

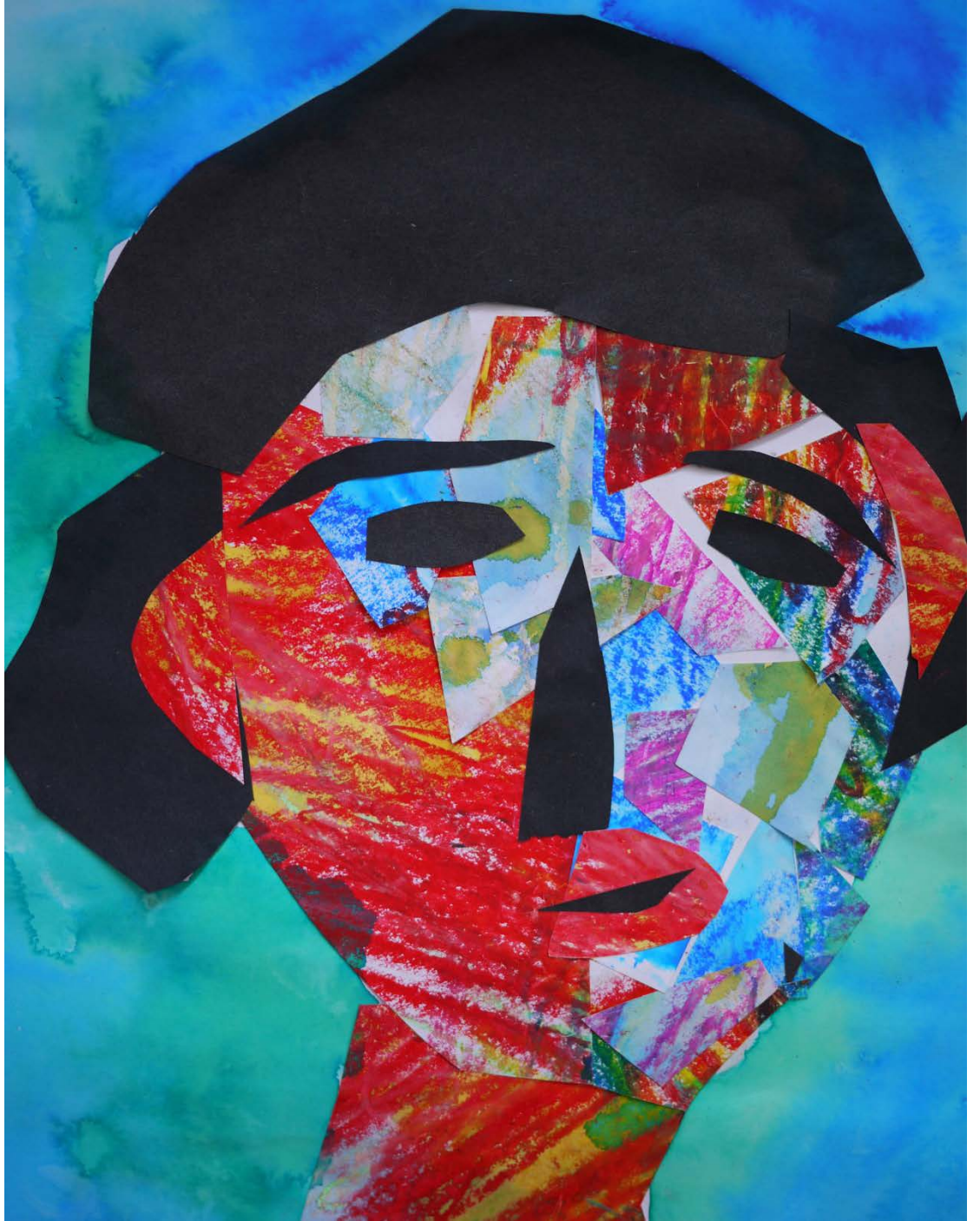


THE UNIVERSITY OF
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Submission

Productivity Commission Review of National Disability Insurance Scheme (NDIS) Costs

Richard Madden



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National Disability Insurance Scheme (NDIS) Costs Productivity Commission

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Introduction

The NDIS is a great social reform. Its development and continuing bi-partisan support at Commonwealth, State and Territory level has been a great achievement in providing for long term support for people with a disability across Australia in line with the desires of the person themselves and their families and carers. In the early stages of full rollout, it is essential for everyone to support this excellent national initiative of which Australia can be very proud.

