Queensland Advocacy Incorporated

Our mission is to promote, protect and defend, through advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland.

Systems and Legal Advocacy for vulnerable people with Disability

National Disability Insurance Scheme (NDIS) Costs

Submission by Queensland Advocacy Incorporated

Productivity Commission Inquiry

March 2017

1. Introduction

Queensland Advocacy Incorporated (QAI) is an independent, community-based systems and individual advocacy organisation and a community legal service for people with disability. Our mission is to promote, protect and defend, through systems and individual advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland.

QAI has an exemplary track record of effective systems advocacy, with thirty years' experience advocating for systems change, through campaigns directed to attitudinal, law and policy reform and by supporting the development of a range of advocacy initiatives in this state. We have provided, for almost a decade, highly in-demand individual advocacy through our three individual advocacy services – the Human Rights Legal Service, the Mental Health Legal Service and the Justice Support Program. Our expertise in providing legal and advocacy services and support for individuals within these programs has provided us with a wealth of knowledge and understanding about the challenges, issues, needs and concerns of individuals who are the focus of this inquiry.

QAI deems that all humans are equally important, unique and of intrinsic value and that all people should be seen and valued, first and foremost, as a whole person. Further, QAI believes that all communities should embrace difference and diversity, rather than aspiring to an ideal of uniformity of appearance and behaviour. Central to this, and consistent with our core values and beliefs, QAI will not perpetuate use of language that stereotypes or makes projections based on a particular feature or attribute of a person or detracts from the worth and status of a person with disability. We consider that the use of appropriate language and discourse is fundamental to protecting the rights and dignity, and elevating the status, of people with disability.

QAI thanks the Productivity Commission for the opportunity to make a submission on the issues paper.

2. Scheme costs

Are there any cost drivers not identified above that should be considered in this study? If so:

- ***How do they impact costs in the short and long term?***
- ***How, and to what extent, can government influence them?***

For some participants, there may be costs that are additional to their assessment costs that are not included in this study. These costs could include establishment costs to self-direct their supports and services in the area of training for themselves or their workers.

There is also no reference to the quality of supports and services participants are receiving. A related issue is of the breadth of choice available to participants, which significantly impacts upon the quality of services received. Quality has a significant impact on both short and long term costs. The Government has significant power to influence quality, in terms of supporting a wide variety of service providers to remain viable in the new market environment.

Why are utilisation rates for plans so low? Are the supports not available for participants to purchase (or are there local or systemic gaps in markets?) Do

participants not require all the support in their plans? Are they having difficulty implementing their plans? Are there other reasons for the low utilisation rates?

Utilisation rates are low because people don't 'own' their plans. Research confirms repeatedly that people require fewer supports, and therefore spend less when they self-manage their plans.

- From 30 June 2015 to 30 June 2016, the proportion of participant plans that are Agency managed decreased from 62 per cent to 58 per cent, plans managed in combination rose from 33 per cent to 35 per cent, and self-managed plans increased from 6 per cent to 7 per cent.[1]

Families reported that they sought fewer services when they had greater control, however they were still satisfied with the quality of the available services.[2]

The reasons are simple. A person who wishes to self-manage is by definition one who wishes to take control and do things for themselves rather than rely on others. Given a finite supply of funds, a person naturally will seek to get the maximum mileage and value from it.

Evidence from other countries suggests that, all other things being equal, Participants who self-direct are happier, feel more in control, have better quality of life, use fewer supports and spend less money on support than their more dependent counterparts.

It is well established that, when given their choice of supports, people who self-direct demand fewer services, and get them at a lower cost.

In Queensland, anecdotal evidence from Townsville suggests that the majority of people are self-managing their plans. QAI suggests that, while it is still early to make any conclusions regarding utilisations rates in Queensland, the uptake of self-management and self-direction may be higher in Queensland than in other jurisdictions because Queensland is, and has historically been, underfunded, so people have sought to self-manage in a way that best utilises their available funding.

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[1] National Disability Insurance Agency Annual Report 2016 p 115

[2] Loretta Piccenna *et* al. 2015. Optimising self-directed funding for the long-term disabled. Briefing Document February 2013, p 13. < http://apo.org.au/files/Resource/sdf_ltd_brief_document_final.pdf>

