HSU NATIONAL

Health Services Union

ISSUES PAPER SUBMISSION

Productivity Commission

Inquiry into National Disability Insurance Scheme (NDIS) Costs

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About Us **3**
Introduction **4**
NDIS Pricing **5**
Inadequacy of the NDIA's "Reasonable Cost Model" 6
Supported Independent Living 8
Pricing and Participant Complexity 9
Price Deregulation 10
NDIA Price Setting Opacity and Possible Conflict of Interest 10
Pricing and Perverse Outcomes 10
Plan Utilisation **11**
Planning **11**
Market Readiness: Workforce **12**
Current Workforce Experiences 12
Pay, Attraction and Retention 14
Ageing Workforce and Data Issues 15
Skilled Migration 15
Direct Employment 15
Workforce Quality: Training, Skills, Registration and Accreditation 16
Market Readiness: Provider and Participant **17**
Provider Readiness 17
Participant Readiness 17
Mainstream Interface Issues **18**
General 18
Mental Health 18
Governance Arrangements **19**
Provider of Last Resort 19
Quality and Safeguarding Framework 19
Competition and Individualisation **20**
Paying for the NDIS and Future Scheme Sustainability **21**

About Us

The Health Services Union (HSU) is one of Australia's fastest growing unions with over 70,000 members working in the health and community services sector across the country.

Our members work in aged care, disability services, community health, mental health, alcohol and other drugs services, private practices and hospitals. Members are health professionals, paramedics, scientists, disability support workers, aged care workers, nurses, technicians, doctors, medical librarians, clerical and administrative staff, managers and other support staff.

We are the primary disability services union in Victoria and Tasmania, representing support workers at the frontline of service delivery. We also represent a number of support workers in New South Wales, Western Australia and the Australian Capital Territory, along with allied health professionals in every jurisdiction except Queensland. Our broad membership gives us a unique insight into the rollout of the National Disability Insurance Scheme (NDIS), how the scheme is interfacing with other mainstream services and the market and workforce issues critical to the scheme's success.

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Introduction

The HSU welcomes the opportunity to make an initial submission to this important inquiry into National Disability Insurance Scheme (NDIS) costs. While the terms of reference for the inquiry are narrowly defined on the scheme's financial sustainability, we believe the Productivity Commission (the Commission) must consider whether NDIS prices and associated price-setting and review arrangements are sufficient to promote and sustain quality, innovation and choice in the provision of funded supports. For this reason, we welcome the Commission's February 2017 Issues Paper, which highlights a range of matters facing the NDIS, all with significant bearing on its successful implementation.

In particular, we believe that the current inquiry must capture the serious supply-side risks facing the scheme, particularly as they relate to workforce. The Commission, in its 2011 report, *Disability Care and Support,* which recommended the introduction of the NDIS, identified acute workforce shortages as the key challenge to successful NDIS implementation and suggested strategies to draw more workers into the disability sector. Some of these strategies included the payment of higher wages, strengthening career pathways, improving community perceptions of the sector and promoting better working conditions such as more favourable shift lengths.[1] However, the HSU's experience of the rollout is that these strategies are not being implemented and that the design of the NDIS is causing the reverse to occur:

- Capped and inadequate NDIS prices for key support items are precluding the payment of higher wages and flattening career pathways for workers.
- Unclear delineation of market development and stewardship responsibilities between the National Disability Insurance Agency (NDIA), the Commonwealth Department of Social Services (DSS) and the States and Territories has resulted in no substantive progress on a workforce development strategy focusing on attraction, retention, skills or quality.
- Individualisation of supports, coupled with low and capped pricing, is eroding workforce conditions and increasing income insecurity. At the Fair Work Commission, employers are using the spectre of the NDIS to argue for reductions to minimum shift engagement lengths in the four-yearly review of the *Social, Community, Home Care and Disability Services Industry Award 2010* (SCHCADS).
- The divestment and privatisation of State and Territory disability services to the non-government and private sectors is leading to the virtual overnight erasure of decent wages and conditions for large segments of the disability workforce. While divestment is not a design feature of the NDIS, States and Territories are claiming otherwise. The HSU recognises, like the Commission, that nothing in the NDIS design architecture precludes government service provision. [2] Workers, responding to the risks of unilateral cuts to wages, conditions and job security are threatening to leave the sector. On 30th June 2016, the HSU Victoria No. 2 Branch conducted an automated ReachTEL telephone survey of 908 disability support workers employed in the public sector. The poll revealed that over half these

[1] Productivity Commission (2011) *Disability Care and Support*, p. 693.

[2] "The structure proposed by the Commission would allow for state, territory and local governments to continue to provide services, but in competition with other providers." See: Productivity Commission (2011), *Disability Care and Support*, p. 407.

workers (53.4%) would leave the disability sector entirely and work elsewhere if they were to be transferred to the non-government/private sector with reduced wages and conditions (a further 30.6% responded "don't know" whilst the remaining 16% of workers would either remain in the sector or retire).

Ultimately, without a skilled, professional and available workforce to deliver supports to NDIS participants, the disability sector will continue to be one characterised by unmet demand. Rationed supply will simply replace the rationed funding of pre-NDIS support arrangements, which the Commission unforgettably described as "inequitable, underfunded, fragmented and inefficient and give people with a disability little choice."[3]

Rather than individually addressing each of the questions in the Issues Paper, this submission responds to key topic areas highlighted by the Commission, specifically: unit pricing; plan utilisation; planning and the role of Local Area Coordinators (LACs); market readiness and workforce issues; the interface between the NDIS and mainstream services; governance and future scheme financial sustainability; and the potential hidden costs of individualisation and competition, which underpin the scheme. In addressing these topic areas, this submission answers a great many of the questions posed by the Issues Paper.

In preparing this submission, the HSU partnered with the Australian Services Union (ASU) and United Voice to survey members from the three unions working in the disability sector across Australia. The survey is still collecting responses; however, this submission uses preliminary results from the sample, which as of 28 March 2017 had 1,522 individual respondents. This submission also uses the words of HSU members from across the country, working in NDIS rollout areas or with NDIS participants. Their experiences, as told by them, provide invaluable insight into the impact of the scheme as it rolls out across Australia.

We thank the Commission for the opportunity to make this submission on behalf of our members and look forward to providing further input into this ongoing inquiry.

NDIS Pricing

The HSU has always been a strong supporter of the NDIS and our longstanding position has been that quality disability services depend on a quality workforce. For people with disabilities, skilled and well-supported workers, employed with decent working conditions and good job security, can ensure that support is consistent, high quality and responsive to clients' choices and needs. For these reasons, we are gravely concerned by the current NDIS pricing environment.

