SUBMISSION TO THE PRODUCTIVITY COMMISSION REVIEW OF NATIONAL DISABILITY INSURNACE SCHEME COSTS

The National Disability Insurance Scheme (NDIS or Scheme) is unique in Australian public policy. It is an economic reform as well as a social policy reform, designed to optimise support for some of Australia's most disadvantaged citizens. It is an example of governments doing what people cannot do for themselves, because the market does not provide insurance for permanent and significant disability.

The NDIS is essential for the equity and decency of Australian society.

By the time it is fully implemented in 2019, the NDIS will have totally replaced the old welfare model of disability which the Productivity Commission in it 2011 Report found was "inequitable, underfunded, fragmented, inefficient and gives people with disability little choice and no certainty of access to appropriate supports".

Before the introduction of the NDIS, disability support depended on where you lived, which the Productivity Commission described as a "postcode lottery", the cause of your disability or the medical diagnosis. For example, there were early intervention supports for children diagnosed with autism, but not with spina bifida. In contrast, support through the NDIS is based on need and so it is fair.

The Productivity Commission also concluded that a lifetime and insurance-based approach would be most efficient and effective and contribute to inter-generational neutrality.

As at the end of December 2016 there were over 60,000 participants in the NDIS and it was meeting all of its mission-critical goals.

First, the NDIS was "on time" and so the number of participants was in line with the schedule set by governments, through an expanded "trial phase" across nine sites and the first phase of the full Scheme rollout. This schedule, while very demanding, meets the desire of people with disability, their families and carers for the NDIS to be implemented as quickly as possible. For most people with disability, the NDIS cannot come soon enough, especially for ageing carers, children requiring early intervention and young adults making the transition from school to post-school options.

Second, the NDIS was "on budget". With 60,000 participants in the NDIS, there is now more than 20 times the data than was available to the Productivity Commission in its 2010 and 2011 study. Extrapolating this much larger dataset to the full scheme, indicates that the original cost projections for the NDIS remain the most reliable estimates, so long as the NDIS is well-managed.

Third, and most importantly, participant satisfaction has averaged nearly 90 per cent since the inception of the NDIS. This is an extraordinary achievement.

These key results, since the inception of the NDIS, confirm that the conclusions reached by the Productivity Commission in its 2011 report are valid and so this review of the NDIS should not lead to any major changes in the NDIS.

Rather, the purpose of this Review should be to identify areas of potential refinement and improvement.

This Review should also draw a sharp distinction between potential structural and strategic refinements and operational matters, which should be left to the good management of the National Disability Insurance Agency (NDIA or Agency) and its Board and Management.

This submission is structured in line with the Issues Paper and focuses on potential structural and strategic areas for improvement, based on the evidence which has been built up since the NDIS commenced on 1 July, 2013.

SCHEME COSTS

<u>Cost Drivers</u>

The Review identifies five drivers of scheme costs: access, scope, volume, price and delivery. These are the drivers of costs identified in the NDIA's Quarterly Actuarial reports.

In addition to these high-level and largely mechanical cost drivers, there are three other drivers of costs, which will have a very significant impact on the long-term sustainability of the NDIS. These are:

1. *Scheme Culture*. The NDIS is based on people with disability being included in community and full citizenship. The Agency has described this objective as achieving an "ordinary life". The NDIS is also based on mutuality. This requires participants and their families to seek only what is "reasonable and necessary" and for disability service providers to commit to continuous improvement and operational efficiency and effectiveness and not engage in over-servicing. The NDIA must also adhere to the vision of the NDIS by putting people with disability first, managing the NDIS well and in accordance with insurance principles and maintaining and building public confidence, as set out in the Agency's Strategic Plan. Without these cultural underpinnings to the mechanical drivers of costs, the NDIS will not transform the lives of people with disability, their families and carers. ***Importantly, the NDIS cannot be allowed to be turned into a Centrelink-type entitlement model, because under this approach costs would continually escalate. In order to ensure on-going cultural alignment, cultural audits of the Agency, participants, families, carers, service providers and mainstream services which intersect with the NDIS (health, education, justice and transport) should be added to the regular assessments of the NDIS, as cultural alignment with the NDIS vision is essential for long-term cost containment and is currently not included in key measures.***
2. *Return on investment/capacity building*. A key tenet of the NDIS is that investing in the lives of people with disability will generate improved quality of life and maximise lifetime opportunities and minimise the lifetime costs of support for people with disability. Consistent with this approach, the NDIA has categorised supports for participants as either core, capacity building or equipment. In economic terms, these can be characterised as consumption, investment and capital expenditure, respectively. During the trials, a significant proportion of spending has been characterised as capacity building, including early intervention supports. It will be essential that these capacity building supports generate a return in terms of increased capacities, as part of the overall insurance approach. The Agency has made a good start on measuring the effectiveness of all supports through the development of an Outcomes Framework and its Insurance Principles Manual. ***Better measures of return on investment, which include quality of life, increased opportunities for participation and the impact on long-term cost projections, should continue to be refined as the data becomes available and then should be used to inform on-going Scheme structure and design.***

