

# Health Services Union

## POSITION PAPER SUBMISSION

Productivity Commission

Inquiry into National Disability Insurance Scheme (NDIS) Costs

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## About Us

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

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

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

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## Introduction

The HSU welcomes the opportunity to make a further submission to the Productivity Commission (the Commission) on this important inquiry. At the outset, it is important to state that the HSU supports a slow-down in the rollout of the scheme. In addition to a recognition that the NDIS market cannot develop in time, too many critical elements of the scheme are not in place and are unlikely to be ready in the timeframe required by the Bilateral Agreements. Many of these elements have been identified by the Commission already, including: Provider of Last Resort arrangements, the NDIA's eMarketPlace, the NDIS Quality and Safeguarding Framework and the Quality and Safeguards Commission, Continuity of Support arrangements and a comprehensive workforce development strategy.

Given the significant investment in the NDIS and its intended benefits, it is essential to get it right. If not, the scheme risks experiencing the worst aspects of recent large-scale Government expenditure programs, which injected significant demand into poorly regulated and undersupplied markets. Examples include the rushed Home Insulation ("Pink Batts") Program and the poorly designed introduction of contestability in the vocational education and training (VET) sector. Comparisons between the Home Insulation Program and the NDIS are already being made in some quarters;<sup>1</sup> and in the case of VET reform, the Australian National Audit Office found "poor design and a lack of monitoring and control led to costs blowing out even though participation forecasts were not achieved and insufficient protection was provided to vulnerable students from some unscrupulous private training organisations."<sup>2</sup> The HSU, as a strong supporter of the NDIS, does not want the scheme and the people it supports to experience these types of failings.

The HSU recognises that many people with disabilities have waited far too long already for the support and care they need, however, as the Commission rightly points out, the ultimate cap on the financial sustainability of the NDIS is "taxpayers' continuing willingness to pay for it." Based on our knowledge and experience, the HSU believes that the current speed of the rollout increases the likelihood of negative participant experiences arising, subsequently being reported and steadily eroding the community goodwill behind the scheme.

This submission builds on the HSU's Issues Paper submission and specifically responds to a number of the Commission's draft findings, recommendations and information requests. This submission is to be read in conjunction with the separate joint submission of the HSU, Australian Services Union (ASU) and United Voice, which is accompanied by new research from the University of New South Wales (UNSW), RMIT University and Macquarie University on the inadequacy on NDIS prices.<sup>3</sup>

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<sup>1</sup> Windholz, E. (2014) 'NDIS Beware: Pink Batts Below!' in *Alternative Law Journal*, Vol 9 (2), pp. 89-93.

<sup>2</sup> Australian National Audit Office (2016) *Administration of the VET FEE-HELP Scheme*, p. 8.

<sup>3</sup> Cortis, N., Macdonald, F., Davidson, B., and Bentham, E. (2017). *Reasonable, necessary and valued: Pricing disability services for quality support and decent jobs* (SPRC Report 10/17). Sydney: Social Policy Research Centre, UNSW Sydney.

## How is the Scheme Tracking?

### Draft Finding 2.4 (Mixed Participant Experience)

The Commission has noted that participants with autism, intellectual disability and psychosocial disability represent over 70% of all scheme participants at the end of March 2017.<sup>4</sup> Various reports have also noted that it is largely participants with these types of disabilities who are not realising the full benefits of the scheme.<sup>5</sup> In light of this finding, the HSU reiterates its comments from our Issues Paper Submission regarding the potential hazards of choice for those most at-risk participants during a transition that could best be described as chaotic.

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

## Scheme Supports

### Information Request 4.2 (Delegating Plan Approvals)

Throughout the Position Paper, the Commission made reference to the variable quality of Local Area Coordinators (LACs). Like many others working in the sector (and those who have made submissions to this inquiry) our members report that LACs have very limited or highly variable knowledge or experience of disability.

**The HSU recommends that the NDIA should not have the ability to delegate plan approvals to LACs, rather, the Agency should be enabled to directly employ more planners with relevant skills, knowledge and experience to undertake this essential task.**

## Boundaries and Interfaces

### Draft Recommendation 5.2 (Continuity of Support)

The HSU is concerned by the significant inaction of all jurisdictions in making public their continuity of support arrangements. This is causing significant distress for current clients and their families, along with the workers who support these individuals. The HSU notes that providers who are supporting clients over the age of 65 who have not yet entered the scheme are unable to make the necessary investments in staffing and other resources without knowing where the funding for these individuals will come from, nor how much it will be.

**The HSU supports the Commission's draft recommendation that all jurisdictions make public their approach to providing continuity of support as soon as possible.**

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<sup>4</sup> Productivity Commission (2017) *National Disability Insurance Scheme (NDIS) Costs*, Position Paper, p. 98.