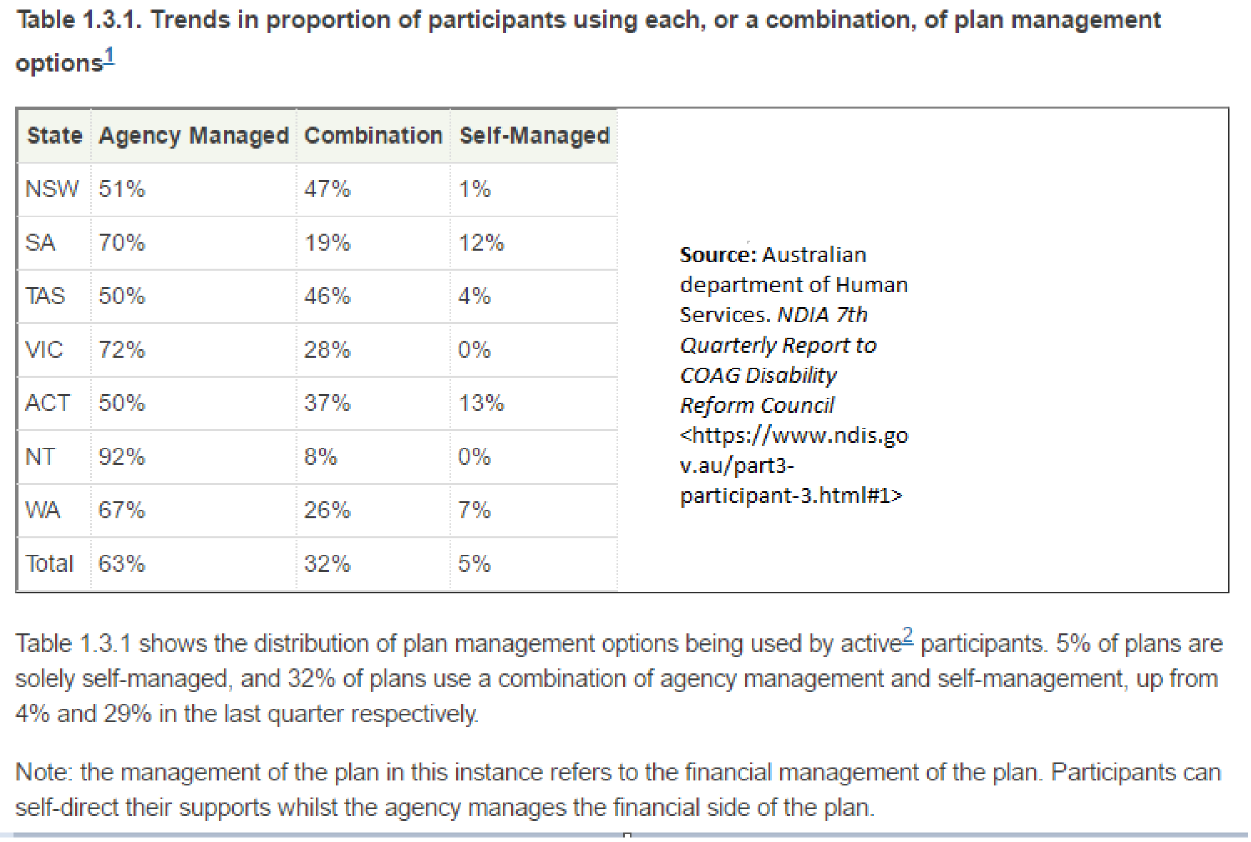

Table 1.3.1. Trends in proportion of participants using each, or a combination, of plan management options[1]

State	Agency Managed	Combination	Self-Managed
NSW	51%	47%	1%
SA	70%	19%	12%
TAS	50%	46%	4%
VIC	72%	28%	0%
ACT	50%	37%	13%
NT	92%	8%	0%
WA	67%	26%	7%
Total	63%	32%	5%

Source: Australian department of Human Services. *NDIA 7th Quarterly Report to COAG Disability Reform Council* <https://www.ndis.gov.au/part3-participant-3.html#1>

Table 1.3.1 shows the distribution of plan management options being used by active[2] participants. 5% of plans are solely self-managed, and 32% of plans use a combination of agency management and self-management, up from 4% and 29% in the last quarter respectively.

Note: the management of the plan in this instance refers to the financial management of the plan. Participants can self-direct their supports whilst the agency manages the financial side of the plan.

A study conducted in Washington DC[3] found that families who participated in a self-directed funding program had high levels of satisfaction with their level of involvement in the decision making process. Interestingly, families also reported that fewer services were received when they had greater control, however they were still satisfied with the quality of the available services.

One study in particular considered experiences of people with learning disabilities and physical disabilities, as well as older people.[4] This study evaluated the program in 13 pilot sites in the UK and was considered to be a robust study as it included a 'quasi-randomised control trial'.[5] People with physical disabilities were satisfied with the support services they purchased and the quality of the support was perceived to be higher than those who did not self-direct. People with learning disabilities found self-directed funding to have a positive impact on their lives by giving them more control.

As the Productivity Commission recognises in the Issues Paper, there are some current pressures which require management responses. These pressures are:

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[3] Neely-Barnes S, Graff JC, Marcenko M, Weber L. Family decision making: Benefits to persons with developmental disabilities and their family members (vol 46, pg 93, 2008). Intellect Dev Disab 2008; 46(3): Ii-Ii

[4] Glendinning C, Challis D, Fernandez JL. Evaluation of the Individual Budgets Pilot Program: Final Report. Manchester, London: SPRU, PSSRU, Social Care Workforce Research Unit, 2008.

[5] Harkes M, Brown M, Horsburgh D. Self Directed Support and people with learning disabilities: a review of the published research evidence. Br J of Learning Disabilities 2013; 42: 87-101.