3. *Managing induced demand*. Prior to the introduction of the NDIS approximately 80 per cent of the support provided to people with disabilities was provided informally by families and 20 per cent by governments. This balance was unsustainable, in part because as the life expectancy of people with disability was increasing, due to better medical and health treatments, the capacity of the community to provide informal care was declining, due to increased workforce participation by women, higher rates of marital breakdown amongst families with children with disabilities and a weakening in extended family support due to greater job mobility. As a result, before the NDIS, more and more of the new government spending on disability was being required to meet emergency and crisis needs. The Productivity Commission in 2011 described this as a "death spiral". Therefore, providing sufficient government funded support to people with disabilities in order to ensure the stability of informal care arrangements is a major objective of the NDIS, as part of overall sustainability. When the NDIS is fully operational, NDIS funding will account for about 40 per cent of support and 60 per cent will still need to be provided informally by families and networks of friends. Maintenance of this quotient of informal care, and hence controlling induced demand, is essential for the sustainability of the NDIS. Informal supports, including family support and friendship networks, are also essential for the Quality and Safeguards Framework to be effective and are part of an ordinary life, which should include loving relationships and friendships. Facilitating new informal networks as the role of parents naturally fades, is therefore an important longer-term objective of the NDIS. ***Measures of informal care, comprising family (parents, siblings, grandparents and other extended family) carers and friends should be included in key measures of the NDIS in future, in order to ensure the long-term sustainability and effectiveness of the NDIS. This should include an assessment of whether the assumption that under the NDIS 60 per cent of supports will be provided informally is accurate and sustainable.***

Experience so far

The Review accurately notes that at the end of the trial period the NDIS was "on budget" and this was reflected in a surplus of around 1.5 per cent of the funding envelope over the three years of the trial.

The Review also points to some emerging cost pressures. These are to be expected and are part of the reason that governments decided that the commencement of the NDIS should be phased. Importantly, the Productivity Commission used the term "launch sites" (which was changed by governments to 'trial sites") because it recognised that it was essential in the early stages of the NDIS to gather the data necessary to inform the full rollout of the NDIS.

The origins of the NDIS are in compensation schemes. The main catastrophic injuries covered by compensation schemes are spinal cord, brain and burns. For each of these injury types there is now comprehensive data, built up over many decades, identifying the most appropriate funding required to achieve best long-term outcomes. The NDIS needed to be launched in order to start collecting and refining the data for a much wider range of functional impairments associated with every disability type. It was therefore inevitable that in the early stages of the NDIS there would be discrepancies between functional impairment and resource allocations and, hence, cost pressures.

Further, programs such as Helping Children with Autism and Better Start, which were based on medical diagnosis rather than functional impairment, created expectations that have contributed to higher than expected demands for early intervention supports.

It was therefore inevitable that there would be areas of cost pressures that would emerge during the launch phase. The Inaugural Board was therefore very vigilant in monitoring any adverse trends and responding. In accordance with well-established prudential insurance governance arrangements, forecasts and experience were continually compared and adverse trends were quickly identified and remedial actions were implemented by Management.

It should be anticipated that as new participants enter the Scheme, during the further roll-out of the NDIS, and more data is collected, further divergences between forecasts and experience will emerge requiring operational adjustments in accordance with the prudential insurance governance cycle.

Cost pressures, which are identified as part of the prudential insurance governance cycle and where the Agency has the powers to respond, should therefore be treated as operational matters that fall within the purview of the NDIA Board and Management and should not be matters of concern to the Productivity Commission in this Review.

SCHEME BOUNDARIES

Eligibility for the NDIS

The eligibility criteria for the NDIS are in general holding well. The main area of concern is autism and developmental delay and challenges in this area have been exacerbated by the decision to adopt an eligibility definition of developmental delay, rather than global developmental delay.

Given that a significant disability in one domain will almost always cause delays in other domains, eligibility based on global developmental delay would be more apposite.

Therefore, eligibility for the NDIS should be based on the Productivity Commission's original recommendation of global developmental delay.

In the context of early intervention it is well-known that children thrive best in loving and supporting environments. Families who discover their new child has a disability or is missing developmental milestones are often grieving, scared or angry. Counselling and support for parents, carers and siblings, often through peer support, is essential, so they can provide the best environment for their child to reach his or her potential. Supports for the child must always be family centred and "friendly".

The Agency's approach to early intervention, called Early Childhood Early Intervention, is based on this family-centred best practice. However, there is potential to strategically strengthen the structure underpinning this approach.

While parents and carers should continue not to be eligible for the NDIS, explicitly recognising the essential role of families, especially in the early years, and so including commitments to family support and early intervention support within the context of families within the Scheme Rules would strengthen the effectiveness of the NDIS and improve its long term sustainability.

The intersection with mainstream services

Ensuring that education, health, justice, transport and other services meet their universal service obligations to people with disability will require constant vigilance so that there is no cost-shifting on to the NDIS. In the trial period continuity of support arrangements have undoubtedly masked some of these pressures and so some of the boundary issues have not been fully tested at this point.

This applies particularly in the area of mental health, where the funding for a number of existing community-based mental health programs has been allocated to the NDIS, even though many of the participants in these programs will not be eligible for the NDIS.

Therefore, boundary issues and cost-shifting are likely to require further analysis and review, subject to emerging evidence.

The Scheme Actuary is required to report on cost-shifting and boundary issues and her reports will provide a useful guide.

In future, as boundary issues with mainstream services inevitably become more prominent and important to the sustainability of the NDIS, it will be essential to develop mechanisms to integrate this work by the Scheme Actuary with the National Disability Strategy and other indicators to ensure appropriate actions are taken by all governments, through the Disability Reform Council (DRC) and the Council of Australian Governments (COAG).

Reports from the Scheme Actuary, the National Disability Strategy and other indicators, such as the proposed cultural audits of the NDIS, will all assist with identifying boundary issues with education, health, justice, transport and the other universal services which people with disability need to access. However, these reports and indicators will not lead to effective actions without stronger government commitments than exist today. It is therefore essential to the future success of the NDIS for structures and strategies to be put in place now to ensure appropriate actions will be taken by all governments, through DRC and COAG, in order to ensure the optimal intersection between the NDIS and mainstream services.

