



## **ABOUT WAIS**

WA's Individualised Services is an incorporated association of disability services providers in Western Australia who specialise in the provision of individualised services to people with disability to enable them to remain in their family home or live in their own home and to engage with their local community.

WAIS comprises 10 member organisations drawn from Perth and rural Western Australia who utilise individualised funding from the Western Australian Disability Services Commission and other sources (government and private) to support more than 1,000 people with disability in individualised support arrangements. Many of these arrangements have been in place for more than a decade.

Approximately one third of the people supported are younger people with disability who are supported to live in their family home. Another third are adults who are supported to live in their own homes (usually provided through public housing) with the live-in and/or visiting support that they need. The remaining third are adults and teenagers supported to participate in various community activities during weekdays and on weekends.

Further information about WAIS and its member organisations (or any enquiries related to this submission) can be obtained from the corresponding author of this WAIS submission.

## **GENERAL COMMENTARY**

### **Values and Principles**

The provision of Disability Care and Support should be underpinned by values and principles. At the core of this support is the principle that the person being supported has the right to be in control of their life. This means that people have a right to:

- Make choices and decisions for themselves;
- Grow and develop in their relationships;
- Be present and participate in the community;
- Have valued roles and contribute; and
- Develop their talents, interests and abilities

These rights are consistent with the United Nations Convention on the Rights of Persons with Disabilities. National reform of Disability Care and Support needs to promote and create actions consistent with this convention. Other values and principles of Disability Care and Support include:

- **Person Centred Support:** Support should be built with the **person with disability at the centre** of support planning. People themselves are the experts in their own lives. Thinking of the person with disability as the centre of a 'bullseye', circles of support should be designed with the person in the centre in control. It is important, therefore, for any system built to begin from the perspective that the person with disability is in the centre of that support and in control of their own plan. Often, the person with disability has a primary carer. Their needs and dreams should also be considered and the person with disability and their carer (often a family member) should not be artificially separated.
- **Flexibility and Creativity of Support Options:** Because every individual is unique, and one plan does not fit every person, Disability Care and Support should be reformed to support **flexibility around different solutions** that could be created. There should be an incentive for **creativity and sustainability** without disadvantaging people by decreasing their funding allocation substantially. Support should be responsive to the changing circumstances of the individual whether these are improvements or an increased level of support need. Support should be as individual and flexible as the person themselves. This requires agility on the part of a larger framework and at the organisational level.
- **Equity:** Disability Care and Support should be equitable, providing each according to their own needs, choice and preferences. No one should be worse off or unfairly worse off than in the current system.
- **Community Inclusion:** No person is an island and the contribution and citizenship of people with a disability should be recognised in their community. The reality is that disability is a community issue, affecting the whole community, therefore, the whole community should contribute to the solution.

## Things to Keep

Western Australia is fortunate in many ways to be on the forefront of support to people with a disability, with a functional Disability Services Commission and a Statewide service co-ordination and service brokerage system through Local Area Co-ordination (LAC). The importance of supporting people with disability in Western Australia is bipartisan, sitting firmly in the agenda of government, whatever their political philosophy. We see that there are parts of the existing system that should be retained when considering reform. These include:

- Individualised service at a local level, such as LAC.
- Using existing mechanisms
- Retaining existing services and structures which meet the values and principles of a reformed system of the provision of Disability Care and Support.
- Supporting broader social interventions ongoing such as access improvement and universal design.

## Things to Change

We strongly support a need for a change in Disability Care and Support and have identified a number of areas in which we believe change should occur under reform.

- Mental health should be 'in': Mental health should be in the scope of the Disability Care and Support reform. People with mental illness have a disability as such and this disability should be recognised along with physical or intellectual disability. Like people who are challenged by other disabilities, people with mental illness can contribute and have right of citizenship. Putting mental health into the Disability Care and Support discussion will potentially allow funding to be allocated to assist people with mental illness on their recovery journey and can promote inclusion into communities and decrease of stigma.
- Disability Care and Support should be viewed from a strengths based perspective rather than a deficit based perspective: People with disability are employees, consumers and contributing members to society. Their disability is a part of who they are, but not a definition of their capacity and heart. Reform of systems should begin from the perspective that people with disability have something to offer the community of real value- that there is reciprocity in our relationships and not a sense of people with disability only receiving benefit, but putting into relationships and community.
- The perception that people with disabilities can't and don't work needs to change: People with disabilities can and do work. They are valuable contributing members of the community. People with disabilities should be afforded the opportunity to participate in work and have an incentive for doing so. Their quantum of support and funding should not be unfairly disadvantaged by taking up paid employment.
- Contribution does not equal productivity: People with disability can make a contribution and be productive, regardless of whether or not they are in paid employment. People's contribution to the community in which they belong is productive, and enhances the community itself. Everyone can learn, everyone can communicate, even without words and the community can benefit.
- Disability is not the property of the person: Disability is not the property or issue for a single individual. It has a societal aspect. Not only is the person with disability affected by their circumstance, but their fathers, mothers, siblings, co-workers and larger community is impacted. Both people with disability and people who love and care for them affect their community by what they can and can't access, by what they choose to purchase, by events they choose to attend, by schools they attend and by services they support. Disability is not an individual issue, but one for the whole community.
- Provision of Disability Care and Support should be equitable: The allocation of support for people should be equitable across similar needs/circumstances.
- Systemic shuffling should be eliminated: There is a clear relationship between people with disability and other significant areas namely Health, Mental Health and Ageing. These areas should not continue to operate in silos, decreasing productivity across the system and increasing the confusion for people with disability. People with disability also age, and people who age have acquired disability. People who age and/or have disability can have mental health issues either related, or not, to their individual circumstance. People should be able to access support across any of these areas with a minimum of confusion and anxiety. Passing the buck between ageing, disability, mental health and health is not going to assist the government in achieving its overarching policy goal to enhance the quality of life and increase the economic and social participation of people with disability and their families, including enhancing and protecting their rights.