- Higher than expected numbers of children entering the scheme: the prevalence of 0-6 year olds remained similar between the 30 June 2016 and 30 November 2016, and the prevalence of 7-14 year olds increased between the 30 June 2016 and 30 November 2016.
- Increasing package costs over and above the impacts of inflation and ageing ("superimposed" inflation): similar levels of superimposed inflation were observed at 30 June 2016 and 30 November 2016.
- Higher than expected participants continuing to approach the scheme: this trend continued between 30 June 2016 and 30 November 2016, with some reduction in New South Wales and the Australian Capital Territory.
- Lower than expected participants exiting the scheme: the exit rate decreased between 30 June 2016 and 30 November 2016.
- A mismatch between benchmark package costs and actual package costs: this improved between 30 June 2016 and 30 November 2016. Further, **a large driver of the mismatch is participants in shared supported accommodation.** This is a legacy issue from the existing disability system – however, is likely to be present for several years. Adjusting for participants with moderate intellectual disability, results in costs more in line with expected (all else equal), noting that this adjustment was also part of the Productivity Commission report.[6]

Why are more participants entering the scheme from the trial sites than expected? Why are lower than expected participants exiting the scheme?

QAI expects that the reason more participants are entering the scheme from the trial sites than expected is due to initial under-estimates of demand. It is too early to predict the rates of exit from the scheme, or to draw conclusions based on this.

What factors are contributing to increasing package costs?

Anecdotal evidence suggests that increased package costs may be due to the shrinking of other disability services, and the assumption that all services will now be purchased through the NDIS. Further to this, people with disability and their families have shared information and experiences and therefore are more enlightened to the possibilities offered by the Scheme. Therefore many have realised that 'my first plan' or their previous support experiences had significant limitations and package costs may have been impacted by the raised awareness and empowerment. This further highlights the under-estimations initially.

Additionally, now that the NDIS Appeals Support processes are being promoted and instigated, more people are realising that plans are inadequate, and when plans are reviewed their packages are being increased. These are directly related to the speed and inappropriate measures of consultation that have occurred in 'Planning by Phone' interviews, in order to intake major numbers of Participants in a hurried fashion.

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[6] December 2016 | COAG Disability Reform Council Quarterly Report

Why is there a mismatch between benchmark package costs and actual package costs?

QAI submits that there was insufficient stakeholder engagement during the development of the NDIS and that this resulted in an inadequate body of accurate data on which to base projections.

The NDIS Grassroots Discussion Group page on FaceBook suggests that the costs of services have increased, in part due to businesses charging the NDIA for costs which would formerly have been absorbed as ordinary business operating costs. There remains significant ambiguity about what is covered by the NDIS and this may be impacting on price.

QAI notes that there are also difficulties associated with the late inclusion of psychosocial disabilities, given that the existing NDIS pricing structure was not designed with regard to specific supports and services required by people with a psychosocial disability. We are concerned that, as in other areas where the needs of persons with disability and mental illness are conflated (with negative impacts for the person), people with a psychosocial disability may struggle to access appropriate supports and services within a system designed primarily to meet the needs of people with disability.

3. Scheme boundaries

To what extent have the differences in the eligibility criteria in the NDIS and what was proposed by the Productivity Commission affected participant numbers and/or costs in the NDIS?

The Productivity Commission's report was published in 2011 and is now six years old. The eligibility criteria have since been broadened and this has had a direct impact upon NDIS participant numbers and actual and projected costs.

Are there other aspects of the eligibility criteria of the NDIS that are affecting participation in the scheme (to a greater or lesser extent than what was expected)? If so, what changes could be made to improve the eligibility criteria?

There has been significant ambiguity regarding the inclusion of persons with psychosocial disability within the NDIS. QAI notes that the NDIS assessment criteria were initially designed to cater for people with a physical and/or development disability. There are a number of issues that have been raised for people with a psychosocial disability, including the assessment approach (indications are that a medical eligibility assessment model will be used, which QAI asserts is inappropriate) and the way in which people with a remittent or relapsing mental illness will be covered (the NDIS was initially designed to cover people with a permanent disability).

To what extent is the speed of the NDIS rollout affecting eligibility assessment processes?

QAI is concerned that certain aspects of the NDIS have not been properly thought out – the issues pertaining to people with a psychosocial disability, discussed in the previous response, provides a good example of this. The speed of the NDIS rollout has impacted in a lack of stakeholder engagement at critical points and in the adoption of expedient measures that may not meet the needs of the person (for example, consultations via telephone that would more appropriately take place in person).

Is the ECEI approach an effective way to ensure that those children with the highest need enter into the NDIS, while still providing appropriate information and referral services to families with children who have lesser needs?

QAI is anecdotally aware of indications of a fear-driven approach to obtaining supports and services under the NDIS. This can and has led to the increased labelling of children with particular disabilities for fear that if they are not deemed eligible for the NDIS now, they may not later be able to qualify.

What impact will the ECEI approach have on the number of children entering the scheme and the long-term costs of the NDIS?

QAI anticipates that the ECEI approach will result in an increased number of children entering the scheme. The long-term costs are difficult to predict, as there is not yet sufficient information available on the efficacy of this approach for children with significant disabilities. The inclusion of children with lower levels of disability at an earlier stage, to avoid potential later ineligibility (as noted above) may lead to inflated long-term costs.

