Australian Government
Department of Social Services

Productivity Commission Study into National Disability Insurance Scheme Costs

Department of Social Services

Response to the Productivity Commission's Position Paper

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Contents

The National Disability Insurance Scheme (NDIS) is a once-in-a-generation reform, and the Productivity Commission's (the Commission) Review of NDIS Costs (the Review) will assist Governments to get the settings right. This submission, prepared by the Department of Social Services (DSS), responds to the draft recommendations and findings from the Commission's Position Paper (the Paper) related to areas of Commonwealth responsibility.

How is the Scheme tracking?

Scale and pace of rollout

All governments remain committed to the bilateral agreements for transition to the NDIS.

Whilst the scale and pace of the NDIS rollout may be seen as ambitious (Draft Finding 2.1), the bilateral agreements made between governments are based on estimates of participant numbers and costs, and define funding arrangements for the agreed transition time frame. They also include a shared commitment to identifying and managing risks.

The transition timeframes agreed between governments set out when existing clients of State and Territory (State) and Commonwealth disability services will transition to the NDIS. Importantly, they set out when the NDIS will be available to all age groups and locations, so that at full Scheme any person with disability can make a request to join the NDIS. The objective of the NDIS transition period is to transition clients currently receiving State and Commonwealth supports to the NDIS, and to make the Scheme available to all eligible Australians.

Experience from trials and the early stages of transition indicate that for many of the approximately 100,000[1] of the 460,000 eligible participants who have never received any specialist disability services before, it may take some time to engage with the Scheme.

As a priority, current clients of existing State and Commonwealth specialist disability programs, and people who are not receiving services and have urgent needs, are being progressively transitioned into the Scheme, typically by age and/or geographic region. The rollout of the NDIS across Australia allows all eligible people to access the Scheme once the NDIS is available to their age group and in their location. Therefore, full Scheme will be the time when all eligible Australians are able to access the Scheme, regardless of their age and location.

Given this approach, and acknowledging the challenges of the transition period, the rollout needs to be closely monitored and managed; however a slowdown of the NDIS rollout is not required. To do so would delay access to the Scheme. There remains strong support in the disability sector to continue the rollout as scheduled and ensure Australians with disability can begin benefitting from the Scheme as soon as possible.

The Commission has asked about the most effective way to operationalise slowing down the rollout (Information Request 9.1). While not advocating a slowdown, DSS suggests the Commission could look to the flexibility within the current arrangements to ease

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[1] The AIHW report *Disability support services: services provided under the National Disability Agreement 2015–16*, estimates that 332,000 people used disability support services under the National Disability Agreement (NDA), including around 3,500 who transitioned to the National Disability Insurance Scheme (NDIS) during the year.”

implementation pressures while preserving the rollout schedules. Firstly, the actual rate of transition is determined by the rate at which people approach the Scheme and apply for access. Secondly, this flexibility is already being used to make adjustments when a genuine need arises. For example:

- The South Australian and Commonwealth governments agreed in June 2017 that estimates in the South Australian bilateral agreement would be adjusted to allow more new participants to transition to the Scheme, given there have been fewer existing South Australian clients approaching the Scheme during transition so far. This change ensures that participant estimates were adjusted based on observed experience, which, in this case demonstrated that there were more new and fewer existing clients than originally estimated.
- The Queensland and Commonwealth governments agreed in May 2017 that three regions in Queensland could commence transition up to two months earlier than outlined in the original bilateral agreement. This addressed observed experience in transition whereby fewer people were engaging with the Scheme than expected, providing capacity to bring forward slightly the rollout to new geographic regions.

Further adjustments could be expected over the course of the transition period.

Scheme cost estimates and pressures

Although the National Disability Insurance Agency (NDIA) projections of Scheme costs are broadly consistent with the Commission's modelling in 2011, and the Commission considers there is insufficient data at this stage to develop revised cost forecasts (Draft Finding 2.2), the Commission could provide detailed advice on the need to monitor and review costs over time, especially to ensure the next scheduled review of costs in 2023 is commenced early, the scope of the review is clear and relevant data is available. As the Commission identifies, there were amendments by governments in 2013 to policy settings underpinning the Scheme design. At a minimum, the Commission should provide advice on the financial impact of the changes that were not reflected in the Commission's original estimated cost range. This includes the costs of including children with development delay, broadening eligibility by taking into account reduced functional capacity to undertake learning or social interaction, and a reduced National Injury Insurance Scheme (NIIS). Understanding the cost implications of these decisions helps governments better understand the expected costs of full Scheme.

