equivalent jobs in 2013 before the trials began to 162 000 jobs when the Scheme is fully implemented.⁴

2.6 The rollout is expected to be completed progressively. The Australian Capital Territory completed transition to the Scheme in July 2017; New South Wales and South Australia are expected to have completed transition by July 2018; and Victoria, Queensland, Northern Territory, and Tasmania are expected to be completed by July 2019.

2.7 As at 30 June 2017, 90 638 participants had an approved plan.⁵ A breakdown of this figure is provided in Table 2.1. In addition to participants with an approved plan, a further 6134 children are supported in the Early Childhood Early Intervention (ECEI) gateway, resulting in a total of 96 772. However, it should be noted that the actual number of participants with an approved plan falls well below the projected bilateral estimates—116 555 participants should have had plan approvals—for the period.

Table 2.1—NDIS participants with approved plans at 30 June 2017

State/Territory	NSW	VIC	QLD	WA	SA	TAS	ACT	NT
Participants with approved plans	43 936	15 434	7188	3782	11 634	2229	6047	388

Source: National Disability Insurance Scheme, *4th Quarterly Report*, 30 June 2017 p. 2.

Western Australia

2.8 Unlike other jurisdictions, Western Australia (WA) trialled two service delivery models (WA NDIS and NDIA NDIS) from July 2014 to June 2016. Following the trial, an independent evaluation of the two models was conducted by Stantons International, although the quality of the evaluation was criticised by the Department of Social Services (DSS) for using too small a sample of participants and 'not focusing on outcomes...which was not very useful'.⁶ Subsequently, a Bilateral Agreement was finalised by the Commonwealth and West Australian Governments

4 The Hon. Christian Porter MP, Minister for Social Services, 'Guaranteeing the NDIS and providing stronger support for people with disability', *Media release*, 9 May 2017.

5 National Disability Insurance Scheme, *4th Quarterly Report*, 30 June 2017 p. 2.

6 Ms Felicity Hand, Deputy Secretary, Disability and Housing, Department of Social Services, *Committee Hansard*, 2 March 2017, p. 137.

which resolved that a nationally consistent but state-run NDIS would be implemented in WA with transition to commence from July 2017. The Scheme was expected to roll out in WA geographically from 1 July 2017, with eligible people to gain access at different times.⁷ However, in August 2017, media reported that the WA Government was reconsidering its approach to the Scheme.⁸ According to reports, while the previous WA Government had signed onto the WA-delivered program, there are ongoing discussions between the WA and Commonwealth Governments on whether WA should switch to the national Scheme. Minister Porter, in an interview in March 2017, expressed his support for WA to join the national Scheme with a range of conditions placed around the WA model.⁹ In August 2017, the Minister for Disability Services, the Hon. Stephen Dawson MLC, indicated that a final decision could be forthcoming in the next month or so.¹⁰

Transition of Commonwealth programs to the NDIS

2.9 The NDIS will eventually replace a range of Commonwealth funded disability programs. There are 17 programs transitioning to the Scheme which are administered by DSS or the Department of Health. As the Scheme becomes available in each area, participants should be able to access equivalent services through the NDIS. According to DSS, for people deemed ineligible for the Scheme, the Commonwealth will continue to provide continuity of support through existing programs.¹¹ However, during the committee's inquiry into the *Provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition*, it received evidence which indicated that the transition into the NDIS of programs such as Partners in Recovery, Personal Helpers and Mentors, Day to Day Living and Mental Health Respite: Carers Support, amongst others, will result in a significant number of current clients of those services not accessing the Scheme.

7 The Hon. Christian Porter MP, Commonwealth Minister for Social Services, the Hon. Colin Barnett MLA, WA Premier, the Hon. Donna Faragher MLC, WA Minister for Planning, Disability Services, 'Governments sign bilateral agreement on local delivery of NDIS in WA', *Media release*, 1 February 2017.

8 Taelor Pelusey, *NDIS decision could come next month*, *The West Australian*, 11 August 2017, <https://thewest.com.au/news/south-west/ndis-decision-could-come-next-month-ng-b88563213z> (accessed 30 August 2017).

9 6PR Morning Program with Gareth Parker, 16 March 2017, <https://christianporter.dss.gov.au/transcripts/6pr-morning-program-with-gareth-parker-2> (accessed 6 September 2017).

10 Taelor Pelusey, *NDIS decision could come next month*, *The West Australian*, 11 August 2017, <https://thewest.com.au/news/south-west/ndis-decision-could-come-next-month-ng-b88563213z> (accessed 30 August 2017).

11 Department of Social Services, *Transition of Commonwealth programs to the NDIS*, <https://www.dss.gov.au/disability-and-carers/programs-services/for-people-with-disability/national-disability-insurance-scheme/transition-of-commonwealth-programs-to-the-national-disability-insurance-scheme-ndis> (accessed 16 August 2017).

National Disability Insurance Agency activities

2.10 This section briefly considers the NDIA's activities over the year, and summarises notable findings from the Agency's quarterly reports. The section concludes with the Agency's governance arrangements.

2.11 The first year of the national transition to the NDIS presented a number of challenges for the Agency. Portal issues significantly impacted the Agency's ability to meet the bilateral estimates for 2016–17 and had a flow-on effect to its delivery of services.¹² Poor participant and provider experiences resulted in a decision by the Agency to conduct an end-to-end review of its pathways and improve its future approach.¹³ Following the Agency's 2017 Price Review, participant and provider workshops, and the Productivity Commission's report, the NDIA advised that an Independent Pricing Review would be undertaken by McKinsey & Company. The review is expected to be completed by the end of 2017.¹⁴

MyPlace portal

2.12 From 1 July 2016, the NDIS Participant Portal was replaced by a new portal called 'MyPlace'. Within weeks, service providers were reporting issues with the new system—most importantly the inability to process claims for payment.¹⁵ Some service providers experienced significant delays in payment, leading to financial stress and the cessation of service provision. The cessation of services, or the inability to pay for them, resulted in participants not being able to access supports.

2.13 At the end of July 2016, NDIA Chief Executive Officer, Mr David Bowen, acknowledged that there were some problems with the migration of data from the trial sites.¹⁶ A week later, the Minister for Social Services, the Hon. Christian Porter MP, advised that, 'the main issues have been rectified and outstanding payment requests are being prioritised'. Concurrently, Minister Porter announced an independent review

12 The Hon. Christian Porter MP, Minister for Social Services, 'NDIS MyPlace portal', *Media release*, 31 August 2016.

13 National Disability Insurance Agency, *Participants and providers work with NDIS to improve processes*, 6 June 2017, <https://www.ndis.gov.au/news/ceo-message-6june.html> (accessed 5 July 2017).

14 National Disability Insurance Agency, *Letter to Registered NDIS Providers from CEO David Bowen*, 12 June 2017, <https://www.ndis.gov.au/news/letter-to-ndia-registered-providers.html> (accessed 5 July 2017).

15 The Hon. Christian Porter MP, Minister for Social Services, and the Hon. Jane Prentice MP, Assistant Minister for Social Services and Disability Services, 'Review of the Implementation of the NDIS MyPlace Portal', *Media release*, 5 August 2016.

16 ABC, 'NDIS payment breakdown continues with no end in sight', 29 July 2016, <http://www.abc.net.au/worldtoday/content/2016/s4509826.htm> (accessed 4 July 2017).

of the MyPlace portal 'to determine how and why the problems arose so we can be confident that they will not reoccur'.¹⁷

2.14 By the end of August 2016, successful payments to providers and participants had increased from around 70 per cent to 96 per cent, however the diversion of resources to achieve this outcome resulted in a slowdown of plan approvals.¹⁸ The government emphasised that providers affected by MyPlace portal issues had received individual attention, and that the number of providers and participants who were still experiencing problems had reduced significantly.

2.15 Consequently, the then Chair of the NDIA Board, Mr Bruce Bonyhady, was requested to immediately take a number of actions to resolve outstanding issues concerning information provision and to ensure that the transitional plan remains on target for the first two quarters of transition. The actions included:

- establishment of an NDIS Transition Management Team;
- appointment of a Chief Operating Officer for the transition;
- more robust reporting on key metrics around portal issue resolution and plan approval rates; and
- establishment of stronger information sharing arrangements between the NDIA, DSS and Department of Human Services (DHS).¹⁹

2.16 The Council of Australian Governments Disability Reform Council (the DRC) met on 2 September 2016 and unanimously agreed that the impact and scale of the issues had been unacceptable for NDIS participants, their carers, and providers, however it noted that the NDIA had fulfilled the actions requested by the Minister. The DRC committed to working with the NDIA to get participants plans back on track by the end of 2016. To this end, it agreed that:

The NDIA will provide monthly reports to Council members to ensure appropriate progress against agreed actions and transition targets for plan approvals in relation to bilateral targets in each jurisdiction and monthly reports on key metrics of payment portal performance.²⁰

2.17 In December 2016, the DRC reported that the issues experienced by participants and providers in implementing the new MyPlace portal had been largely resolved and users of the MyPlace portal reported a significantly improved

17 The Hon. Christian Porter MP, Minister for Social Services, and the Hon. Jane Prentice MP, Assistant Minister for Social Services and Disability Services, 'Review of the Implementation of the NDIS MyPlace Portal', *Media release*, 5 August 2016.

18 The Hon. Christian Porter MP, Minister for Social Services, 'NDIS MyPlace portal', *Media release*, 31 August 2016.

19 The Hon. Christian Porter MP, Minister for Social Services, 'NDIS MyPlace portal', *Media release*, 31 August 2016.

20 Disability Reform Council, *Communiqué*, 2 September 2016, pp. 1–2.

experience.²¹ However, people involved in the Scheme continue to experience a myriad of portal issues, which is discussed further in Chapter 3.