We are concerned that restrictively low and capped prices at the scheme's inception will leave the sector and its workforce structurally undervalued for the skills, emotional labour and dedication they bring to their roles. Without question, this will undermine capacity and sustainability as the sector becomes less attractive to prospective workers at the precise moment it requires rapid workforce expansion. Without the ability to attract and retain skilled and qualified workers, the goal of the NDIS to ensure genuine choice and control for people with disabilities will at best, remain forever unfulfilled, or, at worst, lead to a decline in the quality of service provision.

The following section outlines our concerns with regard to various elements of NDIS pricing including: embedded underfunding in the National Disability Insurance Agency (NDIA) "Reasonable Cost Model" (RCM), concerns around the application of Supported Independent Living (SIL) prices,

[3] Productivity Commission (2011), *Disability Care and Support*, p. 5.

issues around pricing and participant complexity, the possibility of price deregulation, and the opacity of price setting arrangements.

Inadequacy of the NDIA's "Reasonable Cost Model"

Prices for key core support items are based on the NDIA's RCM.[4] The RCM has not, to the knowledge of the HSU, been modified by the NDIA since its inception in 2014.[5] Underfunding is embedded in the assumptions underpinning the six main elements of the RCM. If even one of these six elements was incorrect it would have a profound impact on service delivery and the nascent NDIS market. The fact that all six elements are completely out-of-step with the real costs of service delivery is hugely problematic. The HSU's firm position is that the RCM is modified or replaced with a model that reflects the true cost of service delivery. The HSU is aware that this change, if adopted, would have significant implications for the costs of the scheme. No change, however, is not an option. The HSU recommends that that Commission investigate the adequacy of the assumptions of RCM and other NDIA assumptions on key support items.

> *"Responsibilities seem to be getting greater as clients age and have more health problems. When this happens, clients need more staffing hours and therefore more funding, especially when chronic health issue need constant care. I notice a lot of staff under the pump, some working over hours for no pay at times to get things done and generally being taken advantage of. It is hard to provide the levels of good quality support that is expected and anticipated, when the staff to client ratio is so low."*
> ***HSU Member, Tasmania***

1. The Level of Disability Support Workers

The RCM assumes that the average support worker is classified as a Social and Community Services Employee (SCSE) Level 2 Paypoint 3 in the SCHCADS Modern Award. This assumption is manifestly false. Throughout the disability sector, thousands of workers are classified at higher levels or employed under Enterprise Agreements that set wages and conditions above the Modern Award. Indeed, the Modern Award cannot be viewed as "generous" – it simply provides a floor on minimum wages and conditions. This assumption does not take into consideration that employees need to maintain current working conditions, nor does it provide any capacity for the career progression or salary advancement of direct support workers. Finally, given other RCM assumptions that workers will have greater independence and autonomy due to reduced supervision this classification assumption is manifestly false. As of March 2017, the direct wage component of the efficient price (standard needs, daytime) is 57.7%.[6]

> *"The NDIS is only paying award wages and not what I am currently being paid. I fear that I along with many others, will be financially disadvantaged! I fear that quality of care will gradually deteriorate for the clients."*
> ***HSU Member, Victoria***

[4] NDIA (2014), *NDIA Report on the Methodology of the Efficient Price*; The core support items are: Assistance with self-care activities; Assistance to access community, social and recreational activities; Group based community, social and recreational activities.

[5] While indexation has been applied to support items to account for wage increases and other inflationary pressures, the underpinning assumptions of the RCM remain the same.

[6] This percentage is calculated using SCHADS SCSE Level 2 Paypoint 3 rates as at 1 December 2016 ($24.70 per hour) and standard needs, daytime rates in the current NDIA Price Guide 2016-17 for Victoria, New South Wales, Queensland and Tasmania ($42.79 per hour).

2. Time Allocations of Disability Support Workers

The RCM assumes that including leave, 85% of a workers' paid time is spent with participants. Without leave, the assumption is 95%. This, in practical terms, means that a worker is left with 3 minutes per hour to complete essential administrative tasks, handovers, attend staff meetings and participate in training (mandatory or otherwise). Such an assumption is fanciful and compromises quality support.

> *"My main concern is that NDIS requires extensive paperwork, especially applications for funding for equipment for people who are at high risk for safety, comfort, quality of life - applications are taking hours, we wait for a response to the application, we have to provide more information, and again wait for a response. I am spending 80% of my NDIS time on paperwork and chasing equipment funding approval. This leaves little time to actually see the people. And, they are left waiting for weeks and months for equipment which we have trialled and reported as being effective and necessary. It is dangerous and unethical."*
> ***HSU Member, Western Australia***

3. The Level and Time Allocations of Supervisors

Wages for supervisors are pegged to the classification of SCSE Level 3 Paypoint 2 in the SCHCADS Modern Award. This is despite the fact that the RCM assumes a ratio of 1 supervisor for 15 staff, with a planned increase to a ratio of 1:18 under the NDIA's "efficient" price. However, the SCHCADS Modern Award stipulates that workers classified at this level will "supervise a limited number of employees."[7] This assumption breaches the Modern Award and ignores numerous recommendations from multiple Commonwealth and State inquiries that supervision is critical to the delivery of quality disability services and critical to the prevention of violence, abuse and neglect against people with disabilities.[8]

This assumption also does not reflect current supervision ratios in the sector. The joint HSU, ASU and United Voice survey of 1,522 union members working in the disability sector found that of the 416 respondents who identified themselves as supervisors, nearly two-thirds (65%) supervised 8 or fewer staff and only 17% were supervising 14 or more staff.

The effects of this assumption are very real, with the provider market already responding. In follow-up media coverage on the ABC's recent Four Corners investigation into abuse in the disability sector, *Fighting the System* (27/03/2017) it was reported by the ABC on its nightly Victorian news bulletin (28/03/2017) that the Tipping Foundation—one of Victoria's largest disability service providers—had cut the number of supervisors across its 40 group homes from 33 to 11.

4. Staffing On-Costs

The NDIA is not clear on what comprises staffing on-costs, although they are included in the RCM. We presume that it includes superannuation, work cover and leave allowances not otherwise captured in the utilisation assumptions of workers.

5. Corporate Overheads

Under transitional pricing, the NDIA RCM makes an allowance of 15% for "reasonable infrastructure and overhead costs."[9] Under the NDIA's proposed "efficient" price this is to be reduced to 9%.[10]

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[7] Social, Community, Home Care and Disability Services Industry Award 2010, Schedule B.3.2(i)

[8] Parliament of Victoria Family and Community Development Committee (2016) *Inquiry into abuse in disability services: Final Report,* p. 138;

[9] NDIA (2014), *NDIA Report on the Methodology of the Efficient Price,* p. 4.