Are there other early intervention programs that could reduce long-term scheme costs while still meeting the needs of participants?

QAI does not wish to make a submission in response to this question.

Is the current split between the services agreed to by provided by the NDIS and those provided by mainstream services efficient and sufficiently clear? If no, how can arrangements be improved?

No. QAI is aware that some people are attempting to get certain supports and services funded through the NDIS initially, rather than through public or community health. QAI submits that there is a strong need for the NDIA and the states and territories to be in agreement that those needing ongoing services should be able to access it from Government, unless the supports or services are sufficiently specialised. This is presently not clear. There is the need for a coordinated approach between the NDIS and all relevant mainstream services, and this approach needs to be communicated to people with disability.

Is there any evidence of cost-shifting, duplication of services or service gaps between the NDIS and mainstream services or scope creep in relation to services provided within the NDIS? If so, how should these be resolved?

QAI is anecdotally aware that cost shifting can and has been occurring, whereby providers of therapies and other services are passing on increasing reporting and other administrative costs associated with the introduction of the NDIS. It appears that the costs associated with the provision of services have increased as a result of the increased requirements of being an NDIS service provider. However, there is also the suggestion that some providers are passing on administrative costs which were previously absorbed as business operating costs.

How has the interface between the NDIS and mainstream services been working? Can the way the NDIS interacts with mainstream services be improved?

QAI submits that people with disability should be assessed for NDIS services while in prison, before they are released, whether on parole or on completion of their sentence. QAI submits that there should be specific provisions introduced to necessitate contact between the Parole Board and the National Disability Insurance Agency, in circumstances where a person is eligible for NDIS funding, to help to facilitate this. The process requires that the person apply first, and it is then decided whether they are eligible or not. Who will do this in the prison system before parole is even considered? Further to this, QAI submits that all people with disability in the criminal justice systems must be linked with a local independent advocacy organisation to assist in the application process for the NDIS whether they are thought to be eligible or not. People with disability face specific problems when it comes to parole, including:

1. Difficulties applying for parole – Queensland law requires that parole applications are hand-written, which can pose difficulties for some people with an intellectual or cognitive disability that impacts on their ability to read and write.
2. Prejudicial attitudes by members of the Parole Board, based on stereotypes linking disability or mental illness with a propensity to violence.[7]
3. Difficulty satisfying the Parole Board that they have appropriate accommodation to go to upon release – while there is no causal link between disability and crime, there is a strong causal link between disability and incarceration and this is partly attributable to heightened difficulties people with disability can face in having access to appropriate support networks and appropriate accommodation to go to upon release from prison. Research informs us that prisoners with intellectual disabilities tend to get fewer outside visitors, due to a lack of strong family and friendship networks outside prison.[8] This not only results in heightened risk of social isolation and difficulties reintegrating into society upon release from incarceration, it also raises additional hurdles when trying to qualify for parole. Lack of support and appropriate accommodation prejudices parole applications and extends the term of imprisonment. In order to gain parole, the applicant must provide the Parole Board with an address which the Board then assesses for suitability. Many prisoners with capacity impairments have no home to go to.
4. Increased difficulty completing prison programs – successful completion of prison programs can be a means to early release, yet these programs are rarely designed to meet the needs of prisoners with an intellectual or cognitive disability, with the result that it is not uncommon for prisoners with intellectual or cognitive disability to find it difficult or impossible to complete these programs. (Participation in general criminogenic rehabilitation programs offered by Corrective Services requires that

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[7] NSW Law Reform Commission. 1994. People with Intellectual disability and the Criminal Justice System. Issues paper # 35. Courts and Sentencing Issues.

[8] Australian Institute of Health and Welfare, The Health of Australia's Prisoners 2012, Cat. No. PHE 170, Australian Institute of Health and Welfare: Canberra, 2013, pages x-xv.

participants be 'responsive',[9] making it difficult for some prisoners with intellectual impairments to take part in those programs, gain early release and transition back to the community when they are released.)

5. Increased likelihood of being placed in separate maximum security units for their protection, denying them the opportunity to have the least restrictive environment and to participate in rehabilitation programs (as would happen in a lower grade security setting).[10]

QAI systemically advocates for people with disabilities at risk of or in the criminal justice system. The criminal justice system itself – police, courts, corrections, forensic facilities and related services – are 'mainstream' services that are responsible for providing supports while people are incarcerated. The NDIS is responsible for supports when people are not incarcerated, and for transitional supports. The Principles are clear on this point. The problem that arises, however, is that the responsibility gap creates an unbridgeable information gap. The availability of transitional and community supports is a key determining factor that the MHRT or Parole Board should consider when making a decision about transition. Incarceration may be prolonged indefinitely if the MHRT or the Parole Board is not aware that supports are available.

How will the full rollout of the NDIS affect how mental health services are provided, both for those who qualify for support under the scheme and those who do not?

QAI submits that people who need mental health services should receive these services from their relevant state system, unless their needs are so complex that this is not appropriate or achievable. QAI is concerned that there is the potential for the state system to be diminished and this is particularly alarming given that the majority of people with disability will not be eligible for NDIS funding. NDIS services should be additional to those provided by the relevant state or territory. As noted above, QAI is also concerned about the eligibility requirements and the impact of the 'permanency' requirement on people with an episodic or fluctuating mental illness.