The ILC is a critical foundation stone for the NDIS. If those people with disability who fall just outside the access requirements for the NDIS receive insufficient support, they may need to exaggerate their disabilities in order to become Scheme participants, so as to gain access to necessary supports. This risks undermining the culture of the NDIS and its focus on maximising opportunity and social and economic participation.

Alternatively, this group will not receive the essential supports they need and will become more disabled, entering the NDIS at a later stage at higher cost and so undermining the objective of the NDIS to minimise lifetime costs.

Currently, only $132 million (excluding LAC support) has been allocated to the ILC. This is not sufficient and means that one of the key foundations on which the NDIS is being built is weak. The NDIA should have flexibility to move funds within the existing funding envelope to ILC supports, as a key mitigating strategy to avoid unnecessary medium- to long-term cost increases.

One of the opportunities, which would assist significantly with the effectiveness of ILC, would be for the Productivity Commission in this Review to build on its original work in which it conceptualised the NDIS by categorising the Australian population into Tier 1 (the Australian population), Tier 2 (everyone with disabilities) and Tier 3 (those who receive individualised NDIS packages).

Tier 2 comprises about 4 million people and includes those ageing with disabilities, people with temporary disabilities following injury or surgery, and those with permanent mild and moderate disabilities without any significant functional impairments. There is also a group who have the potential to have significant disabilities, if they do not receive the essential supports they need. Many of these people will have psychosocial disabilities (mental health issues).

Analysis by the Productivity Commission, as part of this Review, to clearly identify the "at risk" group within Tier 2 who should be the primary target for ILC supports, would strengthen the foundations of the NDIS and make a significant contribution to its future sustainability.

The intersection with the National Injury Insurance Scheme

In its Report in 2011 the Productivity Commission identified that the National Injury Insurance Scheme (NIIS) could be introduced before the NDIS. It is therefore particularly disappointing that progress on the NIIS has lagged the NDIS, apart from a shift to no-fault motor accident compensation schemes in all jurisdictions.

The failure to shift medical negligence to a no-fault basis is particularly disappointing, especially given the Commonwealth Government has very significant leverage through the large subsidies it provides through the High Cost Claims Scheme and the Premium Support Scheme.

Progress in this area is complicated by the fact that it requires reform of State laws but given the significant benefits from the NIIS, the required coordination between jurisdictions should be achievable.

In the absence of a full NIIS, NDIS costs will be higher than originally estimated and so renewed commitments from all governments including a near-term deadline to implement the NIIS is vital. In particular medical negligence reform, so that medical damages for costs of future care shift to a no-fault basis is an essential and long-overdue next step.

PLANNING PROCESSES

The questions raised in this section of the Review are all operational, rather than strategic or structural and should therefore be addressed by the NDIA.

However, the terms "planning" and "planner" continue to cause some confusion. The term planning was adopted because there was a desire not to use the term "assessment" with all of its medical overtones. However, planning is a complicated process involving many discussions and deep trust, especially when anticipating big life changes such as moving out of home.

The realities of the large and rapid rollout of the NDIS mean that NDIA "planners" do not have the time to engage very deeply. Moreover, the real aim of plans is to quantify and allocate resources from the NDIS, based on functional impairments, goals and sustaining and nurturing informal care arrangements. This has led the Agency to develop a "First Plan" process. Nevertheless, and very understandably, given the current descriptors, many participants and their families are trying to develop very detailed life-plans for the NDIA to approve. This can then unnecessarily restrict choices within existing funding allocations. Consideration should therefore be given to changing terminology. The "planning process" would be more accurately described as a "planning and resourcing process" and the role of "planner" would be better described as an "Agency representative". The suggestion of the term "resourcing" rather than "funding" is important as it reflects the need for participants to build personal capacity, including knowledge, skills and social networks and aligns with the Quality and Safeguards Framework.

MARKET READINESS

The approach in the Issues Paper to market readiness is to look at the key market players – the workforce, disability service providers and participants – and then to ask: Will they be ready?

While this approach raises some interesting questions, they are largely operational and point to the need to build on work that has already been undertaken, including by the NDIA, on Market Position Statements, a Statement of Market Opportunity and Intent and benchmarking of disability service provider costs.

A more strategic approach would be for the Report from the Productivity Commission to focus on the following issues:

Demand and Supply Analysis

Through the lens of demand and supply analysis, it is clear that the introduction of the NDIS implies a big demand shock, with demand effectively doubling in a very short period of time.

At the same time, the NDIA's "efficient prices", which are calibrated to the expected full costs of the NDIS of $22 billion, imply that prices for disability services need to fall. Effectively, the supply curve needs to shift to the right and downwards.

However, when demand expands rapidly the more usual market response is for supply either to expand along the existing supply curve or for the supply curve to move upwards. This implies a very unusual and very challenging market shift.

Further, as people with disability become full citizens, we should not just think about supply as the supply of specialist disability services. Engaging mainstream services effectively opens up new sources of supply.

New social capital in the form of volunteering and donations will shift the supply curve down. Conversely, a loss of social capital will move the existing supply curve upwards. Building social capital and how best to do this should also therefore be an important element in this market analysis.

On the demand side of the market, it is essential that demand for individual services is highly value for money elastic. This implies a need for the demand curve to flatten, so that a relatively small rise in prices generates a large shift away in the quantity of demand.

There is also a requirement for the nature of NDIS services to change and this implies a significant shift in the attitude and approach of many disability organisations and support workers to align with the values of the NDIS.

Robbi Williams describes this as a shift in supports from providing just "transactional benefits", e.g. cooking a meal, to supports which include "transformational benefits", e.g. increased capacity to prepare future meals. This implies that supports should always seek to increase the knowledge and social capital of participants over time, so they achieve their potential.