- WAIS suggests there is a need for pilots of the NDIS in every jurisdiction with say 2000-3000 people involved. The NDIA would then be able to learn implementation lessons that involve for each state (jurisdiction). Pilots in all the jurisdictions are a benefit because each jurisdiction has a different context and current areas of strength and deficit. Each will have different things that are known already and be able to see what needs to change at the jurisdiction level. There can then be informed decisions and discussion about what should be separate from a national scheme and what should be left the same.

## OVERALL RESPONSE TO DRAFT RECOMMENDATIONS

WAIS is in general agreement with 58 of the recommendations (see attached), partially agrees with another seven recommendations (5.2, 5.7, 6.3, 6.5, 6.7, 7.5, 8.3), neither agrees nor disagrees with two (12.1, 12.2) and does not agree with four (4.5, 5.4, 7.12, 12.3). Reasons for disagreeing or only partially agreeing appear against the relevant Draft Recommendations below.

## SPECIFIC RESPONSES TO DRAFT RECOMMENDATIONS

### Chapter 3 Who is the NDIS for?

#### DRAFT RECOMMENDATION 3.1

The National Disability Insurance Scheme (NDIS) should have three main functions:

- to cost-effectively minimise the impacts of disability, maximise the social and economic participation of people with a disability, and create community awareness of the issues that affect people with disabilities. These measures should be targeted at all Australians
- to provide information and referral services, which should be targeted at people with, or affected by, a disability
- to provide individually tailored, taxpayer-funded support, which should be targeted at the subset of people with disabilities who are assessed as needing such support.

#### AGREE

#### DRAFT RECOMMENDATION 3.2

Individuals receiving individually tailored, funded supports should be Australian residents, have a permanent disability, (or if not a permanent disability, be expected to require very costly disability supports) and would meet one of the following conditions:

- have significant difficulties with mobility, self-care and/or communication
- have an intellectual disability
- be in an early intervention group, comprising:
  - those for whom there was a reasonable potential for cost-effective early therapeutic interventions (as in autism and acquired brain injury)
  - those with newly diagnosed degenerative diseases for whom early preparation would enhance their lives (as in multiple sclerosis)
- have large identifiable benefits from support that would otherwise not be

realised, and that are not covered by the groups above. Guidelines should be developed to inform the scope of this criterion.

AGREE

#### **DRAFT RECOMMENDATION 3.3**

The NDIS should provide advice to people about those instances where support would be more appropriately provided through non-NDIS services. Support should be provided outside the NDIS for people whose:

- disability arose from a workplace accident or catastrophic injury covered by insurance premiums
- support needs would be more appropriately met by the health and/or palliative care systems, comprising:
  - those who would benefit from largely medically oriented interventions (including less restrictive musculoskeletal and affective disorders, and many chronic conditions)
  - many people with terminal illnesses
- support needs would be more appropriately met by the aged care system
- needs were only in relation to mainstream employment, public housing or educational assistance.

AGREE

#### **DRAFT RECOMMENDATION 3.4**

The NDIS should put in place memoranda of understanding with the health, mental health, aged and palliative care sectors to ensure that individuals do not fall between the cracks of the respective schemes and have effective protocols for timely and smooth referrals.

AGREE

#### **DRAFT RECOMMENDATION 3.5**

Whatever the actual funding divisions between the NDIS and aged care that are put in place, people should have the option of migrating to the support system that best meets their needs, carrying with them their funding entitlement.

Upon reaching the pension age (and at any time thereafter), the person with the disability should be given the option of continuing to use NDIS-provided and managed supports or moving to the aged care system. If a person chose to:

- move to the aged care system, then they should be governed by all of the support arrangements of that system, including its processes (such as assessment and case management approaches)
- stay with NDIS care arrangements, their support arrangements should continue as before, including any arrangements with disability support organisations, their group accommodation, their case manager or their use of self-directed funding.

Either way, after the pension age, the person with a disability should be subject to

the co-contribution arrangements set out by the Commission in its parallel inquiry into aged care.

If a person over the pension age required long-term aged residential care then they should move into the aged care system to receive that support.

In implementing this recommendation, a younger age threshold than the pension age should apply to Indigenous people given their lower life expectancy, as is recognised under existing aged care arrangements.

AGREE

#### **DRAFT RECOMMENDATION 3.6**

Following the transition spelt out in draft recommendation 17.1, the NDIS should fund all people who meet the criteria for individually tailored supports, and not just people who acquire a disability after the introduction of the scheme.