[10] NDIA (2014), *NDIA Report on the Methodology of the Efficient Price.*

Employers have told the HSU that the current 15% is causing immense pressure on budgets, with many unsure how they will survive under 9%. Additionally, this assumption does not make allowances for the minimum provider compliance arrangements foreshadowed in the NDIS Quality and Safeguarding Framework (QSF).[11]

> *"NDIS funding does not cover the costs of running a disability organization. The response of my previous employer in this sector to this problem was to decrease the amount of supervision provided; reduce access to professional development and subject therapists to micromanagement. The organization also adopted a cumbersome client management system that seems to have taken on a greater importance than therapy itself and which makes great demands on therapist time."*
> ***HSU Member, New South Wales***

6. Return on Capital (Margin)

The RCM makes an allowance for a 5% margin. This was selected by the NDIA with the rationale being that "an overall net profit below 4% is likely to be problematic…below 4% most organisations struggle to keep pace with inflation let alone replacing critical assets or business innovation."[12] However, a 2016 research report on the financial sustainability of Australia's disability sector by Curtin University revealed that 42% of surveyed disability providers generated a margin of less than 3%, noting that "a significant minority of organisations may ultimately be facing solvency and sustainability issues."[13] Importantly, of the combined revenue of the 180 surveyed providers participating in this study only 2% represented income from the NDIS.[14] This suggests that once NDIS income makes up a majority of provider revenue we will witness widespread market failure.

Supported Independent Living

The HSU is unaware of the methodology used to set prices for Supported Independent Living (SIL). Without this, we are unable to raise any possible concerns with the adequacy of the assumptions underpinning the price. However, we do have strong concerns regarding the lack of guidance on minimum staffing ratios in the NDIA Price Guide. As it currently stands, we cannot see any mechanism to prevent an unscrupulous provider minimising staff headcount to maximise profitability at the expense of quality support. While participants can ostensibly exercise choice and switch providers if they feel they are not receiving quality care and support, without stipulating at least some form of minimum staff ratio or guidance, we believe that the NDIA runs the risk of incentivising unscrupulous providers entering the market and unnecessarily forcing scheme participants to go through the dislocating process of establishing themselves with a new provider. This is particularly problematic in light of the types of participants receiving SIL support, i.e. people with profound and complex cognitive and intellectual disabilities, many without families or other informal supports to support them to exercise choice. While the possibility of including guidance on staffing ratios was raised in the NDIA's *Personal Care and Community Participation 2016-17 Price Review* no action was taken by the NDIA in the 2016-17 Price Guide.[15]

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[11] Australian Government, Department of Social Services (9 December 2016) *NDIS Quality and Safeguarding Framework.*

[12] NDIA (2014), *NDIA Report on the Methodology of the Efficient Price,* p. 5.

[13] Gilchrist, D. (2016) *Australia's Disability Sector 2016: Report One – Financial Sustainability and Summary of Key Findings*, a Report for the Research Data Working Group, Sydney, p. 43.

[14] Gilchrist, D. (2016) *Australia's Disability Sector 2016: Report One – Financial Sustainability and Summary of Key Findings*, a Report for the Research Data Working Group, Sydney, p. 2.

[15] NDIA (2016) *Personal Care and Community Participation 2016/17 Price Review Discussion Paper,* p. 11.

Another concern with SIL pricing is how the price matrix operates in practice. It is common within the sector to have shared supported accommodation arrangements that house a mix of lower needs and higher needs clients. In a hypothetical arrangement where a residence houses two lower needs clients and three standard needs clients, it is unclear whether the quantum of funds allocated to individual participants is determined on the sum total of participants in the SIL arrangement or the number of participants within a support level category. This is important to clarify, since the price differential between the two options is significant. For example, under the scenario of a SIL arrangement with 5 participants (2 lower needs and 3 standard needs) it is unclear whether the funding allocation is:

Option 1 – Funds Based on Total Number of Participants in SIL Arrangement

SIL UNIT	NUMBER OF PARTICIPANTS	TOTAL WEEKLY FUNDING
5 persons – lower needs	2	$3,628.86
5 persons – standard needs	3	$6,821.91
		$10,450.77

Option 2 – Funds Based on Total Number of Participants in SIL Needs Category

SIL UNIT	NUMBER OF PARTICIPANTS	TOTAL WEEKLY FUNDING
2 persons – lower needs	2	$4,321.56
3 persons – standard needs	3	$9,195,48
		$13,517.04

Finally, there are no guidelines on whether multiple participants living in a SIL arrangement could access different providers. While the HSU has been advised by a large SIL provider in Victoria that their Service Agreement prohibits this from happening, the NDIA provides no guidance. This is critical for scheme costs since if each SIL participant in a single residence was able to choose a different service provider, there would be no economies of scale, not to mention it is logistically unrealistic with detrimental flow-on effects the safety of workers and participants.

Pricing and Participant Complexity

The NDIA presumes that the skill and wage level of a worker delivering high-intensity supports to a participant with complex needs is the same as a worker delivering supports to less complex participants.[16] This is a fundamentally flawed assumption. Participants with higher needs not only require greater numbers of workers to deliver their supports, but those workers need to be more highly qualified and have a greater depth of experience. NDIS prices need to take into account not just the increase in overall staff levels that arise with increasing participant complexity, but also recognise that more highly skilled workers will be in receipt of greater remuneration.

> *"It appears that the NDIS has been created with a particular set of disabilities in mind, or at least as a priority, but in the case of intellectual disability there is not enough consideration given to the complexities of supporting those with complex care needs. Where participants are unable to self-manage or advocate strongly for themselves, supervisory staff are not being given the resources to properly provide choices and to collect the evidence that quality services are being delivered. What was sold as an opportunity to address the inequalities*

[16] The same underpinning assumption of SCHADS SCSE 2.3 as the level of the average worker is applied to prices for participants with higher intensity needs.

> *inherent in the block-funded arrangements has instead delivered a cost-cutting exercise; whether through accident or design, the lofty ideals of the NDIS are not being going to be achieved for a great many participants unless the paucity of funding to provide the best outcomes is rectified."*
> ***HSU Member, Tasmania***

Furthermore, there is a lack of consistency regarding complexity levels throughout the current NDIA Price Guide. Prices for SIL supports have three levels of complexity (lower, standard, higher), whereas those for assistance with self-care activities and community participation only have two (standard and higher). Given the NDIA is assessing participants on a functional impairment scale of 1 to 15 when they enter the scheme (with 15 being the highest level of functional impairment) it is not appropriate that support items and their attendant prices have a maximum of three tiers.[17]

Price Deregulation

Calls to deregulate pricing by some groups in the disability sector, notably National Disability Services (NDS), will fail to address provider and workforce concerns if there is not a concomitant increase in the value of participant NDIS plans. For example, in a scenario where prices for community participation were deregulated and the provider market at-large charged above the NDIA-determined value of each unit in order to recoup their costs, a hypothetical NDIS participant assigned 10 units of community participation a week in their plan would never be able to access the full extent of their reasonable and necessary supports without a co-contribution. The HSU has reservations with price deregulation, particularly if the value of the reasonable and necessary supports allocated to NDIS participants in their plan are not adequate to cover the real cost of service provision. The HSU recommends that the issue of price-setting, price-deregulation and their intersection with the growth and development of the NDIS market be central to the Commission's inquiry.