In effect, a new and vastly expanded disability market place is emerging and participants and their families and carers need to become highly discerning buyers, who have reliable, accessible and timely information at their fingertips, enabling them to navigate effectively and overcome inherently high transaction costs. The high transaction costs particularly apply when changing personal care and support arrangements.

To gauge progress towards an efficient market, it would be particularly valuable to measure buyer effectiveness, through regular consumer surveys which would then inform market stewardship actions. This would complement current supply-side surveys.

There are also opportunities to learn from other sectors which have experienced similar changes, in order to identify potential actions which will be most effective in triggering the needed structural adjustments.

The original report from the Productivity Commission in 2011 did not particularly focus on these new market dynamics and so there was an implicit expectation that the disability sector would adjust relatively quickly.

The evidence from the past three and a half years indicates that the disability sector is in fact adjusting and reports from National Disability Services would suggest that it is adjusting faster than at any time in recent history.

It is also pleasing to see new and innovative providers entering the disability sector from adjacent sectors and, especially, start-ups and there are also numerous examples of participants exercising control and choice.

However, it is also clear that the need for rapid structural change is even greater than is currently underway in the disability sector—on both the demand and supply sides—in response to the coming demand shock.

Given the Productivity Commission's expertise in market dynamics, structural adjustment and sectoral analysis, advice from the Productivity Commission, as part of this Review, on the most effective measures to facilitate the required shifts in the demand and supply curves and changes in their respective shapes has the potential to make an invaluable contribution to the future sustainability of the NDIS.

Price Deregulation

The Agency has been fixing prices, since the inception of the NDIS. This has been essential, in order to ensure that inefficiencies in the old disability system were not locked into the NDIS, before sufficient competitive forces emerged. However, some of the potential consequences of this approach are that it limits innovation and also effectively sets not just prices, but also service levels.

In time, it is essential that NDIS prices will be deregulated. Preconditions for deregulation would include evidence that markets are competitive and this is likely to emerge on a location-by-location and service-by-service basis. Safeguards when prices are deregulated, such as price transparency, which clearly show and explain prices set above the efficient price will also be important.

However, the deregulation of prices represents a significant structural and strategic risk. Again, given the Productivity Commission's expertise in market dynamics, structural adjustment and sectoral analysis, advice from the Productivity Commission on the most effective way to deregulate NDIS prices has great potential to assist with the on-going sustainability of the NDIS.

Technology and Technological Innovation

The Issues Paper refers to the potential for technology to provide labour-saving equipment and this will be important.

However, the advances in technology and in particular the speed with which the technology industry has embraced accessibility, represents a major change since the original work by the Productivity Commission in 2010 and 2011.

The potential for technology "to create a lifetime of moments when disability becomes normality" was highlighted at the NDIS New World Conference in November 2015. Since then, there have been further enhancements in technology and its potential to assist people with disability to live independently and engage with friends and community.

The potential for technology to assist quality lives, build independence and reduce the support needs of people with disability and how the NDIA should engage with the technology sector should be major themes in the Productivity Commission report into NDIS costs, taken through the lens of building independence, quality lives and Scheme sustainability and not simplistic short-term measures of cost reduction.

In-kind Services

When the Productivity Commission undertook its work in 2010 and 2011, it was never anticipated that existing services would be subject to in-kind arrangements. This therefore represents a significant strategic and structural shift from the original Productivity Commission recommendations.

The Agency has consistently advised that in-kind arrangements are not consistent with the vision of the NDIS and would not scale to full scheme. Further, these arrangements are not consistent with a contestable or competitive market, because they limit control and choice and also lock-in old-style standards and prices above the efficient price.

While these risks have been generally recognised and there is a broad intent to phase out in-kind arrangements, there are still no public commitments by governments to the elimination of in-kind arrangements. ***Therefore, analysis by the Productivity Commission of the risks to the sustainability of the NDIS from in-kind arrangements would be very helpful to ensuring that governments make firm commitments ending current in-kind arrangements.***

GOVERNANCE AND ADMINISTRATION OF THE NDIS

Governance

The governance arrangements provide an effective structure for managing scheme costs. There are also aspects of the current arrangements which have not been utilised to their full potential, such as the Statement of Strategic Guidance, which has not been updated since the trials of the NDIS commenced in 2013.

One aspect of governance which would lead to improved cost control would be to establish a Premium Reserve, subject to 5-year actuarial review, and then require the NDIA Board to operate within this Reserve. This would provide clear accountability, while also providing increased flexibility, as currently under the bilateral agreements funding is split between package costs by jurisdiction and administration costs and so there is almost no flexibility for the NDIA Board to manage total costs within an agreed envelope.

The Premium Reserve should include a Contingency Reserve, to enable the NDIA to smooth out fluctuations in costs from year to year, and it could be established by allowing any under-spending to accrue within the Reserve. Currently, the NDIA has no capacity to deal with unexpected contingencies, other than seek government top-ups, and this is a weakness in the current governance and funding arrangements.

The suggestion that there should be a Premium Reserve including a Contingency Reserve is consistent with the recommendations from the Productivity Commission for a 'National Disability Insurance Premium Fund' including a margin.

The proposed national Quality and Safeguards Framework represents very significant progress on current arrangements and it is appropriate that these are administered separately from the NDIA. In addition to the proposed arrangements, the new national regulator should have powers to investigate misleading advertising, inappropriate inducements and commissions and other sharp practices, which could become a bigger risk with price deregulation.

The mechanisms for dealing with disputes with the NDIA appear to be appropriate and it is notable that there have been many, many fewer appeals to the Administrative Appeals Tribunal than is normal for compensation schemes or was anticipated before the NDIA commenced operations.