The NDIS has been introduced quickly, and involves a large increase in public expenditure, and inevitably some uncertainty as long standing support arrangements change. The change effort has been huge for all involved. Inevitably, there have been issues to be addressed, and some delay in ambitious timetables. These issues, while important, must not detract from the achievements made and the opportunities that exist.

This submission covers a small number of fundamental issues in the structure and financing on the NDIS, where the author has some experience and has considered the issues for some time. The issues are considered under the main headings used in the Issues Paper.

Colleagues from the Centre for Disability Research and Policy have made submissions addressing additional important issues.

6 Governance and administration of the NDIS

Do existing administrative and governance arrangements affect (or have the potential to affect) the provision of services or scheme costs? What changes, if any, would improve the arrangements?

Is there likely to be a need for a provider of last resort? If so, should it be the NDIA? How would this work?

Sharing NDIS cost overruns

The transition arrangements agreed between the Commonwealth and all States and Territories except Western Australia involve 'the Commonwealth (being) responsible for meeting 100 per cent of the risk of cost overruns above the contributions outlined above' (Victoria Schedule B, para 2). The full scheme arrangements provide for fixed (indexed) contribution from each jurisdiction (Victoria Schedule B, para 28). So the Commonwealth continues to be responsible for 100% of cost overruns.

In contrast the Western Australian agreement provides for 'the Commonwealth (being) responsible for a maximum of 25 per cent of any cost overruns for higher participant numbers and/or higher average package costs' (WA Agreement Schedule C, para 2). The WA arrangement no doubt reflects the fact that WA will administer the NDIS in WA.

There are strong arguments to support a sharing of cost overruns in other jurisdictions. States and Territories are responsible for supporting NDIS participants with a wide range of mainstream services. In 2015, COAG agreed to 'Principles to determine the responsibilities of the NDIS and other service systems.' These principles appear to be sensible and should underpin the access of NDIS participants to State and Territory mainstream services.

In practice, State and Territory service systems face tight financial constraints and have to deal with competing priorities between a wide range of clients, including NDIS participants and also a wide variety of others seeking services. Despite well defined principles to ensure NDIS participants are treated in the same way as others, there will be pressure at all levels of these systems to have NDIS meet as many support needs as possible for NDIS participants. NDIS administrators may also face pressure to fund other services where they consider that early provision of these services will reduce long term NDIS support costs.

Sharing of cost overruns would mean States and Territories have 'skin in the game' in limiting NDIS cost overruns, which would act to limit incentives to have the NDIS meet the cost of services which are available from budget constrained State and Territory systems.

The State and Territory share of overruns would need to be determined having regard to the their influence on the cost of the NDIS. Besides the provision of mainstream services, other issues of State and Territory involvement (see below) would have a bearing.

A minimum of 25% State and Territory share of cost overruns would seem appropriate having regard to the impact of mainstream service provision.

State and Territory involvement in disability support

The bilateral agreements with most States and Territories (WA and SA are exceptions) see those States and Territories withdrawing from responsibility for arranging or delivering disability support services. Generally, withdrawal from direct provision seems sensible, subject to affected people with a disability and their carers being fully engaged in the choice of alternative providers and the existing workforce not being lost to the sector.

However, the decision to discontinue any role at all in arranging services is much more problematic.

The Issues Paper has posed a specific question:

Is there likely to be a need for a provider of last resort? If so, should it be the NDIA? How would this work?

There is a need for a service organiser or arranger of last resort rather than a provider. States and Territories have in the past been able to call on NGOs at very short notice to provide a wide range of supports to a person in immediate and urgent need of them or a person with high and complex needs in danger of 'falling through the cracks'. This is a valid role for State/Territory agencies. The person in immediate need is likely to have come to attention through a State/Territory service such as an acute or a mental health service, via community services if existing supports have broken down, or via the police or justice system. State/Territory agencies will be meeting the costs of maintaining the person in the absence of disability

supports being put in place, and so the State/Territory will have a clear financial incentive to put disability supports in place as soon as possible. This would be in the person's interests as well.