2.18 In August 2016, an independent review was conducted by PricewaterhouseCoopers (PwC). PwC concluded in its report to government that 'the root cause of payment failure was not a single catastrophic event, but rather a series of compounding issues which prevented a viable option to delay ICT implementation'.²² In assessing the adequacy of the NDIA's practices and businesses processes in implementing the ICT system, PwC found that:

The NDIA has not implemented a comprehensive Service Delivery Operating Model (SDOM). This has impacted the successful execution of the Full Scheme Launch and put the existing organisational operating model under stress. Stakeholder engagement, training and preparedness were insufficient, and necessary training materials were not finalised for staff and providers by 29 June 2016.²³

2.19 PwC made six recommendations to address identified issues with implementing the MyPlace portal. The recommendations focus on continual quality improvements as more participants transition to the Scheme, and include:

- implement and embed the SDOM;
- enhance program management fundamentals including inter and intra-agency governance and an integrated program plan;
- monitor payments and service recovery against agreed performance metrics;
- review the resourcing model for Full Scheme Transition;
- undertake a comprehensive Stakeholder and Change Impact Assessment; and
- tailor and measure the Change Management approach.²⁴

2.20 The DRC also discussed a number of changes to the NDIS governance structure to enable governments to respond and implement solutions quickly as issues over transition arise.²⁵ Changes to the Agency's governance arrangements are discussed further at paragraph 2.55.

Review of participant and provider pathways

2.21 Towards the end of 2016–17, the then NDIA Chief Executive Officer, Mr David Bowen, released a statement acknowledging that even before the

21 Disability Reform Council, *Communiqué*, 5 December 2016, p. 1.

22 PricewaterhouseCoopers, *National Disability Insurance Scheme MyPlace Portal Implementation Review – Final Report*, 31 August 2016, p. 2.

23 PricewaterhouseCoopers, *National Disability Insurance Scheme MyPlace Portal Implementation Review – Final Report*, 31 August 2016, p. 2.

24 PricewaterhouseCoopers, *National Disability Insurance Scheme MyPlace Portal Implementation Review – Final Report*, 31 August 2016, p. 2.

25 Disability Reform Council, *Communiqué*, 2 September 2016, p. 4.

commencement of transition to full Scheme in July 2016, the quality of the NDIA's internal preparation warranted significant improvement.²⁶ Mr Bowen noted that the Agency's processes and systems had not resulted in a high-quality experience for participants or providers and that the Agency had been working to identify areas for improvement.²⁷

2.22 The Agency sought feedback from participants, providers, peak disability bodies and other stakeholders from April 2017. Following that process, the Agency advised that:

...400 specific improvement ideas and 200 solution concepts have been generated. Detailed work is currently underway to incorporate participants' and providers' insights to ensure the NDIA delivers a high quality, outcomes focussed participant and provider experience that is simple, clear and accessible, at the same time as ensuring the Scheme's financial sustainability...The NDIA is committed to getting the proposed approach right. As a result, full implementation, which will be dealt with as a matter of priority, may take somewhat longer because of the need to retrain staff; implement systems changes; and significantly improve communications...During the interim period, until the full proposal can be implemented, the NDIA will work hard to actively engage with stakeholders and to provide information on progress.²⁸

2.23 In June 2017, the Chair of the NDIA Board, Dr Helen Nugent AO, and Mr Bowen reported the findings of the participant and provider pathways review to the DRC.²⁹ By July 2017, the DRC was expected to have reviewed the NDIA's approach to developing and implementing participant plans, with a focus on plan quality, participant experience, and outcomes.³⁰ However, by the end of August 2017, no public information on the DRC's progress against this term of reference was available.

Annual review of the NDIS Price Guide

2.24 The NDIA is required to ensure that the disability services market operates in a way that will help the NDIS achieve its objectives. To this end, the Agency applies price controls to a range of supports that can be purchased under the NDIS. Price

26 National Disability Insurance Agency, *Participants and providers work with the NDIS to improve processes*, 6 June 2017, <https://www.ndis.gov.au/news/ceo-message-6june.html> (accessed 5 July 2017).

27 National Disability Insurance Agency, *Participants and providers work with the NDIS to improve processes*, 6 June 2017, <https://www.ndis.gov.au/news/ceo-message-6june.html> (accessed 5 July 2017).

28 National Disability Insurance Agency, *Participants and providers work with the NDIS to improve processes*, 6 June 2017, <https://www.ndis.gov.au/news/ceo-message-6june.html> (accessed 5 July 2017).

29 Disability Reform Council, *Communiqué*, 16 June 2017, p. 1.

30 Disability Reform Council, *Terms of Reference*, April 2017, p. 3.

controls are monitored by the Agency through an annual price review to ensure that the NDIS is delivering value for money and promoting choice in the marketplace.³¹

2.25 In the 2017 Price Review, feedback from stakeholders was used by the Agency to determine which price changes should be implemented. The 2017–18 Price Guide for NDIS Service Providers was published in late May 2017 and took effect from 1 July 2017. The following changes were incorporated:

- a 4.5 per cent increase in prices for Personal Care and Community Participation in all jurisdictions. The base rate for these supports, delivered between Monday to Friday, increased from \$42.79 to \$44.72 in the eastern states, with higher rates available for supports delivered out of hours and on weekends, and higher rates applicable for participants requiring high intensity supports;
- a 1.94 per cent increase in price levels for all other supports that are subject to growth in wage costs, to be applied nationally, except for Therapy supports, which remain unchanged;
- increased price loadings for the delivery of supports to participants in remote areas (20 per cent) and very remote areas of Australia (25 per cent); and
- extension of the cancellation policy to allow providers to charge up to two participant cancellations for therapeutic supports per annum.³²

2.26 The Chief Executive Officer of National Disability Services (NDS), Mr Ken Baker, expressed disappointment with the results of the Agency's Price Review.³³ Mr Baker noted that the announcement will only enable some services to keep pace with inflation, with lesser increases for others, and no increase at all for therapy services. He argued that pricing remains inadequate for providers of disability services:

These pricing decisions effectively ignore evidence provided to a price review earlier this year which promised to test the assumptions that underlie the hourly rate...NDIS prices are not where they need to be to ensure the highest-quality services for people with disability.³⁴

2.27 Following its 2017 Price Review, the NDIA's Board and management commissioned McKinsey & Company to immediately undertake an independent pricing review and report by the end of 2017. Mr Bowen outlined the decision to undertake an independent review in a letter to providers:

Some providers argued that existing prices do not allow adequate recovery of their costs, impeding their ability to make a return and acting as a barrier to market growth. On the other hand, some participants argued that

31 National Disability Insurance Agency, *2017 Price Controls Review—Discussion Paper*, March 2017, p. 1.

32 National Disability Insurance Agency, *Pricing and payment*, <https://www.ndis.gov.au/providers/pricing-and-payment.html> (accessed 5 July 2017).

33 National Disability Services, 'NDIS prices continue to fall short', *Media release*, 12 June 2017.

34 National Disability Services, 'NDIS prices continue to fall short', *Media release*, 12 June 2017.

providers are overpricing supports in some categories. More detailed work is required to gain a deeper understanding of these divergent perspectives.³⁵

2.28 In making the decision, several sources had been taken into account, including perspectives from providers and participants, economic data, and Wage and Consumer Price Indexes.³⁶ The terms of reference for the independent review are as follows:

- (1) Provide recommendations in relation to improved pricing effectiveness, including but not limited to:
 - national versus regional pricing;
 - pricing of services with different levels of complexity;
 - pricing of short stay support, and for emergency and crisis supports;
 - thin and undersupplied markets, particularly in regional and remote areas;
 - relative provider efficiencies (including overheads);
 - adequacy of provider returns; and
 - effectiveness of the Hourly Return approach used to set prices.
- (2) Provide recommendations in relation to the potential early de-regulation of price in more mature sub-markets and the glide path for the eventual de-regulation of price more generally.³⁷

Quarterly reports

2.29 In accordance with Section 174 of the NDIS Act, the Board members of the NDIA must prepare a report on operations of the Agency for each period of three months starting on 1 July, 1 October, 1 January, and 1 April. The NDIS Performance Reporting Framework contained in the Bilateral Agreements between the Commonwealth and State and Territory Governments outlines the outcomes, key performance indicators, and performance measures against which to report.³⁸

2.30 The committee notes that it is difficult to draw conclusions about the progress of the Scheme as the 2016–17 Quarterly Reports have used metrics which do not

35 National Disability Insurance Agency, *Letter to Registered NDIS Providers from CEO David Bowen*, 12 June 2017, <https://www.ndis.gov.au/news/letter-to-ndia-registered-providers.html> (accessed 5 July 2017).

36 National Disability Insurance Agency, *Letter to Registered NDIS Providers from CEO David Bowen*, 12 June 2017, <https://www.ndis.gov.au/news/letter-to-ndia-registered-providers.html> (accessed 5 July 2017).

37 National Disability Insurance Agency, *Letter to Registered NDIS Providers from CEO David Bowen*, 12 June 2017, <https://www.ndis.gov.au/news/letter-to-ndia-registered-providers.html> (accessed 5 July 2017).

38 National Disability Insurance Scheme, *2nd Quarterly Report*, 31 December 2016, p. 2.

enable clear comparison and analysis.³⁹ The NDIA should be reporting in a way that aids external scrutiny; to this end, it could consider whether improvements that promote transparency can be applied to future quarterly reporting.

1st Quarter 2016–17 notable findings

2.31 The need to respond to initial IT issues caused a delay in the Agency's phasing of participants into the Scheme in line with Bilateral Agreements. Consequently, the DRC and the NDIA agreed to a Transition Recovery Plan which indicated that the Agency would aim to meet half of the quarter one bilateral estimate for 2016–17, with the cumulative quarter two estimate for 2016–17 to remain the same.⁴⁰

2.32 Participant plan approval numbers at the end of September 2016 were much lower than the bilateral estimates due to the Agency's diversion of resources to address IT and payment issues. Table 2.2 provides a breakdown of plan approvals compared to bilateral estimates by state and territory as at 30 September 2016.

Table 2.2—Plan approvals compared to estimates as at 30 September 2016

State/Territory	2016–17 Q1 approved plans	2016–17 Q1 bilateral estimate (revised)	2016–17 Q1 bilateral estimate (original)
NSW	4397	7459	14 919
VIC	670	1062	2125
QLD	376	500	1000
WA	156	198	396
SA	751	386	772
TAS	142	127	255
ACT	948	797	797
NT	-	-	-
Total	7440	10 529	20 264

Source: National Disability Insurance Scheme, *1st Quarterly Report*, 30 September 2016, p. 46.

39 For example, the numbers of people awaiting a plan were listed in the Q3 and Q4 reports, but not included in the Q1 and Q2 reports. A breakdown of Administrative Appeals Tribunal (AAT) determinations were provided in the Q1 and Q2 reports, but not provided in Q3 or Q4 (eg. decision affirmed, set aside, pending, varied, dismissed or withdrawn).