The Commonwealth has made arrangements to ensure the Commonwealth contribution to the NDIS is fully funded. The Commonwealth has introduced legislation to establish the NDIS Savings Fund Special Account ('the NDIS Savings Fund'), – a new ongoing special account that will assist the Commonwealth to meet future financial commitments to the NDIS.

The NDIS Savings Fund will be administered by DSS, with its funding sitting within the Consolidated Revenue Fund. This will ensure that any contributions deposited into the NDIS

Savings Fund are not returned to the Consolidated Revenue Fund itself and effectively lost for NDIS purposes. Subject to the passage of legislation, the NDIS Savings Fund will also be credited with one fifth of the Medicare levy from 1 July 2019, as well as savings already identified from across the Commonwealth.

While the Commission notes that Scheme costs are broadly in line with expectations (Draft Finding 2.3), there are a range of factors impacting on Scheme costs, including average package costs being higher for some cohorts of people and lower for others, higher than expected numbers of children entering the Scheme and underutilisation of committed supports.

The NDIA has put in place initiatives to better improve financial sustainability and achieve participant outcomes, such as the Early Childhood Early Intervention (ECEI) gateway and the use of reference packages. DSS agrees that it is too early to assess the effectiveness of these initiatives to alleviate cost pressures on the Scheme.

It is critical that the 2023 scheduled review of Scheme costs is able to assess the systemic cost drivers and the effectiveness of cost control measures. It would be useful for the Commission's 2017 report to comment on this and to recommend a proposed scope and timing for this work.

Reviewing NDIS costs every five years

Under the current Heads of Agreement for full Scheme, State contributions will be reviewed in 2023 and every five years thereafter following the publication of Census data. The purpose of the review is to confirm State contributions to ensure each State contributes to the NDIS on the same per population basis (i.e. all States pay the same premium to the Scheme when considered on a person by person basis). While not explicitly stated, these reviews also provide an opportunity for the Commonwealth and States to review the arrangements for funding the Scheme based on actual experience over previous five years, including:

- the latest risk profile for the Scheme, and appropriate measures to address any defined risks;
- whether there need to be any further adjustments to the policy or legislative settings for the NDIS that would impact on Scheme financial sustainability; and
- the adequacy of existing funding arrangements.

These reviews should ensure that arrangements for funding the NDIS remain responsive to the actual operation of the Scheme.

Scheme supports

Definition of ‘reasonable and necessary’

The Commission asks whether the *National Disability Insurance Scheme Act 2013* (NDIS Act) is sufficiently clear about how and whether reasonable and necessary criterion should be applied (Information Request 4.1). The independent Review of the NDIS Act in December 2015 acknowledged that, generally, stakeholders were supportive of how the legislative framework defines the concept of reasonable and necessary supports. The NDIA advises that it is not seeking legislative change at this time, but sees value in clarifying what is reasonable and necessary and what is not.

Through the independent Review of the NDIS Act, some concerns were raised, relating to ‘value for money’ (Section 34(1)(c)), ‘effective and beneficial’ (Section 34(1)(d)) and ‘reasonable family carer or other support’ (Section 34(1)(3)). Although the independent Review did not recommend a change to Section 34 at this time, the Council of Australian Governments (COAG) agreed to the recommendations of the Review of the NDIS Act to amend parts of the Supports for Participants Rules to provide greater guidance on the matters that may be used to determine whether a support will be effective and beneficial, on how to determine value for money, and what a ‘reasonable’ level of informal care is. The legislation was in Parliament at the time of writing.

A further review of the legislation is planned for full Scheme, and the COAG Disability Reform Council (DRC) agreed on 16 June 2017 that this review should occur in 2021.