The NDIA is not well placed to take on this responsibility. It has orderly and necessarily time consuming processes to establish NDIS eligibility and to establish a service plan. As well, the person is likely to be in no position to quickly seek out service providers of choice once a plan is in place.

States and Territories already have capacity to respond quickly to last resort needs seems sensible to continue existing arrangements. Normal NDIS arrangements should be put in place as soon as possible, ensuring that an alternative path to long term supports is not established. NDIS financial arrangements would need to be altered to reflect the expanded responsibilities of States and Territories.

Another area for a specific State/Territory role in arranging services is for a person with a disability who has been in the correctional system. Before release, it would be very difficult to determine NDIS eligibility and to put a support plan in place. The person's needs may be complex requiring supports from across a range of mainstream services in addition to disability supports. States/Territories have put in place specific programs to support people in these circumstances, and these need to be continued and expanded to ensure people with a disability can have a good opportunity to avoid return to the correctional system. Again, NDIS financial arrangements would need to be altered to reflect the expanded responsibilities of States and Territories.

There are a range of other circumstances where State/Territory initiatives would be beneficial to supporting a person with a disability pending long term NDIS support arrangements. People with a mental health problem and those completing a rehabilitation program are examples. Importantly, fast provision of disability support will tend to reduce long term support needs by providing a good environment for the person to benefit from their health treatment or other State/Territory program.

State/Territory arranged support services should be for a time limited period (say 3 months), to ensure there is an incentive to move to the NDIS and receive all the associated advantages.

Conclusion

Continuing State and Territory involvement in the short term arrangement (not delivery) of supports for people with disability is in the interests of the person concerned, will prevent inappropriate interim arrangements by other State/Territory agencies to maintain the person, and will tend to reduce the long term costs of NDIS support.

Commonwealth/State financial arrangements for the NDIS will need to be adjusted to accommodate this role for the States.

Such a role for the States and Territories increases the argument for States and Territories to meet a percentage of NDIS cost overruns.

7 Paying for the NDIS

The author has been studying the financing of the NDIS since 2014. The focus has been on the Commonwealth's financing requirements.

Broadly, the NDIS will cost \$22 billion at full rollout. Information on total NDIS expenses is included in each year's Commonwealth Budget papers (Budget Paper No 1, Statement 5, Table 9.2). The Budget papers show that the cost is roughly 50% shared by the Commonwealth on the one hand and the States and Territories on the other:

'Of the total \$53.3 billion in NDIS expenses from 2016-17 to 2019-20, the Commonwealth is contributing funding of \$27.1 billion, with the remainder contributed by the States and Territories.'

The DisabilityCare Australia (DCA) levy was introduced on 1 July 2014 as a 0.5% addition to the Medicare levy, 2 years before full NDIS rollout began. This resulted in large Commonwealth surpluses which have been invested in a DCA Fund to offset future NDIS outlays (25% of the levy is reserved for States and Territories).

The net impact on the Commonwealth's budget of its share of NDIS expenses is offset by the elimination or reduction in other Commonwealth programs as a result of the NDIS. These offsets were estimated by the Productivity Commission in its 2011 report, and these estimates were subsequently largely confirmed by the Australian Government Actuary. With multiple changes to Commonwealth budgets since 2011, there are differing views on what these offsets are in practice, and only limited information is available through the Budget papers and the various Commonwealth-State bilateral agreements. It is recommended that the current Productivity Commission review revisit this topic (desirably with the involvement of the Australian Government Actuary) and provide updated estimates.

The author has published reviews of the Commonwealth's financial arrangements in 2014 and 2015 (National Disability Insurance Scheme: Commonwealth Financial Arrangements up to 2019-20, Policy Bulletin 5, November 2015)

(<http://sydney.edu.au/health-sciences/cdrp//CDRP%20Policy%20Bulletin%205-NDIS%202015.pdf>).