40 National Disability Insurance Scheme, *1st Quarterly Report*, 30 September 2016, p. 46.

2.33 During the first quarter of 2016–17, the NDIS grew by almost 11 000 people. By 30 September 2016, 37 721 participants had approved plans, and \$3.3 billion had been committed to participants. By the end of September 2016, the NDIA had received 6857 service provider registration requests of which 3696 were approved.⁴¹ In comparison to previous quarters, results from the participation satisfaction survey showed a reduction in overall satisfaction with the Agency in the first quarter of 2016–17.⁴²

2.34 A number of pressures were identified during the first quarter of the year. These included:

- higher than expected numbers of children entering the Scheme;
- increasing package costs over the impacts of inflation and ageing;
- potential participants continuing to approach the Scheme;
- lower than expected participants exiting the Scheme; and
- a mismatch between benchmark package costs and actual package costs.⁴³

2.35 Two specific initiatives were introduced by the Agency to address these pressures—the Early Childhood Early Intervention (ECEI) approach and the First Plan approach. In addition to these initiatives, the NDIA put in place a Sustainability and Liability Review Working Group led by the CEO to oversee the initiatives and address the identified cost pressures.⁴⁴

2.36 The ECEI approach provides a gateway to the NDIS for eligible children aged 0–6 years to enter as a participant. The ECEI approach is intended to provide support for children to access mainstream and community services when they do not meet the eligibility criteria but need assistance to access services. According to the NDIA, the First Plan process is a method for better aligning levels of function and need with support packages for participants when they first enter the Scheme.⁴⁵ However, the First Plan process caused many of the issues of dissatisfaction with regards to the planning process (discussed in Chapter 3). The NDIA have now altered the model as indicated in its Q4 report.

2nd Quarter 2016–17 notable findings

2.37 During the second quarter of 2016–17, the NDIS grew by more than 25 000 people. A further 23 494 participants received an approved plan and 2267 were referred to the ECEI approach.⁴⁶ For participants who received a plan in Q2, close to

41 National Disability Insurance Scheme, *1st Quarterly Report*, 30 September 2016, p. 36.

42 National Disability Insurance Scheme, *1st Quarterly Report*, 30 September 2016, p. 34.

43 National Disability Insurance Scheme, *1st Quarterly Report*, 30 September 2016, p. 60.

44 National Disability Insurance Scheme, *1st Quarterly Report*, 30 September 2016, p. 60.

45 National Disability Insurance Scheme, *1st Quarterly Report*, 30 September 2016, p. 60.

46 National Disability Insurance Scheme, *2nd Quarterly Report*, 31 December 2016, p. 7.

25 per cent received a plan within 30 days of being made eligible for the Scheme, and a further 30 per cent over 90 days.⁴⁷

2.38 Participant plan approval numbers at the end of December 2016 were lower than the original bilateral estimates but in line with the revised Q2 estimates. Table 2.3 provides a breakdown of plan approvals compared to bilateral estimates by state and territory as at 30 December 2016.

Table 2.3—Plan approvals compared to estimates as at 30 December 2016

State/Territory	Plans approved in 2016–17 Q2	Plans approved in 2016–17 total	Plans approved in 2016–17 total incl. ECEI	End of Q2 2016–17 revised estimate	End of Q2 2016–17 bilateral estimate
NSW	14 772	19 169	20 976	20 259	24 547
VIC	3416	4086	4378	3733	6110
QLD	1835	2211	2268	2227	4218
WA	301	457	457	792	792
SA	2329	3080	3191	1548	1548
TAS	341	483	483	314	511
ACT	494	1442	1442	977	977
NT	6	6	6	1	1
Total	23 494	30 94	33 201	29 851	38 704

Source: National Disability Insurance Scheme, *2nd Quarterly Report*, 30 December 2016, p. 3.

2.39 By 30 December 2016, 61 215 participants had approved plans, and \$5.1 billion had been committed for participant supports. Similar to Q1, committed support was again higher than revenue.⁴⁸ By the end of December 2016, the NDIA had received 8076 service provider registration requests, of which 5110 were approved.⁴⁹

2.40 Results from the participation satisfaction survey showed a similar rate of satisfaction with the agency as Q1, and identified the same five pressures.⁵⁰ With

47 National Disability Insurance Scheme, *2nd Quarterly Report*, 31 December 2016, p. 65.

48 National Disability Insurance Scheme, *2nd Quarterly Report*, 31 December 2016, p. 47.

49 National Disability Insurance Scheme, *2nd Quarterly Report*, 31 December 2016, p. 11.

50 National Disability Insurance Scheme, *2nd Quarterly Report*, 31 December 2016, p. 84.

regards to the mismatch between benchmark package costs and actual package costs, the Agency noted that a large driver of the disparity is participants in shared supported accommodation. According to the Agency, this is a legacy issue from the existing disability system that is expected to be present for several years.⁵¹

3rd Quarter 2016–17 notable findings

2.41 During the third quarter of 2016–17, the NDIS grew by over 16 000 people. By 31 March 2017, 75 567 participants had approved plans, and \$6.3 billion of support had been committed to participants. By the end of the quarter, \$2.2 billion of support had been paid to providers and participants.

2.42 Participant plan approval numbers at the end of March 2017 were much lower than the bilateral estimates. Table 2.4 provides a breakdown of plan approvals compared to bilateral estimates by state and territory as at 31 March 2017.

Table 2.4—Plan approvals compared to estimates as at 31 March 2017

State/Territory	Prior quarters	2016-17 Q3	Total excluding ECEI	Total including ECEI	Bilateral estimates
NSW	28 774	7261	36 035	38 163	45 937
VIC	9369	2454	11 823	11 980	13 973
QLD	2572	2481	5053	5177	10 296
WA	2951	489	3440	3440	6049
SA	10 198	854	11 052	11 081	11 467
TAS	1645	232	1877	1877	1938
ACT	5540	448	5988	5989	5075
NT	161	138	299	299	413
Total	61 210	14 357	75 567	78 006	95 148

Source: National Disability Insurance Scheme, *3rd Quarterly Report*, 31 March 2017, p. 4.

2.43 The Agency reported that the overall percentage of people exiting the Scheme was lower than expected. Exits are an important sustainability control for ensuring that only participants that continue to meet the access criteria of the Act receive

51 National Disability Insurance Scheme, *2nd Quarterly Report*, 31 December 2016, p. 84.

individualised funding.⁵² The majority of participants who exited the Scheme had a section 24 plan.⁵³

2.44 A higher proportion of active participants with First Plan approvals in the third quarter of 2016–17 had average annualised committed supports greater than \$30 000, compared with active participants who entered in prior quarters.⁵⁴

2.45 There was an increase of 33 per cent in registered providers with 6814 service providers registered by the end of the quarter, noting that 32 registrations had ended during the third quarter.⁵⁵ Pressures identified in Q1 and Q2 were again identified in Q3.⁵⁶

4th Quarter 2016–17 notable findings

2.46 In 2016–17, a total of 60 357 participants entered the Scheme and received an approved plan. In addition, there were 6134 children with a confirmed referral to the ECEI gateway. This represented 83 per cent of the cumulative bilateral estimate to 30 June 2017.⁵⁷

2.47 In the period of 1 July 2013 to 30 June 2017, \$7.3 billion of support has been committed to 90 638 participants who have had at least one approved plan. This includes \$1.5 billion of support in respect of the trial years, \$3.2 billion in respect of 2016–17, and \$2.6 billion for later years (due to current plans in place that have an end date past 30 June 2017).⁵⁸

2.48 Consistent with previous reports, the Q4 report acknowledged the same pressures which require monitoring, such as higher than expected number of participants approaching the Scheme, and a degree of committed support in participant plans increasing above indexation.⁵⁹

2.49 The Q4 report noted that limitations continue to exist in the data available for reporting. Specifically, data is not available to report on:

- the number of participants that are culturally and linguistically diverse;

52 National Disability Insurance Scheme, *3rd Quarterly Report*, 31 March 2017, p. 15.

53 A section 24 plan refers to participants who meet certain disability requirements, such as: the participant has a disability that is attributable to one or more intellectual, cognitive, neurological, sensory or physical impairments or to one or more impairments attributable to a psychiatric condition; the impairment is likely to be permanent; the impairment results in substantially reduced functional capacity to undertake activities; the impairment affects capacity for social or economic participation; and the participant is likely to require support under the NDIS for their lifetime.

54 National Disability Insurance Scheme, *3rd Quarterly Report*, 31 March 2017, p. 30.

55 National Disability Insurance Scheme, *3rd Quarterly Report*, 31 March 2017, p. 39.

56 National Disability Insurance Scheme, *1st Quarterly Report*, 30 September 2016, p. 60.

57 National Disability Insurance Scheme, *4th Quarterly Report*, 30 June 2017, p. 3.

58 National Disability Insurance Scheme, *4th Quarterly Report*, 30 June 2017, p. 5.

59 National Disability Insurance Scheme, *4th Quarterly Report*, 30 June 2017, p. 5.

- the amount of supports provided as in-kind for each participant. This in turn affects reporting on utilisation at the participant level;
- participants exiting the Early Childhood Early Intervention (ECEI) gateway;
- decision reviews; and
- service provider complaints and investigations.⁶⁰

2.50 Ongoing enhancements to the Customer Relationship Management system, data warehouse and business practices are intended to address these issues in future reports.⁶¹

2.51 The report also discussed its end to end review of the participant and provider pathways, and advised that the current approach is being redesigned to deliver a pathway that is participant-centric, outcomes focused and based on insurance principles. Changes will be piloted before nation-wide rollout.⁶²

2.52 Since the Scheme's inception there have been 268 access, plan, and plan review related Administrative Appeals Tribunal appeals (0.19 per cent of all access decisions) and 4968 complaints made (5.1 per cent of all participants).

2.53 In relation to financial sustainability, the Q4 report highlighted the same five cost pressures discussed above, however, one of the two specific initiatives put in place to manage these trends has changed. The First Plan Process seems to have been replaced by the reference package and planning process. According to the NDIA, the reference package and planning process is a method for better aligning the support need with support packages for participants when they first enter the Scheme.⁶³ However, the methodology will require ongoing refinement to ensure the right assessment tools and questions are used.⁶⁴

2.54 The numbers of participant plan approvals at the end of June 2017 were much lower than the expected bilateral estimates. Table 2.5 provides a breakdown by state and territory as at 30 June 2017.