Agency Operating Costs

The Agency has been set an operating cost target of 7 per cent of total scheme costs at full scheme. This is well below the target that was implicit in the 2010 and 2011 work by the Productivity Commission and would represent an administrative cost that is well below usual insurance scheme benchmarks of around 10 per cent. It is therefore highly aspirational and should be reviewed as it represents a significant risk to total Scheme costs

Given that the major risk to total Scheme costs is package costs, which comprise 93 per cent of total costs, it would be a mistake to hold the Agency to an aspirational operating cost target if by capping administrative costs, it threatens a blowout in package costs, due to inadequate quality control or oversight.

Based on the first six months of transition, there is evidence that the operating cost limits for the Agency during transition are likely to be inadequate. While the target for plan approvals (including children in Early Childhood Early Intervention) during the first half of 2016-17 were achieved, many plans were extended and plan reviews were deferred and Local Area Coordinators were not able to engage in essential work on community inclusion. This is not sustainable and administrative cost targets should be reviewed, based on the emerging evidence during the transition period.

The Board of the NDIA should have discretion within the full costs of the NDIS to set its administrative costs at the most cost-effective level, rather than be held to a highly aspirational target of 7 per cent for which there is no evidence. Otherwise there is a risk that total costs will be higher, and potentially significantly higher, than necessary.

Market Stewardship and Provider of Last Resort Arrangements

The Agency has a number of very important market stewardship responsibilities, which flow from its responsibilities for the sustainability of the NDIS and which were not fully identified in the 2011 Productivity Commission Report or in subsequent work by governments.

These responsibilities have led to the development of Market Position Statements for every jurisdiction except WA, a statement of Market Opportunity and Intent, a project with Disability Support Organisations designed to inform and train participants to exercise control and choice and working with disability service providers on efficient pricing and benchmarking.

The Agency is best placed to be a market steward, because it must be close to the market in order to implement the NDIS sustainably. However, the Agency's resources in this area are insufficient, given the very significant market stewardship challenges.

There are also resources within the Department of Social Services (DSS) allocated to market analysis. While this creates some ambiguity in relation to responsibilities, it is appropriate given that some of the market work, goes well beyond the remit of the NDIA. For example, the disability sector will be competing with the health and aged care sectors for its new workforce and so this requires broader government coordination.

It is also notable that DSS also has responsibility for the Sector Development Fund (SDF). However, given its strategic importance in shaping the market and long-term costs, as highlighted by the Australian National Audit Office in 2016, the processes for allocating funds from the SDF should be much more transparent and evidence-based.

Going forward, market stewardship responsibilities should be much more clearly the responsibility of the Agency and it should be resourced fully to undertake this function. In fact, market stewardship is a clear example of where insufficient Agency resources pose a clear and unnecessary risk to the long-term costs of the NDIS and its sustainability.

In remote and very remote parts of Australia it is certain that there will need to be provider of last resort arrangements. These arrangements should be put in place by the NDIA, as part of its market stewardship responsibilities, but under no circumstances should these services be provided by the NDIA. More broadly, the NDIA should never be a service provider, as this would represent a major conflict of interest.

PAYING FOR THE NDIS

Funding

The preferred method of funding in the Productivity Commission Report in 2011 was for the Commonwealth and States to engage in a tax-swap and for the Commonwealth to fully fund the NDIS from general revenues. This contrasts with the agreed arrangements for the Commonwealth to fund around 51 per cent of scheme costs at full scheme and for the States and territories to contribute 49 per cent.

The recommendation from the Productivity Commission reflected that the States and territories had been unable to meet rising disability costs, because of an absence of reliable growth taxes. However, acceptance of this recommendation would have meant that once the NDIS was fully implemented, the States and territories would not have had any "skin in the game" and so risked the States not having any interest in the NDIS or engagement with people with disability. This would have been a mistake.

It is clear from the implementation of the NDIS to date that the shared funding model has contributed very positively and significantly to the national governance arrangements and ensured that all governments have maintained their strong commitments to the NDIS.

The risk-sharing arrangements require the Commonwealth to meet at least 75 per cent of cost overruns in the event that the funding envelope is exceeded, while the States and territories are liable for up to 25 per cent. While this risk-sharing arrangement is different to the arrangements for sharing the expected full cost of $22 billion in 2019, it is appropriate for the Commonwealth to have additional responsibilities for any future cost overruns given its deeper and broader tax pool.

Therefore, while the financial arrangements are significantly different to the recommendations from the Productivity Commission in 2011, the current NDIS funding and risk sharing arrangement between the Commonwealth and all States except WA provide a very appropriate balance and have ensured that all governments have maintained their strong commitments to the NDIS.

The current proposed arrangements for the NDIS in WA, which were agreed between the Commonwealth and the then Barnett WA Government on 1 February 2017, will require WA to be carved out of the NDIS Act (2013) and for new legislation, which should mirror the NDIS Act, to be passed by the WA Parliament. The agreement also places a much greater responsibility on Western Australia to meet NDIS costs, than for all other jurisdictions. Under the proposed arrangements, WA is responsible for all administration costs, which are expected to total around $140 million per annum at full Scheme, and at least 75 per cent of any cost overruns.

Given that WA is currently facing record budget deficits and debts, the additional costs to be borne by WA taxpayers are inappropriate. They create a risk that participants in WA will not receive the same level of benefits as in other jurisdictions, because they could exceed the capacity of the State to meet these costs. More generally, previous analysis by the Productivity Commission has clearly identified that federated models lead to increasing differences and hence inequality over time.

Further, State government revenues in WA are particularly uncertain, because of their reliance on volatile commodity prices. It is also well known that larger insurance companies are more efficient and require a lower level of contingency reserves than smaller insurance companies. WA is effectively creating its own smaller and separate risk pool under the proposed arrangements and has therefore, inadvertently, created a situation where it is at greater risk while having less financial capacity than the Commonwealth to respond.