NDIA Price Setting Opacity and Possible Conflict of Interest

The HSU is concerned by the opacity surrounding NDIA pricing decisions. With the exception of its annual Price Reviews and associated Discussion Papers, the sector is not broadly consulted on pricing, with the apparent exception of NDS. In particular, the NDIA needs to make a concerted effort to consult more directly with those who will ultimately deliver the scheme: disability support workers and, by extension, their representatives. Additionally, we note the Commonwealth Auditor-General's position that there is an inherent conflict of interest in the NDIA being "both a funder or 'purchaser' on behalf of governments, and as a price 'regulator.'"[18] The HSU recommends that the effectiveness and appropriateness of the NDIA's role as price-setter be closely examined by the Commission.

Pricing and Perverse Outcomes

Across the country, the HSU's experience is that employers are responding to inadequate NDIS pricing by reducing conditions of employment, including increasing the rates of insecure (casual) work. In Victoria, according data compiled through NDS' Workforce Wizard data tool, the rate of

[17] In the NDIA's 2016-17 2nd Quarterly Report, the functional impairment levels of all NDIS participants as at 31 December 20`16 were: 1-5 (35%), 6-10 (41%) and 11-15 (24%), see: NDIA (2017) *COAG Disability Reform Council Quarterly Actuarial Report: Version 1, January 2017* (Quarterly Report No. 2, 2016-17) pp. 61-62.

[18] Australian National Audit Office (2016) *National Disability Insurance Scheme—Management of the Transition of the Disability Services Market,* No. 24 (2016-17), p. 30.

casualisation in non-government disability service providers is 40% (35% nationally).[19] In Tasmania, we have seen an increase in use of fixed-term contracts and clauses in employment contracts which stipulate that the duration of employment is only guaranteed whilst a participant wants the worker. These experiences are reinforced by NDS' most recent *State of the Sector* report, which states that for many employers "lean NDIS prices makes employing people casually and for short-hours jobs supporting specific clients the only financially viable options."[20] Generally, employers are casualising part-time work by applying no minimum engagements. Employers are requiring part-time workers to work 1 hour shifts or multiple 1 hour split shift arrangements, effectively creating casual workers out of part-times without a 25% casual loading. Some employers whose employees are subject to the SCHCADS Modern Award are attempting to improperly reclassify workers as Home Care Employees rather than Social and Community Services Employees, as the former does not attract Equal Remuneration Order (ERO) payments. On current rates of pay this leaves full-time workers $155.30 worse-off per week, or $4.08 worse-off per hour.[21]

The HSU believes that the delivery of individualised supports and the maintenance of secure jobs need not be mutually exclusive. While it may seem obvious to use casual employment as a means to address the need for flexible and responsive service delivery, it is not a long-term solution. Casualisation will have detrimental effects on continuity of supports and workforce attraction and retention. The HSU asserts that NDIS pricing must accurately cover the true cost of service provision, including decent wages and the costs of training, recruitment, leave, superannuation and career progression for support workers. Without decent wages and conditions, the industry will struggle to attract new entrants and retain existing skilled workers, thereby failing to achieve the ambitions of the scheme.

Plan Utilisation

On the complete set of issues affecting plan underutilisation, the HSU can only hypothesise. However, members are reporting that supply-side gaps are leaving participants with funded plans and no available service providers or support workers:

> *"Clients have plans but no support workers, plans are a few months out and have not been utilised it's unfair on the clients."*
> ***HSU Member, Victoria***

This goes back to our initial comments in this submission that without a skilled, professional and available workforce to deliver supports to NDIS participants, the disability sector will continue to be one characterised by unmet demand. Rationed supply will simply replace the rationed funding of pre-NDIS support arrangements.

Planning

On the issue of planning, the primary concern of the HSU is the outsourcing of planning functions to Local Area Coordinators (LACs). It is the HSU's understanding that this outsourcing was driven by an ideological, not evidence-based, decision of the Commonwealth Government in the 2016-17 Budget to cap the number of Commonwealth Public Servants. This required the NDIA to reduce the number of staff that it could hire for planning roles and other core functions, with the NDIA now estimating

[19] National Disability Services (2016) *Workforce Wizard Report Q4 2015-16*, p. 4.

[20] National Disability Services (2017), *State of the Disability Sector Report 2016*, p. 39.

[21] SCHADS, Social and Community Services Employee Level 2 Paypoint 3, compared to Home Care Worker Level 3 Paypoint 1, using payrates that applied as at 1 December 2016.

that it will have 3,000 FTE employees at full scheme, down from an initial assumption of 10,595 FTE.[22]

Outsourcing planning to LACs is problematic for several reasons. Firstly, their critical role in linking participants and people with disabilities not eligible for an NDIS package with mainstream supports has been supplanted by planning. Secondly, organisations awarded LAC contracts are unable to be registered providers of NDIS supports. While this is appropriate given the conflict of interest issues arising, it has led many established disability providers to exit the NDIS market at the precise moment it needs to grow. Thirdly, outsourcing planning to such a wide variety of different providers has meant NDIS participants are having inconsistent planning experiences, with attendant flow-on effects for scheme costs and participant satisfaction.

> *"Planners employed by [LAC deidentified] are not skilled. Excessive time delays = clients stuck in hospital. Transition has been chaotic – planners not knowing what they are doing."*
> ***HSU Member, Victoria***

> *"Families do not know what they are entitled to. Plans are not being reviewed they are just being rolled over with no or little consultation with the service user. This means that if needs have changed or the individual has a new goal their needs are not being met."*
> ***HSU Member, Western Australia***

> *"I believe that customers have less choice with NDIS, and plans are rigid – difficult to change once written. I believe that on the whole planners are not well equipped to conceptualise plans to meet the needs of people with disabilities who have complex needs, and/or co-morbid mental health conditions."*
> ***HSU Member, Western Australia***

The HSU recommends that planning functions be taken from the LAC role and that responsibility for planning be the exclusive domain of the NDIA. The Commission should investigate the feasibility of this scenario and any attendant risks.

Market Readiness: Workforce

This section focuses on the workforce's current experience of NDIS transition, before focusing on key workforce issues that go to the heart of scheme viability: pay and its implications for attraction and retention; workforce ageing; data challenges; skilled migration; direct employment arrangements; labour market competition from adjacent sectors; and the need for a greater emphasis on skills development and workforce professionalisation.