AGREE

#### **DRAFT RECOMMENDATION 3.7**

The supports to which an individual would be entitled should be determined by an independent, forward-looking assessment process, rather than people's current service use.

AGREE

## **Chapter 4 What individualised supports will the NDIS fund?**

### **DRAFT RECOMMENDATION 4.1**

The NDIS should cover the current full range of disability supports. The supports would need to be 'reasonable and necessary'. The NDIS should also support the development by the market of innovative support measures (using the approaches set out in draft recommendation 8.3).

AGREE

### **DRAFT RECOMMENDATION 4.2**

There should be no income or asset tests for obtaining funded NDIS services.

AGREE

### **DRAFT RECOMMENDATION 4.3**

There should sometimes be a requirement to pay a modest fixed upfront contribution to the NDIS, with free access to services after that point. The NDIS should waive the amount where families have already contributed significantly towards the costs of support through unpaid care.

AGREE

### **DRAFT RECOMMENDATION 4.4**

People should pay the full costs of services (primarily therapies) for which clinical evidence of benefits are insufficient or inconclusive if they wish to consume those services.

AGREE



#### **DRAFT RECOMMENDATION 4.5**

Services that meet the needs of much wider populations, including people with disabilities not covered by the NDIS, should lie outside the scheme:

- health, public housing, public transport and mainstream education and employment services, should remain outside the NDIS, with the NDIS providing referrals to them
  - but specialised employment services, disability-specific school to work programs, taxi subsidies, and specialised accommodation services should be funded and overseen by the NDIS.

**DISAGREE – with the second part of the recommendation, which states that all existing State and federally funded disability services would be overseen by the NDIA and administered centrally.**

#### **DRAFT RECOMMENDATION 4.6**

The Disability Support Pension (DSP) should not be funded or overseen by the NDIS. The Australian Government should reform the DSP to ensure that it does not undermine the NDIS goals of better economic, employment and independence outcomes for people with disabilities. Reforms should aim to:

- encourage the view that the norm should not be life long use of the DSP, among:
  - people with non-permanent conditions
  - people with permanent conditions who could have much higher hopes for employment participation
- provide incentives for people to work (even if only for a few hours per week) and for targeted rehabilitation for those with reasonable prospects of employment.

These reforms should not be limited to new entrants into the DSP.

**AGREE**

## Chapter 5 Assessing care and support needs

### DRAFT RECOMMENDATION 5.1

Working within the International Classification of Functioning, Disability and Health (ICF), the assessment process should identify the supports required to address an individual's reasonable and necessary care and support needs across a broad range of life activities, and should take account of an individual's aspirations and the outcomes they want to achieve.

The assessment process should be a valuable intervention in its own right, rather than just an entry point to supports. The process should:

- draw on multiple sources of information, including:
  - information provided by the individual with a disability, including their aspirations and requirements for supports
  - information provided by unpaid carers
  - current medical information on the person with a disability
- assess the nature, frequency and intensity of an individual's support needs.

AGREE

### DRAFT RECOMMENDATION 5.2

The process should be person-centred and forward looking and consider the supports that would allow a person to achieve their potential in social and economic participation, rather than only respond to what an individual cannot do

- determine what supports outside the NDIS people should be referred to, including referrals to Job Network providers and mental health services
- consider what reasonably and willingly could be provided by unpaid family carers and the community ('natural supports')
- translate the reasonable needs determined by the assessment process into a person's individualised support package funded by the NDIS, after taking account of natural supports
- provide efficiently collected data for program planning, high level reporting, monitoring and judging the efficacy of interventions.

PARTIALLY AGREE – "Job Network" no longer exists (having been replaced by Jobs Australia) and, in any event, the Disability Employment Services system should be the primary referral target as they are far best equipped and experienced to support people with significant disabilities into sustainable employment.

### **DRAFT RECOMMENDATION 5.3**

Any tools employed by the scheme should exhibit validity and reliability when used for assessing the support needs of potential NDIS users. The preferred assessment tools should be relatively easy to administer and exhibit low susceptibility to gaming. The toolbox should be employed nationally to ensure equitable access to nationally funded support services (and allow portability of funding across state and territory borders when people move).

AGREE

### **DRAFT RECOMMENDATION 5.4**

Trained assessors should undertake assessments. To promote independent outcomes, assessors should not have a longstanding connection to the person. Assessors' performance should be continually monitored and assessed to ensure comparability of outcomes and to avoid 'sympathetic bracket creep'.

**DISAGREE** – This implies that the NDIA will establish a new nationwide network of assessors who will take over all assessment responsibilities from states and territories (such as Local Area Co-ordination in WA). Previous federal government efforts to establish such systems have largely unsuccessful. For example, the Job Capacity Assessor system in DEEWR is fundamentally flawed and universally criticised by disability employment services. The various 'disability officer' programs rolled out within Centrelink over the years have all failed to deliver valid or reliable assessment (by way of example, there are legion examples of 'disability officers' contacting disability providers to ask questions like 'has so-and-so recovered from her Down syndrome yet?'). Further, the restriction on any assessor with a longstanding connection to the person just serves to increase the likelihood of invalid or unreliable assessments. Similarly, an assessor with limited local knowledge would not be equipped to assess the person's needs.

### **DRAFT RECOMMENDATION 5.5**

The NDIS should periodically reassess people's need for funded support, with a focus on key transition points in their lives.