It is also clear that while the independent evaluation by Stanton's International of the two trials of the NDIS that have been underway in WA since 1 July, 2014 recommended that the 'WA NDIS' is the preferred model in WA, it has not provided sufficient evidence to guide the future directions of the NDIS in WA, as it was based on a survey of just 21 participants.

People with disability in WA should be covered under the same national legislation as the rest of Australia and the funding arrangements for the NDIS in WA should be the same as for the rest of the country, as there is a very significant risk that the 'WA NDIS' will lead to either unsustainable costs to WA taxpayers or an artificial cap on WA participants and, hence, a continuation of the postcode lottery for people with disability in WA. Proper evidence from the two NDIS trial should then be used to inform how best to deliver the NDIS as effectively as possible in WA and revised arrangements should be finalised as soon as possible so the people in WA do not have to wait unnecessarily for the NDIS to reach them.

Once the NDIS is fully operational the contributions from States and territories will increase by 3.5 per cent per annum. Given current population growth of about 1.75 per cent per annum and increases in average weekly earnings (AWE) of 2.25 per cent per annum, this assumption currently looks reasonable assuming a productivity saving of 0.5 per cent per annum.

However, should Australia return to higher rates of inflation this assumption would need to be adjusted. It is also possible that the disability sector will need to offer higher wages to attract and retain the necessary workforce, while technology should contribute to productivity improvements but the quantum is unclear. ***It would therefore be more realistic to index the State and territory contributions by AWE, rather than set a fixed annual indexation factor, while the productivity assumption should be subject to actuarial review every 5 years***.

In terms of funding sources, governments should raise revenues as efficiently as possible and then incur expenditures in accordance with community expectations.

As is well known, just prior to the introduction of the NDIS, it was agreed that the Medicare levy should be increased by 0.5 per cent to partly pay for the NDIS. While this was widely supported and has made an important contribution to the funding of the NDIS, it has unfortunately led to suggestions that <u>all</u> of the additional funding required to meet the full costs of the NDIS should be hypothecated from new revenue sources or budget “savings” through the NDIS Savings Fund.

It is notable that hypothecation is not being applied in any other area of current or future government spending and this has led to suggestions that people with disability are being treated differently and as second class citizens.

Hypothecation is a very inefficient way of funding government expenditures and, while the NDIS benefits from part-funding from hypothecation from the Medicare levy, the NDIS should be thought of as being funded from general revenues, which should be collected as efficiently as possible, in order to meet the full costs of the NDIS and all other essential government spending.

<u>Towards a financially sustainable future</u>

The financial sustainability of the NDIS should be currently defined and measured as $22 billion in 2019 – 20, which is consistent with the original estimate from the Productivity Commission, after adjusting for inflation and population growth, and it can be further extrapolated annually.

However, the limitation on this measure of sustainability is that the original Productivity Commission estimate was based on a sample of people with disability, from the ABS Survey of Disability, Ageing and Carers (SDAC) plus other sources. Until the NDIS reaches full scheme and then matures, it will continue to be based on estimates, rather than actual population data, although it is notable that the Scheme Actuary continues to believe that the original Productivity Commission estimate remains the most reliable estimate of full scheme costs, so long as the NDIS is well-managed.

The response to any future cost overruns in excess of $22 billion in 2019-20 should depend on the source of the additional costs.

If the costs are due to an underestimate of the number of people with disability or the severity of their functional impairments, this should result in a re-estimation of full-scheme costs and be met by the Commonwealth and States in accordance with the risk sharing arrangements.

If there is a cost overrun due to cost-shifting, then the responsible government or government agency should meet those costs.

If, however, there is a cost overrun due to the way the NDIS is being managed by the NDIA, it should be held responsible for bringing the NDIS back on track as quickly as possible.

As noted earlier, one of the difficulties is that the NDIA does not have any reserves to meet cost contingencies. This could be rectified by allowing the Agency to build up reserves of any unspent monies. A buffer of at least 10 per cent of expected annual NDIS costs would be advisable.

One of the ways in which NDIS costs can be reduced is through reduced investment in capacity building. Should this occur, it would be misguided because while it would produce short-term financial gains, it would lead to significant long-term cost in terms of improving the lives of people with disability and financial sustainability. On the other hand, excessive “investment” without prospect of reduced future costs can inflate NDIS costs unnecessarily and so capacity building investments through the NDIS is a very important aspect of the ongoing good management of the NDIS by the NDIA.

Finally, the projected costs of the NDIS should be subject to actuarial review every five years, starting in around 2020-21 (or as soon as the NDIS is considered sufficiently mature). The need for the NDIS was largely driven by demographic forces and changes in life expectancy, incidence of disability at birth, inflation, productivity changes and technology, along with other factors, will influence the expected costs of the NDIS in the long-term. The agreed measure of NDIS sustainability should take these factors into account in order to ensure the on-going correct measurement of financial sustainability and appropriate funding beyond the current best estimate of $22 billion in 2019-20.

OTHER ISSUES

<u>Housing and SDA</u>

An important matter which could affect the sustainability of the NDIS and which is not mentioned in the Issues Paper is the structure of Specialist Disability Accommodation (SDA). Demand for SDA is likely to be exacerbated by the widespread under-supply of affordable housing, as Scheme participants, many of whom are on income support or low incomes, seek to live independently.

Flexibility in support packages and the opportunities this creates for participants to share housing with other people they choose to live with is already adding effectively to housing options without any reliance on SDA.

However, the SDA Rule runs significant risks in terms of the sustainability of the NDIS, because it creates a perverse incentive for participants to exaggerate their support needs in order to get access to SDA and, hence, affordable housing. This is effectively a double risk, if participants both add unnecessarily to their claims for support needs and then receive additional support hours as well as SDA funding.

