



# **Productivity Commission Review of National Disability Insurance Scheme Costs**

Position Paper

Submission from the South Australian Government

July 2017

## Overview

South Australia (SA) recognises the transformative potential of the National Disability Insurance Scheme (NDIS) for people with disability, their families, carers and communities. SA remains strongly committed to the Scheme and to continued collaboration across governments, the National Disability Insurance Agency (NDIA) and sector stakeholders to ensure its successful implementation.

Following a children's trial, adults in SA phase into the NDIS between 1 July 2017 and 30 June 2018, when the State is in full Scheme.

The SA Government recognises the challenge facing the NDIA in balancing the imperatives of transition intake schedules, plan quality and participant outcomes, and the financial sustainability of the Scheme.

Achievement of ambitious transition timeframes will require an adequately resourced NDIA and continued joined up action with governments and key sector stakeholders.

The building of a vibrant and competitive disability marketplace comprising responsive, innovative suppliers and informed and active consumers is essential to a successful NDIS.

As the Productivity Commission's (the Commission) Position Paper makes clear, innovative strategies are required to grow the disability workforce to meet demand at full Scheme and to ensure equitable access to the Scheme by participants in critically thin markets.

Enhanced mechanisms for transparency and accountability, as well as the availability of data and information, will help to build the capacity of participants and providers and promote stakeholder confidence in the Scheme.

SA remains concerned about cost pressures associated with the potential impacts on mainstream services and the transition of government-delivered disability services. The State does not have capacity to increase its level of contribution or burden of risk beyond what has already been agreed.

The following issues outlined in the Position Paper are of key concern to SA:

- SA supports adequate NDIA resourcing and continued joined up effort to achieve current transition timeframes.
- SA recognises that innovative strategies are required to build workforce capacity and to ensure equitable access to the Scheme by participants in critically thin markets.
- SA's position is that Commonwealth responsibility for the management of Scheme costs, including overruns, is appropriate.
- While SA supports streamlining of Scheme governance for efficiency, governance arrangements must reflect the significant risk carried by states.

- The planned phasing out of in-kind should be aligned to market maturity rather than transition timeframes.

SA's response to key draft recommendations from the Commission's Position Paper is outlined in detail below.

## Scheme supports

### DRAFT Recommendation 4.1

The NDIA should:

- implement a process for allowing minor amendments or adjustments to plans without triggering a full plan review
- review its protocols relating to how phone planning is used
- provide clear, comprehensive and up-to-date information about how the planning process operates, what to expect during the planning process, and participants' rights and options
- ensure that Local Area Coordinators are on the ground six months before the scheme is rolled out in an area and are engaging in pre-planning with participants.

High quality planning processes, with an appropriate balance between consistency across participants and responsiveness to individual requirements, are critical to participant outcomes. The SA Government supports all elements of draft recommendation 4.1. In particular, SA concurs with the need for NDIA planning protocols that are adaptive to the needs of participants for whom phone planning is not appropriate and those who require support to engage effectively with the planning process.

While SA supports the recommendation that Local Area Coordinators (LACs) are on the ground in an area six months prior to Scheme roll-out to pre-plan with participants, innovative approaches to pre-planning supports, as well as plan implementation supports, may need to be considered in rural and remote communities if there are difficulties recruiting LACs in these contexts, as is anticipated.

### DRAFT Recommendation 4.2

The NDIA should ensure that planners have a general understanding about different types of disability. For types of disability that require specialist knowledge (such as psychosocial disability), there should be specialised planning teams and/or more use of industry knowledge and expertise.

SA strongly supports draft recommendation 4.2, in particular the proposed development of specialist planning teams working in partnership with sector experts to meet the needs of specific participant cohorts. This specialist approach may also be extended to the LAC model. This may include LACs with a focus on developing expertise and sector partnerships to support pre-planning and other activities with specific cohorts, for example; participants with psychosocial disability, participants in custody, children and young people in contact with the child protection system.