My 2015 review found, in summary:

‘The estimates show that the Commonwealth will have no net financing requirement in the years up to and including 2018-19. In these years, the balances from the Commonwealth’s share of the DCA levy will be substantial, reaching an estimated \$6,568 million in 2016-17.

It is estimated that the Commonwealth will have a net financing requirement in 2019-20, the first year in which the NDIS will be fully rolled out. In that year, the requirement is estimated to be \$2,023 million, and the Commonwealth share of the DCA Fund will be exhausted. In later years, based on annual overall NDIS expenses of \$22 billion, the net Commonwealth financing requirement is estimated at \$4,073 million, which represents 37% of the Commonwealth’s share of total NDIS expenses.’

The Commonwealth Minister subsequently estimated the annual requirement at \$5.2 billion (<http://christianporter.dss.gov.au/speeches/national-disability-services-ceo-conference-2015>). Unfortunately, no analysis to support this conclusion was provided. That figure has been repeated (as \$5 billion) by the Minister for Finance (<http://www.financeminister.gov.au/media-release/2016/03/16/new-ndis-account-lock-funding-0>), also with no supporting analysis.

The 2016 Budget showed a \$4 billion reduction in total NDIS expenses over 3 years:

	2015 Budget (\$M)	2016 Budget (\$M)	Reduction (\$M)
2016-17	4,331	4,183	148
2017-18	11,718	10,016	1,702
2018-19	19,202	17,573	1,629
2019-20	22,000 ⁽¹⁾	21,500	500

(1): Estimated NDIS total expenses at full rollout; 2019-20 is beyond the 2015 Budget forward estimates

This reduces the Commonwealth share over these years by approximately \$2 billion. As offsets in the affected years will be correspondingly reduced, the net impact of these reductions will be approximately \$1.3 billion. That would

reduce my 2015 estimate of the Commonwealth's net financing requirement in 2019-20 to approximately \$0.7 billion. The net financing requirement in later years is not affected.

Conclusion

Existing estimates for the Commonwealth net financing requirement for the NDIS after full rollout range between \$4.1 billion and \$5.2 billion. It is important that the Productivity Commission derive its own estimates of the annual Commonwealth net financing requirement and the timing of this impact. It should revise its 2011 estimates of Commonwealth Budget offsets in making these estimates.

There is no net financing requirement in the years up to and including 2018-19. The impact in 2019-20 appears to be relatively small, with the full net impact being felt in 2020-21.

Other Issues

2 Scheme Costs

Observers of the NDIS have been greatly hampered by the limited amount of information released on the operations of the Scheme. There are two distinct matters needing improvement.

A Public Release of Actuarial Reports on Scheme Performance and Cost

From the outset, the NDIA has included a strong actuarial team. It must be assumed that this team is carefully analysing the performance and costs of the Scheme.

Regrettably, actuarial reports are not released. Information in quarterly reports is very brief. Costing information refers to the 'annualised cost' of packages, with no information on lifetime estimates of costs. Part of the justification for the NDIS as an insurance scheme is the investment in interventions now to reduce long term support costs in the future. There is no break-up of the investment component of packages versus that designed to meet current needs.

The NDIS is a publicly funded social insurance system. There is no commercial confidentiality requirement to limit release of information to all stakeholders and the community generally.

B Statistical Data

The Productivity Commission has asked for responses on a range of questions affecting costs, including

- 'Why are utilisation rates for plans so low? ...
- Why are more participants entering the scheme from the trial sites than expected? Why are lower than expected participants exiting the scheme?
- What factors are contributing to increasing package costs?
- Why is there a mismatch between benchmark package costs and actual package costs.'

Little data has been made available by the NDIA to allow informed responses to these important questions, and many others. A robust statistical data set is

essential to support informed analysis and comment, and was an expected output from administration and monitoring of the NDIS.

Prior to the NDIS, the public had access to a range of statistics to monitor the extent of disability in the community and the provision of disability support services. The ABS has conducted the Survey of Ageing, Disability and Carers (SDAC) since the 1980s. This gives a comprehensive picture of people with a disability in Australia, and their needs for support, the 'demand' for support. The Productivity Commission used SDAC as a key source to estimate the costs of the proposed NDIS in 2011.