Boundaries and interfaces with the NDIS

Information, Linkages and Capacity Building (ILC)

The Commission has observed that adequate resourcing of Information, Linkages and Capacity Building, or ILC, is important during transition to ensure people (both inside and outside of the NDIS) are connected to appropriate services (Draft Finding 5.1). Further, the Commission recommends funding for ILC should be increased during transition and maintained at a minimum level of $131 million per annum with a review of effectiveness of the ILC program as part of the five-yearly review of Scheme costs (Draft Recommendation 5.1). DSS agrees ILC is an important insurance element of the Scheme to assist all Australians with disability and their families and carers, including those people moving into the NDIS. Monitoring of the level of ILC funding required will continue as part of standard budget processes for the Commonwealth. DSS also notes that current ILC investment and outcomes are determined by transitional funding arrangements. That is, the level of funding builds as the transition progresses, and is largely state-based. Any new investment may be better aligned with the move to the national ILC Commissioning Framework[2], to be fully implemented in full Scheme.

The NDIA may require a greater degree of flexibility around how much of the current ILC and participant plan budget is spent on ILC to improve early outcomes for people with disability through an early intervention approach and reduce longer term Scheme costs. That being said, ILC investment needs to be targeted to areas that have a strong evidence base for greatest effectiveness, while being careful not to replace mainstream services which are a State responsibility. DSS supports the NDIA establishing data collections and evaluation tools to build a strong evidence base for ILC, in particular for capacity building.

Continuity of support

For people with disability who are already receiving government specialist disability services but are not eligible for the NDIS, governments have committed to deliver continuity of support. This commitment is outlined in the bilateral agreements. That means if someone is already a client of state/territory or Commonwealth disability services, they will be supported to achieve similar outcomes, even if the name of their program changes or they access help through a different arrangement. The Commission has highlighted the importance of governments making public their approach to providing continuity of support and the services they intend to provide (Draft Recommendation 5.2).

DSS agrees that making continuity of supports arrangements public will help people to understand what governments are providing. This is a matter for respective governments, who have responsibility for providing these supports.

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[2] https://ndis.gov.au/community/ILCCommissioningFramework.html

In the short term, continuity of support for existing Commonwealth clients will be delivered through existing Commonwealth program funding, with funding agreements extended to 30 June 2019 to enable this. Commonwealth clients will be notified once longer term arrangements for continuity of support are finalised.

Continuity of support for clients of State administered specialist disability programs is made up of two age groups; those who are under 65 years of age, and those who are 65 years of age and over. States are responsible for providing continuity of support for people who are under 65 years of age.

State clients who are 65 years of age and over (and Indigenous people aged 50 and over), and who are ineligible for the NDIS, will receive support from the Commonwealth Continuity of Support program, administered by the Department of Health. Information on this program is publically available at the Department of Health website[3]. This is a separate program to continuity of support arrangements being developed for existing Commonwealth clients.

Boundaries and interfaces with the NDIS

The Commission has recognised the importance of the clear boundaries for system responsibilities and NDIS interfaces with mainstream services (Draft Recommendation 5.3).

COAG has agreed the overarching policy relating to system responsibilities, through the *Principles to Determine the Responsibilities of the NDIS and Other Service Systems*, which are supported by the *Applied Principles and Tables of Supports*. As the NDIS is implemented some of these boundaries are being tested and clarified.

In addition, at an operational and jurisdictional level, there needs to be clarity on how interfaces work between the NDIS and mainstream service systems. These interfaces should be made public so that participants know where to turn to and what to expect. Solutions will often be needed at a local level, rather than nationally. There are emerging good practice examples of interface management, through detailed work undertaken by jurisdictions and the NDIA. DSS will facilitate the sharing of this work through senior officials and DRC Ministers.

There are also instances where interface issues are proving challenging to operationalise, such as the NDIS and health and education systems. One example is specialist school transport, which COAG agreed should be an NDIS responsibility for eligible participants. However, the interfaces between NDIS, education systems and transport systems and markets have posed challenges. Much more work will be required, including considering the costs and benefits of including or excluding specialist school transport from the NDIS.

[3] Department of Health - https://agedcare.health.gov.au/programs-services/commonwealth-continuity-of-support-programme - Accessed 10 July 2017.

The National Disability Strategy

Through DRC all jurisdictions have re-affirmed their commitment to COAG's National Disability Strategy (the Strategy). The Strategy seeks to drive a more inclusive approach to the design of policies, programs and infrastructure so that people with disability can participate in all areas of Australian life. Importantly, action taken under the strategy to improve the accessibility of mainstream services for people with disability will complement specialist disability services and programs currently provided by Commonwealth and State governments, including those provided through the NDIS. Mainstream service systems have a responsibility to consider actions to ensure that people with disability have the same access to services and supports as other Australians.