It is possible that the demand for SDA will be able to be managed effectively through operational guidelines and procedures, but the structure of SDA should also be subject to active strategic monitoring in order to identify risks to the sustainability of the NDIS.

Data

The NDIA is building the most comprehensive population-based longitudinal database on disability in the world. There is also the potential to link this data to other national databases to provide a unique evidence base on which to improve the lives of people with disability, their families and carers and contribute to the sustainability of the NDIS. This database should be valued, protected and resourced adequately and will grow and become more useful for research over time. It has the potential to place Australia at the cutting-edge of disability research globally.

The NDIA is utilising this database to refine and improve the operations of the NDIS, as part of a "learn and build" philosophy. This includes the NDIA actuarial team, which is analysing the data as well as preparing reports. However, because the NDIS is a pay-as-you-go scheme, the NDIA does not have a corpus of funds, which would enable it to invest significantly in large-scale research that would make a major contribution to scheme sustainability, as part of a total return investments strategy.

The disability data that is being collected by the NDIA is world-leading and should be made available for research, as a matter of high priority, subject to appropriate safeguards. As the Productivity Commission is currently conducting an Inquiry into Data Availability and Use which will report shortly, this Review should include recommendations on how best to ensure that the NDIA data will be made available for research to improve the lives of people with disability, their families and carers.

KEY RECOMMENDATIONS

SUMMARY

1. ***Key results since the inception of the NDIS confirm that the conclusions reached by the Productivity Commission in its 2011 report are valid and so this review of the NDIS by the Productivity Commission should not lead to any major changes in the NDIS. Rather, the purpose of this Review should be to identify areas of potential refinement and improvement. This Review should also draw a sharp distinction between potential structural and strategic refinements and operational matters, which should be left to the good management of the National Disability Insurance Agency (NDIA or Agency) and its Board and Management.***

SCHEME COSTS

2. ***Importantly, the NDIS cannot be allowed to be turned into a Centrelink-type entitlement model, because under this approach costs would continually escalate. In order to ensure on-going cultural alignment, cultural audits of the Agency, participants, families, carers, service providers and mainstream services which intersect with the NDIS (health, education, justice and transport) should be added to the regular assessments of the NDIS, as cultural alignment with the NDIS vision is essential for long-term cost containment and is currently not included in key measures.***

3. ***Better measures of return on investment, which include quality of life, increased opportunities for participation and long-term cost measures, should be developed as soon as the data is available and then used to inform on-going Scheme design and operations.***

4. ***Measures of informal care, comprising family (parents, siblings, grandparents and other extended family) carers and friends should be included in key measures of the NDIS in future, in order to ensure the long-term sustainability and effectiveness of the NDIS. This should include an assessment of whether the assumption that under the NDIS 60 per cent of supports will be provided informally is accurate and sustainable.***

5. ***Cost pressures, which are identified as part of the prudential insurance governance cycle and where the Agency has the powers to respond, should be treated as operational matters that fall within the purview of the NDIA Board and Management and should not be matters of concern to the Productivity Commission in this Review.***

6. ***Eligibility for the NDIS should be based on the Productivity Commission's original recommendation of global developmental delay.***

7. ***While parents and carers should not be eligible for the NDIS, explicitly recognising the essential role of families, especially in the early years, and so including family support and early intervention support within the context of families within the Scheme Rules would strengthen the effectiveness of the NDIS and improve its long-term sustainability.***

SCHEME BOUNDARIES

8. ***Reports from the Scheme Actuary, the National Disability Strategy and other indicators such as the proposed cultural audits of the NDIS will all assist with identifying boundary issues with education, health, justice, transport and the other universal services which***

people with disability need to access. However, these reports and mechanisms will not lead to effective actions without stronger government commitments than exist today. It is therefore essential to the future success of the NDIS for structures and strategies to be put in place now to ensure appropriate actions will be taken by all governments, through DRC and COAG, in order to ensure the optimal intersection between the NDIS and mainstream services.

9. ***The ILC is a critical foundation stone for the NDIS. Currently, only $132 million (excluding LAC support) has been allocated to the ILC. This is not sufficient and means that one of the key foundations on which the NDIS is being built is weak. The NDIA should have flexibility to move funds within the existing funding envelope to ILC supports, as a key mitigating strategy to avoid unnecessary medium- to long-term cost increases.***

10. ***Analysis by the Productivity Commission, as part of this Review, to clearly identify the "at risk" group within Tier 2 who should be the primary target for ILC supports would strengthening the foundations of the NDIS and make a significant contribution to its future sustainability.***

11. ***In the absence of a full NIIS, NDIS costs will be higher than originally estimated and so renewed commitments from all governments including a near-term deadline to implement the NIIS is vital. In particular medical negligence reform, so that medical damages for costs of future care shift to a no-fault basis is an essential and long-overdue next step.***

PLANNING PROCESSES

12. ***The realities of the large and rapid rollout of the NDIS mean that NDIA "planners" do not have the time to engage very deeply. Moreover, the real aim of plans is to quantify and allocate resources from the NDIS, based on functional impairments, goals and sustaining and nurturing informal care arrangements. This has led the Agency to develop a "First Plan" process. Nevertheless, and very understandably, given the current descriptors, many participants and their families are trying to develop very detailed life-plans for the NDIA to approve. This can then unnecessarily restrict choices within existing funding allocations. Consideration should therefore be given to changing terminology. The "planning process" would be more accurately described as a "planning and resourcing process" and the role of "planner" would be better described as an "Agency representative". The suggestion of the term "resourcing" rather than "funding" is important as it reflects the need for participants to build personal capacity, including knowledge, skills and social networks and aligns with the Quality and Safeguards Framework.***

MARKET READINESS

13. ***Given the Productivity Commission's expertise in market dynamics, structural adjustment and sectoral analysis, advice from the Productivity Commission, as part of this Review, on the most effective measures to facilitate the required shifts in the demand and supply curves and changes to their respective shapes has the potential to make an invaluable contribution to the future sustainability of the NDIS.***

14. ***The future deregulation of prices represents a significant structural and strategic risk. Again, given the Productivity Commission's expertise in market dynamics, structural adjustment and sectoral analysis, advice from the Productivity Commission on the most***

effective way to deregulate prices has great potential to assist with the on-going sustainability of the NDIS.