<sup>5</sup> Mavromaras, K., Moskos, M., Mahuteau, S. (2016) *Evaluation of the NDIS – Intermediate Report*, p. ix; Warr, D., Dickinson, H., Olney, S., et. al. (2017) *Choice, Control and the NDIS*.

## Provider Readiness

### Draft Recommendation 6.1 (Independent Price Monitor)

The HSU welcomes the Commission’s statement that “prices are important for market development and participant outcomes.”<sup>6</sup> However, we were disappointed that despite this recognition the Commission did not engage with the adequacy of the NDIA’s pricing decisions in the Position Paper. On this matter, the HSU refers the Commission to the separate joint submission of the HSU, ASU and United Voice and the research report: *Reasonable, necessary and valued: Pricing disability services for quality support and decent jobs* (Cortis, Macdonald, Davidson and Bentham, 2017). This research found:

“Prices for disability support work set by the NDIA according to the ‘Reasonable Cost Model’ do not enable minimum Award conditions to be met, and prevent employers who offer above-Award conditions from meeting their legal obligations. Prices do not account for what is required to deliver high quality services, and arrangements are not fully enabling disability support workers to deliver services which are personalised, co-ordinated, responsive or safe. Quality is likely to diminish in the process of NDIS expansion.”<sup>7</sup>

The HSU submits that the NDIA’s pricing decisions are, to borrow the Commission’s own words, “making the market” with long-term negative consequences for the goals and aspirations of the scheme. Urgent change is needed now and the HSU has little confidence in the “independent” price review currently being undertaken by McKinsey at the NDIA’s behest.

**The HSU supports in-principle Draft Recommendation 6.1, particularly the focus on improving the transparency of pricing decisions, jurisdictional variability in prices and the establishment of an independent price regulator. The HSU also calls on the Commission to investigate the adequacy of NDIS pricing in its final report.**

### Information Request 6.1 (Strategies to Address Thin Markets)

The HSU submits that the wholesale withdrawal of specialist disability services by a number of jurisdictions during NDIS transition is demolishing a key piece of efficient architecture necessary to address thin markets. In the absence of any Market Intervention Framework or Provider of Last Resort Strategy from the NDIA, these withdrawals are likely to exacerbate market failure as non-government providers seek to “cherry-pick” less costly NDIS participants and exit provision in regional and remote areas. In the absence of a public service provider, State and Territory Governments and/or the NDIA are likely to be compelled to provide Community Service Obligation (CSO) funding to non-government providers, which may be more costly than direct government service provision.

**The HSU recommends that the NDIA release its Provider of Last Resort Strategy and Market Intervention Framework as soon as possible. Furthermore, jurisdictions that are in the process of divesting themselves of specialist disability services, such as Victoria, should cease that process immediately.**

### Information Request 6.2 (Encourage Greater Supply of Disability Supports)

The essential change is to increase NDIS prices. In this regard, we would refer the Commission to the work of Cortis, Macdonald, Davidson and Bentham, which found that a number of existing disability

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<sup>6</sup> Productivity Commission (2017) *National Disability Insurance Scheme (NDIS) Costs*, Position Paper, p. 36.

<sup>7</sup> Cortis, N., Macdonald, F., Davidson, B., and Bentham, E. (2017). *Reasonable, necessary and valued: Pricing disability services for quality support and decent jobs* (SPRC Report 10/17). Sydney: Social Policy Research Centre, UNSW Sydney, p. 1.

service providers were considering exiting certain lines of service provision due to prices failing to cover the cost of supply.<sup>8</sup>

**The HSU reiterates its recommendation that the Commission investigate the adequacy of NDIS prices in its final report.**

## Workforce Readiness

### Draft Recommendation 7.1 (Workforce Development Clarity)

The HSU welcomes the Commission's recommendation that the parties responsible for workforce development clarify and make public their respective roles. This recommendation should be extended to broader policy changes, such as the proposed Quality and Safeguarding Commission. For example, the Discussion Paper for the Draft NDIS Code of Conduct recently issued by the Department of Social Services (DSS) makes reference to the Quality and Safeguards Commissioner having the power to issue binding directions to providers to increase staffing levels.<sup>9</sup> Yet how will this be direction be operationalised if there is no change to a participant's NDIS funding package? While the HSU supports the Quality and Safeguards Commission making these kinds of directions, unless there is a corresponding increase in funding to pay for increased staffing levels, providers will simply seek to do more with less, increasing work intensification or withdrawing services from more complex clients. Urgent clarity is needed not only on workforce development roles and responsibilities, but also how legal directions from one entity (the Quality and Safeguards Commission) will interface with powers of the price regulator (whether that be the NDIA or another independent authority).