The Commission recommended that a standing agenda item on the NDIS be considered for COAG Councils (Draft Recommendation 5.3). The COAG DRC now lists the NDS as a standing agenda item for its ordinary meetings. Should this option be more broadly pursued it would be important that the standing agenda item be extended to include a broader focus on improving outcomes for people with disability, consistent with the Strategy, to help drive improved outcomes for all people with disability, including those who will not be NDIS participants.

One way to better understand how mainstream services and the NDIS are supporting people with disability is to ensure adequate data collection and reporting. As States wind down the provision of specialist disability services, there is a risk State provided data may decrease. The NDIS will provide a rich source of new data, but only for around one tenth of the total population of people with a disability. DSS considers that all governments need to commit to sustaining and enhancing data collection and reporting on people with disability access to services in cost effective ways. DSS notes that not all jurisdictions are contributing funding towards the 2018 Survey of Disability, Ageing and Carers (SDAC), produced by the Australian Bureau of Statistics. Agencies such as the Australian Institute of Health and Welfare need the opportunity to collect data on disability from a range of existing data collections, and to report more broadly than has been possible to date of how people with disability are faring. States should also publish their access policies for mainstream services.

Interface with the National Injury Insurance Scheme (NIIS)

The States should bear the consequential NDIS costs if the NIIS remains only partially implemented. This is consistent with the *Intergovernmental Agreement for the National Disability Insurance Scheme (NDIS) Launch* and the transition agreements between governments, reflecting the original intent of the NIIS to reduce the cost of the NDIS. This should be made clear in the Commission's Final Report.

Minimum benchmarks have been developed for State motor vehicle accident compensation schemes and agreed by the seven jurisdictions with a Heads of Agreement in place for the NDIS. Work is also well progressed on the development of minimum benchmarks for the workplace accidents stream. While Western Australia (WA) does not have a Heads of

Agreement, WA has committed in their bilateral agreement for transition to an NDIS to meet minimum benchmarks for motor vehicle accident compensation and to continue to work towards the minimum benchmarks for no-fault lifetime care and support for people who are catastrophically injured in work place accidents.

Leaders at the COAG meeting on 9 June 2017, agreed with Treasurers' advice to not proceed with a medical treatment stream of the NIIS at this time. Leaders asked Treasurers to review the cost implications of this decision in the context of the Commission's Review of NDIS Costs. Leaders also asked Treasurers, in consultation with the DRC, for advice on a general accident stream of the NIIS for the first COAG of 2018.

Eligibility

The NDIS should support eligible people with psychosocial disability. This is in line with broad stakeholder support, with feedback suggesting participants with psychosocial disability are receiving better and more effective support and assistance under the NDIS than previously available. It is important to note, however, that the health system will continue to be responsible for the treatment of mental illness.

The investment approach of the NDIS and the recovery model of mental health are both about building capacity, and are well aligned. In the NDIS context, recovery is about achieving an optimal state of personal, social and emotional wellbeing, as defined by each individual, whilst living with or recovering from mental health issues. Recovery approaches acknowledge that the effects of illness and subsequent psychosocial disability may or may not diminish over time. This means that while some people may recover to the point they do not require any mental health or disability supports, others will always require supports to assist and maintain their recovery, ongoing community participation and social inclusion. Similarly, the idea of permanence is about the irreversible nature of a disability, regardless of whether it is chronic or episodic. Therefore the eligibility criteria should not be changed in relation to people with psychosocial disability. However, DSS is interested in the Commission further developing the concept of a specialised gateway as a way to improve the engagement of people with psychosocial disability with the Scheme.

Importantly, clients of existing programs who are not eligible for the NDIS will receive continuity of support. The Commonwealth will continue providing support through existing program structures, funding and services to June 2019. Longer-term continuity of support arrangements are also being developed and will be informed by transition outcomes, updated numbers of Commonwealth clients not eligible for the NDIS and key reviews and inquiries.

Outside the NDIS, community-based mental health services remain primarily a State government responsibility. All governments will continue working together on community mental health services being maintained outside the NDIS through a number of important avenues, including the Fifth National Mental Health and Suicide Prevention Plan and the National Disability Strategy, and DRC.