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#### *INFORMATION REQUEST 4.1*

*Is the National Disability Insurance Scheme Act 2013 (Cwlth) sufficiently clear about how or whether the 'reasonable and necessary' criterion should be applied? Is there sufficient clarity around how the section 34(1) criteria relate to the consideration of what is reasonable and necessary?*

*Is better legislative direction about what is reasonable and necessary required? If so, what improvements should be made? What would be the implications of these changes for the financial sustainability of the scheme?*

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In relation to the application of 'reasonable and necessary' criteria to funded NDIS supports, consistency must be balanced against flexibility to promote participant choice and control and innovative service responses. SA recognises that the parameters of 'reasonable and necessary' will be shaped over time by policy and judicial precedents. SA does not support further legislating 'reasonable and necessary' at this juncture. Additional legislative direction may function to reduce flexibility and discretion in the application of the criteria, thereby reducing choice, control and flexibility for participants.

A high degree of transparency in relation to the NDIA's application of 'reasonable and necessary' in funding decisions will promote accountability, equity and stakeholder confidence in the Scheme.

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#### *INFORMATION REQUEST 4.2*

*Should the NDIA have the ability to delegate plan approval functions to Local Area Coordinators? What are the costs, benefits and risks of doing so? How can these be managed?*

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The NDIA should have the ability to delegate plan approval functions to LACs. As LACs will be supporting a proportion of participants with pre-planning, planning and plan implementation, LACs being able to approve plans will promote process efficiencies and a more streamlined participant experience. SA supports changes to the NDIA operating model to assist in meeting transition targets, where efficiencies also promote positive outcomes for participants.

The NDIA has developed controls that mitigate any potential risks associated with outsourcing the approval of funded supports to LACs, in particular national benchmarking of package costs.

## Boundaries and interfaces with the NDIS

### DRAFT Recommendation 5.1

Funding for Information, Linkages and Capacity Building (ILC) should be increased to the full scheme amount (of \$131 million) for each year during the transition. The funds that are required beyond the amounts already allocated to ILC to reach \$131 million should be made available from the NDIA's program delivery budget.

The effectiveness of the ILC program in improving outcomes for people with disability and its impact on the sustainability of the NDIS should be reviewed as part of the next COAG agreed five-yearly review of scheme costs. The ILC budget should be maintained at a minimum of \$131 million per annum until results from this review are available.

SA supports this draft recommendation, recognising the importance of Information, Linkages and Capacity Building (ILC) to Scheme sustainability over time and in promoting community inclusion and participation for all people with disability. Given that only 20% of LAC funding is for ILC activities, it is important that the other four ILC activity streams are adequately funded to build the capacity of people with disability, families, communities and mainstream services.

### DRAFT Recommendation 5.2

The Australian, State and Territory Governments should make public their approach to providing continuity of support and the services they intend to provide to people (including the value of supports and number of people covered), beyond supports provided through the NDIS. These arrangements for services should be reflected in the upcoming bilateral agreements for the full scheme.

The NDIA should report, in its quarterly COAG Disability Reform Council report, on boundary issues as they are playing out on the ground, including identifying service gaps and actions to address barriers to accessing disability and mainstream services for people with disability.

SA recognises that there is significant stakeholder concern about what services will be available outside the NDIS, particularly for people requiring community mental health (CMH) services who are not eligible for the NDIS. However, continuity of support for people under 65 years is essentially the responsibility of mainstream State Government services. As such, SA does not view the inclusion of continuity of support arrangements in full Scheme bilateral agreements as necessary.

At this time some mainstream interface issues remain unclear, including the proportion of CMH clients eligible for the Scheme. SA is therefore not able to accurately quantify all continuity of support requirements until existing clients' transition.

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#### DRAFT Recommendation 5.3

Each COAG Council that has responsibility for a service area that interfaces with the NDIS should have a standing item on its agenda to address the provision of those services and how they interface with NDIS services. This item should cover service gaps, duplications and other boundary issues.

Through the review points of National Agreements and National Partnership Agreements under the Federal Financial Relations Intergovernmental Agreement, parties should include specific commitments and reporting obligations consistent with the National Disability Strategy. The Agreements should be strengthened to include more details around how boundary issues are being dealt with, including practical examples.