What, if anything, needs to be done to ensure the intersection between the NDIS and mental health services outside the scheme remains effective?

The parameters of the services appropriately provided by the relevant state or territory and by the NDIS must be clearly established. Clear guidelines must be drafted, with input from relevant stakeholders. This information should be communicated to all relevant people, including people with disability and mental health concerns, service providers and relevant organisations.

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[9] T Walsh. 2004. Incorrections: Investigating prison release practice and policy in Queensland and its impact on community safety. Brisbane: Queensland University of Technology.

[10] W Glaser & W Deane. 1999. 'Normalisation in an Abnormal World: A Study of Prisoners with an Intellectual Disability'. International Journal of Offender Therapy and Comparative Criminology 43(3): 338-56.

Is the range and type of services proposed to be funded under the ILC program consistent with the goals of the program and the NDIS more generally?

QAI has been and remains vocal about the fact that the introduction of the ILC component of the NDIS does not diminish the vital need for advocacy. Robust, independent advocacy for people with disability is critical if the vision of the NDIS of providing people with disability with choice and control over their services and supports is to be realised. While QAI takes the view that it advocacy should not be funded under the NDIS, we emphasise that the ILC does not displace or lessen the need for advocacy.

What, if anything, can be done to ensure the ILC and LAC initiatives remain useful and effective bridging tools between services for people with disability?

The LAC roles have been co-opted into the development of Plans for Participants and therefore have not had appropriate levels of resourcing or time to engage effectively in their roles for providing Linkages and Capacity Building for Participants or non-Participants. It is of concern to QAI that LAC's are enabled to function in their capacity of providing that coordination and particularly to people who will not be funded under the Scheme.

It is too early to judge whether the ILC and LAC initiatives are effective bridging tools. One measure that we propose is for people with disability to be given key roles with the ILC and as LACs.

QAI submits that there is a vital need to increase funding for ILC if it is to be an effective initiative. The current annual funding of $132 million was acknowledged by former NDIA Chairman Bruce Bonyhady as insufficient.

Is the way the NDIS refers people who do not qualify for support under the scheme back to mainstream services effective? If not, how can this be improved?

QAI submits that it is important that there is accountability in this regard, with appropriate follow-up protocols implemented and adhered to. One key measure will be whether mainstream services become more accommodating of people with disability. For example, at present we know that the Australian education system and the Australian workforce are both hostile to the needs of people with disability and do not yet offer an inclusive environment.

How will the NIIS affect the supply and demand for disability care services?

QAI does not wish to make a submission in response to this question.

What impact will the full establishment of the NIIS have on the costs of the NDIS?

We expect that costs will drop once the NIIS is fully operational and that subsequent to this, costs will ebb and flow, like the NDIS, as people enter and exit the scheme.

Are sufficiently robust safeguards in place to prevent cost shifting between the NIIS and the NDIS?

QAI does not wish to make a submission in response to this question.

4. Planning processes

In response to the questions posed by the Productivity Commission regarding this issue, QAI makes the following submission: Assessment tools are inappropriate. They are not a reasonable, useful, or user-friendly way of attempting to meet the support needs that people with disability may have. In place of assessment tools, QAI submits that people with disability should be given a guide to self-assess their needs, and be provided with access to the supports they may require to do so.

Pre-planning organisations that pre-existed the NDIS were more effective in building knowledge and capacity and empowering people with disability to articulate their wants and wishes. QAI submits that these pre-planning organisations should have been funded, rather than the approach that has been taken of designating NDIS employees as planners. Many NDIS employees lack the knowledge and experience required to properly perform this role. QAI predicts that the current approach is likely to result in a greater volume of plan reviews and appeals of NDIA decisions.

Finally, we note that people will not ask for more services or supports than they need. The only exception to this may be under the ECEI, where the need to predict potential future needs of a young child, underpinned by fear of exclusion from later assistance, may lead to inaccurate estimates.

We also provide specific responses to the following questions:

Is the planning process valid, cost effective, reliable, clear and accessible? If not, how could it be improved?

QAI submits that the planning period should be longer than one year and proposes that three to five years is a more appropriate timeframe, with determinations made of what is needed for one year at a time within this three to five year planning timeframe. This will allow for more comprehensive and forward-looking plans to be made.

If a person wishes, they should be able to write their own plan and have this plan approved by the NDIA. People should be at liberty to amend their plans and there should be greater flexibility so that people are able to do what they want and to have some spontaneity.

How should the performance of planners be monitored and evaluated?

Planners should not be employees of the NDIA – this role should be outsourced to organisations that were engaged in and experienced in helping people with disability to plan before the introduction of the NDIS. However, Participant satisfaction and improved control and quality of life would be an effective measure, particularly for people who live in group situations. For example – where a person has expressed a desire to leave the group arrangement, how has the Plan supported a person to move into a home where, and with whom they wish to live?

Do NDIS assessment tools meet these criteria? What measures or evidence are available for evaluating the performance of assessment tools used by the NDIA?