AGREE

### **DRAFT RECOMMENDATION 5.6**

Where an informal carer provides a substantial share of the care package, they should receive their own assessment. This should seek to identify their views on the sustainability of arrangements and the ways in which they could be supported in their role, including through the initiatives recommended in draft recommendation 13.3.

AGREE

#### **DRAFT RECOMMENDATION 5.7**

The NDIS should establish a coherent package of tools (a 'toolbox'), which assessors would employ across a range of disabilities and support needs (attendant care, aids and equipment, home modifications).

PARTIALLY AGREE – caution against the development of a 'tick-a-box' assessment (like the highly-criticised and untrusted Job Seeker Classification Instrument used by DEEWR to assess support levels in generic and disability specialist employment services). There is no substitute for a competent and properly resourced assessor taking sufficient time to get to know a person, their support systems and their life situation.

#### **DRAFT RECOMMENDATION 5.8**

The assessment tools should be subject to ongoing monitoring, as well as a regular cycle of evaluation against best practices, including the ICF framework, and, if necessary, recalibration. The scheme should have systematic internal mechanisms to ensure that anomalies can be analysed and addressed.

AGREE

#### **DRAFT RECOMMENDATION 5.9**

The NDIS should use the best available tools in its initial implementation phase, with the on-going development of best-practice tools.

AGREE

## **Chapter 6 Who has the decision-making power?**

### **DRAFT RECOMMENDATION 6.1**

Governments should give people with disabilities eligible for benefits under the NDIS, or their nominated proxies, various options for exercising choice, including the power to:

- choose directly the service provider/s that best meet their needs
- choose disability support organisations that would act as intermediaries on their behalf when obtaining services from service providers, and/or
- ‘cash out’ all or some of their individual budgets if they wish, with the NDIA making direct payments to their bank accounts, and allowing people to purchase directly the detailed package of supports that best meets their preferences (‘self-directed funding’), subject to the constraints set out in draft recommendations 6.2, 6.7 and 6.8.
  - The specific arrangements for self-directed funding should be underpinned by the principle that, subject to the assessed individual budget and appropriate accountability requirements, the arrangements should maximise the capacity for a person to choose the services that meet their needs best and that promote their participation in the community and in employment.

AGREE

### **DRAFT RECOMMENDATION 6.2**

Self-directed funding should include the following key stages.

- It would be informed by any prior planning and aspirations expressed by the person during the assessment phase (draft recommendation 5.2).
- The individual budget for self-directed funding would be based on the formal individual assessment of the person’s needs and would include the cashed out value of all goods and services covered by the NDIS, except those where specialist knowledge is required for informed choices.
- The person with a disability — and/or their support network or chosen disability support organisation — would create a personal plan and a concrete funding proposal to the NDIA that outlines the person’s goals and the type of support that is necessary and reasonable to achieve these within the allocated budget.
- The resulting funding proposal would require approval by the National Disability Insurance Agency (NDIA).

There should be a capacity for a person to:

- obtain quick approvals for changes to a funding proposal
- add their own private funds to a funding proposal
- allocate the individual budget to any mix of preferred specialist and mainstream goods and services, subject to the requirements that:
  - the person spend the budget in areas related to his or her disability needs and consistent with the funding proposal
  - the scope to cash out funds set aside for large non-recurrent spending items should be limited to the (rare) circumstances where the NDIA has

approved this as an appropriate decision.

AGREE

#### **DRAFT RECOMMENDATION 6.3**

The NDIA should pay annual allocations of self-directed funding in monthly instalments paid in advance, with the capacity for the person to 'bank' up to 10 per cent of the annual allocation to the subsequent year.

PARTIALLY AGREE – have reservations about what happens to any remaining unspent funds. The recommendation implies that other unspent funds would have to be returned to the NDIA each year – or that an adjusted amount is provided in the following year. This implies that funds would need to be accounted for and formally acquitted. How might this be done? How will it be audited? Will the cost of administering such an arrangement outweigh the moneys saved? Further, if it were implemented, a roll-over amount of somewhat more than 10% may provide better protection against unforeseen events and rapidly changing needs.

#### **DRAFT RECOMMENDATION 6.4**

There should be a capacity for people to recruit and employ their own support workers, subject to the proviso that these should not be close family members, other than when:

- care is intermittent and provided by a non-resident family member
- exceptional circumstances are present and after approval by the NDIA
- the person is in the family employment trial spelt out in draft recommendation 6.5.

AGREE

#### **DRAFT RECOMMENDATION 6.5**

There should be a trial of the employment of family members under self-directed funding to assess its risks, advantages, disadvantages and optimal design, with its wider adoption if the evaluation proves positive. The trial should use an appropriately rigorous scientific approach, drawing on the evaluations used in the United States 'Cash and Counseling' programs. For the trial:

- the NDIA should determine that there are few risks from hiring relatives for each family in the trial
- the individual budget should be discounted by 20 per cent
- support should be initially limited in duration to six months, with continuation of any arrangement for a given family based on the benefits and costs to that family
- risks should be carefully managed to ensure appropriate use of funds and to safeguard people with disabilities and carers (draft recommendation 6.8).

PARTIALLY AGREE – unsure where a concept of a 20% discount to the individual budget comes from.