**The HSU partially supports Draft Recommendation 7.1, specifically the elements requiring clarity on the roles and responsibilities of the various parties for workforce development. The HSU does not support the use of skilled migration to address workforce supply gaps when those gaps are driven by the undesirable characteristics of the work itself. In the case of disability support work—structurally undervalued, low-paid and increasingly precarious—the use of skilled migration is not suitable and risks further entrenching the structural reasons for labour shortages. The HSU recommends that the Commission instead focus on how to best upskill local labour supply and consider policy changes that would incentivise workers to make the disability sector their vocation.**

### Information Request 7.1 (Workforce Development Strategy)

A disappointing feature of the NDIS rollout to date has been the near-complete lack of stakeholder engagement from both the DSS and the NDIA with unions. While States and Territories have been much more consultative, at the Commonwealth level there has been an utter lack of consultation with those who will ultimately deliver the scheme: disability support workers and, by extension, their representatives.

**The HSU recommends that unions be involved in the development of a truly sector-wide workforce development strategy, encompassing providers, unions, people with disabilities and the participating jurisdictions.**

### Draft Recommendation 7.2 (Workforce Data)

Better workforce data is essential and we welcome the Commission's attention in this regard. As an aside, the HSU wishes to advise that when estimating the number of disability-related VET

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<sup>8</sup> Cortis, N., Macdonald, F., Davidson, B., and Bentham, E. (2017). *Reasonable, necessary and valued: Pricing disability services for quality support and decent jobs* (SPRC Report 10/17). Sydney: Social Policy Research Centre, UNSW Sydney, pp. 14-17.

<sup>9</sup> Australian Government Department of Social Services (2017) *National Disability Insurance Scheme (NDIS) – Code of Conduct Discussion Paper*, p. 17.

qualifications the Commission made a significant oversight by only counting qualifications with the term “disability” in their title. The Commission must reassess estimates presented in Box 7.2 of the Position Paper by including data on the number of Certificate III in Individual Support (CHC33015) qualifications issued (this qualification covers both aged care and disability support skills, with students able to nominate a specific stream).<sup>10</sup>

**The HSU strongly supports this recommendation, particularly the need for the Australian Bureau of Statistics to capture more accurate and granular data of the disability support workforce. This should include changes to ANZSCO divisions to disaggregate “Aged and Disabled Carers”.**

### **Draft Recommendation 7.3 (Payments to Informal Carers)**

The HSU is concerned by the proposition that informal carers be paid to provide supports to NDIS participants. There are several risks to such a proposition. Firstly, households could become overly reliant on NDIS payments and in instances where they are both the paid caregiver and the participant’s decision-maker this could give rise to instances where the participant is kept at home for the sake of securing income, despite this not being the most suitable option for the person with a disability. The second concern is that some people with disabilities in receipt of personal care from their families find that it “engenders a humiliating sense of being dependent and a burden.”<sup>11</sup> The Commission’s recommendation may have this effect on many scheme participants, undermining the very intentions and ideals of the NDIS. Finally, the HSU utterly rejects the principle that if this recommendation were to be adopted that family members would be paid less than formal carers.

**The HSU does not support any changes to current practices. Furthermore, any NDIS payments to informal carers that do occur under the current operating environment must not be less than those prescribed by the relevant industry Award.**

### **Information Request 7.2 (Impact on Respite Services)**

Anecdotal reports from members working in respite services in NDIS rollout areas are that there has been a significant increase in the numbers of vacancies in respite houses. The HSU submits the key reason for this change has been a view from the NDIA that the inclusion of respite (Short Terms Accommodation and Assistance – STAA) in participant plans represents a “failure” of the NDIS to adequately support informal carers through other supports. This view has manifested itself in a deliberate strategy by the NDIA to underprice STAA services and undersupply them in participant plans. The current (2017/18) NDIS STAA price for the four eastern States is \$501.71 per participant, per day, which is meant to cover all integrated support (care, accommodation, food and activities) in a 24-hour period. Unlike other NDIS prices, which apply loadings for participant complexity and provide higher rates for weekends and public holidays, STAA is a single capped price. This underpricing has provoked a provider response, with reports of STAA providers refusing to service participants on weekends and public holidays as they cannot cover wage premiums. Additionally, properties used for STAA cannot attract Specialist Disability Accommodation (SDA) payments, whereas those used for Supported Independent Living (SIL) do.

**The HSU submits that respite (STAA) pricing provides the clearest example of the NDIA “making the market” through its pricing decisions. The HSU recommends urgent increases to STAA prices to ensure they cover the true cost supply.**

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<sup>10</sup> NCVER data shows 7,962 CHC33015 qualifications were issued over 2015 and 2016. Source: NCVER VOCSTATS (<http://www.ncver.edu.au/resources/vocstats.html>), extracted on 13 July 2017.