Additionally, the Commonwealth has announced a new $80 million over four years for psychosocial support services to assist people with severe mental illness who are not eligible for assistance through the NDIS. The additional Commonwealth investment will be delivered once agreements have been reached with appropriate commitments from each State and Territory. Program arrangements will be subject to State and Territory negotiations.

Provider readiness

NDIS Pricing

Price controls and monitoring will continue to be required for some NDIS sub-markets for some time as providers and participants build capacity to engage with a market-based model. The NDIA is responsible for setting prices, and has commissioned an independent pricing review which will inform consideration of how pricing in the Scheme can be improved.

Noting that the longer-term goal for the Scheme is price deregulation, DSS does not agree with the Draft Recommendation 6.1 to immediately introduce an independent price monitor.

Price controls are required now and for the foreseeable future, and NDIA is best placed to perform this role during the early stages of the NDIS. This will be critical in order to strike the right balance between encouraging the market-based model to evolve and keeping NDIS costs sustainable over time.

However, DSS agrees that greater transparency, appropriate benchmarking and independence are required in price regulation under the Scheme. Better communication is required to improve stakeholder understanding and provide greater market certainty, particularly about the pre-conditions for price deregulation. The current NDIA pricing review should provide a pathway to achieving these improvements.

Provider readiness

Encouraging the disability services market to develop and transition to the NDIS is a priority for all governments and the NDIA, and there is general agreement that there is a risk thin markets will persist for some sub-markets and participant groups (Draft Finding 6.1). The Commonwealth is supporting market development through the Sector Development Fund (SDF), which has funded 76 projects totalling over $108 million (as at 30 May 2017) (Information Requests 6.1 and 6.2).

Over $22 million of SDF funding has supported projects targeted at addressing or responding to thin market risks. Some examples of these projects are provided in Box 1.

The NDIA as market steward is developing a Market Intervention Framework to guide its advice and activities to ensure the most appropriate government intervention is applied to manage market risks as they emerge. Commissioning a provider of last resort to deliver services to participants should only occur when a market fails and be preceded by other interventions to stimulate the market.

Careful language is required to describe the spectrum of government interventions that may be appropriate to respond to market risks, including thin markets and market failure. Using provider of last resort as a descriptor of this spectrum of government responses may unintentionally lead to a perception that a more interventionist approach than is required will be taken by governments.

Box 1 – Sector Development Fund Projects Addressing Thin Markets

Participants with complex needs

The Centre for Disability Research and Policy at the University of Sydney and the Young People in Nursing Homes National Alliance received funding to provide cross-sector service coordination for people with high and complex needs.

Aboriginal, Torres Strait Islander or Culturally and Linguistically Diverse participants

The First Peoples Disability Network was funded to build the capacity of Indigenous organisations and the cultural competence of mainstream organisations to deliver supports under the Scheme.

The Victorian Government is building core capability within two key State-wide organisations representing Aboriginal and CALD community's interests and intersecting with other sectors to enable coordinated responses to community needs.

The Northern Territory Government is growing remote workforce capacity by establishing registered training organisations to deliver tailored, face to face training packages in remote communities for Indigenous people that have expressed an interest in and have the potential to become support workers.

Rural and remote markets

The NDIA received funding to develop an accredited Remote Disability Training package to build the skills of local Indigenous people to support and coordinate services in their communities.

Indigenous Allied Health Australia was funded to deliver activities to build the Indigenous workforce and culturally safe and responsive allied health services in rural and remote areas.

The Northern Territory Government used SDF funds to establish community plans and support local decision-making in remote communities to inform service provision and direct necessary services to these areas, and is exploring innovative service models to increase access to supports in difficult to reach markets.

Identified thin service markets

The Summer Foundation has been funded to develop an NDIS Housing Blueprint and other initiatives to grow the disability accommodation market.

The Specialist Disability Accommodation Initiative funded 12 non-government organisations selected through a competitive grants process to deliver sustainable housing projects that addressed an identified need and were supported by the community.

The Independent Living Centre NSW received funding for an Assistive Technology Mentoring program providing competency based training for people with disability and carers to build the knowledge and skills to support others with their assistive technology needs.

Workforce readiness

The Government is very conscious that the NDIS requires a strong and effective disability market, sector and workforce. As the Commission observes, an inadequate disability care workforce would be a risk to full implementation of the Scheme (Draft Finding 7.1). DSS has been working with State governments, the NDIA, and the sector, to support disability workforce development. This includes working directly with jurisdictions to develop workforce plans.