QAI suggests that a measure or evidence of this will be the number of people seeking NDIS appeals or review and the outcomes of these appeals/reviews.

5. Market readiness

What factors affect the supply and demand for disability care and support workers, including allied health professionals? How do these factors vary by type of disability, jurisdiction, and occupation? How will competition from other sectors affect demand (and wages) for carers? What evidence is there from the NDIS trial sites about these issues?

QAI disagrees with the approach of attempting to label and classify people with disability by their disability type. It is more important that the NDIA and related planners and LAC's refer to the issues that have confronted a person with disability and their support needs. This includes the Productivity Commission when examining these factors – people with disability are not a homogenous group of people but share many adverse experiences.

How will an ageing population affect the supply and demand for disability carers (including informal carers)?

It is unclear whether the reference to 'disability carers' is meant to refer to carers or to support workers. Assuming the reference is to unpaid carers, QAI submits that the fact that we are an ageing population will have an impact in terms of increasing the demand for paid support workers.

Is increasing the NDIS workforce by 60 000-70 000 full time equivalent positions by 2019-20 feasible under present policy settings? If not, what policy settings would be necessary to achieve this goal, and what ramifications would that have for scheme costs?

QAI does not wish to make a submission in response to this question.

How might assistance for informal carers affect the need for formal carers supplied by the NDIS and affect scheme costs?

QAI notes that, under the *National Disability Insurance Scheme Savings Fund Special Account Bill 2016* (Cth), and as detailed in the 2016/2017 Commonwealth Budget, the Federal Government proposed that part of the Commonwealth's financial contribution for the NDIS would be gleaned through savings, over four years, of $108.6 million, but aligning the backdating provisions for new Carer Allowance claims with other social security payments, so that they are only claimable from the date of first contact or claim. Carers are already predominantly under-supported and under-resourced. QAI was thus highly concerned about the proposal to deny them their full entitlement. Assistance for informal carers can have positive effects in helping to support those who provide support to a person with disability, where that support is chosen by the person, and by reducing the need to engage service providers.

To what extent is the supply of disability care and support services lessened by the perception that caring jobs are poorly valued? If such a perception does exist, how might it best be overcome?

QAI notes that caring jobs are not poorly valued by the people with disability who are supported by support workers – to the contrary, this can be a very valuable and valued role. However, these roles have been traditionally accorded scant value insofar as support workers have traditionally been under-paid by service providers and will inevitably continue to be poorly remunerated if people with disability are not adequately funded.

What scope is there to expand the disability care and support workforce by transitioning part-time or casual workers to full-time positions? What scope is there to improve the flexibility of working hours and payments to better provide services when participants may desire them?

Some people will be content to be contractors working with a small number of "clients" where the people with disability are self-managing. This can provide variety to their work and also lessen the potential for conflicts of interest to occur.

This is a role that is, by its very nature, well suited to flexible working hours and payments. However, there have been significant problems with the concentration of workers within the disability sector (and other caring sectors) in casual and insecure employment. This contributes to the social devaluing of the work of support workers, discussed above.

It is important for the benefits of back-up support for people with disability to be promoted. Direct payments to workers should be supported.

What role might technological improvements play in making care provision by the workforce more efficient?

While well-designed technology can play a positive role in assisting some people with disabilities, QAI does not support the introduction of inaccessible and poorly designed technological initiatives that actually increase the disempowerment of many people with disability.

Electronic monitoring of people with disability is often used or proposed as a means to improving efficacy of disability service provision. QAI does not support, in principle, electronic monitoring of people with disability as it is a direct interference with a person's human right to privacy, which is explicitly protected by article 22 of the UN Convention on the Rights of Persons with Disabilities, and also because it is open to abuse and can be a poor substitute for proper care provision. We caution that any electronic monitoring must occur within a robust human rights framework that safeguards the rights of all persons to privacy. We also propose that any proposals for electronic monitoring are first subjected to an independent and rigorous cost-benefit analysis of the respective merits of funding electronic monitoring and appropriate support and welfare for persons with disability.

Serious privacy concerns have been raised about the electronic monitoring of people living in disability support accommodation in Queensland, whether with or without consent. This practice, though considered in the context of concerns to safeguard persons with disabilities from accidents and protect their health, was considered to create ‘the potential for significant breaches of privacy’.[11] The Report from the OPA into that issue notes:[12]

> *From a human rights perspective, the invasion of privacy represented by electronic monitoring cannot be justified for issues related to lack of resources, such as insufficient support staff…*
>
> *The Australian Law Reform Commission (ALRC) has recognised that the common law is still developing in Australia in terms of recognising the right to personal privacy and is subject to some uncertainty. The ALRC is currently undertaking an inquiry in relation to whether there should be a statutory cause of action for serious invasions of personal privacy. In some cases however, a person may be able to bring an action for trespass to protect themselves from physical intrusions, serious breaches or nuisance in relation to invasions of privacy.*

What are the advantages and disadvantages of making greater use of skilled migration to meet workforce targets? Are there particular roles where skilled migration would be more effective than others to meet such targets?