Current Workforce Experiences

Based on feedback from our members, the workforce is experiencing high-levels of anxiety about what the NDIS will mean for their job security, wages and conditions. In the view of the HSU, this anxiety is driven by a disconnect of rhetoric and action, coupled with inadequate NDIS pricing and the pace of the transition. Workers, on the one hand, are being told that the NDIS will fundamentally transform the sector, yet are receiving limited or no information from the NDIA or through their employers about what this transformation means for them:

> *"Everyone feels that they are in the dark about NDIS, no one knows what's happening, or where they will be standing in the future, whether our jobs or pay will be secure, who knows,*

[22] Commonwealth Government (2016) *2016-17 Budget Paper No. 4 – Part 2: Staffing of Agencies.*

because no one is telling us anything."
HSU Member, Victoria

"There is so much uncertainty about the details of NDIS and how it will affect service delivery."
HSU Member, Western Australia

"The NDIS remains a convoluted mystery."
HSU Member, Victoria

Preliminary data from the joint HSU, ASU and United Voice member survey captures this sentiment. As shown by Figure 1, nearly three-quarters (72.2%) of respondents who had experience working in an NDIS rollout area or with NDIS participants agreed or strongly agreed with the statement "Under the NDIS, I worry about the future of my job." Just over half (55.9%) disagreed or strongly disagreed with the statement "Overall, the NDIS has been a positive change for me as a worker." The data in Figure 1 also reaffirms our concerns around inadequate pricing, increasing work intensification and unpaid work, with a majority of respondents agreeing or strongly agreeing with the statement: "Under the NDIS, I don't have enough time to do everything in my job."

Figure 1. Joint HSU, ASU and United Voice Survey – Preliminary Data (2017)
Percentage of respondents which agreed with statements about working under NDIS

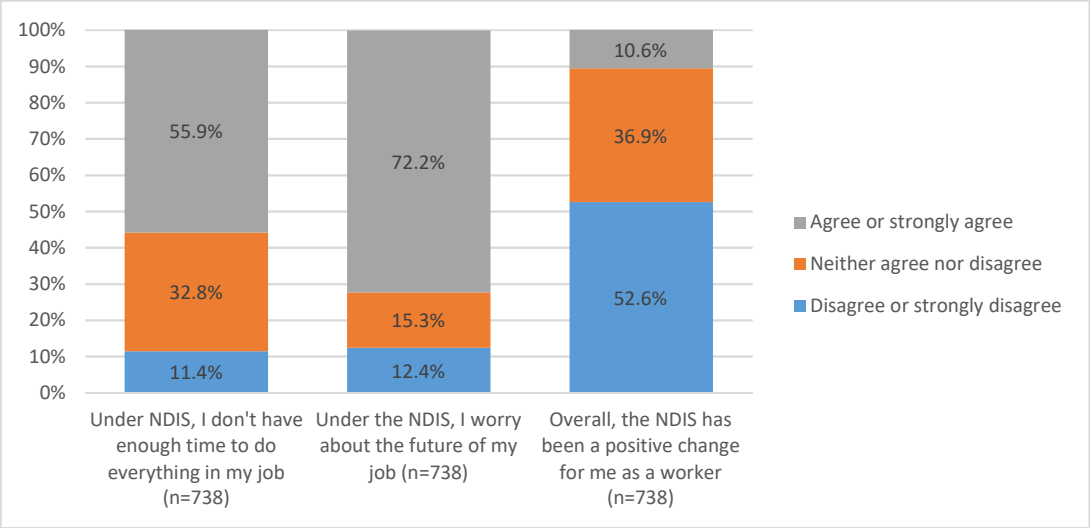
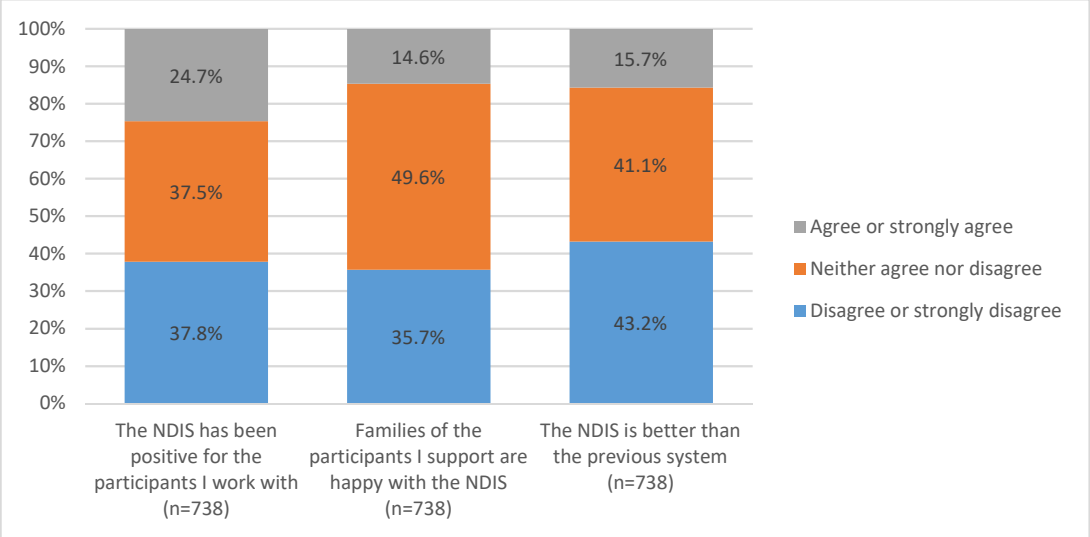


Figure 2 indicates the workforce has mixed feelings about the impact of the NDIS on participants and their families, with a quarter of respondents (24.7%) agreeing or strongly agreeing that the NDIS had been positive for participants and only 14.6% agreeing or strongly agreeing that the NDIS had been positive for the families of participants they worked with. It is important to note that many workers did not take a position one way or another. However, a plurality of respondents disagreed or strongly disagreed with the statement "the NDIS is better than the previous system." Critically, 69.7% of the respondents had worked in the sector for 6 or more years, with 41.8% having worked in the sector for more than 10 years.

"The biggest concern is that, whilst the NDIS might be good whereby people with disabilities have partial/complete ownership of their package, the system is open to exploitation by parents and that less than qualified staffing levels may be employed to save costs. So are people with disabilities any better off either with the current funding package where they have qualified staff who have secure employment but no control over funding or have less than ideal staffing levels but full control of funds? I see the latter as leaving those with disabilities more vulnerable to abuse than before. There is not enough information forthcoming from governments or the NDIA."
HSU Member, Victoria

Figure 2. Joint HSU, ASU and United Voice Preliminary Survey – Preliminary Data (2017)
Percentage of respondents which agreed with statements about impact of NDIS on participants and families



Pay, Attraction and Retention

On the question of pay satisfaction, 59.7% of respondents to the joint unions survey disagreed or strongly disagreed with the statement "I am paid fairly for the work I do" with 59.3% disagreeing or strongly disagreeing with the statement "I am satisfied with my overall level of take-home pay."