In September 2016, the DRC agreed the roles and responsibilities of relevant market actors, including the Commonwealth and State governments, and the NDIA. The roles and responsibilities of different parties to develop the NDIS workforce should be published as recommended by the Commission (Draft Recommendation 7.1 and Information Request 7.1).

States should leverage their expertise in the delivery of disability services to identify and address workforce gaps, as recommended by the Commission (Draft Recommendation 7.1).

The Commonwealth's priority is to connect domestic jobseekers, including those accessing jobactive and Disability Employment Services, with the care career opportunities created by the NDIS. Through the SDF, the Commonwealth has funded a number of initiatives to build the disability workforce, including:

- Projects to support the disability sector and development of the market through governance training for boards/senior management, distribution of the Readiness Assessment Tool for providers, and provision of business support and coaching webinars, as well as access to information sessions and videos which discuss the NDIS experience.
- The National Disability Services' (NDS) Carecareers project provides a platform to connect service providers and potential employees through a disability-specific job board, and a quiz to help potential employees work out where in the sector they would fit best.
- NDS's projectABLE project runs workshops to educate high school students about the range of career opportunities in the disability sector.
- A number of projects aimed at stimulating the allied health workforce, particularly in rural and remote locations.
- Commissioning a research project focusing on 'Changing the Workforce to Support the NDIS'.

There has also been significant Commonwealth investment in State-based projects (over $51 million) tailored to each jurisdiction's unique market environment and rollout schedule.

The Commonwealth's $5 million Innovative Workforce Fund (IWF) seeks to ensure that the disability workforce will be skilled to meet future requirements. The IWF seeks to support projects that boost the capability, management, and size of Australia's disability workforce to meet future requirements of the NDIS. Businesses will continue to conduct their own workforce recruitment and planning, but this fund will support them by showcasing new models, and exchanging best-practice methods across the broader care sector. The IWF is being run by NDS, with $1 million allocated towards researching and developing different workforce models that can be applied to the disability sector, and the remaining $4 million available for innovative workforce related projects over the next two years.

As providers organise and deploy their workers in new ways, this IWF will equip them with good practice and bright ideas that have been proven to work in other industries.

The 2017-18 Budget provides $33 million over three years, for the Boosting the Local Care Workforce Program (the Program). The Program will provide targeted assistance to meet expanding workforce requirements, helping employers increase the supply of care workers in regions, to meet the needs of NDIS participants and the care sector more broadly. The Program will boost local opportunities in care work, particularly in rural, regional and outer suburban areas by identifying markets gaps and areas of thinness and providing support to providers to adapt their businesses and grow their workforce.

A lead organisation (or consortia) will be engaged through a restricted selection process to implement the three elements of the program nationally, which includes:

- Regional Coordinators – a group of up to 25 coordinators will be engaged across the country in key locations based on a combination of NDIS and aged care market and provider need, timing of the NDIS rollout and the location of existing services. Coordinators will work with existing local service providers, businesses entering the disability market and establish links with Employer Liaison Officers, jobactive, and Disability Employment Services providers.

- Specialist Coordinators – a group of up to 10 coordinators will be engaged to provide a national approach to disability sector market issues and responding to aged care reform by engaging with key stakeholders to analyse key risks and issues, to recommend responses, identify areas of market underutilisation and unmet demand, inform provider assistance and identify gaps.

- Sector Transition and Employer Support will provide up to 720 small to medium, existing or new disability services providers with the opportunity to access business assistance or a grant of up to $10,000 to support a provider's transition to delivering NDIS services.

Supports delivered through this program are expected to commence from late 2017 and cease in late 2019 as the NDIS moves to full scheme.

DSS notes the Commission's recommendation that immigration policy could be considered to mitigate workforce shortages over the transition period. Migration programs, such as labour agreements, have been used in the aged care sector to meet workforce demand. A similar program could be considered for the disability sector if actions to grow the domestic workforce do not meet demand. The Commonwealth will continue to work actively with other stakeholders to explore opportunities to develop the workforce, particularly in sub-markets where potential shortages could occur.