QAI holds significant concerns about the Productivity Commission’s proposal, which would involve Temporary Work (Skilled) Visas (Visa 457) workers being introduced.

QAI is not able to comment with authority on whether providers or participants will be ready and so will not respond to these questions.

What are the barriers to entry for new providers, how significant are they, and what can be done about them?

The requirements to become a registered NDIS service provider pursuant to current NDIS funding arrangements will likely have the effect of squeezing smaller, community-based organisations and specialist services out of the market.

Similarly, the expectation that organisations which have previously provided government-funded services will have the resources and expertise to meet the requirements to support NDIS applicants will likely pose an additional challenge for smaller, less financially robust organisations.

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[11] Office of the Public Advocate. *Inquiry into the use of electronic monitoring at disability accommodation sites in Queensland: A systemic advocacy report*. May 2014.

[12] Office of the Public Advocate. *Inquiry into the use of electronic monitoring at disability accommodation sites in Queensland: A systemic advocacy report*. May 2014.

What are the best mechanisms for supplying thin markets, particularly rural/remote areas and scheme participants with costly, complex, specialised or high intensity needs? Will providers also be able to deliver supports that meet the culturally and linguistically diverse needs of scheme participants, and Aboriginal and Torres Strait Islander Australians?

Access to appropriate, quality supports and services for people in rural, regional and remote localities has always been an issue and the problems faced by those in these areas are likely to increase, rather than decrease, with the progressive rollout of the NDIS.

QAI submits that thin markets, particularly rural, regional or remote areas or those areas with a high proportion of persons with costly, complex or highly specialised needs, including higher proportions of CALD or ATSI persons with disability, need to be supported to maintain a diverse and robust variety of services. This is counter to the current approach taken by NDIS funding arrangements, which have the effect of further depleting these markets. Therefore the rule of disallowing the employment of a Participant's relative in a support relationship should be reconsidered, and the NDIA has a role in promoting the benefits of self-directed and self-managed Plans for Participants in thin market areas or for people with disability from ATSI and/or CALD backgrounds.

Many larger, mainstream services are not equipped to cater for, or preferred by, people with disability. This is of great concern given that many niche federal-government organisations are being wound up as part of the transition to the NDIS, and there are indications that many state and territory funded organisations may similarly become defunct, as many services are rolled into the NDIS. QAI is concerned that there will be an increasing small body of organisations that will remain viable to provide the range of services that people need.

QAI emphasises that the importance of a pre-existing relationship, and an established reputation, cannot be overstated. To diminish the breadth of the market of organisations providing supports and services for people with disability will undermine the NDIS vision of choice and control.

How will the changed market design affect the degree of collaboration or co-operation between providers? How will the full scheme rollout affect their fundraising and volunteering activities? How might this affect the costs of the scheme?

As noted above, QAI holds grave concerns that the NDIS era will herald an increasingly receding number of organisations, and that it will be the smaller, more highly specialised, flexible organisations that will be the first to go. This will have severe, negative implications for the ability of people with disability to have choice and control over their lives and service provision.

Like Simon Viereck, we query whether the NDIS can properly be termed a market, given the fixed prices, strict definitions of which supports will be included and lack of independent (or any) information.[13] On present indicators, the post-NDIS landscape may resemble a market less than the pre-NDIS landscape.

How well-equipped are NDIS-eligible individuals (and their families and carers) to understand and interact with the scheme, negotiate plans, and find and negotiate supports with providers?

QAI submits that this is the role that host provider services (that currently exist in Queensland) can play in providing the education and support for people to perform these roles and in the education and support for people to self-direct and/or self-manage their plans, supports and services.

6. Governance and administration of the NDIS

Do existing administrative and governance arrangements affect (or have the potential to affect) the provision of services or scheme costs? What changes, if any, would improve the arrangements?

QAI submits that the requirements for registration as an NDIS service provider will have the effect of squeezing smaller or lower funded organisations out of the marketplace. This will be to the detriment of people with disability and will impact upon the choice and control they have with respect to their services.

To what extent do the reporting arrangements help to achieve the financial sustainability of the scheme? Are they too onerous or do they need to be expanded?

QAI does not wish to make a submission in response to this question.

Does the way that the NDIA measures its performance affect the delivery of the NDIS?

QAI does not wish to make a submission in response to this question.

To what extent do the existing regulations provide the appropriate safeguards and quality controls? Can these arrangements be improved?

People who live under Restrictive Practices should be supported to manage their supports and services to enable more control and autonomy in their lives, as a means to ensure they have safeguards and determine the quality of their supports themselves.

Are there appropriate and effective mechanisms for dealing with disputes with the NDIA?

At this stage, this remains to be seen.

Is the NDIA's target for operating costs (as a percentage of total costs) achievable? Is it practical? Should it vary over the life of the scheme?

We are not equipped with sufficient information to respond to this question. However, with respect to the final limb of this question, we submit that, like all of life, this should fluctuate as need arises.

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[13] S Viereck. 'Transition to change: Lessons from the ACT NDIS trial'. *Power to Persuade Blog.* www.powertopersuade.org.au/blog/transition-to-change-reflections-on-the-act-ndis-trial/12/7/2016.