SDAC funding is not secure. The ABS conducts the survey each three years, but must rely on funding from stakeholders (Commonwealth Departments of Social Services and Health, and States and Territories). Funding also determines the sample size. Presently, the proposed 2018 SDAC is not certain as most stakeholders have not yet committed funding.

The other statistical collection prior to the NDIS, the Disability Services collection, related to support services provided by States and Territories – the supply side of the picture. Service providers provided data on their services and service recipients to their respective State/Territory funder, which in turn provided de-identified data (in an agreed national minimum data set) to the Australian Institute of Health and Welfare which formed a national data collection. This collection provided information on the 'supply' of support. The Disability Services collection will no longer be collected once State funding of disability support services ceases.

Using the SDAC and the Disability Services collection together, unmet demand was estimated by the AIHW on several occasions. To allow this comparison, the data definitions and standards (metadata) in both collections were aligned, using national standards where they existed.

It is important that the SDAC continue on as regular basis, and that statistics be available on support services provided.

The NDIA currently receives information on each service for which it is billed by service providers, and has full information on the NDIS participant who has received the service. NDIA should work with stakeholders and the AIHW and ABS to design an appropriate minimum data set for participants and supports received, which can be extracted from its data holdings. Attention

should be given to the desirability of continuity of statistical series for key data across the old and the new collections. The WA Agreement provides for such a minimum data set on participants in the WA administered NDIS.

A de-identified data set on participants and supports received should be provided without charge to the AIHW in a timely fashion for statistical reporting.

3 Scheme boundaries

The intersection with the National Injury Insurance Scheme

The National Injury Insurance Scheme (NIIS) is not consistent with the NDIS. The Issues paper states 'The development of the NIIS has been agreed to by all States and Territories and is proposed to provide fully-funded care and support for all new catastrophic injuries on a no-fault basis.'

In principle, the NIIS offers superior benefits to NDIS benefits, as provision of 'care' is included. But 'catastrophic' injury affects only a small proportion of injured people.

A further complication is that many injured people **without** 'catastrophic' injury have the possibility of pursuing compensation claims. The NDIS Act provides that they must pursue the compensation path before becoming eligible for NDIS benefits.

This forces the injured person into an invidious position. Their compensation claim can cover losses due to the injury and the costs of care, in addition to seeking disability supports. But the compensation system can be lengthy, uncertain and involve arguments about fault and contributory negligence. The outcome may be better overall than reliance on the NDIS and other mainstream services, or it may be worse: this 'lottery' outcome will often not be known for a long time, even many years, after the injury occurs, and is an obstacle to rehabilitation. No information is available on how these arrangements have worked in practice in the NDIS rollout to date.

This is a highly unsatisfactory set of circumstances for those injured people not yet covered by the NIIS but who can seek compensation. The Productivity Commission report in 2011 (Chapter 17) detailed in great detail the defects of existing fault based compensation systems, such as apply in medical

indemnity and public liability claims as well as for road injuries that do not result in catastrophic injury and are not covered by a no fault compensation system.

The Productivity Commission should fully examine not only the intersection of the NDIS and NIIS, but the consequences for injured people outside the NIIS of the compensation provisions of the NDIS Act. The aim should be to ensure arrangements for injured people outside the NIIS who would otherwise be eligible for the NDIS to be able to access their entitlements to the full range of supports that the NDIS would provide.

Section 104(4) of the NDIS Act allows the NDIA to take over person's claims unless they are under a scheme of compensation under a Commonwealth, State or Territory law. In particular, common law claims may be taken over by the NDIA. This provision should be actively promoted by the NDIA to provide an easy option for people to opt out of injury compensation and opt in to the NDIS and so access disability supports as soon as possible.

The Productivity Commission recommended in 2011 (Recommendation 18.7) that:

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*

- the expert panel for medical treatment injury, evaluating the timeliness of its decisions, its independence and cost-effectiveness*

- merging the NIIS and the NDIS.*

The current review should confirm the need for this review and the topics that it should cover.