<sup>11</sup> Meagher, G. (2006) ‘What can we expect from paid carers?’ in *Politics & Society*, Vol. 34 (1), p. 37.



## Governance

### Information Request 9.1 (Slowing NDIS Rollout)

As indicated at the outset of this submission, the HSU supports a slow-down of the rollout. In the first instance, we would say that no new areas or participant cohorts should transition until existing areas have caught up to the Bilateral estimate (or at least 90% of the Bilateral estimate). Whilst this initial pause takes place, the NDIA and DSS must be compelled to produce a timeline for the delivery of key pieces of scheme infrastructure such as: Provider of Last Resort arrangements, the eMarketPlace and the NDIS Quality and Safeguarding Framework and the Quality and Safeguards Commission.

**The HSU recommends an initial pause in the rollout to allow those areas and participant cohorts who have already transitioned to gain entry to the scheme against the original Bilateral estimate. Whilst this pause takes place, extensive community consultation should occur to determine the most equitable way to progress the rollout without compromising the scheme’s capacity to cope.**

## Funding Arrangements

### Draft Recommendation 10.2 (Reconsider NDIA Staffing Cap)

The HSU has never supported the arbitrary staffing cap imposed on the NDIA by the Commonwealth of 3,000 FTE down from an initial assumption of 10,595 FTE.<sup>12</sup>

**The HSU supports the Commission’s draft recommendation that the NDIA’s staffing cap of 3,000 be removed.**

### Draft Recommendation 10.3 (In-kind Funding)

The HSU disputes the Commission’s contention that in-kind supports are of a lower quality and costlier than competitively provided supports. Indeed, there is no evidence to suggest that in-kind supports, such as State Government operated group homes, are in any way inferior to those provided by the non-government sector. In Victoria, for example, the Department of Health and Human Services (DHHS) operates over 500 group homes, supporting 2,500 people with disabilities. These services, relative to the non-government sector, are characterised by higher levels of supervision (one supervisor per group home),<sup>13</sup> lower levels of casualisation (22% compared to an average of 41% in the non-government sector)<sup>14</sup> and a more trained workforce.<sup>15</sup> These three characteristics—greater supervision, lower casualisation and better training—have been pointed to by a number of State and Federal inquiries into violence, abuse and neglect in the disability sector as critically important for quality and safety.<sup>16</sup> On this evidence it is arguable in-kind supports are of a higher quality.

With regard to the cost of in-kind services, it must be recognised that State and Territory Government service providers have been and continue to be the providers of last resort for clients that the non-

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<sup>12</sup> Commonwealth Government (2016) *2016-17 Budget Paper No. 4 – Part 2: Staffing of Agencies*.

<sup>13</sup> One supervisor per group home (community residential unit) is established in the *HACSU Department of Human Services Disability Services Enterprise Agreement 2012-2016*, Clause 19.9.1 (AG2013/4860).

<sup>14</sup> Casualisation rate for DHHS workforce found in unpublished 2016 employment data, for non-government sector see: National Disability Services (2017) *Australian Disability Workforce Report July 2017*, p. 4.

<sup>15</sup> Unpublished DHHS employment data from 2006 shows 93.5% of the workforce holds a Certificate IV in Disability (or above), compared to ABS data showing 70% of individuals within the ANZSCO classification “Aged and Disabled Carer” have a Certificate III (or above).

<sup>16</sup> Parliament of Victoria Family and Community Development Committee (2016) *Inquiry into abuse in disability services: Final Report*, p. 138; The Senate Community Affairs References Committee (2015) *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*, pp. 231-232.

government sector is unwilling or unable to service due to the complexities of their disabilities. Therefore, in-kind providers service a greater proportion of higher-cost participants than their counterparts operating under contestable NDIS funding. The removal of in-kind arrangements would be unlikely to make any substantial change to overall scheme costs, rather, providers would simply seek quotes above benchmark NDIS prices in order to service more complex participants.

**The HSU does not support the removal of in-kind funding arrangements until it is clear that the NDIS market is operating effectively and NDIS prices accurately cover the true cost of service delivery. The HSU fundamentally opposes setting an arbitrary date for the cessation of in-kind funding particularly given the findings of poor preparedness of the NDIS provider market.<sup>17</sup> Jurisdictions should not face a financial penalty for maintaining in-kind services until these preconditions are met.**

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<sup>17</sup> The Australian Centre for Social Innovation (TACSI) found that 60% of providers in South Australia were “poorly prepared” to transition into the NDIS market, see: TACSI (2016) *NDIS Readiness and Beyond*, p. 5.