#### DRAFT RECOMMENDATION 6.6

The NDIA should:

- inform people with disabilities and their proxies of the various options for self-directed funding
- provide support for people using self-directed funding, including easy-to-understand guidance about the practical use of self-directed funding, including standard simple-to-follow forms for funding proposals, hiring employees and for acquittal of funds
- promote the use of self-directed funding, with examples of innovative arrangements
- provide training to local case managers and front-line staff about self-directed funding
- encourage the formation of disability support organisations to support people in the practical use of self-directed funding.

AGREE

#### DRAFT RECOMMENDATION 6.7

Before offering self-directed funding to a person, the NDIA should:

- meet with the person with a disability and their carers, and take account of their experience and skill sets
- use that and any information provided during the assessment phase to determine whether the person and/or their support network are likely to be able to:
  - make reasonably informed choices of services
  - manage the administrative and financial aspects of funding if they wish to oversee these aspects by themselves.

PARTIALLY AGREE – concerned whether independent assessors could legitimately make that assessment. Perhaps all people should be given the chance from the outset and, where doubts exist, be more closely monitored in the early days.

#### DRAFT RECOMMENDATION 6.8

In offering self-directed funding, the NDIA should ensure that:

- it reduces the risks of neglect or mistreatment of people with a disability by support workers or other service providers hired by users in the informal sector, by:
  - ensuring easy and cheap access to police checks
  - giving users the capacity to complain to the NDIA about inappropriate behaviour of providers, and to have these investigated
  - monitoring by local case managers
- it reduces the risks to support workers employed under self-directed funding by requiring that they are covered by workers' compensation arrangements and

have an avenue for lodging complaints

- it adopts a risk-management approach for receipting and other accountability requirements, which:

- requires less accountability for people with low risks or who have demonstrated a capacity to manage their funds well
- takes into account the compliance costs of excessive accountability measures
- allows a small component of the individual budget to be free of any receipting requirements.

AGREE

#### **DRAFT RECOMMENDATION 6.9**

The NDIA should undertake ongoing monitoring of self-directed funding arrangements, with a quarterly report to the board of the NDIA on issues arising from self-directed funding. There should be a full evaluation three years after their commencement to assess any desired changes in their design.

AGREE

#### **DRAFT RECOMMENDATION 6.10**

The Australian Government should amend the Income Tax Assessment Act 1936 and the Social Security Act 1991 so that the following are not treated as income for assessment of taxes or eligibility for income support or other welfare benefits:

- self-directed funding paid by the NDIA and, in the interim, by state and territory governments
- early compassionate release of eligible superannuation amounts for disability expenditures which meet the criteria set down by the Superannuation Industry (Supervision) Act 1993.

AGREE



## **Chapter 7 Governance of the NDIS**

### **DRAFT RECOMMENDATION 7.1**

The Australian Government should establish a new independent Commonwealth statutory authority, the National Disability Insurance Agency (NDIA), to administer the National Disability Insurance Scheme.

The NDIA should be subject to the requirements of the Commonwealth Authorities and Companies Act 1997 (CAC Act), not the Financial Management and Accountability Act 1997.

AGREE

### **DRAFT RECOMMENDATION 7.2**

An independent board should oversee the NDIA. The board should comprise people chosen for their commercial and strategic skills and expertise in insurance, finance and management.

- As specified in the CAC Act, the board should not be constituted to be representative of particular interest groups, including governments, disability client or service provider groups.

The Australian Government and the state and territory governments should together establish an appointment panel comprising people with skills and experience in these areas, including people with a clear interest in disability policy issues.

- The panel should nominate candidates for each board vacancy against tightly specified selection criteria set down in the Act governing the NDIA.

Appointments should be based on the majority decision of governments.

The Australian Government, with the agreement of the majority of state and territory governments, should have the power to remove the chair or dissolve the board as a whole.

The board would have the sole power to appoint the CEO and to sack him or her if necessary, without authorisation from governments.

AGREE

### **DRAFT RECOMMENDATION 7.3**

The Australian Government, together with state and territory governments, should establish an advisory council. The council should provide the board of the NDIA with ongoing advice on its activities and effectiveness in meeting its objectives, from the perspectives of people with disabilities, carers, suppliers of equipment and services and state and territory service providers and administrators.

- The council should comprise representatives of each of these groups.

AGREE

#### **DRAFT RECOMMENDATION 7.4**

The arrangements between the NDIA and governments should be at arm's length, and subject to strict transparency arrangements.

The federal Treasurer should have responsibility for the NDIA.

AGREE

#### **DRAFT RECOMMENDATION 7.5**

The Australian Government, with the agreement of state and territory governments, should provide the NDIA with its own legislation that specifies its objectives and functions, and its governance arrangements.

- Financial sustainability should be a specific obligation of the board, the management and the minister, and this obligation should be enshrined in legislation. It should specifically guide any external review body (draft recommendation 7.8).
- An entitlement to reasonable support should be enshrined in legislation, together with details about people's eligibility for services and the range of services to be offered.

Future changes to the legislative framework should be undertaken only by explicit changes to the Act itself, made transparently, and subject to the usual processes of community and Parliamentary scrutiny, and in consultation with all state and territory governments.

- Such proposed legislative changes should be accompanied by an independent assessment of the impact of the changes on the sustainability of the scheme.