Table 2.5—Plan approvals compared to estimates as at 30 June 2017

State/Territory	Prior quarters	2016–17 Q4	Total excluding ECEI	Total including ECEI	Bilateral estimates
NSW	36 029	7 907	43 936	48 266	55 333
VIC	11 823	3611	15 434	16 484	20 205

60 National Disability Insurance Scheme, *4th Quarterly Report*, 30 June 2017, p. 9.

61 National Disability Insurance Scheme, *4th Quarterly Report*, 30 June 2017, p. 9.

62 National Disability Insurance Scheme, *4th Quarterly Report*, 30 June 2017, p. 12.

63 National Disability Insurance Scheme, *4th Quarterly Report*, 30 June 2017, p. 39.

64 National Disability Insurance Scheme, *4th Quarterly Report*, 30 June 2017, pp. 39–40.

QLD	5054	2134	7188	7442	14 966
WA	3440	342	3 782	3782	5301
SA	11 051	583	11 634	12 116	12 887
TAS	1877	352	2229	2247	2242
ACT	5987	60	6047	6047	5075
NT	299	89	388	388	546
Total	75 560	15 078	90 638	96 772	116 555

Source: National Disability Insurance Scheme, *4th Quarterly Report*, 30 June 2017, p. 4.

Governance arrangements

2.55 Under the NDIS Act, Board members are appointed on a part-time basis for three years. However, the contracts of the first NDIA Board were extended to the end of December 2016. At the conclusion of its term, the first Chair, Mr Bruce Bonyhady, was replaced by Dr Helen Nugent AO.

2.56 In March 2016, the DRC agreed to increase the size of the Board from eight members and a Chair, to eleven members and a Chair. According to the DRC, the additional three Board members would enable greater stability and diversity during transition to full Scheme.⁶⁵ The Commonwealth introduced legislation to this effect and the *National Disability Insurance Scheme Amendment Act 2016* received Royal Assent on 5 May 2016.

2.57 At its last meeting for the year in June 2017, the DRC agreed to undertake further work on NDIS governance reform for full Scheme and to discuss this at its next meeting.⁶⁶

2.58 On 19 July 2017, the Board announced that following Mr David Bowen's retirement, Mr Rob De Luca had been appointed as the next CEO of the NDIA to commence 28 August 2017. Mr De Luca was the Managing Director of Bankwest, a position which he held for five years.⁶⁷

Australian National Audit Office

2.59 The Australian National Audit Office (ANAO) completed one performance audit in relation to the NDIS. The *NDIS Management of Transition of the Disability Services Market* was the first in a series of potential audits to be conducted by the

65 Disability Reform Council, *Communiqué*, 4 March 2016, p. 3.

66 Disability Reform Council, *Communiqué*, 16 June 2017, p. 2.

67 The Hon. Christian Porter MP, Minister for Social Services, and the Hon. Jane Prentice MP, Assistant Minister for Social Services and Disability Services, 'Government welcomes new NDIA Chief', *Media release*, 19 July 2017.

ANAO as part of a five-year audit strategy. The ANAO is expected to table a second report *Decision-making controls for sustainability—NDIS access* in August 2017.

NDIS—Management of Transition of the Disability Services Market

2.60 The ANAO's audit report was published in November 2016. The objective of the audit was to assess the effectiveness to date of the DSS and the NDIA's management of the approach to transitioning the disability services market to the NDIS market arrangements. In carrying out the audit, the ANAO considered whether:

- the approach by the department and the NDIA to transition the market was informed by lessons learnt from the trial sites and other relevant market transformations;
- the department and the NDIA have effectively considered implementation issues in their management of the approach to transitioning the market;
- the Sector Development Fund has been used strategically to support and inform the transition; and
- the department and the NDIA have effective mechanisms to continue to adjust and refine their approach to transitioning the market.⁶⁸

Planning the market transition

2.61 The ANAO examined whether management of the transition of the disability services market is underpinned by effective governance arrangements; clear roles and accountabilities; and a strategic approach to market regulation and transition. It also considered whether there are processes in place to monitor implementation and whether the Sector Development Fund is being used strategically to support the market transition.

2.62 The ANAO found that, within the NDIS intergovernmental governance arrangements, the processes and timeframes for collective decision-making have been inconsistent with the timeframes for the rollout of the Scheme. This, along with a lack of clarity over roles and responsibilities, has contributed to delays, risk, and complexity. Furthermore, there is limited evidence of a strategic approach to the use of the Commonwealth's \$146 million Sector Development Fund in the first three years of the Fund's administration.⁶⁹

Implementing the market transition

2.63 The ANAO examined whether DSS and the NDIA have in place a program of work to transition the market, including how lessons learned from the NDIS trials were used to inform NDIS policy and implementation; and whether risk management arrangements are in place to identify and mitigate risks associated with the market transition.

68 Australian National Audit Office, *NDIS—Management of the Transition of the Disability Services Market*, Audit Report No. 24, 2016–17, p. 7.

69 Australian National Audit Office, *NDIS—Management of the Transition of the Disability Services Market*, Audit Report No. 24, 2016–17, p. 9.

2.64 The ANAO found that both DSS and the NDIA captured, analysed and used lessons from the trial sites to develop market policy and operational settings in response to feedback and experience. While the department did not have a clearly documented work program to implement its disability workforce development responsibilities, the NDIA had documented a program of activities to operationalise its market transition responsibilities. However, there is no published overall work plan which sets out timeframes and deliverables. The ANAO concluded that although there is a high degree of executive oversight of NDIS risks within both DSS and the NDIA, opportunities remain to enhance both intergovernmental and Commonwealth risk management.⁷⁰

Meeting future market challenges

2.65 The ANAO examined the organisational arrangements and mechanisms to support the market transition and entities' responsibilities; processes and systems for the continued collection and analysis of data and market learnings; and whether barriers to a successful market transition have been considered and addressed.⁷¹

2.66 The ANAO found that in October 2016, DSS developed a draft NDIS Transition Program Plan to support its market oversight role in the NDIS market transition. The NDIA's transition planning provides for continued collection of data, and mechanisms are in place, or under development, to improve data collection. It recommended prioritising finalisation of the national *NDIS Quality and Safeguarding Framework* and supporting infrastructure and implementation arrangements to improve regulatory certainty and address market transition risks.⁷²

2.67 The *NDIS Quality and Safeguarding Framework* was finalised in December 2016 and is discussed further at paragraph 2.99 under the DRC activities section.

Audit recommendation

2.68 The ANAO recommended that DSS produce and publish a disability care workforce action plan as soon as practicable, which includes specific actions, timeframes, accountabilities, and monitoring arrangements for implementation.⁷³ Both DSS and NDIA agreed with the recommendation and its findings, however, the department noted that:

...the NDIS is a ground-breaking reform to offer life-long, multi-service support to people with disability, which does not lend itself easily to

70 Australian National Audit Office, *NDIS—Management of the Transition of the Disability Services Market*, Audit Report No. 24, 2016–17, p. 10.

71 Australian National Audit Office, *NDIS—Management of the Transition of the Disability Services Market*, Audit Report No. 24, 2016–17, p. 54.

72 Australian National Audit Office, *NDIS—Management of the Transition of the Disability Services Market*, Audit Report No. 24, 2016–17, p. 11.

73 Australian National Audit Office, *NDIS—Management of the Transition of the Disability Services Market*, Audit Report No. 24, 2016–17, p. 41.

comparisons with other reforms. Similarly, while it was critical to capture the learnings from the trial sites to inform development of strategies and approaches, the information derived from the trials is limited to geographic areas or participant cohorts and does not provide a sound basis for forming judgements about the wider market. The Department considers that a stronger basis for intervention in the market is likely to emerge in the later part of the transition to full Scheme.⁷⁴

Decision-making controls for sustainability—NDIS access

2.69 The objective of the *Decision-making controls for sustainability—NDIS access* audit is to assess the effectiveness of controls being implemented and/or developed by the NDIA to ensure NDIS access decisions are consistent with legislative and other requirements. The ANAO will examine whether:

- suitable information, training and guidance is available to support effective decision-making about access to the NDIS;
- suitable administrative systems and processes are in place to support transparent, accurate, timely and consistent assessment of eligibility; and
- suitable quality and compliance arrangements have been established to mitigate the risk of incorrect NDIS access decisions.⁷⁵

2.70 The ANAO is due to table its report in November 2017.

Potential audits

2.71 The ANAO has identified two potential audits to be conducted as part of a five-year performance audit strategy.⁷⁶

2.72 The potential *Administration of the Sector Development Fund* audit would examine the outcomes achieved by the NDIS Sector Development Fund, including whether the impact of funded activities were evaluated within an agreed performance framework, and whether outcomes of funded projects were distributed and utilised to support the transition of the disability sector.⁷⁷

74 Australian National Audit Office, *NDIS—Management of the Transition of the Disability Services Market*, Audit Report No. 24, 2016–17, p. 12.

75 Australian National Audit Office, *Decision-making controls for sustainability—NDIS access*, <https://www.anao.gov.au/work/performance-audit/decision-making-controls-sustainability-ndis> (accessed 4 July 2017).

76 Australian National Audit Office, *NDIS—Administration of the Sector Development Fund*, <https://www.anao.gov.au/work/performance-audit/national-disability-insurance-scheme-administration-sector-development-fund> (accessed 4 July 2017) and Australian National Audit Office, *NDIS—Fraud and Compliance Program*, <https://www.anao.gov.au/work/performance-audit/national-disability-insurance-scheme-fraud-and-compliance-program> (accessed 4 July 2017).

77 Australian National Audit Office, *NDIS—Administration of the Sector Development Fund*, <https://www.anao.gov.au/work/performance-audit/national-disability-insurance-scheme-administration-sector-development-fund> (accessed 4 July 2017).