How appropriate, effective and efficient are the market stewardship initiatives?

QAI does not wish to make a submission in response to this question.

Is there likely to be a need for a provider of last resort? If so, should it be the NDIA? How would this work?

QAI does not wish to make a submission in response to this question.

7. Paying for the NDIS

Does the current funding split between the Commonwealth and the States and Territories have implications for the scheme's sustainability? Does it affect the NDIA's capacity to deliver disability care to scheme participants at the lowest cost? Are there any changes that could be made to the funding split that would either improve the financial sustainability or the efficiency of the scheme?

QAI notes that, where transport costs are insufficient, the ultimate cost will be greater in terms of the expense of plan reviews and disputes. It is illogical for participants to have plans developed where the stated goals and aspirations cannot be achieved or attained if there is insufficient funding allocated for transportation costs. QAI acknowledges that state governments have a role to play in sustaining the Transport Subsidy Scheme for people who are unfunded in the Scheme but that this should also be upheld for participants, and that the Mobility Allowance must be maintained to ensure equitable access to transport regardless of whether people are supported within the NDIS or not. This would simplify some of the issues that will inevitably arise in Plan reviews and disputes.

The Productivity Commission has previously taken the stated position that the NDIS was not about the lowest cost, but about the most appropriate support. Lowest cost denominators will inevitably result in more abuse and a greater volume of complaints and disputes. By way of example, we note that NDIA cancellation and de-regulation of Lifestyle Solutions, Victoria, following the death of four people.

What proportion of a state or territory's contribution to the NDIS are in-kind services? Are there risks associated with in-kind service contributions?

In-kind contributions should be toward the sustaining of state-funded advocacy and other organisations that offer capacity building and other functions that support people with disability and decrease the likelihood of harm and disempowerment. State in-kind contributions should also be the continuation of transport costs, via the Taxi Subsidy Schemes.

What are the implications of the current risk sharing arrangements? Do they encourage either cost shifting or overruns? What, if any, improvements could be made to the current risk sharing arrangements?

QAI does not wish to make a submission in response to this question.

How is the 3.5 per cent increase in a state or territory's contribution to the full scheme calculated? Is this reasonable? Will it skew the balance of the funding over time? If so, what are the implications? Is there a better way to index contributions?

QAI does not wish to make a submission in response to this question.

How will Western Australia's agreement with the Commonwealth Government affect scheme costs?

QAI does not wish to make a submission in response to this question, save to note that this undermines that nationally consistent approach and increases state and territory variation.

Is there a better way of paying for the NDIS? For example, would it be better to fully fund the NDIS out of general revenue?

QAI is concerned that there are already indications that the funding for the NDIS is becoming a political battlefield, where other forms of government revenue, and in particular revenue dedicated to other welfare payments, is being redirected to meet the commonwealth, state and territory funding obligations for the NDIS. This is highly inappropriate and will result in significant social cost.

We note the Federal Government's demonstrated tendency to achieve costs savings by stripping funding from areas where it is most needed. For an example of this, consider the Government's proposed slashing of funding to the advocacy sector, which will have serious, adverse implications for people with disability.

QAI notes that there is undoubtedly areas of general revenue that may be appropriately directed towards the NDIS and other forms of disability-related supports and services. For example, the Government's expenditure in the areas of defence and security are disproportionate to the funding provided to those most in need in our society, who are living on the edge and experiencing a host of sub-optimal life experiences and outcomes across the educational, health, housing and community spectrums as a result.

QAI supports an innovative and creative approach to funding which considers ways the Commonwealth can deliver on its funding commitment without increasing the vulnerability and poverty of already socio-economically disadvantaged Australians. For example, within the disabilities sector, there is Government-owned infrastructure that will become redundant as people with disability move to community living. The sale of these assets would be a symbolic way for the Government to both honour its funding commitment and support the move towards inclusivity and community integration of people with disability that it has committed to by signing and ratifying international human rights treaties, including the Convention on the Rights of Persons with Disabilities. This is a sustainable, appropriate and humane approach.

Towards a financially sustainable future:

In response to the questions posed in this part, QAI wishes to document our concerns with the evidence shift in mindset since 2011.

Political distraction and gamesmanship are the biggest risks to the scheme's financial sustainability. Already the mainstream media has an alarming tendency to characterize the NDIS as an 'us and them' (or, more accurately, 'us *for* them') charitable welfare scheme. That characterization is not consistent with the insurance model envisaged by the Productivity Commission:

> *[T]he contributions would reflect the price that (barring market failures) people would willingly pay to purchase peace of mind that they or their family would receive reasonable lifetime care and support if they were to acquire a severe disability.*[14]
>
> …
>
> *As a result, it may be necessary for the government to fund the scheme through general revenue in the initial few years, with an agreement by government to shift to a sustainable tax arrangement by a specified date. One of the primary values of the Commission's proposal to launch the NDIS in some regions in the first year of its operation (chapter 19) is that this should allow more accurate calibration of the appropriate rate of contribution into the national disability insurance fund.*[15]

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[14] Productivity Commission. 2011. *Disability Care and Support*. Volume 2, p 976.

[15] Ibid: p 662.