PARTIALLYAGREE – with the proviso that changes to the legislation should require the prior agreement of the majority of state and territory governments (not just consultation with them)

#### **DRAFT RECOMMENDATION 7.6**

An independent actuarial report on the NDIA's management of the NDIS should be prepared quarterly and annually, and provided to the board, the regulator, the federal Treasurer, and to all state and territory governments. It should assess risks, particularly in regards to the capacity of the expected funding stream to meet expected liabilities within its funding framework, the source of the risks and the adequacy of strategies to address those risks.

AGREE

#### **DRAFT RECOMMENDATION 7.7**

A specialist unit should be established within the federal Treasury to monitor the performance of the NDIA against a range of cost and performance indicators, and report its findings annually to its minister, state and territory governments and the public.

AGREE

#### **DRAFT RECOMMENDATION 7.8**

The NDIA should be independently reviewed, initially after its first three years of operation, and every five years thereafter, with the outcomes publicly and promptly released.

AGREE

#### **DRAFT RECOMMENDATION 7.9**

The NDIA should be subject to benchmarking with other comparable corporate entities to assess its relative efficiency in its various functions, with the federal Treasury initiating benchmarking studies.

AGREE

#### **DRAFT RECOMMENDATION 7.10**

The NDIA should establish two service charters that specify respectively the appropriate conduct of the (i) NDIA and (ii) specialist service providers and disability support organisations.

AGREE

#### **DRAFT RECOMMENDATION 7.11**

The wording of the NDIA Act should limit the capacity of merits review processes to widen eligibility or entitlement. It should require that any claims by NDIA clients would need to:

- meet a 'reasonable person' test
- balance the benefits to the person with a disability against the costs to the scheme, including any adverse implications for the long run sustainability of the scheme from the review outcome
- take into account the obligation of people with disabilities or their families to avoid decisions that unreasonably impose costs on the scheme.

AGREE

#### **DRAFT RECOMMENDATION 7.12**

The NDIA should include an internal complaints office that would:

- be separate from the other parts of the NDIA dealing with clients and service

providers

- hear complaints about breaches of the service charters (draft recommendation 7.10)
- reassess contested NDIA decisions on a merit basis.

The office would be headed by an independent statutory officer who would review appeals made by people with disabilities and support providers against the decisions of the NDIA.

- The NDIA legislation should create this role and specify that the officer would be independent, would act fairly and impartially, basing their decisions on the available evidence, and could not be directed in their decision-making.
- A person or support provider should only be able to appeal the decisions of the office on matters of law, rather than on merit, to the courts.

The NDIA should publish the number, types and outcomes of complaints and appeals (subject to privacy protections).

**DISAGREE – the complaints office should be external to the NDIA. It should have the status of an Ombudsman and it should be attached to HREOC.**

#### **DRAFT RECOMMENDATION 7.13**

If the proposal in draft recommendation 7.12 for appeal processes supported by an independent statutory officer are not adopted, then the Australian Government should create a specialist arm of the Administrative Appeals Tribunal to hear appeals on merit about the NDIA's decisions subject to the constraints of draft recommendation 7.11. The Australian Government should set aside significant additional resources to fund this specialist arm and should include a larger reserve for the NDIS, calculated to take account of the higher risks of this approach.

**AGREE**

## Chapter 8 Delivering disability services

### DRAFT RECOMMENDATION 8.1

The NDIA should support consumer decision-making by providing:

- a centralised internet database of service providers that indicates the ranges of products and services, price, availability and links to measures of performance and quality
- well resourced and effective provision of advice and information to clients, as well as monitoring of their wellbeing. These services should be graduated in terms of the needs of the client and concentrated at key points, such as when entering the disability system or important transition periods.

AGREE

### DRAFT RECOMMENDATION 8.2

The Australian Government should fund and develop a national system for a shared electronic record of the relevant details of NDIA clients, including assessed need, service entitlements, use and cost of specialist disability services, outcomes and other key data items with privacy safeguards.

AGREE

### DRAFT RECOMMENDATION 8.3

The NDIA should develop and implement a quality framework for disability providers, which would include:

- the development of complete, nationally consistent standards that would apply to all funded specialist service providers and disability support organisations. The NDIA should monitor compliance with these standards and other regulations through a range of instruments, including graduated and rolling audits of service providers, community visitors, senior practitioners, independent consumer surveys, complaints, surveillance by case managers and interrogation of the electronic disability record
- arrangements that encourage the diffusion of best practice throughout the disability sector
- providing consumers with information about the quality and performance of service providers on the national internet database of service providers
- establishing an innovation fund that providers would use for developing and/or trialling novel approaches to disability services.

**PARTIALLYAGREE** – quality audits should focus on quality outcomes for people with disability rather than providers' compliance with standards that will primarily take the form of an inspection of their policies and procedures. NDIA should be seeking to implement contemporary and robust quality assurance systems.

## **Chapter 9 Disability within the Indigenous community**

### **DRAFT RECOMMENDATION 9.1**

The Australian Government and state and territory governments should consider the feasibility of overcoming the barriers to service delivery in the NDIS for Indigenous people with a disability by:

- fostering smaller community-based operations that consult with local communities and engage local staff, with support from larger experienced service providers
- employing Indigenous staff
- developing the cultural competency of non-Indigenous staff.