2.73 The potential *Fraud and Compliance Program* audit would examine the efficiency and effectiveness of the NDIA's compliance program for the NDIS, including the controls in place to register providers and administer payments, as well as the frameworks in place to assist providers and participants to manage their obligations. The audit would provide assurance that suitable controls, including effective and efficient prevention, early detection and response mechanisms, are in place to ensure accurate payments are being made to eligible providers to support the Scheme's ongoing sustainability.⁷⁸

Productivity Commission review

2.74 On 20 January 2017, the Treasurer, the Hon. Scott Morrison MP, requested that the Productivity Commission (the Commission) undertake a study into the NDIS costs.⁷⁹ The Heads of Agreement between the Commonwealth and State and Territory Governments on the NDIS specified that the Commission would undertake a review of Scheme costs in 2017 in order to inform the final design of the full Scheme prior to its commencement.⁸⁰

2.75 In February 2017, the Commission published its Issues Paper and received over 200 submissions from a wide range of stakeholders, such as governments, service providers, research organisations, individuals, NDIS participants and carers, lawyers, consultants and peak bodies for professionals and advocates.⁸¹ The Commission released its Position Paper on 14 June 2017 to seek feedback on its preliminary conclusions and outlined the Commission's initial findings on the NDIS Costs study. The Commission will release its final report in September 2017.⁸²

2.76 The DRC is expected to deliver its advice on the Commission's report to the Council of Australian Governments (COAG) by December 2017.⁸³

Summary of key findings

2.77 The Commission highlighted that, based on trial and transition data, NDIS costs are broadly on track with the NDIA's long term modelling. While there are some emerging cost pressures (such as higher numbers of children entering the Scheme), the NDIA has put in place initiatives to address them.⁸⁴

78 Australian National Audit Office, *NDIS—Fraud and Compliance Program*, <https://www.anao.gov.au/work/performance-audit/national-disability-insurance-scheme—fraud-and-compliance-program> (accessed 4 July 2017).

79 Productivity Commission, *NDIS Costs Terms of Reference*, 20 January 2017, <http://www.pc.gov.au/inquiries/current/ndis-costs/terms-of-reference> (accessed 23 June 2017).

80 Productivity Commission, *NDIS Costs Position Paper*, June 2017, p. 6.

81 Productivity Commission, *NDIS Costs Position Paper*, June 2017, pp. 349–354.

82 Productivity Commission, *NDIS Costs Position Paper*, June 2017, p. 3.

83 Disability Reform Council, *Terms of Reference*, April 2017, p. 3.

84 Productivity Commission, *NDIS Costs Position Paper*, June 2017, p. 2.

2.78 The Commission concluded that the speed of the NDIS rollout, as specified in Bilateral Agreements between governments, is compromising the NDIA's ability to implement the NDIS as intended, and putting the financial sustainability of the Scheme at risk—and the number of participants entering the Scheme is only now just starting to ramp up.⁸⁵ The schedule has resulted in the NDIA focusing too much on meeting participant intake estimates and not enough on planning processes, supporting infrastructure and market development.⁸⁶

2.79 According to the Commission, the speed of the rollout has:

- compromised the quality of plans;
- impacted the development of other parts of the Scheme, especially the disability care workforce, which is unlikely to be sufficiently developed by 2020 to deliver the supports the NDIA is expected to allocate; and
- imposed challenging timeframes on the development of important structural elements of the Scheme—including details around responsibilities at the coalface in services like health and transport, and instituting the new Quality and Safeguarding Framework.⁸⁷

2.80 A significant challenge is the need to develop the disability supports market, to ensure there are enough providers and workers to meet the increased demand for services from Scheme participants.⁸⁸

2.81 There is also a need for all governments to work together to better manage the integration of the NDIS and other services, as there is evidence of service gaps and an apparent reluctance in some instances to find ready solutions.⁸⁹ Some disability supports are not being provided because of unclear boundaries about the responsibilities of the different levels of government. Governments must set clearer boundaries at the operational level around 'who supplies what' to people with disability, and only withdraw when continuity of service is assured.⁹⁰

2.82 Early evidence suggests that the NDIS is improving the lives of many participants and their families and carers. Many participants report more choice and control over the supports they receive and an increase in the amount of support provided. However, not all participants are benefiting from the Scheme. Participants with psychosocial disability, and those who struggle to navigate the Scheme, are most at risk of experiencing poor outcomes.⁹¹

85 Productivity Commission, *NDIS Costs Position Paper*, June 2017, p. 13.

86 Productivity Commission, *NDIS Costs Position Paper*, June 2017, p. 2.

87 Productivity Commission, *NDIS Costs Position Paper*, June 2017, p. 49.

88 Productivity Commission, *NDIS Costs Position Paper*, June 2017, p. 52.

89 Productivity Commission, *NDIS Costs Position Paper*, June 2017, p. 52.

90 Productivity Commission, *NDIS Costs Position Paper*, June 2017, p. 2.

91 Productivity Commission, *NDIS Costs Position Paper*, June 2017, p. 54.

Summary of key insights

Costs pressures

2.83 Average package costs (for plans effective from 1 July 2016) are higher than the modelling assumptions (after accounting for disability, age and level of function). However, utilisation rates are lower than expected. Therefore, underutilisation is currently offsetting the increase in Scheme costs attributable to higher prevalence rates for children and higher than expected package costs.⁹²

2.84 The NDIA has identified five early cost pressures that need to be managed for the full Scheme going forward:

- the number of children entering the Scheme is higher than expected;
- the number of people approaching the Scheme in trial sites that have been operating the longest (since 2013) is higher than would be expected if only people with newly acquired conditions were approaching the Scheme;
- the number of participants exiting the Scheme has been lower than expected (particularly for children entering under the early intervention requirements);
- levels of committed support tend to increase as participants move to their second and third plans (over and above the impacts of inflation and ageing);
- there is greater than expected variability in package costs for participants with similar conditions and levels of function (suggesting inconsistencies in planners' decisions).⁹³

Confusing planning process and speed of transition

2.85 The Commission considered that the pre-planning phase of the planning process has not received the attention that it requires and many participants are ill-prepared for planning conversations (which is affecting the quality of plans).⁹⁴

2.86 At present, the planning process is complex and confusing, and often lacks clarity and transparency. Limited information is publicly available to help Scheme participants and their families, carers and advocates to navigate the planning system. Scheme participants are often not aware of their rights and options, such as their entitlement to request a face to face meeting, or have an advocate present during the planning meeting.⁹⁵

2.87 The Commission noted that NDIS planners' limited disability knowledge is an issue of real concern and recommended specialised planning teams for some types of disability, such as psychosocial disability.⁹⁶

92 Productivity Commission, *NDIS Costs Position Paper*, June 2017, p. 17.

93 Productivity Commission, *NDIS Costs Position Paper*, June 2017, p. 17.

94 Productivity Commission, *NDIS Costs Position Paper*, June 2017, p. 27.

95 Productivity Commission, *NDIS Costs Position Paper*, June 2017, p. 28.

96 Productivity Commission, *NDIS Costs Position Paper*, June 2017, p. 28.

Importance of Information, Linkages and Capacity Building (ILC) for sustainability

2.88 ILC is important for Scheme sustainability because it is expected to reduce reliance on NDIS funded support and costs over time. Therefore, it is important that ILC is adequately funded. The Commission recommended that funding for ILC should be increased to the full Scheme amount of \$131 million for each year during the transition.⁹⁷

Boundaries and interfaces between the NDIS and services outside the Scheme—emerging issues

2.89 For the NDIS to work efficiently and effectively, the interface of the Scheme with other services on which people rely must be as seamless as possible.⁹⁸

2.90 The Commonwealth has entered into Bilateral Agreements with State and Territory Governments to delineate the types of services to be provided and funded by the NDIS and mainstream services. The boundary issues are yet to be tested. However, the NDIA reports some instances of possible cost shifting, scope creep and service gaps, including:

- providers trying to extend the amount of therapeutic (health) interventions through use of NDIS funding;
- reports that mainstream services are refusing entry to people who are likely to be eligible for the NDIS;
- issues around a lack of accessible public transport options, particularly in regional, rural and remote areas, which means NDIS participants seek transport funding through the NDIS despite having the capacity to travel independently.⁹⁹

Gaps in services

2.91 Many are concerned that, as disability support programs are rolled into the NDIS, people using these services (including those not eligible for the NDIS) may no longer receive continuity of support. This is a key risk to the financial sustainability of the NDIS and one that the NDIA has little control over.¹⁰⁰

2.92 While the Commonwealth and State and Territory Governments have agreed to provide continuity of support for disability services outside the NDIS, in practice there is confusion and uncertainty about what services will continue to be provided and/or funded. Governments need to be clearer about how they will approach continuity of care, and in particular about what disability services they will continue to provide for people who are not eligible for the NDIS.¹⁰¹

97 Productivity Commission, *NDIS Costs Position Paper*, June 2017, pp. 189–190.

98 Productivity Commission, *NDIS Costs Position Paper*, June 2017, p. 30.

99 Productivity Commission, *NDIS Costs Position Paper*, June 2017, p. 32.

100 Productivity Commission, *NDIS Costs Position Paper*, June 2017, p. 33.

101 Productivity Commission, *NDIS Costs Position Paper*, June 2017, pp. 33–34.

2.93 The Commission warned that gaps in disability services need to be quickly identified and managed, possibly with the assistance of ILC and Local Area Coordinators (LACs), to ensure the sustainability of the overall Scheme.¹⁰²

Market readiness and pricing issues

2.94 The market based approach of the NDIS means that there will be significant changes in the way that supports are demanded by and provided to participants.¹⁰³ Prices are currently regulated and the NDIA sets maximum prices or 'price caps' for many of the supports provided by NDIA registered providers.¹⁰⁴

2.95 There is a potential conflict of interest with the NDIA setting prices and also being responsible for the financial sustainability of the Scheme. This is a structural issue in the design of the Scheme that needs to be addressed, as the mere perception of a conflict is sufficient to disrupt the transition to price deregulation.¹⁰⁵ The Commission proposed moving towards the deregulation of prices in three stages:

- (a) immediately introduce an independent price monitor;
- (b) shift the NDIA's price setting powers to a regulator that is an independent statutory authority;
- (c) subsequent monitoring of prices by the independent price monitor.¹⁰⁶

Disability care workforce

2.96 Growing the disability care workforce required to deliver the Scheme is a significant challenge—it is estimated that 1 in 5 new jobs created in Australia over the next few years will need to be in the disability care sector. Present policy settings are unlikely to see enough providers and workers as the Scheme rolls out. Some emerging shortages need to be mitigated by:

- better price monitoring and regulation;
- better tailored responses to thin markets;
- formal and informal carers allowed to provide more paid care; and
- a targeted approach to skilled migration.¹⁰⁷

Governance and performance reporting

2.97 In 2011, the Commission recommended a single national Scheme, and a single national agency, to provide disability care and support. All states, except WA, joined the national Scheme. In 2017, the Australian Government and Western

102 Productivity Commission, *NDIS Costs Position Paper*, June 2017, p. 34.

103 Productivity Commission, *NDIS Costs Position Paper*, June 2017, p. 34.

104 Productivity Commission, *NDIS Costs Position Paper*, June 2017, p. 36.

105 Productivity Commission, *NDIS Costs Position Paper*, June 2017, p. 37.

106 Productivity Commission, *NDIS Costs Position Paper*, June 2017, pp. 37–38.

107 Productivity Commission, *NDIS Costs Position Paper*, June 2017, p. 2.

Australian Government signed a Bilateral Agreement for the implementation of the WA NDIS. Under the agreement, the WA NDIS will be administered by the WA Government, not the NDIA. The Commission considered that WA should be in the national NDIS.¹⁰⁸

2.98 While the NDIA is still developing its performance reporting—making it too early to determine whether the performance reporting is sufficient to shed light on Scheme objectives—the Commission identified some gaps in the framework and the performance reporting against this framework:

- there is limited reporting against the outcomes indicators;
- too few indicators for mainstream services, ILC and LACs;¹⁰⁹ and
- the performance reporting framework does not have a strong enough focus on reporting on quality, including the quality of participants' plan.¹¹⁰

Disability Reform Council activities

2.99 This section contains a brief overview of the activities of the DRC. The DRC oversees implementation of the NDIS and makes recommendations to COAG on the transition to full Scheme.¹¹¹ It is chaired by the Minister for Social Services and consists of Commonwealth and state ministers within disability and treasury portfolios, as well as a representative from the Australian Local Government Association.¹¹²

2.100 During the year, the DRC worked to drive national reform in disability policy through:

- the implementation of the *NDIS Quality and Safeguarding Framework*;
- changes in NDIS governance arrangements; and
- agreement of market development indicators.

NDIS Quality and Safeguarding Framework

2.101 In February 2017, the DRC released a national Quality and Safeguarding Framework for the NDIS (the framework) to be implemented at full Scheme. The framework is a high-level policy which establishes nationally consistent protections for participants in the NDIS by setting out their rights to safe, high-quality services. It is designed to help participants and providers resolve issues quickly, and strengthen

108 Productivity Commission, *NDIS Costs Position Paper*, June 2017, p. 43.

109 Given the importance of understanding the interaction between the NDIS and mainstream services, and the critical role that ILC and LACs play in the Scheme, data on these activities should be an important component of reporting on the NDIS performance.

110 Productivity Commission, *NDIS Costs Position Paper*, June 2017, p. 46.

111 Disability Reform Council, *Terms of Reference*, April 2017, p. 1.

112 Department of Social Services, *Disability Reform Council*, <https://www.dss.gov.au/our-responsibilities/disability-and-carers/programmes-services/government-international/disability-reform-council> (accessed 23 June 2016).

the capability of participants, the workforce, and providers to participate in the NDIS market.¹¹³

2.102 The framework will replace existing state-based, fragmented quality and safeguarding measures that are no longer applicable in the new market-based system. A nationally consistent system will reduce duplication of requirements for providers who operate across jurisdictions, make it easier for participants who move interstate, and enable emerging trends to be identified and addressed.¹¹⁴ Until the framework is implemented in their jurisdiction, State and Territory Governments will continue to maintain their current quality and safeguarding arrangements, such as arrangements for managing complaints and feedback.

2.103 The framework's underpinning foundations are based on the UN Convention on the Rights of Persons with Disabilities, the *Disability Services Act 1986*, the National Disability Strategy 2010–2020, and the NDIS Act. It consists of developmental, preventative, and corrective measures which are targeted at individuals, the workforce, and providers.¹¹⁵

2.104 Broadly, measures for individuals are designed to help people with disability to exercise choice and control over how their supports are delivered and help them resolve any issues they encounter with workers or providers. Workforce measures are designed to promote safety and competence and ensure people who are unsafe are not able to support NDIS participants. Measures for providers are designed to encourage safe, innovative, high-quality support provision and ensure that providers who do not meet acceptable safety and quality standards are not able to support participants.¹¹⁶

2.105 Introducing worker screening and reducing restrictive practices are key components of the framework. Responsibility for these components will be shared between the Commonwealth and State and Territory Governments. With regards to worker screening, the Commonwealth will work with all governments to develop national policy and standards to be implemented, while the states and territories will be responsible for worker screening checks in their own jurisdictions. The DRC is expected to deliver a national approach to NDIS worker screening by 31 December 2017.¹¹⁷ Restrictive practices will be reduced through the NDIS senior practitioner, who will provide clinical leadership in positive behaviour support, and reduce and eliminate the use of restrictive practices in the NDIS, while states and

113 Department of Social Services, *NDIS Quality and Safeguarding Framework*, December 2016, p. 4.

114 Department of Social Services, *NDIS Quality and Safeguarding Framework*, December 2016, pp. 7–8.

115 Department of Social Services, *NDIS Quality and Safeguarding Framework*, December 2016, p. 13.

116 Department of Social Services, *NDIS Quality and Safeguarding Framework*, December 2016, pp. 19–97.

117 Disability Reform Council, *Terms of Reference*, April 2017, p. 3.

territories remain responsible for the authorisation of restrictive practices in their jurisdiction.¹¹⁸

2.106 In the new framework, the Commonwealth will be responsible for the following national regulatory functions:

- provider registration including quality assurance;
- a complaint handling system;
- serious incident notification;
- restrictive practice oversight; and
- investigation and enforcement.¹¹⁹

2.107 The regulatory components of the framework will be supported through three new roles:

- (1) the NDIS complaints commissioner will receive and support the resolution of complaints about providers of NDIS-funded supports, and investigate serious incident reports and potential breaches of the NDIS code of conduct. The commissioner will refer matters to the NDIS registrar, senior practitioner, and other authorities as needed;
- (2) the NDIS registrar will have responsibility for registering providers, managing the NDIS practice standards and certification Scheme, leading the design and broad policy settings for nationally consistent NDIS worker screening, and monitoring provider compliance and anti-competitive conduct; and
- (3) the NDIS senior practitioner will oversee approved behaviour support practitioners and providers; provide best practice advice; receive, review and report on provider reports on use of restrictive practices; and follow-up on serious incidents that suggest unmet behaviour support needs. The senior practitioner will refer concerns about worker or provider non-compliance to the NDIS registrar. Approval for the use of restrictive practices will continue to be managed through current state and territory government processes.¹²⁰

2.108 According to DSS, once capability has grown and the market has become more established, the framework will need to be reviewed to ensure it remains fit for purpose.

118 Department of Social Services, *Summary of the NDIS Quality and Safeguarding Framework*, January 2017, p. 2.

119 Department of Social Services, *Summary of the NDIS Quality and Safeguarding Framework*, January 2017, p. 1.

120 Department of Social Services, *NDIS Quality and Safeguarding Framework*, December 2016, pp. 16–17.

2.109 The National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017 (the bill) is the legislative foundation that gives effect to the Commonwealth's regulatory responsibilities under the framework. The bill was referred to the Senate Standing Committee on Community Affairs for inquiry and report by 5 September 2017. On 17 August 2017, the Senate granted an extension of time for reporting until 13 September 2017.

Market development indicators

2.110 In September 2016, the DRC identified that a key risk to NDIS implementation is the development of a market that will ensure the supply of quality supports and workforce to NDIS participants. The DRC decided to enhance its oversight of the developing market for the NDIS, including by agreement of the market-related roles and responsibilities of the Commonwealth, State and Territory Governments and the NDIA. The DRC further agreed to a number of strategies to focus attention on development of a strong workforce, including the role of the Commonwealth's Sector Development Fund, to support people with disability, the disability services sector and its workforce to transition to the NDIS.¹²¹

2.111 In order to monitor and encourage market development, the DRC considered a number of market development indicators. In March 2017, the DRC agreed to Key Performance Indicators to monitor market development and performance and to identify immediate and emerging market risks.¹²² The Key Performance Indicators do not appear to be publically available.

DisabilityCare Australia Fund

2.112 The DRC considered the current DisabilityCare Australia Fund (the Fund) payment arrangements. The Fund was established on 1 July 2014 by the *DisabilityCare Australia Fund Act 2013*. The Fund is a financial asset, consisting of cash and investments, with the purpose of holding and distributing money raised from the increase in the Medicare Levy. Revenue raised from the increase in the Medicare Levy will reimburse the Commonwealth, State and Territory Governments for expenditure incurred in relation to the NDIS. Disbursement from the DisabilityCare Australia Fund to State and Territory Governments is subject to key conditions being met, including that a state has agreed to deliver the full Scheme.¹²³

2.113 In June 2017, the DRC discussed the initial one-off DisabilityCare Australia Fund payment to states and territories and agreed that continued consideration of DisabilityCare Australia Fund payment arrangements is required.¹²⁴ The DRC is expected to agree on any necessary arrangements for full Scheme by 31 December

121 Disability Reform Council, *Communiqué*, 2 September 2016, p. 3.

122 Disability Reform Council, *Communiqué*, 3 March 2017, p. 1.

123 Department of Finance, *DisabilityCare Australia Fund – Overview*, <https://www.finance.gov.au/investment-funds/disabilitycare-australia-fund-overview/> (accessed 4 July 2017).