SA recognises that there is still extensive work to be done in defining the boundaries between mainstream service systems and the NDIS. SA, along with other jurisdictions, is waiting for the NDIA to release operational guidelines under the National Working Arrangement to support interactions between the NDIS and mainstream services in order to clarify 'who provides what' at an operational level. This will assist states to identify service gaps.

SA supports the critical focus under the *National Disability Strategy 2010-20* on mental health, the broader health system and the criminal justice system, as agreed by the Disability Reform Council. Proposed approaches to progressing policy and action of national significance in these areas, including joint meetings of Disability Reform Council senior officials with equivalent level working groups of the COAG Health Council and COAG Law, Crime and Community Safety Council, will support a national focus on the interface between the NDIS and these critical mainstream service areas. SA notes that the interface between the NDIS and the ageing sector is also a focus for the COAG Health Council.

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#### INFORMATION REQUEST 5.1

*The Commission is seeking feedback on a mechanism to ensure that the States and Territories bear the cost of participants who were intended to be covered by the National Injury Insurance Scheme.*

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The Commission originally recommended that the National Injury Insurance Scheme (NIIS) be operated as state-based insurance schemes, arguing that premiums and state funding should be used to send price signals and encourage greater incentives for safety.

There was a clear link to state responsibility for insurance covering injury from motor vehicle and workplace accidents, given existing insurance schemes. States have now completed reforms to these schemes to establish NIS arrangements for these types of injuries.

However, it is not clear why the states should have sole responsibility to fund or establish the medical treatment injury and general accident streams. Existing insurance schemes for medical indemnity and public liability are privately underwritten (aside from injuries occurring in the public health system) and in turn regulated by the Commonwealth. Negotiations regarding the establishment of a NIS for medical and general injuries are occurring between the Commonwealth and the states and both levels of government have recommended to COAG that the medical NIS not proceed at this time. This was agreed at the COAG meeting 9 June 2017. The NDIS cost implications arising from a failure to establish NIS arrangements are not clearly a state responsibility, given states' lack of involvement in these fields of insurance, the joint decision making process underway between both levels of government to assess feasibility and the relatively stronger ability of the Commonwealth to raise revenue from efficient taxes.

## Provider readiness

### DRAFT Recommendation 6.1

The Australian Government should:

- immediately introduce an independent price monitor to review the transitional and efficient maximum prices for scheme supports set by the NDIA.
- transfer the NDIA's power to set price caps for scheme supports to an independent price regulator by no later than 1 July 2019.

The body tasked with price regulation for scheme supports should:

- collect data on providers' characteristics and costs. This should include appropriate funding to continue the business characteristics and benchmarking study currently undertaken by National Disability Services and Curtin University
- determine transitional and efficient prices for supports at a state and territory level
- comprehensively review and publish its price model on an annual basis. This review should be transparent, have public consultation, be evidence-based and evaluate the effectiveness of prices in meeting clearly-defined objectives
- assess and recommend when to deregulate prices for supports, with particular regard to the type of support and region, on the basis that prices should only be regulated as narrowly, and for as short a time, as possible.

SA supports the proposed introduction of an independent price monitor to review the transitional and efficient maximum prices for Scheme supports set by the NDIA, including the impact of prices on market responses in rural and remote contexts.

SA notes the Commission's recommendation for the establishment of an independent price regulator by 1 July 2019. SA considers this recommendation premature for the transfer of the NDIA's price regulation function. The NDIA should retain this role in conjunction with its mandate as market steward until the market has sufficiently matured under a fully operational Scheme over the longer term.

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#### *INFORMATION REQUEST 6.1*

*In what circumstances are measures such as:*

- *cross-government collaboration*
- *leveraging established community organisations*
- *using hub and spoke (scaffolding) models*
- *relying on other mainstream providers*

*appropriate to meet the needs of participants in thin markets? What effects do each have on scheme costs and participant outcomes? Are there barriers to adopting these approaches?*

*Under what conditions should block-funding or direct commissioning of disability supports (including under 'provider of last resort' arrangements) occur in thin markets, and how should these conditions be measured?*

*Are there any other measures to address thin markets?*

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SA notes the Commission's finding that under new market conditions for disability supports, thin markets will persist in outer regional, remote and very remote locations and for some participant cohorts. Given South Australia's demographic spread, the development of strategies to promote service responses in critically thin markets, including remote Aboriginal communities, is vital to ensure equitable access to Scheme benefits for all South Australian participants.