In its initiatives for delivering disability supports to Indigenous people, the NDIS should be mindful of the wider positive measures addressing Indigenous disadvantage being adopted throughout Australia.

AGREE

## **Chapter 10 Collecting and using data under the NDIS**

### **DRAFT RECOMMENDATION 10.1**

Prior to the implementation of the NDIS, the NDIA should design and establish extensive and robust data systems, underpinned by the associated information technology and administrative systems. The systems should be used to develop a central database that would:

- guide financial management of the scheme, and in particular, to continuously manage risks to scheme sustainability and to pinpoint areas of inefficiency
- inform decisions about disability services and interventions
- enable performance monitoring of service providers
- monitor and evaluate outcomes

Disability support organisations and service providers would be required to provide timely relevant data to the NDIA.

AGREE

### **DRAFT RECOMMENDATION 10.2**

The NDIA should establish an independent research capacity under the NDIS. It should determine how research is undertaken and the research agenda, following public consultation.

AGREE

### **DRAFT RECOMMENDATION 10.3**

The NDIA should make relevant data, research and analysis publicly available, subject to confidentiality, privacy and ethical safeguards.

AGREE

### **DRAFT RECOMMENDATION 10.4**

In implementing draft recommendation 10.1, the NDIA should determine after consultation with relevant stakeholders, including the Australian Privacy Commissioner:

- the key actuarial information needed to underpin sound scheme management
- data standards, definitions, terminology and collection processes
- data reporting standards, taking into account the Australian Government's initiatives for standard business reporting
- arrangements for achieving inter-connectedness of information technology systems among the NDIA, other relevant government agencies and service providers
- rules for accessing data, including confidentiality and privacy safeguards
- arrangements for integrating data and associated information technology and administrative systems with eHealth initiatives.

The NDIA should then establish data collection and associated IT and administrative systems that link all agencies and service providers within the disability system.

AGREE



## **Chapter 11 Early intervention**

### **DRAFT RECOMMENDATION 11.1**

Early intervention approaches used by the NDIA should draw on evidence of their impacts and be based on an assessment of the likelihood of cost-effectiveness.

NDIS funding for early intervention should be additional to that allocated to clients for their ongoing care and support and should not be able to be cashed out under self-directed care packages.

AGREE

## **DRAFT RECOMMENDATION 11.2**

The NDIA should build an evidence base on early intervention. It should commence this task by identifying, in consultation with stakeholders, existing or potentially promising approaches for further research.

AGREE

## **Chapter 12 Where should the money come from? Financing the NDIS**

### **DRAFT RECOMMENDATION 12.1**

The costs of supporting people with a disability from year to year should be met from claims on general government revenue (a 'pay as you go' scheme):

- but would be subject to the strong disciplines for certainty of funding specified in draft recommendation 12.2
- supplemented by payments to create reserve funds.

However, the scheme should be managed and reported as if it were a 'fully-funded' scheme in which each year's funding is considered in the context of the scheme's expected future liabilities.

NO COMMENT

### **DRAFT RECOMMENDATION 12.2**

The Australian Government should direct payments from consolidated revenue into a National Disability Insurance Premium Fund, using an agreed formula entrenched in legislation that:

- provides stable revenue to meet the independent actuarially-assessed reasonable needs of the NDIS
- includes funding for adequate reserves.

If that preferred option is not adopted, the Australian Government should:

- legislate for a levy on personal income (the National Disability Insurance Premium), with an increment added to the existing marginal income tax rates, and hypothecated to the full revenue needs of the NDIS
- set a tax rate for the premium that takes sufficient account of the pressures of demographic change on the tax base and that creates a sufficient reserve for prudential reasons.

NO COMMENT

### **DRAFT RECOMMENDATION 12.3**

The Australian Government and state and territory governments should sign an intergovernmental agreement specifying that:

- the Australian Government should:
  - collect all of the revenue required to fund the NDIS through the National Disability Insurance Premium Fund
  - make no further special purpose payments to state and territory

governments for disability supports.

- state and territory governments should offset the Australia-wide fiscal implications of the transfer of responsibility by either:
    - (a) reducing state and territory taxes by the amount of own-state revenue they used to provide to disability services or
    - (b) transferring that revenue to the Australian Government.
- The Commission sees particular merit in option (a).

Any NDIS funding arrangements should ensure that state and territory governments that provide less own-state funding for disability supports than the average should not be rewarded for doing so.

DISAGREE – There is much that is good in current state and territory disability service systems – and much that is bad. A mechanism should be developed to enable States and territories to preserve services (such as local area co-ordination) that they deem valuable or perhaps integrate them into the new assessment and case management systems that will be introduced by the NDIA.

## **Chapter 13 Workforce issues**

### **DRAFT RECOMMENDATION 13.1**

The Australian Government should attract further support workers into the disability sector:

- by marketing the role and value of disability workers as part of the media campaign launching the creation of the NDIS
- by providing subsidies to training of disability workers
- through immigration of support workers, but only in the event that acute and persistent shortages occur, and drawing on the lessons from the Canadian Live-In Caregiver program and other similar programs.