Members regularly report that it is the nature of the work that attracts them to a career in disability, rather than the pay and this concept is regularly echoed in the literature. However, the level of pay matters for attraction and retention. International research suggests that the intrinsic benefits of "care work"—that is, the personal nature of the work and relative autonomy—are not strong enough to overcome negative extrinsic factors. In a 2013 study, researchers investigating the quality of frontline healthcare (broadly defined) jobs in the United States—including those in disability services—found that for the majority of workers, low-pay, precarious employment and unreasonable workloads outweighed the satisfaction they gained from the inherent nature of the work itself. The researchers concluded that "these 'bad job' characteristics play a stronger role in whether workers will stay with their employers."[23] While this study focused on workers in the United States, the same dynamics are playing out in the Australian context. The joint HSU, ASU and United Voice survey results revealed that 15.2% (n=227) of workers intended to leave the sector within the next five years, whilst a third (33.3%, n=496) where unsure of their intention to stay. Of those who intended to leave, 1 in 4 (27.5%) reported their main reason for leaving the sector was that they could receive better pay and conditions doing work in another sector.

Improving wages and working conditions is critical to grow and sustain the disability workforce. It is not an accident that disability support work is poorly remunerated. Rather, it reflects the way these jobs have been designed, such as minimising formal skill requirements and narrowing career pathways, thereby keeping wages low. Additionally, "care" work is poorly recognised by governments and society more broadly. Partly this reflects social attitudes which see care work as something that should be done within the home and behind closed doors, with the expectation that

[23] Morgan, J. Dill, J. Kalleberg, A. (2013) "The quality of healthcare jobs: can intrinsic rewards compensate for low extrinsic rewards?" *Work, Employment, Society*, pp. 817-18.

the labour involved should be gifted freely and without fanfare by people, the vast majority of whom, are women.[24] Our belief is that the use of "bad job" characteristics—low pay, poor conditions, limited skills utilisation, attenuated career pathways—to control costs may ultimately make organisations less competitive and raise labour costs over time, as employers are faced with high levels of frontline worker turnover and a contingent workforce that is underprepared to meet critical skills gaps.

Ageing Workforce and Data Issues

Attraction and retention issues will become more acute as the disability workforce ages. Currently the median age for the occupation "Aged and Disabled Carers" is 47, compared to a median age of 40 for all occupations.[25] The joint HSU, ASU and United Voice survey of 1,522 disability workers revealed that 35% of respondents were over the age of 55.

However, there is competing data on the true extent of workforce ageing and other key workforce characteristics. This lack of clarity is problematic for effective workforce planning and is partly being driven by problems with the Australian and New Zealand Standard Classification of Occupations (ANZSCO). Currently, direct disability support workers are predominantly captured in Australian Bureau of Statistics (ABS) Labour Force Surveys and Census data under the ANZSCO classification of "Aged and Disabled Carers" (423111). This means that even at the six-digit level, policymakers and workforce planners cannot use Australia's most comprehensive labour force datasets to distinguish between aged care workers and disability support workers.

Whilst outside the scope of this inquiry, the HSU recommends the Commission investigate the feasibility of making changes to the way disability and broader community sector labour force data is captured and presented. In the interim, consideration should be given to conducting a repeat of the 2010 *Survey of Community Services* (SCS), which informed the Commission's understanding of the disability workforce in its 2011 report.[26]

Skilled Migration

The HSU does not support the use of skilled migration to address workforce supply gaps when those gaps are driven by the undesirable characteristics of the work itself. In the case of disability support work—structurally undervalued, low-paid and increasingly precarious—the use of skilled migration is not suitable and risks further entrenching the structural reasons for labour shortages. The HSU recommends that the Commission instead focus on how to best upskill local labour supply and consider policy changes that would incentivise workers to make the disability sector their vocation.

Direct Employment

The HSU is concerned by future risks of widespread, improper use of peer-to-peer workforces and "independent" contracting arrangements to undercut minimum wages and conditions. While these arrangements will be a necessary part of solving the workforce puzzle, overreliance will lead to a hollowing out of skills and quality for the broader workforce. This is not a sustainable option for the workforce or the entirety of participants who will access the NDIS.

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[24] Meagher, G. Szebehely, M. Mears, J. (2016) "How institutions matter for job characteristics, quality and experiences: a comparison of home care work for older people in Australia and Sweden", *Work, Employment and Society*, p. 2.

[25] Australian Government, *Job Outlook: Aged and Disabled Carers* (based on ABS Labour Force Survey, annual average 2015). See: http://joboutlook.gov.au/occupation.aspx?search=keyword&tab=stats&cluster=&code=4231&graph=AG

[26] Martin, B. and Healy, J. (2010) *Who Works in Community Services? A Profile of Australian Workforces in Child Protection, Juvenile Justice, Disability Services and General Community Services.*

Workforce Quality: Training, Skills, Registration and Accreditation

The challenges involved in increasing the workforce relate directly to the way in which the NDIS is shaping the nature of work in the sector. Increasingly, work is precarious and therefore many workers do not consider the disability sector as a viable long term career. While modifications to pricing and funding models are critical to addressing these challenges it is equally important that the sector is professionalised. For this reason, workforce development must be a priority.

The HSU is concerned that training and skills development is not factored into the individualised funding approach of the NDIS. Further, there appears to be little work occurring to ensure the funding model doesn't create disincentives to skill investment i.e. participants purchasing low-skill services, which will impact on system-wide service quality and increase risk.

> *"Standard of care drops significantly when new, temporary and unfamiliar staff work with residents. The calibre of agency staff is significantly lower than that of ongoing employees. In my team, this is not just a job; it is a career that we are passionate about. We commit to our residents long term for consistent improvement and quality life experiences. I am concerned that NDIS will casualise the workforce, leaving staff disengaged, devalued and bitter, and clients in the care of people who are not committed to positive outcomes."*
> ***HSU Member, Victoria***

We believe that there is a need to set an entry-level threshold of training which focuses on provision of service within a human rights context; duty of care responsibilities; prevention, identification and reporting of abuse; identification of grooming behaviour; working with culturally and linguistically diverse (CALD) populations; problem-solving frameworks; occupational health and safety; and, ethics as a minimum. Further training and qualifications must include:

- Facilitating a person's individual plan
- Specific and / or complex health needs
- Managing and reporting on behaviours of concern
- Leadership and management
- Occupational violence
- Forensic disability
- Complex communication
- Dual disability

Another initiative which should be championed is a mandatory Disability Workforce Registration and Accreditation Scheme. This scheme should be risk-based, in that a worker's level of accreditation is dependent on the complexity of participant needs and the types of supports they require. We believe that any registration and accreditation scheme should be applied on the basis of job roles and its scope should cover all workers who provide direct support to people with disability, whether they provide government-funded supports or not. We do not see this as restricting choice, rather it adds a layer of quality assurance and brings workforce regulatory requirements into line with many of the other occupations (e.g. allied health professionals, nurses) who also provide support to people with disabilities under the NDIS.

The key benefit of such a scheme is that it will provide a much-needed layer of quality assurance to a sector that has been largely unregulated. It would improve the quality and skills of workers and safety of participants, particularly those who are vulnerable and unable to self-advocate. The HSU sees such a scheme as a key initiative to enable all Australians with disabilities to lead lives free of violence, abuse and neglect. Such a scheme would have flow-on effects for scheme costs and the Commission should consider these in the context of benefits afforded to participants.