In its agreed role of market steward, the NDIA is principally responsible for effective market intervention. The SA Government is working with the NDIA as it develops proposed approaches to intervention in critically thin SA markets and anticipates that interventions may encompass grant funding and direct commissioning (for example, of established community organisations and mainstream providers) as a last resort. Robust oversight of how quality and safeguards mechanisms are operating will be critical in such circumstances of reduced participant choice and control.



The SA and Northern Territory Governments are working collaboratively to develop market responses in cross-border regions.

Other potential measures to address thin markets include the use of innovative assistive technology in remote areas (e.g. leveraging telehealth technologies), the application by the NDIA of temporary incentive-based pricing and co-design of service responses with providers.

## Workforce readiness

### DRAFT Recommendation 7.1

The roles and responsibilities of different parties to develop the NDIS workforce should be clarified and made public.

- State and Territory Governments should make use of their previous experience in administering disability care and support services to play a greater role in identifying workforce gaps and remedies tailored to their jurisdiction.
- The Australian Government should retain oversight of workforce development, including how tertiary education, immigration and aged care policy interact and affect the development of the workforce. In doing so, the Australian Government should pay particular attention to immigration policy to mitigate workforce shortages over the transition period.
- The NDIA should provide State and Territory Governments with data held by the Agency to enable those jurisdictions to make effective workforce development policy.
- Providers of disability supports should have access to a clear and consistent mechanism to alert those tasked with market development about emerging and persistent workforce gaps.

Roles and responsibilities for market and workforce development across the Commonwealth, states and territories and the NDIA have been agreed by the Disability Reform Council. SA supports continued oversight by the Commonwealth Government of workforce development, including leading joined up action with key government and industry stakeholders. Additionally, the Commonwealth Government's Sector Development Fund should be extended beyond the transition period to promote required market maturation over the longer term.

While the SA Government is progressing a range of workforce development initiatives, the proposed greater role for jurisdictions in identifying workforce gaps and remedies represents a cost shift to the State and does not align with market roles and responsibilities agreed by the Disability Reform Council.

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#### DRAFT Recommendation 7.2

The NDIA should publish more detailed market position statements on an annual basis. These should include information on the number of participants, committed supports, existing providers and previous actual expenditure by local government area.

The Australian Government should provide funding to the Australian Bureau of Statistics to regularly collect and publish information on the qualifications, age, hours of work and incomes of those working in disability care roles, including allied health professionals.

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SA strongly agrees with draft recommendation 7.2, recognising the importance of detailed market and workforce data to signal demand to current and prospective providers and to inform targeted workforce development strategies. Market position statements with a specific focus on psychosocial disability would be of benefit.

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#### DRAFT Recommendation 7.3

The NDIA guidelines on paying informal carers who live at the same residence as a participant should be relaxed for core supports for the period of the NDIS transition. Such payments should be:

- accessible under clearly defined and public guidelines, which make reference to worker shortages in the relevant market using the NDIA's information about providers and supports in the participant's region
  - set at a single rate determined by the NDIS price regulator in a transparent manner
  - reviewed by the NDIA as part of plan reviews.
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SA does not support the recommendation to temporarily relax restrictions on co-resident informal family carers from delivering NDIS-funded supports. The NDIA's current position, which allows for exceptions only in exceptional circumstances, should be retained.

Aside from fundamental reservations about the commodification of informal caring relationships between family members, SA has concerns about potential conflict of interest and abuse of power in such arrangements. Additionally, paying informal carers a flat rate, differentiated from payments to other providers of NDIS supports, is problematic. It is not clear if this would be an allowance or a wage and subject to tax and superannuation contributions. Finally, SA anticipates that it would be considerably challenging for the Scheme to revert back from paying informal carers, both for the individuals and carers concerned and at a macro level.