Participant readiness

eMarketPlace

The market is responding to provide consumer options to assist participants to engage with the NDIS market effectively. Creating these tools will be important to the Scheme's success, consistent with the Commission's observations (Draft Recommendation 8.1). Tools such as service finder and review websites, including Seeva, Clickability, and Care Navigator are emerging, as are online communities for participants, their families and carers to share their experience of accessing supports from service providers. Supporting participants to exercise choice and control is fundamental to developing a competitive and diverse market. Tools and resources that enable participants to engage with the market as informed consumers are necessary for demand signals to drive competition and shape market development.

Governance

Governance

Changes to governance to allow more streamlined changes to NDIS rules and simplified decision-making would improve the agility and the efficiency of the NDIA to respond to cost pressures and provide greater flexibility to manage future financial sustainability (Draft Recommendation 9.1).

The NDIS is a shared commitment of the Commonwealth and States and it is important that all governments manage the Scheme appropriately to ensure the NDIS remains financially sustainable. All governments have committed to continue to discuss these issues as the Commission finalises its Review.

Western Australia (WA) and NDIS

DSS agrees with the Commission's recommendation that WA should join the NDIA-delivered NDIS to ensure national consistency and sustainability (Draft Recommendation 9.2). DSS is providing all information requested to support the WA government to make a decision about the NDIS, and is committed to working with WA to ensure that Western Australians have influence over how the NDIS is delivered in their State. A decision is needed quickly, in order to provide certainty to Western Australians with disability, their families and carers and disability support providers and their employees in WA; and so that arrangements can be put in place for WA to smoothly transition to the NDIS.

Improved reporting

Improved performance reporting allows the Commonwealth and NDIA to quickly identify and address issues as they occur. It is important that the Scheme is responsive to issues that arise, both to ensure its financial sustainability, and to maintain the immense level of support for the NDIS in the community. In particular, performance reporting that is not only descriptive, but provides explanation and analysis for trends in the data will be more useful in assessing the performance of the Scheme. The NDIA has already begun implementing improvements in reporting in its quarterly reports.

NDIS Funding arrangements

Escalation parameters

Under full Scheme Heads of Agreements, contributions from the States are assumed to grow by 3.5 per cent per annum based on the mid-point of the long term Consumer Price Inflation target range, as set by the Reserve Bank of Australia, and population growth. The Commission has already noted that these existing escalation parameters for full Scheme may not capture the full increase of NDIS costs over time (Draft Finding 10.1). Accordingly, if escalation rates are not changed this would likely result in the Commonwealth incurring a higher share of overall Scheme costs.

Under first principles, financial contributions from all parties should reflect, where possible, the roles and responsibilities of those parties. The architecture of the NDIS is a unique arrangement in the relationship between the Commonwealth and State governments, with current governance arrangements providing States with a significant and ongoing funding and stewardship role in the NDIS, the effective implementation of the interface of the NDIS with mainstream service systems and stimulating the appropriate workforce to deliver disability services.

As DSS outlined in its first submission in response to the Productivity Commission's Issues Paper, contribution levels should be linked to underlying growth in NDIS costs, including short to medium term financial implications such as expanding market and wage increases for the Social and Community Services sector. In addition, should there be an adverse impact on the pricing of supports, escalation rates should be adjusted to reflect those changes. Escalation rates should therefore be based on an economic projection of cost escalation, with any costs incurred outside of these settings considered in the context of risk sharing arrangements.

Risk sharing

The Commission has stated that risk settings for the Scheme need to be in line with the level of control, and that the Commonwealth should not bear the risk for aspects of the Scheme that the States have sole control over and vice versa (Draft Finding 10.2). In principle, any cost overruns should be apportioned according to the parties best able to manage the risk.

The States have primary responsibility for providing mainstream services for the 4.3 million people with disabilities in Australia. Around 460,000 people will become NDIS participants with plans for services that rely on mainstream services being available. One of the biggest financial risks of the NDIS is the potential for States to withdraw funding from mainstream services. Those costs should not shift to the NDIS, and risk sharing arrangements should not create a perverse incentive for States in this regard.

More specifically, States are accountable for:

- any lack of services provided through mainstream systems that has the impact of increasing costs in the NDIS, including the implementation of the NIIS and roles and responsibilities under the National Disability Strategy; and
- preventing or delaying changes to NDIS policy or legislative settings which would have the effect of mitigating financial risks to the Scheme

DSS considers that Commonwealth and State contributions to the NDIS should, in the first instance, be linked to a series of implementation benchmarks and performance indicators that demonstrate that the NDIS is able to operate under the original design of the Scheme (as agreed by governments in 2013) and that the NDIS is capable of quickly responding to emerging risks. If these benchmarks or performance indicators are not met, the responsible party would be liable for funding 100 per cent of any risk that has materialised from failing to meet those benchmarks.