15. *The potential for technology to assist quality lives, build independence and reduce the support needs of people with disability and how the NDIA should engage with the technology sector should be major themes in the Productivity Commission report into NDIS costs, taken through the lens of building independence, quality lives and Scheme sustainability and not simplistic short-term measures of cost reduction.*

16. *Analysis by the Productivity Commission of the risks to the sustainability of the NDIS from in-kind arrangements would be very helpful to ensuring that governments make firm commitments ending current in-kind arrangements.*

GOVERNANCE AND ADMINISTRATION OF THE NDIS

17. *The current governance arrangements provide an effective structure for managing scheme costs. One aspect which would lead to improved cost control would be to establish a Premium Reserve, subject to 5-year actuarial review, and then require the NDIA Board to operate within this Reserve. The Premium Reserve should include a Contingency Reserve, to enable the NDIA to smooth out fluctuations in costs from year to year, and it could be established by allowing any under-spending to accrue within the Reserve. Currently, the NDIA has no capacity to deal with unexpected contingencies, other than seek government top-ups, and this is a weakness in the current governance and funding arrangements.*

18. *The Board of the NDIA should have discretion within the full costs of the NDIS to set its administrative costs at the most cost-effective level, rather than be held to a highly aspirational target of 7 per cent for which there is no evidence. Otherwise there is a risk that total costs will be higher, and potentially significantly higher, than necessary.*

19. *Going forward, market stewardship responsibilities should be much more clearly the responsibility of the Agency and it should be resourced fully to undertake this function. In fact, market stewardship is a clear example of where insufficient Agency resources pose a clear and unnecessary risk to the long-term costs of the NDIS and its sustainability.*

20. *In remote and very remote parts of Australia it is certain that there will need to be provider of last resort arrangements. These arrangements should be put in place by the NDIA, as part of its market stewardship responsibilities, but under no circumstances should these services be provided by the NDIA. More broadly, the NDIA should never be a service provider, as this would represent a major conflict of interest.*

PAYING FOR THE NDIS

21. *While the financial arrangements are significantly different to the recommendations from the Productivity Commission in 2011, the current NDIS funding and risk sharing arrangement between the Commonwealth and all States except WA provide a very appropriate balance and have ensured that all governments have maintained their strong commitments to the NDIS.*

22. *People with disability in WA should be covered under the same national legislation as the rest of Australia and the funding arrangements for the NDIS in WA should be the same as for the rest of the country, as there is a very significant risk that the 'WA NDIS' will lead to*

either unsustainable costs to WA taxpayers or an artificial cap on WA participants and, hence, a continuation of the postcode lottery for people with disability in WA. Proper evidence from the two NDIS trial should then be used to inform how best to deliver the NDIS as effectively as possible in WA and revised arrangements should be finalised as soon as possible so the people in WA do not have to wait unnecessarily for the NDIS to reach them.

23. ***State and territory contributions should be indexed by AWE, rather than set a fixed annual indexation factor of 3.5 per cent, while the productivity assumption should be subject to actuarial review every 5 years.***

24. ***Hypothecation is a very inefficient way of funding government expenditures and, while the NDIS benefits from part-funding from hypothecation from the Medicare levy, the NDIS should be thought of as being funded from general revenues, which should be collected as efficiently as possible, in order to meet the full costs of the NDIS and all other essential government spending.***

25. ***The response to any future cost overruns in excess of $22 billion in 2019-20 should depend on the source of the additional costs. If the costs are due to an underestimate of the number of people with disability or the severity of their functional impairments, this should result in a re-estimation of full-scheme costs and be met by the Commonwealth and States in accordance with the risk sharing arrangements. If there is a cost overrun due to cost-shifting, then the responsible government or government agency should meet those costs. If, however, there is a cost overrun due to the way the NDIS is being managed by the NDIA, it should be held responsible for bringing the NDIS back on track as quickly as possible.***

26. ***The projected costs of the NDIS should be subject to actuarial review every five years, starting in around 2020-21 (or as soon as the NDIS is considered sufficiently mature). The need for the NDIS was largely driven by demographic forces and changes in life expectancy, incidence of disability at birth, inflation, productivity changes and technology, along with other factors, will influence the expected costs of the NDIS in the long-term. The agreed measure of NDIS sustainability should take these factors into account in order to ensure the on-going correct measurement of financial sustainability and appropriate funding beyond the current best estimate of $22 billion in 2019-20.***

OTHER ISSUES

27. ***It is possible that the demand for SDA will be able to be managed effectively through operational guidelines and procedures, but the structure of SDA should also be subject to active strategic monitoring in order to identify risks to the sustainability of the NDIS.***

28. ***The disability data that is being collected by the NDIA is world-leading and should be made available for research, as a matter of high priority, subject to appropriate safeguards. As the Productivity Commission is currently conducting an Inquiry into Data Availability and Use which will report shortly, this Review should include recommendations on how best to ensure that the NDIA data will be made available for research to improve the lives of people with disability, their families and carers.***

Bruce Bonyhady AM
24 March 2017