SA considers that there is benefit in distinguishing informal co-resident carers from foster carers, including where a foster care arrangement is continued after the participant turns 18. Within SA's child protection system, foster carers are able, and financially supported, to provide

some therapeutic supports to the children and young people in their care. Foster carers being able to deliver NDIS-funded supports provides the child or young person with the option to receive care from someone known to them and who has a thorough understanding of their support needs and promotes the sustainability of foster care arrangements.

In SA, some foster arrangements for a young person with disability have been continued post-18 through the disability system. Former foster carers providing support and accommodation are contracted and receive remuneration in line with the level of support required. This program is currently considered out of scope for the NDIS. Without the option of this arrangement or being able to deliver NDIS-funded supports, foster carers are indicating they may need to relinquish care. This has the potential to negatively impact young people who would otherwise choose to remain in this living/caring arrangement. Such mechanisms are also significantly less costly than specialist disability accommodation options.

SA recognises the need for robust application and oversight of quality and safeguarding strategies, including management of potential conflict of interest, were foster carers and former foster carers to deliver NDIS supports.

## Participant readiness

### DRAFT Recommendation 8.1

The NDIA should implement the eMarketPlace discussed in the *Integrated Market Sector and Workforce Strategy* as a matter of priority.

SA strongly supports the recommendation that the NDIA implement an eMarketPlace as a matter of priority. The eMarketPlace will be an important mechanism to support people with disability and their families to make informed decisions about available services and to promote a responsive and sustainable market.

## Governance

SA recognises the challenge facing the NDIA in balancing the imperatives of transition intake schedules, plan quality and participant outcomes, and the financial sustainability of the Scheme.

### DRAFT Recommendation 9.1

The requirement that changes to NDIS Category A Rules have unanimous agreement from the Australian Government and all host jurisdictions should be relaxed.

SA does not support draft recommendation 9.1 and notes that governance arrangements for the Scheme are to be considered again by DISABILITY REFORM COUNCIL. While SA is open to considering changes that enhance the agility of Scheme governance, governance and risk-sharing arrangements must reflect the risks faced by states and territories. In particular, changes to rules relating to NDIS eligibility and scope of supports have the potential to shift costs to the states.

The Commission notes the relatively lengthy timeframes for agreement of some Category A Rules, citing the *NDIS (Specialist Disability Accommodation (SDA)) Rules 2016* as an example. While agreement of the SDA Rules took time, the final product much better addresses critical issues for states and territories.

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#### DRAFT Recommendation 9.4

The performance of the NDIS should be monitored and reported on by the NDIA with improved and comprehensive output and outcome performance indicators that directly measure performance against the scheme's objectives.

The NDIA should continue to develop and expand its performance reporting, particularly on outcomes, and Local Area Coordination and Information, Linkages and Capacity Building activities. The NDIA should also fill gaps in its performance reporting, including reporting on plan quality (such as participant satisfaction with their plans and their planning experience, plans completed by phone versus face-to-face, and plan reviews).

The *Integrated NDIS Performance Reporting Framework* should be regularly reviewed by the NDIA and the COAG Disability Reform Council and refined as needed.

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SA supports the NDIA strengthening its reporting on Scheme outcomes, in particular in relation to plan quality, the timeliness of plan development and review, and LAC and ILC activities.

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#### INFORMATION REQUEST 9.1

*The Commission is seeking feedback on the most effective way to operationalise slowing down the rollout of the NDIS in the event it is required. Possible options include:*

- *prioritising potential participants with more urgent and complex needs*
- *delaying the transition in some areas*
- *an across-the-board slowdown in the rate that participants are added to the scheme.*

*The Commission is also seeking feedback on the implications of slowing down the rollout.*

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SA does not support a slowdown of the transition phasing schedule in this State. Following SA's children's trial, adults began phasing in to the Scheme on 1 July 2017. SA is in the process of rolling out a broad-reach multi-media awareness campaign about the NDIS. There is considerable expectation among potential participants and the broader community, as well as business planning and preparation within the disability services sector, aligned to the State's roll out timeframe.

While SA's transition schedule is ambitious, it is achievable. Under SA's Bilateral Agreement, existing disability clients will predominantly enter the Scheme through transition. SA will continue to work collaboratively with the NDIA to streamline transition processes and promote positive outcomes for participants.