AGREE

### **DRAFT RECOMMENDATION 13.2**

Australian governments should ensure that, across all jurisdictions, police check arrangements for paid workers providing services to people with a disability:

- apply only in cases where both the person with a disability is vulnerable AND the risks associated with delivery of services are sufficiently high
- not include disclosure of crimes covered by spent convictions legislation
- cover people for a given period, rather than for a particular job.

AGREE

### **DRAFT RECOMMENDATION 13.3**

In order to promote training and counselling for carers, the NDIS should:

- assess carer needs as well as those of people with disabilities (draft recommendation 5.6) and, where needed, use the assessment results to:
  - refer people to the ‘Carer Support Centres’ recommended in the Commission’s parallel inquiry into aged care and to the National Carers Counselling Program
  - include the capacity for accessing counselling and support services for carers as part of the individual support packages provided to people with a disability
- assess the best training and counselling options for carers of people with disabilities as part of the NDIS research and data collection function.

AGREE

### **DRAFT RECOMMENDATION 13.4**

The Australian Government should amend s. 65(1) of the Fair Work Act 2009 to permit parents to request flexible leave from their employer if their child is over 18 years old, but subject to an NDIS assessment indicating that parents are providing a sufficiently high level of care.

After monitoring the impacts of this legislative change, the Australian

Government should assess whether it should make further changes to the Act to include employees caring for people other than children.

AGREE

## **Chapter 16 A national injury insurance scheme (NIIS)**

### **DRAFT RECOMMENDATION 16.1**

State and territory governments should establish a national framework in which state and territory schemes would operate — the National Injury Insurance Scheme. The NIIS would provide fully-funded care and support for all catastrophic injuries on a no-fault basis. The scheme would cover catastrophic injuries from motor vehicle, medical, criminal and general accidents. Common law rights to sue for long-term care and support should be removed.

AGREE

### **DRAFT RECOMMENDATION 16.2**

State and territory governments should fund catastrophic injury schemes from a variety of sources:

- compulsory third party premiums for transport accidents
- municipal rates and land tax for catastrophic injuries arising for victims of crime and from other accidents (excluding catastrophic medical accidents)

Once the NIIS is fully established, the Australian Government should examine the scope to finance catastrophic medical accidents from re-weighting government subsidies and doctors' premium contributions.

AGREE

### **DRAFT RECOMMENDATION 16.3**

The NIIS should be structured as a federation of separate state catastrophic injury schemes, which would include:

- consistent eligibility criteria and assessment tools, and a minimum benchmarked level of support
- consistent scheme reporting, including actuarial valuations and other benchmarks of scheme performance
- shared data, cooperative trials and research studies
- elimination of any unwarranted variations in existing no-fault schemes.

State and territory governments should agree to a small full-time secretariat to further the objectives outlined above. The NIIS and the NDIA should work closely together.

AGREE

### **DRAFT RECOMMENDATION 16.4**

State and territory governments should consider transferring the care and support of catastrophic workplace claims to the NIIS through a contractual arrangement with their respective workers' compensation schemes, drawing on the successful experiences of Victoria's Worksafe arrangements with the Transport Accident Commission.

AGREE

**DRAFT RECOMMENDATION 16.5**

The initial priority for the NIIS should be the creation of no-fault accident insurance schemes covering catastrophic injuries arising from motor vehicle and medical accidents in all jurisdictions, with schemes in place by 2013. Other forms of catastrophic injury should be covered by at least 2015.

An independent review in 2020 should examine the advantages and disadvantages of:

- widening coverage to replace other heads of damage for personal injury compensation, including for pecuniary and economic loss, and general damages
- widening coverage to the care and support needs of non-catastrophic, but still significant, accidental injuries, except where:
  - the only care needed can be provided by the health sector
  - the injuries arose in workplaces covered by existing workplace insurance arrangements
- merging the NIIS and the NDIS.

AGREE

## **Chapter 17 Implementation**

### **DRAFT RECOMMENDATION 17.1**

In the second half of 2011 or early 2012, the Australian Government and the state and territory governments should, under the auspices of COAG, agree to a memorandum of understanding that sets out an in-principle agreement:

- that the NDIS should commence in stages from January 2014, be rolled out nationally in 2015 and be fully operational by 2018
- to follow the reform timetable for the NIIS specified in draft recommendation 16.5.

AGREE

### **DRAFT RECOMMENDATION 17.2**

The Australian Government and the state and territory governments, under the auspices of COAG, should create:

- a full-time high level taskforce from all jurisdictions to commence work on the detailed implementation of the NDIS
  - to be headed by a person with insurance or disability experience who has driven change successfully in a large organisation, appointed with the agreement of all jurisdictions
  - with a draft intergovernmental agreement to be prepared for final consideration and agreement by COAG in February 2013
- a full-time high level taskforce from all jurisdictions to commence work on the implementation of the NIIS by the states and territories.

AGREE

### **DRAFT RECOMMENDATION 17.3**

In the period leading up until the full introduction of the NDIS, the Australian Government should supplement funding under the National Disability Agreement to reduce some of the worst rationing of support services.

AGREE

### **DRAFT RECOMMENDATION 17.4**

In 2020, there should be an independent public inquiry into the operation of the NDIS and its effectiveness in meeting the needs of people with disabilities. The review should also encompass the review of the NIIS as set out in draft recommendation 16.5.

AGREE