DSS considers that this arrangement should be implemented through new intergovernmental agreements that:

- provide more flexible/agile governance processes that allow changes to certain NDIS policy parameters and rules to be made quickly to mitigate risk;
- require States to contribute per capita funding with an appropriate escalation rate for full Scheme (as discussed earlier);
- eliminate in-kind funding contributions, and instead allow governments who wish to deliver NDIS services do so on the same basis as other providers; and
- protect against cost-shifting through agreed principles dealing with boundaries and mainstream interfaces and requiring the NDIA to report on deviations from agreed boundaries or mainstream interfaces.

Outside of this, DSS acknowledges that general risks to Scheme sustainability arising from standard variances should, in the first instance, be managed through general NDIA processes and any available cash reserves. That is, risk should not be attributed to contributing governments for minor fluctuations unless the NDIA has insufficient cash reserves from standard and ongoing contributions by the Commonwealth and States. To support this approach, DSS considers that the NDIA should retain a reserve for contingencies from contributions made by contributing jurisdictions and the Commonwealth.

In the absence of any changes to current governance settings, should there be a significant system wide cost variance for the NDIS, DSS considers that contribution levels by all parties should be adjusted if the NDIA lacks the adequate reserves required for mitigation. For example, wage rates under the NDIS were affected by the Fair Work Australia decision in 2012 to increase the award rates for workers in the social and community services sector. This increase, to be phased in over a period of time (to 2020-21), was reflected in NDIS bilateral agreements for the trial and transition to full scheme period via indexation arrangements. The year-on-year indexation rate for the NDIS was set above long term trends and was used to determine changes to the national benchmark average package costs, for which States contribute 59.4 per cent. As a result, State contributions became sensitive to short term shocks to NDIS costs.

Should the Commonwealth be provided with additional capability to manage risks to Scheme costs, then it would be appropriate that the Commonwealth would be liable for a greater share of any risk.

NDIA annual operating budget

The Commonwealth has introduced legislation for the full funding of the NDIS and, ensured that the NDIA is adequately resourced. The NDIA has not asked for more funding to deliver the NDIS during transition, and currently has an operating budget of around 15 per cent of Scheme costs, which reflects the nature of costs during the transition period. Based on experience from similar Schemes around the world, a long term operating budget ratio of around seven per cent is appropriate. However, DSS is aware that these comparable Schemes have operating expenses that may fluctuate year to year.

The NDIA has advised that the seven per cent operating cost ratio is achievable at full Scheme, if consideration is given to some flexibility to account for annual fluctuations in operating expenses.

In-kind contributions to the NDIS

In-kind funded supports should be phased out by the end of the transition period (Draft Recommendation 10.3). Allowing in-kind to exist beyond transition would restrict participant choice and control and have a distortionary impact on prices, delaying the development of a functioning disability support marketplace.

There are challenges in transitioning out of the provision of in-kind funded services, and it is possible that some, time-limited in-kind funding may exist in the initial years of full Scheme, but only where a strong rationale exists and there is a clear and agreed path for in-kind funding to cease. Any in-kind funding provided at full Scheme should be valued at the NDIA efficient price. This approach would act as an indirect financial penalty, if in-kind programs cost a State more than the NDIA efficient price offset they would receive.

While the Heads of Agreement for the NDIS outlines that the States will retain full policy and administrative responsibility for their in-kind funded services, they also require that these in-kind funded services reflect the final NDIS design agreed by COAG. Therefore, requiring in-kind funding offsets to be valued at NDIA efficient prices for supports would be consistent with the Heads of Agreement, subject to COAG agreement.

Therefore, Draft Recommendation 10.3 should be revised to:

In-kind funding arrangements should be phased out by the end of transition and should not form part of the intergovernmental agreements for full Scheme funding. Should in-kind funding exist beyond transition, jurisdictions' in-kind offsets should be valued at the NDIA efficient price.

Final comment

All governments will discuss these issues as part of the ongoing management and development of the NDIS and look forward to the Commission's Final Report in September 2017.