Market Readiness: Provider and Participant

As flagged at the outset of our submission, the development of the market is critical to the success of the NDIS. However, the HSU's experience of the scheme's rollout has left us with great concerns that have been echoed succinctly by the Commonwealth Auditor-General's November 2016 report, *Management of the Transition of the Disability Services Market*. The report found that due to the scale of the NDIS reform, market maturity is expected to take up to a decade to realise, with some market sectors taking longer—a finding that was supported by both the DSS and the NDIA.[27] While the Commission is no doubt aware of this report and its findings, we reference it to reiterate the enormity of its implications for the short and medium-term success of the NDIS.

Provider Readiness

Across the country, the HSU's experience is that providers are struggling to keep pace with the changes driven by the NDIS.

> *"I believe uncertainty around NDIS implementation, poor implementation and effects on cash flow has left our organisation in a threatened position. This has had a direct effect on jobs, pay, workplace morale and job security. While I can see the motives behind the NDIS and applaud that - it's hard to see how causing this situation in the sector can deliver better outcomes for people with disabilities."*
> ***HSU Member, Western Australia***

The HSU is aware that NDS, the peak employer group for disability service providers in the non-government sector, has been provided with significant injections of Commonwealth and State Government funding to deliver provider readiness activity. Over the two financial years of 2014-15 and 2015-16, $52 million of taxpayer funds have been provided to NDS, with little apparent benefit to providers. The HSU is concerned that there appears to be limited or no accountability for what this funding has actually delivered and supports the Commonwealth Auditor-General's position that the Commonwealth Government introduce greater transparency and formal evaluation of projects funded through the Sector Development Fund.[28]

Participant Readiness

One of the HSU's key concerns is that participant readiness activities appear to be driven by the belief that most NDIS participants will self-manage, despite the fact that as at 30 June 2016 only 8% of total payments from the NDIA had been provided to self-managing participants.[29] A further concern is that the NDIA has not yet released its "eMarketplace", despite need for participants to have credible, neutral market comparison information. The introduction of individualised and contestable funding prior to the introduction of market comparison services provides an uncomfortable parallel with recent reforms to the vocational education and training (VET) sector. Under recent VET reforms, we saw the introduction of contestable and portable training entitlements long before the *MySkills* website was launched. While it is simplistic to ascribe the

[27] Australian National Audit Office (2016) *National Disability Insurance Scheme—Management of the Transition of the Disability Services Market,* No. 24 (2016-17), p. 7.

[28] Australian National Audit Office (2016) *National Disability Insurance Scheme—Management of the Transition of the Disability Services Market,* No. 24 (2016-17), p. 9.

[29] NDIA (2016) *COAG Disability Reform Council Quarterly Actuarial Report: Version 1, October 2016* (Quarterly Report No. 1 2016-17) p. 15.

widespread failure of VET contestability to the delayed introduction of a market information service, it is without question that competitive, functional markets rely on informed consumers.

> *"I have concerns about families not receiving the support they need to navigate the 'system'. From accounts with numerous families I have learned that NDIA support/funding is more likely to be received by families who 'jump up and down', which indicates to me that it is a reactive, not proactive system. For such an amazing concept, I think it is really important for access to the NDIA to provide equality, otherwise the same inequalities that have always been in the disability sector will continue to occur."*
> ***HSU Member, Tasmania***

Mainstream Interface Issues

General

The HSU will be focusing on mainstream interface issues more fully in further submissions to this inquiry. At this point in time we are aware of numerous emerging issues relating to cost-shifting between different levels of government and between different government funding streams. The HSU was recently made aware of a case in Barwon, Victoria where a participant in shared supported accommodation contracted a urinary tract infection, which developed into septicaemia. The participant was taken to a local public hospital for treatment and was deemed medically fit to return home after two weeks and was advised she would need her incontinence aids changed every two hours–necessitating an active-overnight shift from her SIL provider. The NDIA refused to include this in a plan review so the participant remained in hospital for a further six weeks during an ongoing dispute between the provider and the NDIA. As this participant had no family or other informal supports, they had to wait for individual advocacy services to intervene.

Mental Health

The HSU has included mental health under the topic area of "Interface Issues" in this submission as we are concerned that the inclusion of psychosocial disabilities as an eligible disability type under the NDIS has not been properly considered. Specifically, the HSU and its members have grave concerns with the transfer of funding from other State and Commonwealth mental health programs to the NDIS. This is due to the scheme's requirements that a participant's disability be deemed "permanent" in order to access the NDIS. This requirement is completely incongruent with established principles regarding mental health recovery models and episodic nature of mental illness.

> *"I work in an acute psychiatric adult inpatient unit and there are serious concerns that many people who are admitted to our unit and require ongoing NDIS support will not meet the criteria for that support. The distress caused to individuals and their families over the issue of episodic mental illness or one off serious 'situational crisis' cannot be emphasised enough. The escalating suicide rate unfortunately is an example of the extremely high needs of people with a mental illness."*
> ***HSU Member, Victoria***

> *"Mental health was a last-minute add-on to NDIS. People currently serviced will not qualify for assistance and will put increasing pressure on emergency department and clinical services."*
> ***HSU Member, Victoria***

> *"I work in the public sector mental health sector. I am concerned that many of my clients will fall through the cracks."*
> ***HSU Member, Victoria***

> *"NDIS does not fit the mental health recovery model and allows very poor direct service provision for those who receive NDIS and next to nothing for those who don't receive NDIS."*
> ***HSU Member, Victoria***

The HSU recommends that the Commission work closely with the Parliamentary Joint Standing Committee on the NDIS who are currently conducting an inquiry into "the provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition" to examine whether the inclusion of mental health in the scheme and associated funding arrangements are appropriate.

Governance Arrangements

Provider of Last Resort

The HSU and its members find it incredibly concerning that despite being well into the first year of the three year NDIS transition, the only official public statement on provider of last resort measures was in the NDIA's November 2016 report, *NDIS Market Approach: Statement of Opportunity and Intent.*[30] In the absence of any coherent delineation of roles and responsibilities for market development and market stewardship, several State and Territory jurisdictions have abrogated their responsibility as traditional providers of last resort through large-scale privatisations.

The HSU recommends that the Commission undertake further work on how provider of last resort measures should operate under the scheme and investigate the impact of State and Territory disability service privatisations, both during scheme transition and at full-scheme.

Quality and Safeguarding Framework

The HSU is concerned that the recently-released NDIS Quality and Safeguarding Framework (QSF) has been designed using the assumption that all people with disabilities possess strong informal safeguards, i.e., that all people with disabilities have the capacity to make informed, rational decisions as empowered consumers; or, in cases where supported decision making is required, that people with disabilities have family and friends who will always be looking out for their best interests). However, as far too many Commonwealth and State inquiries into the abuse of people with disabilities have shown, this is sadly not the case. The HSU is concerned that through this misapprehension, the QSF builds a series of weak preventative and corrective measures, which will fail to adequately protect at-risk people with disabilities.

