



12 July 2017

Productivity Commission
Canberra ACT

Mr Harris, Chairman of the Productivity Commission,

RE: National Disability Insurance Scheme Costs Position Paper

As Victoria's Public Advocate, I welcome the opportunity to respond to the Productivity Commission's Position Paper on National Disability Insurance Scheme (NDIS) costs. I note my office made a submission to the NDIS costs issues paper, reference to which is contained in the position paper.

The Office of the Public Advocate (OPA) is an independent statutory body that works to protect and promote the rights, interests, and dignity of people with disability. In order to achieve this, my Office provides advocacy, investigation, and guardianship services to people with cognitive impairment, mental illness, and physical disabilities affecting communication, and undertakes research and policy work that aims to improve the lives of people with disability.

In addition, OPA is the coordinating body of the Community Visitors Program in Victoria, training and supporting more than 400 volunteers. Community Visitors are empowered by law to visit Victorian disability accommodation services, supported residential services and mental health facilities at any time, unannounced to monitor and report on the adequacy of services provided in the interests of residents and patients. They perform a crucial role in protecting and promoting the rights of people within the new disability service environment.

Through my role as guardian and advocate for NDIS participants and prospective participants, and through the work of the Community Visitors Program, my office has gained extensive expertise in understanding and negotiating the new disability service environment created by the roll out of the NDIS. I welcome the opportunity to reply to information requests and recommendations from the Productivity Commission's position paper.

Scheme supports

My Office recognises that the criterion for 'reasonable and necessary' is subject to differing interpretations. Notwithstanding this, I do not recommend legislative change in this regard. The criterion should maintain its flexibility to allow for plans that reflect a variety of individual situations and needs, including disability that may be of an episodic nature. Most importantly, a more stringent criterion could limit a participant's choice and control.

In light of the McGarrigle court case, I have concerns that the National Disability Insurance Agency (NDIA) may narrow what they operationally identify to be 'reasonable and necessary' for the important purpose of financial sustainability. I repeat a principle of the *National Disability Insurance Scheme Act 2013* (Cth) that 'people with disability and their families and carers should have certainty that they will receive the care and support they need over their lifetime'. I stress that 'reasonable and necessary' supports should be determined according to

individual disability support needs. The funding of specialised and tailored supports is what will effectively create the best outcomes for participants and ensure the long-term financial sustainability of the scheme.

The position paper recognises planning meetings as a substantial component of the scheme. A high quality planning process does more than influence short-term costs; it is the crucial process that can, and should, enable people with disability to exercise choice and control in the pursuit of their goals, and the planning and delivery of their supports—an object of the NDIS Act.

I agree that communication between the NDIA and participants needs to be strengthened. As previously advised, my office is especially concerned about plans being made over the phone; for participants with cognitive impairments or communication difficulties, a phone conversation is inadequate to develop a meaningful plan. This procedure excludes the opportunity for supports or advocates, and too often leads to a plan that is not appropriate or responsive to a participant's needs and requirements. The consequence is delays in obtaining essential services or equipment and a need for plan reviews that could otherwise be avoided. Most importantly, it is considered a breach of the commitment to the principle of the NDIS Act that 'people with disability should be supported in all their dealings and communications with the Agency so that their capacity to exercise choice and control is maximised in a way that is appropriate to their circumstances and cultural needs' and does not reflect the statement in plan approval letters supplied by the NDIA that 'the NDIS is designed around participants having a say in what they want their plan to achieve'.

I support recommendation 4.2 from the position paper for specialised planning teams; this would be particularly welcome for participants with cognitive impairment, psychosocial disability, and communication difficulties.

Provider readiness

Community Visitors increasingly report on the closure of disability services, including day programs, which they attribute to the rapid removal of block funding. The ramifications are felt by both the organisations and their clients.

Organisations that operate on smaller budgets are not necessarily prepared for the sudden change and it becomes impossible for them to financially withstand the wait to be 'chosen' by participants. Providers are also apprehensive of the scheme's unit costs which affects their ability to employ permanent staff. A casualisation of the workforce will be detrimental to the quality and safeguarding of services provided under the NDIS. These issues exemplify how the combination of various sector reforms and the transition to a 'marketplace' is affecting business models and financial survival of disability organisations. Most importantly, the sudden closure of organisations is affecting consumers of these services who suddenly lose access to effective supports. This is the case both for participants who are transitioning into the NDIS, and for clients who are ineligible for the NDIS and are now left with very few options.

These significant consequences must be considered as the NDIS continues to full implementation. For this reason, OPA recognises the need, and advocates, for interim block funding arrangements to financially support organisations through the transition into full scheme.

I have further concerns about the likely undersupply of services for complex clients. My office is involved in guardianship matters where participants with complex needs have received individual NDIS funding but services refuse to take them on as clients. Despite the strong advocacy support that comes with the provision of guardianship, at times we still find it difficult to locate suitable providers. There is little incentive for providers to service participants with complex needs who require extensive support and whose crises can be difficult to manage. Adequate supports and services must be available for people with complex behaviours, particularly those without advocacy support. This should be considered in the provision of block funding or direct commissioning of disability supports.

In OPA's submission to the issues paper, I advocated for a provider of last resort and recommended that in Victoria this should be the Department of Health and Human Services (DHHS). DHHS has since extended an expression of interest to the non-government sector to determine its interest and capacity to provide disability services. DHHS confirmed, however, that it expects to remain a service provider in some form. I welcome this commitment; it will be an important remedy to thin markets and market failures, and will offer greater choice to NDIS participants. I am concerned about jurisdictions where government has not made similar commitments.

Participant readiness

Advocate Guardians from my office report that support coordination and its level of funding are currently insufficient in meeting the needs of participants with cognitive impairment. Supporting participants in the implementation of their plans is not a simple task, particularly where direction from a participant is very limited, and where they may be accessing numerous supports.

OPA staff consistently observe that adequate funding and timely provision of paid supports is the key to the effective implementation of NDIS plans for people with cognitive impairments.

However, there is a shortage of high quality support coordinators. In some cases, Community Visitors report considerable delays in the implementation of plans because there are insufficient support coordinators in some areas. Some agencies now operate waiting lists rather than referring participants to other agencies that have the capacity to provide this support.

Across program areas, OPA staff recognise that the most effective form of support coordination is one that is comprehensive; that is, it resembles case management and focuses on building participant capacity. For this reason, I reiterate the importance of employing support coordinators who are qualified and skilled in working with people with disability; this will only be possible if they receive remuneration that is commensurate to their experience.

I agree that time is needed to fully evaluate the roles of service intermediaries, support coordinators, and Local Area Coordinators; currently these roles do not seem to be distinct enough to create efficiencies for the scheme. I suspect that, as the scheme matures, the additional tasks being undertaken by support coordinators may change (for example, support in relation to housing needs). The roles may eventually fall within those identified in the position

paper as undertaken by service intermediaries. At this time, I suggest that any duplicated responsibilities be removed to avoid unnecessary complexities for participants.

Ultimately, all NDIS participants need flexible, responsive, and individualised supports. Where needed, specialised support should be funded on an ongoing basis, in conjunction with the vital roles of advocacy and assertive outreach.

I welcome the opportunity to discuss the contents of this letter with you further. Thank you for the opportunity to contribute to the review of NDIS costs.

Kind regards,

Colleen Pearce
Public Advocate