124 Disability Reform Council, *Communiqué*, 16 June 2017, p. 2.

2017, including appropriate future arrangements for access to the DisabilityCare Australia Fund.¹²⁵

National Disability and Carer Advisory Council

2.114 Parallel to the rollout of the NDIS, the disability sector is undergoing significant reform. In 2010, all states signed up to the National Disability Strategy 2010–2020 to ensure mainstream supports and services are inclusive and accessible for the more than four million people living in Australia with a disability, not just the 460 000 likely to become participants.¹²⁶

2.115 As part of the Australian Government's election commitment on 7 November 2016, the National Disability and Carer Advisory Council (NDCAC) was established to oversee the implementation of the National Disability Strategy 2010–2020 and regularly report to the DRC on progress.¹²⁷

2.116 At its inaugural meeting in December 2016, NDCAC noted the progress of reform in several areas and agreed to initially form three Working Groups to focus on providing advice in the key areas of: reinvigoration of the National Disability Strategy 2010–2020; greater employment of people with disability; and enhanced supports and services for carers.¹²⁸ At its second meeting, NDCAC developed a 12-month activity plan and identified priority activities to be achieved over the next year. These included:

- improving engagement with the business community and employers, with a particular focus on small and medium enterprises and regional and remote areas;
- developing strategies to assist the transition from education to work for people with disability;
- promoting success stories, especially by engaging champions of change and the lived experience of people with disability;
- enhancing the services and supports for carers by examining best practice and promote these initiatives across jurisdictions;
- identifying improvements to the national measurement and reporting of achievements under the National Disability Strategy 2010–2020;
- making recommendations about strategies to improve advocacy for people with disability and the need for all governments to support advocacy services; and
- identifying regulation and red tape reforms.¹²⁹

125 Disability Reform Council, *Terms of Reference*, April 2017, p. 3.

126 Disability Reform Council, *Communiqué*, 2 September 2016, p. 2.

127 National Disability and Carer Advisory Council, *Communiqué*, 14 December 2016, p. 1.

128 National Disability and Carer Advisory Council, *Communiqué*, 14 December 2016, pp. 1–2.

129 National Disability and Carer Advisory Council, *Communiqué*, 3 May 2017, p. 2.

Legislation introduced in 2016–17

National Disability Insurance Scheme Savings Fund Special Account Bill 2016

2.117 The National Disability Insurance Scheme Savings Fund Special Account Bill 2016 (the bill) was introduced into the House of Representatives on 16 March 2016. The bill passed that chamber but had not been debated in the Senate when the Parliament was dissolved for the election. The bill lapsed with the dissolution of the Parliament on 9 May 2016.

2.118 In the 45th Parliament, the bill was introduced into the House of Representatives on 31 August 2016. It was referred to the Senate Standing Committee on Community Affairs in September 2016, which tabled its report on 7 November 2016 recommending that the bill be passed without changes. The bill remains under the consideration of the Senate.

2.119 The bill establishes a new ongoing special account, known as the National Disability Insurance Scheme Savings Fund Special Account. The bill enables the Minister for Social Services to determine amounts to be credited to the special account which will be subject to a review before 1 July 2027. Credits to the special account will be announced and committed for a period of 10 years, with estimated savings calculated with the Budget Process Operational Rules. The credits may result from:

- underspends and net savings from the NDIS and other portfolio savings, as determined by the Minister for Social Services;
- discretionary decisions by the Prime Minister or the Cabinet (for example, to establish a starting balance at the special account's commencement); and
- decisions by the Prime Minister or the Cabinet about identified savings from other Commonwealth portfolios.

2.120 Credits to and debits from the special account would be subject to the provisions of the bill. The Minister for Social Services will be solely responsible for the day-to-day policy and management of the special account.

Social Services Legislation Amendment (Transition Mobility Allowance to the National Disability Insurance Scheme) Bill 2016

2.121 The Social Services Legislation Amendment (Transition Mobility Allowance to the National Disability Insurance Scheme) Bill 2016 (the bill) was introduced in the House of Representatives on 13 October 2016. The bill remains under the consideration of the Senate.

2.122 The bill amends the *Social Security Act 1991* and *Social Security (Administration) Act 1999* to:

- tighten the eligibility criteria for mobility allowance for new claims and reduce the period for which the allowance is continued when a person ceases to be qualified;
- provide that the allowance will no longer be payable to individuals who transition to the NDIS; and
- close the mobility allowance program from 1 July 2020.

2.123 These changes support transition from mobility allowance to the NDIS or to other arrangements for continuity of support. This bill proposed that mobility allowance will cease on 1 July 2020 to ensure the NDIS is the main source of support for people with disability who need assistance to engage in the workplace and other economic activities.¹³⁰

National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017

2.124 As discussed above, the DRC released the *NDIS Quality and Safeguarding Framework* (the framework) in February 2017 which addresses many of the issues raised in the Senate inquiry into violence, abuse and neglect against people with a disability in institutional and residential settings.

2.125 The National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017 (the bill) is the legislative foundation that gives effect to the Commonwealth's regulatory responsibilities under the framework. The bill establishes an independent NDIS Quality and Safeguards Commission to protect and prevent people with disability from experiencing harm arising from poor quality or unsafe supports or services under the NDIS.

2.126 The bill was introduced in the House of Representatives on 31 May 2017. The following month, the bill was referred to the Senate Standing Committee on Community Affairs for inquiry and report by 5 September 2017. On 17 August 2017, the Senate granted an extension of time for reporting until 13 September 2017.

2.127 The Scrutiny of Bills Committee considered the bill according to its usual process and made a number of comments in relation to the scrutiny principles outlined in Senate Standing Order 24. The committee identified the following concerns with the bill's proposed provisions which would:

- grant the Commissioner broad discretionary public interest disclosure powers;
- place significant matters in delegated rather than primary legislation;
- allow broad delegation of administrative powers;
- remove fair hearing rights;
- not identify whether there are any non-reviewable decisions; and
- allow broad delegation of administrative powers.

2.128 A brief overview of the Scrutiny of Bills Committee's comments is as follows:

Broad discretionary power

2.129 The committee identified that the bill proposes to grant the NDIS Quality and Safeguards Commissioner broad discretionary public interest disclosure powers. An

¹³⁰ Explanatory Memorandum, p. 1.

example of when it might be necessary to disclose personal information would be for the protection of persons with disability or the investigation of a criminal offence.¹³¹

2.130 The committee's view is that the information that may be disclosed under this power may be sensitive and the provision is extremely broad. It pointed out that there is no requirement that rules must be made in relation to the Commissioner's power to disclose the information and no information as to the circumstances in which the power can be exercised, other than that the Commissioner must be satisfied that it is in the public interest to make the disclosure. The committee highlighted that there is no requirement for the Commissioner to notify the person, give them reasonable opportunity to make written comments, or consider any written comments made by that person before disclosing the information. The committee requested the Minister's advice as to:

- why rules or guidance about the exercise of the Commissioner's disclosure power could not be included in the primary legislation; and
- why there was no requirement that rules must be made to regulate the exercise of the Commissioner's power.¹³²

Significant matters in delegated legislation

2.131 The committee identified that the bill enables a number of significant matters to be included in delegated legislation rather than set out in the primary legislation. For example, enabling the NDIS rules to make provision for the establishment of an NDIS Code of Conduct for NDIS providers and their employees.

2.132 The committee's view was that matters such as the establishment of a Code of Conduct—breaches of which could be subject to significant penalties—should be included in primary legislation unless a sound justification for its inclusion in delegated legislation has been provided. As no explanation was provided in the explanatory memorandum as to why it was necessary to include this detail in the rules and not in the primary legislation, the committee requested the Minister's advice as to:

- why it was considered necessary to leave significant matters such as the establishment of the Code of Conduct to delegated legislation; and
- the type of consultation envisaged to be conducted prior to the making of regulations establishing the NDIS rules and whether specific consultation obligations could be included in the legislation.¹³³

Broad delegation of administrative powers

2.133 The committee identified that the bill enables authorised officers to be assisted 'by other persons' in performing functions related to monitoring and investigation which could potentially include coercive duties such as entering

131 Explanatory Memorandum, p. 12.

132 Senate Scrutiny of Bills Committee, *Scrutiny Digest 6 of 2017*, 14 June 2017, p. 50.

133 Senate Scrutiny of Bills Committee, *Scrutiny Digest 6 of 2017*, 14 June 2017, p. 52.

premises and inspecting documents. As the explanatory memorandum did not provide an explanation and the bill did not confine who may exercise such powers, the committee requested the Minister's advice as to why it may be necessary to confer monitoring and investigatory powers on any 'other person' to assist an authorised officer and whether it would be appropriate to amend the bill to require that any person assisting an authorised officer have specified skills, training or experience.¹³⁴

Fair hearing rights

2.134 The bill proposes to grant the Commissioner power to prohibit or restrict activities by an NDIS provider in certain circumstances. The Commissioner would only be able to make a banning order after first giving the person an opportunity to comment on the matter. This would not apply in the circumstance that there is an immediate danger to the health or safety of a person with a disability or where the Commissioner has revoked the registration of the person as a registered NDIS provider. However, the committee pointed out that this would appear to remove fair hearing requirements.

2.135 The committee noted that it would be possible to reconcile the need for urgent action and the right to a fair hearing by providing for the banning order to have immediate effect but only making it permanent after a hearing has been provided. The committee requested the Minister's advice as to the appropriateness of amending the bill to provide that the banning order have a temporary immediate effect in specified circumstances but that it would only become a permanent order after the affected person had been given an opportunity to make submissions to the Commissioner on the matter.¹³⁵

Merits review

2.136 Under the *National Disability Insurance Scheme Act 2013*, a person must be notified by the decision-maker of their right to request a review of a reviewable decision. As the explanatory memorandum does not explain whether there are any decisions that may not be described as 'reviewable', the committee considered that it is difficult to assess whether there are any decisions that may not be subject to internal review and AAT review processes. The committee requested the Minister's advice as to whether there are any decisions that could be made under the *National Disability Insurance Scheme Act 2013* that are not listed as being a 'reviewable decision', and if any decisions are excluded that might have an adverse impact on an individual, the justification for not including these in the list of 'reviewable decisions'.¹³⁶

Broad delegation of administrative powers

2.137 The committee identified that the bill includes provisions which would allow the Commissioner to delegate to 'a Commission officer' any or all of his or her power

134 Senate Scrutiny of Bills Committee, *Scrutiny Digest 6 of 2017*, 14 June 2017, p. 53.

135 Senate Scrutiny of Bills Committee, *Scrutiny Digest 6 of 2017*, 14 June 2017, pp. 52–53.

136 Senate Scrutiny of Bills Committee, *Scrutiny Digest 6 of 2017*, 14 June 2017, p. 54.

or functions under the NDIS (except in relation to privacy powers, which may only be delegated to an SES employee in the Commission). Generally, the committee prefers to see a limit set either on the scope of powers that might be delegated, or on the categories of people to whom those powers might be delegated. As no explanation was provided in the explanatory materials, the committee requested the Minister's advice as to why it was considered necessary to allow most of the Commissioner's powers and functions to be delegated to any Commission officer at any level. The committee also requested the Minister's advice as to whether the bill could be amended to provide legislative guidance on the scope of powers that might be delegated, or the categories of people to whom powers might be delegated.¹³⁷