Transition timeframes would also be facilitated by concentrated effort on the two jurisdictions entering full Scheme in July 2018 and greater focus on targeted bilateral discussions.

## Funding arrangements

### DRAFT Recommendation 10.2

The Australian Government should reconsider the staffing cap on the NDIA, given the importance of developing internal capability and expertise.

SA agrees that the Australian Government should reconsider the staffing cap on the NDIA. Adequate NDIA resources are critical to the effective management of transition and quick responses to Scheme cost overruns.

### DRAFT Recommendation 10.3

In-kind funding arrangements should be phased out by the end of transition and should not form part of the intergovernmental agreements for full scheme funding. Should in-kind funding persist beyond transition, jurisdictions should face a financial penalty for doing so.

SA recognises that in-kind funding arrangements cannot be sustained indefinitely. However, SA strongly disagrees with draft recommendation 10.3, proposing the phasing out of in-kind funding arrangements by the end of transition and financial penalties for their continuation.

SA notes that there remain services that require further consideration nationally as to how they will be funded and administered under the NDIS. Jurisdictions should not be penalised where the NDIA proposes that services remain in-kind into full Scheme to support this national policy and operational work, as is the case for transport to school.

The SA Government has made a decision to divest a large proportion of its service delivery to the non-government sector and is working towards achieving this. While all SA non-government

services operate on a cash basis, the majority of government-delivered disability services are currently in-kind. This includes services delivered by government in thin markets and supported disability accommodation, of which the SA Government currently has 40% market share. Government-delivered services have a higher cost-base due to factors including higher public sector wages (to be addressed progressively through the Fair Work Commission's Equal Remuneration Order) and payroll tax requirements from which non-government providers are exempt. Premature cessation of in-kind arrangements could therefore create a significant risk of market failure in the SA context. To ensure that people with disability have access to services they need, the phasing out of in-kind must be aligned to market maturity rather than transition timeframes.

In addition, the Government's orderly transition plans to reform its disability businesses have been developed in the agreed context that in-kind funding arrangements would be available beyond the transition period. In-kind funding arrangements should be available for an agreed period, recognising the specific issues facing disability businesses in each jurisdiction and where jurisdictions can demonstrate clear, achievable plans to reform their businesses while supporting the development of a robust disability services market. SA and New South Wales enter full scheme twelve months earlier than other jurisdictions and should not be disadvantaged as a consequence of this. Full Scheme bilateral agreements should encompass agreed strategies and timeframes for the phasing out of in-kind mechanisms.

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#### *INFORMATION REQUEST 10.1*

*The Commission is seeking views on the role of the escalation parameters in the Bilateral Agreements between the Australian Government and the State and Territory Governments.*

*Should escalation parameters be set on the basis of maintaining a constant real per capita contribution to the NDIS by State and Territory Governments; or should they be more explicitly tied to scheme costs so that the proportion of funding allocated to the Australian Government and the State and Territory Governments is maintained over time?*

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SA supports retaining existing escalation parameters at this juncture. SA does not consider that there is a sufficiently developed information base from which to assess the options flagged by the Commission.

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#### *DRAFT FINDING 10.2*

*Responsibility for funding NDIS cost overruns should be apportioned according to the parties best able to manage the risk. This is not the case in the transition period, as the Australian Government bears all the risk of any cost overruns, but not all the control.*

*The governance arrangements for the NDIS do not allow the NDIA to respond swiftly when factors outside its control threaten to impose cost overruns.*

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SA does not support any changes to the current allocation of liability for cost overruns across the Commonwealth and state and territory governments. States bear significant financial risk associated with anticipated increases in demand for mainstream services and the transition of disability services currently directly delivered by government. SA notes that the intention of the insurance and investment approach underpinning the NDIS is that Scheme costs will decline over time.

## Conclusion

SA remains strongly committed to the NDIS. The issues that SA has raised in response to the Commission's Position Paper are to ensure that the Scheme is successfully implemented and sustainable in the long term for both Commonwealth and state and territory governments. This will provide people with disability the confidence that the NDIS will deliver the benefits for which it was designed.