The Commission must remain cognisant that not all social groups (or groups within a broader social group) have the same capacity to exercise choice, based on their command of information and other resources. Therefore, market forces alone are not strong enough to deliver quality outcomes. Key lessons from other countries that have moved to marketized models of care is that when government(s) failed to acknowledge its role in implementing effective regulatory standards and more generous performance incentives for high-quality providers, the workforce suffered and support standards were compromised. The United Kingdom provides a good example of this, with the introduction of a direct payments scheme for care of older people as detailed by Macdonald and Charlesworth.[31]

The HSU is also concerned that the QSF places an overreliance on other parts of the NDIS system. In particular, the reference to conducting a formal risk assessment during the development of a

[30] NDIA (2016) *NDIS Market Approach: Statement of Opportunity and Intent*, p. 24.

[31] Macdonald. F. and Charlesworth, S. (2015) "Cash for care under the NDIS: Shaping care workers' working conditions?" in *Journal of Industrial Relations*

participant's plan is fanciful.[32] Currently the NDIA is approving 450 plans per day. In 2018-19 the NDIA will need to approve 850 plans a day and review a further 1,100. In 2019-20 the NDIA will be reviewing 2,000 plans a day.[33] Given these volumes, it is irresponsible to suggest that planners will be able to properly assess and build participant capacity to assess and manage their own risk. This irresponsibility is heightened given the emerging issues with LACs outlined earlier in this submission.

Competition and Individualisation

The HSU supports the principles of choice and control for people with disabilities, but we believe that competition and contestability cannot be introduced into a market without appropriate regulations or market stewardship mechanisms firmly in place. This is particularly the case given the distinguishing features of the NDIS market:

- High levels of information asymmetry between the buyers and sellers of goods and services. This is particularly true in the NDIS where the most recent best-estimates from outgoing NDIA Chair, Bruce Bonyhady, are that participants with intellectual disability will comprise 70% of full-scheme participants.[34]
- The bulk of goods and services consumed by NDIS participants are "experience goods" which, by their very nature, are difficult for participants to compare prior to purchasing and consuming.
- Some key support items such as SIL entail high switching/transaction costs for participants, thereby blunting competitive forces.

In this context, it is worthwhile noting the Commission's remarks on choice and informed decision-making in its November 2016 Study Report for its inquiry into competition and informed user choice in human services: "It will not always be the case that users are well placed to make their own decisions. People vary in their ability to make informed choices about the services they need or want, as does the level of assistance and user-oriented information needed to support user choice. Not everyone can, is willing to, or should exercise choice."[35]

Increasingly, social policy theorists and researchers are positing that the NDIS has "been constructed predominantly with people with physical and sensory disabilities in mind. For this constituency, who have less difficulty in negotiating the world, the [scheme's] emphasis on individual autonomy and agency makes the most sense. For those with complex and multiple disabilities, and for people with cognitive and intellectual impairment, in contrast, the benefits are less clear, and an individual approach can be counterproductive."[36] HSU members have echoed these sentiments:

[32] Australian Government, Department of Social Services (9 December 2016) *NDIS Quality and Safeguarding Framework*

[33] Bonyhady, B. (22 December 2016) *Letter to Disability Reform Council*, p. 3.

[34] Bonyhady, B. (2016) "Reducing the inequality of luck: Keynote address at the 2015 Australasian society for intellectual disability national conference" in *Research and Practice in Intellectual and Developmental Disabilities*, 3 (2), p. 116.

[35] Productivity Commission (2016) *Introducing Competition and Informed User Choice into Human Services: Identifying Sectors for Reform: Study Report*

[36] Miller, P. (2017) "'The age of entitlement has ended': designing a disability insurance scheme in turbulent times" in *Journal of International and Comparative Social Policy,* pp. 11-12; see also: Hayward, D. (2017) "Social policy 'generosity' at a time of fiscal austerity: The strange case of Australia's National Disability Insurance Scheme" in *Critical Social Policy*, Vol. 37 (1), pp. 128-47.

> *I am still unclear about the impact the NDIS will have on my work, and unclear that the NDIS will in fact be a better system for people with severe intellectual disabilities, particularly those who are unable to voice their concerns, opinions, or choices clearly. I am also concerned about moves to privatise areas of disability support, and the ability to provide quality services to those with a disability.*
> ***HSU Member, Victoria***

This is not to say that the HSU and its members believe people with disabilities (physical, sensory, intellectual or cognitive) do not have the capacity to make choices, rather we simply highlight the potential hazards of choice for those most at-risk participants during a transition that could best be described as chaotic:

> *There does not seem to be the infrastructure in place to accommodate the huge changes which are taking place. I am concerned about vulnerable families and how they will be able to articulate their needs and negotiate the system. Both staff and participants are very confused about how the NDIS will work.*
> ***HSU Member, Tasmania***

In a case that may be of interest to the Commission, the HSU has encountered examples of where a relentless focus on individualisation has increased scheme costs with no apparent material benefit for participants. In Barwon, during the Victorian NDIS trial, HSU members working in shared supported accommodation reported frequent instances where multiple NDIS participants living together required similar or the same assistive aids and equipment. Because of the scheme's individualised funding approach, many group homes were being sent multiples of the same equipment—in one instance a home received five shower chairs. A cheaper, more practical and equally beneficial approach would have been to send a single adjustable chair for all participants to share. The important thing to take from this is that in some instances the individualisation of supports actually drives up scheme costs with no material benefit for participants.

As part of this inquiry the HSU recommends that the Commission examine in detail the numbers of NDIS participants by disability type and level of functional impairment for the purposes of identifying whether current scheme design is still appropriate, with particular emphasis on the appropriateness of individualisation and contestability for different participant cohorts and market segments.

Paying for the NDIS and Future Scheme Sustainability

The HSU would emphasise that the original budgetary estimates of the NDIS were "best-guesses" based on incomplete and partial information. Consequently, we are concerned by the Commission's apparent assumption that NDIS cost overruns would automatically necessitate a reduction in the scope or certainty of support for participants, or require cuts to other funded programs.[37] Ultimately, the NDIS is a program which benefits all Australians, whether or not they have disability and in 2011, the Commission found that the NDIS would only have to produce a $3,800 annual gain per participant gain to meet a cost/benefit test.[38]

Given the wealth of new data and the experience of the scheme so far, the HSU recommends the Commission perform an updated cost/benefit analysis on a high-quality, properly priced NDIS.

[37] Productivity Commission (2017) *National Disability Insurance Scheme (NDIS) Costs Issues Paper,* p. 7.

[38] Productivity Commission (2011) *Disability Care and Support*, p. 2.