Ministerial response

2.138 On 27 June 2017, the Minister for Social Services, the Hon. Christian Porter MP, responded to the Scrutiny Committee. With regards to the bill's proposed provisions that would grant the Commissioner broad discretionary disclosure powers, Minister Porter advised that it is necessary to adapt guidance during the transition period from the states and territories quality and safeguards arrangements to the Commission's arrangements.¹³⁸ The Minister reiterated the rationale contained in the bill's explanatory memorandum which states that:

It is necessary to provide for the parameters of this discretion in the NDIS rules as the Commissioner will be operating within the context of complex mainstream systems and services. The purposes for disclosure, the bodies to whom disclosure can be made and the type of information which may be disclosed is likely to change over time as States and Territories withdraw from the regulation of disability services under the NDIS and establish new arrangements for the protection of vulnerable people under mainstream service systems.¹³⁹

2.139 In relation to the requirement that rules be made to regulate the exercise of the Commissioner's powers, Minister Porter drew attention to subsection 67E(2) which references 'the NDIS rules' rather than 'any NDIS rules'. This wording indicates that the Commissioner can only make disclosures under the provisions if there are rules in place. A draft copy of the rules was included in the Minister's response to the Scrutiny Committee. Minister Porter advised that the rules are intended to commence at the same time as Schedule 1 of the bill in its establishment of the Commission.¹⁴⁰

2.140 The Minister advised that careful consideration had been given to ensuring any personal information held by the Commission is given proper protection. However, in regards to the Scrutiny Committee's suggestion that the Commissioner be

137 Senate Scrutiny of Bills Committee, *Scrutiny Digest 6 of 2017*, 14 June 2017, pp. 54–55.

138 The Hon. Christian Porter MP, Minister for Social Services, *Response to the Scrutiny of Bills Committee*, 27 June 2017, p. 1.

139 Explanatory Memorandum, p. 12.

140 The Hon. Christian Porter MP, Minister for Social Services, *Response to the Scrutiny of Bills Committee*, 27 June 2017, p. 1.

required to notify and receive submissions from a person before a disclosure, he advised, 'this would compromise situations of urgency such as where a child is at risk of harm or there are serious allegations of neglect, abuse or exploitation'.¹⁴¹

2.141 In response to the Scrutiny Committee's concerns that the bill places significant matters in delegated rather than primary legislation, the Minister argued that separating the rules from the bill provides flexibility and enables the Commission to be responsive in circumstances where the NDIS market is uncertain and rapidly changing. Minister Porter highlighted that the rules are subject to ongoing consultation with states and territories and peak organisations.¹⁴²

2.142 In relation to the bill's proposal to allow broad delegation of administrative powers, Minister Porter assured the Scrutiny Committee that proposed section 73ZR provides that the Commissioner may only appoint persons assisting under proposed section 181W if he or she is satisfied that the person has suitable training or experience or is an appropriate person to be appointed.¹⁴³ The Minister emphasised that the person appointed must comply with the directions of the Commissioner, and that proposed sections 73ZE and 73ZF of the bill are subject to the *Regulatory Powers (Standard Provisions) Act 2014* which provides that any use of powers by an appointed person is subject to the direction of the authorised person being assisted.¹⁴⁴

2.143 With regards to banning orders in the bill, the Minister pointed out that if a registered NDIS provider poses an immediate danger to a person with disability, the Commissioner may suspend the registration of the provider pending consideration of whether the provider's registration should be revoked. A ban order is also a reviewable decision and a person may apply under proposed section 73Z0(2) for the revocation or variation of a ban order. Minister Porter argued that the approach taken is considered to be the most appropriate to protect people with disability from unsafe providers or workers.¹⁴⁵

2.144 The Minister provided the Scrutiny Committee with a table of decisions that are not reviewable decisions, noting that they are not reviewable because they are subject to separate review process and guidelines not administered by the Commissioner.¹⁴⁶

141 The Hon. Christian Porter MP, Minister for Social Services, *Response to the Scrutiny of Bills Committee*, 27 June 2017, p. 2.

142 The Hon. Christian Porter MP, Minister for Social Services, *Response to the Scrutiny of Bills Committee*, 27 June 2017, p. 3.

143 The Hon. Christian Porter MP, Minister for Social Services, *Response to the Scrutiny of Bills Committee*, 27 June 2017, p. 4.

144 The Hon. Christian Porter MP, Minister for Social Services, *Response to the Scrutiny of Bills Committee*, 27 June 2017, p. 5.

145 The Hon. Christian Porter MP, Minister for Social Services, *Response to the Scrutiny of Bills Committee*, 27 June 2017, p. 6.

146 The Hon. Christian Porter MP, Minister for Social Services, *Response to the Scrutiny of Bills Committee*, 27 June 2017, p. 7.

2.145 Lastly, the Minister addressed concerns regarding the bill's proposed broad delegation of administrative powers. According to the Minister, a broad delegation is necessary to enable the Commission to regulate the NDIS market in an efficient manner which is responsive to rapid changes. Minister Porter highlighted that the core functions of the Commission outlined in section 181E are consistent with the *NDIS Quality and Safeguarding Framework* released by the DRC. A draft organisational chart was provided to the committee and to stakeholders which illustrated the scope of powers to be delegated and the categories of people to whom specific powers will be delegated.¹⁴⁷

Scrutiny Committee's response to the Minister

2.146 On 9 August 2017, the Scrutiny Committee noted the Minister's response but reiterated all of its concerns bar those related to reviewable decisions. The committee requested that key information provided by the Minister be included in the explanatory memorandum to assist in understanding and interpretation of the law. The committee then drew its scrutiny concerns to the attention of senators and 'left to the Senate the appropriateness of the Commissioner's broad discretionary power to disclose personal information'.¹⁴⁸

2017–18 Budget Measures

2.147 A number of disability-related measures were announced by the Australian Government in the 2017–18 Budget, including an increase in the Medicare levy by half a percentage point from 2 to 2.5 per cent of taxable income from 1 July 2019. On 9 May 2017, the Hon. Scott Morrison MP, Treasurer, announced that the increase in the Medicare Levy is expected to raise an extra \$3.55 billion in revenue in its first year, rising to \$4.25 billion in 2020–21. One-fifth of this revenue, along with any underspends within the Scheme, will be directed to the NDIS Savings Fund where it will be held for meeting the needs of people living with disability.¹⁴⁹

Quality and Safeguards Commission

2.148 As mentioned earlier, the NDIS Quality and Safeguards Commission is still to be legislated; however, the Budget allocated more than \$200 million for its establishment. Preparatory ICT work by DSS and DHS is expected to commence during 2017–18 to allow the Commission to start operating in New South Wales and South Australia from 1 July 2018.¹⁵⁰

147 The Hon. Christian Porter MP, Minister for Social Services, *Response to the Scrutiny of Bills Committee*, 27 June 2017, p. 8.

148 Senate Scrutiny of Bills Committee, *Scrutiny Digest 8 of 2017*, 9 August 2017.

149 Australian Government, *Budget 2017–18*, <http://budget.gov.au/2017-18/content/glossies/essentials/html/essentials-02.htm> (accessed 4 July 2017).

150 Department of Human Services, *NDIS Quality and Safeguards Commission—establishment*, <https://www.humanservices.gov.au/corporate/budget/budget-2017-18/disability-and-carers/national-disability-insurance-scheme-quality-and-safeguards-commission-establishment> (accessed 18 July 2017).

Psychosocial disability services

2.149 Contingent on the funds being matched by states and territories, a commitment of \$80 million for Australians with a mental illness resulting in a psychosocial disability was announced.¹⁵¹ The measure is intended to support community mental health services to assist people with severe mental illness resulting in psychosocial disability that are not eligible for the NDIS.¹⁵²

Sector Development Fund

2.150 The Budget provided \$33 million to help service providers in the disability and aged care sectors grow their workforce and ensure NDIS participants and older Australians can access quality services in their local area. The Local Care Workforce Package will increase the number of local workers available to meet the demand from new entrants into the NDIS, as well as preparing for an influx of care needed because of the nation's ageing population.¹⁵³ This is in addition to the Australian Government's spending to date through the NDIS Sector Development Fund, which has already funded 75 projects totalling more than \$105 million.¹⁵⁴

Disability Employment Services

2.151 Over the next four years from 1 July 2018, the Australian Government will spend over \$3 billion in Disability Employment Services (DES) and associated services to help people with disability find jobs with mainstream employers.

2.152 Under the new arrangements, DES providers will have to attract job seekers to their organisation, rather than being guaranteed a set level of business with a certain number of people referred to them. If a job seeker changes provider, the funding attached to that individual will move with them. The changes are intended to reward providers who are successful in attracting jobseekers, and working with them and with employers to achieve lasting employment outcomes.

2.153 In addition to the changes that will be made to DES, the Australian Government also provided for a trial to evaluate whether extending support through DES to a broader range of children with disability in the final years of their schooling can increase the number who successfully transition from school to work, without

151 Australian Government, *Budget 2017–18*, <http://budget.gov.au/2017-18/content/speech/html/speech.htm> (accessed 4 July 2017).

152 Department of Health, *Prioritising Mental Health—Psychosocial Support Services—funding*, <http://www.health.gov.au/internet/budget/publishing.nsf/Content/budget2017-factsheet28.htm> (accessed 1 July 2017).

153 The Hon. Christian Porter MP, Minister for Social Services, 'Guaranteeing the NDIS and providing stronger support for people with disability', *Media release*, 9 May 2017.

154 The Hon. Christian Porter MP, Minister for Social Services, 'Guaranteeing the NDIS and providing stronger support for people with disability', *Media release*, 9 May 2017.

adverse effects on their education. The trial will commence from July 2018, with the voluntary participation of up to 1000 students with disability.¹⁵⁵

155 The Hon. Christian Porter MP, Minister for Social Services, 'Guaranteeing the NDIS and providing stronger support for people with disability', *Media release*, 9 May 2017.