



Mick Gentleman MLA

Member for Brindabella

Manager of Government Business
Minister for Police and Emergency Services
Minister for the Environment and Heritage
Minister for Planning and Land Management
Minister for Urban Renewal

Ms Angela MacRae and Mr Richard Spencer
Commissioners
Review of NDIS Costs
Productivity Commission
GPO Box 1428
CANBERRA CITY ACT 2600

Dear Commissioners

Thank you for the opportunity to provide a response to the *Productivity Commission's National Disability Insurance Scheme (NDIS) Costs position paper (position paper)*. Please find enclosed the ACT Government Response to the *position paper*.

As you would be aware, the ACT was the first jurisdiction to enter into full implementation of the NDIS. Whilst the trial in the ACT went well, there has been community feedback received by ACT Government that identified areas for NDIS improvements. These issues include planning, participant experience, participant reviews with both participants and providers experiencing a range of issues with the NDIA Portal. These issues were raised at a teleconference that you both participated in on 22 June 2016 with ACT Government officials.

I appreciate that significant work has been done, and will continue to be developed in order to ensure the overall financial sustainability of the Scheme and I am pleased to provide the ACT Government Response to inform your study.

The ACT Government Response was coordinated across ACT Government and non Government peak bodies. Input was provided by ACT Government directorates, the Disability Reference Group and the Joint Community Government Reference Group and the ACT NDIS Inter Directorate Committee to inform our response.

ACT Government officials would be happy to expand on the ACT Government Response, should this be help to the Productivity Commission. Any questions should be referred to Ellen Dunne, Director, Office for Disability.

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601, Australia
Phone +61 2 6205 0218

GPO Box 1020, Canberra ACT 2601, Australia
Email gentleman@act.gov.au



 @GENTLEMANMick

 MickGentleman

The ACT Government looks forward to continuing our work with the Productivity Commission, and looks forward to the findings from the completion of the study.

Yours sincerely

Mick Gentleman MLA
A/g Minister for Disability, Children and Youth

13/7/17



ACT
Government

ACT GOVERNMENT RESPONSE

***PRODUCTIVITY COMMISSION'S
NATIONAL DISABILITY
INSURANCE SCHEME (NDIS)
COSTS POSITION PAPER,
OVERVIEW AND
RECOMMENDATIONS***

12 JULY 2017

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EARLY INTERVENTION (INFORMATION REQUEST 3.1)

Throughout the trial the ACT Government has been active in supporting people to transition to the National Disability Insurance Scheme (NDIS). Therapy ACT as an in-kind service provider, along with other mainstream services including ACT Child and Family Centres, Education and Health Directorates, supported clients to transition to the NDIS. The ACT Government ensured continuity of care in this trial period by providing services until children were deemed eligible for the NDIS. During 2015 Early Intervention and Therapy Services transitioned to different models of service, which included the community sector as well as the creation of the ACT Child Development Service (CDS).

CDS has been operational since January 2016; utilising medical and allied health staff co-located to provide a seamless service for young children and their families. This new service focuses on the early identification of developmental delays and or disabilities by providing assessment and referral for children aged 0- 6 years, children 7- 8 years who have not had a previous diagnosis, and autism assessments to age 12 years. The service promotes appropriate referral pathways; referring to the NDIS, other mainstream services, and provides some services for children aged 0-6 not eligible for the NDIS.

Implementation of Early Intervention in the ACT by the National Disability Insurance Agency (NDIA) has been significantly delayed. The Early Childhood Early Intervention (ECEI) approach was not adopted during trial and only came on line in May 2017. The ACT Government believes this has resulted in higher than anticipated numbers of children entering the scheme. Whilst concrete data is not available it is understood that this was because of inconsistent understanding and implementation of the Early Intervention Rule.

The ACT also has concerns that the inexperience of planners in this area has also resulted in higher than expected children in the scheme and a lack of understanding of the expected outcomes of intervention approaches. The NDIA has not leveraged off the skills and expertise of a range of allied health and related professionals (i.e. Early Intervention Specialists). In particular there is a lack of expertise in Assistive Technologies and Environmental Modifications.

It is not known how many children 0-6 over the past two and a half years of Trial and Transition, should have been diverted away from a participant plan to a light touch service at an ECEI Centre.

The ACT Government welcomes the introduction of the ECEI approach and considers that, if implemented properly, this approach should reduce dependence on paid supports through the NDIA. The ACT agrees however, that the NDIA needs to build a robust evidence base of Early Intervention approaches and options that are cost effective and most importantly beneficial in reducing the long term impacts of disability consistent with insurance principles.

REASONABLE AND NECESSARY (INFORMATION REQUEST 4.1)

The ACT Education Directorate experience working with the NDIA to address the issue of scope for Special Needs Transport demonstrates the difficulty of operationalising the concept of *reasonable and necessary*.

There is a clear tension between the intent for the *reasonable and necessary* concept to be malleable and provide flexibility to exercise choice and control, and the need for greater clarity in guiding planners on determining whether a support is *reasonable and necessary* to achieve fairness and consistency in decision-making.

The lack of clarity regarding what is *reasonable and necessary* in the context of specialised student transport is a potential barrier to transition of responsibility for specialised student transport from in-kind provision by states and territories to cashed out arrangements under the NDIS. This is due to the lack of consistency of existing program eligibility across states and territories and differing perspectives of what is reasonable and necessary for the NDIS to fund.

Determination of what is *reasonable and necessary* has significant funding and continuity of support implications for states and territories as some students receiving these supports under current eligibility arrangements may not meet the reasonable and necessary test. A Transport sub working group of the COAG Senior Officials Working Group, including representation from all States and Territories and the NDIA, is currently grappling with the issue.

The NDIA has developed an approach to what is *reasonable and necessary*, for consultation with this group, based on the considerations outlined in the *NDIS Act s.34(1)*.

States and Territories are likely to have differing views of what is *reasonable and necessary* and this could impact on the feasibility of cashing out.

The absence of clear and publicly available guidelines on what is *reasonable and necessary* creates uncertainty for students and their families and can impact on their school enrolment decisions. It also creates uncertainty for transport providers that need to plan their service offer (transport routes) around knowledge of which students will be approved for transport funding.

ACT Health note that the terms *reasonable and necessary* supports are ambiguous, contextual and very loosely, if at all, correlated with evidence-based care and principles of equity. Many groups (for example, people from culturally and linguistically diverse backgrounds and individuals with mental illness) struggle to articulate what they consider to be *reasonable and necessary* needs under a choice and control approach, so that the process

fundamentally favours those with the greatest health literacy, self-advocacy skills and, possibly, personal resources. This clearly has implications for public perceptions as to the overall fairness and financial sustainability of the scheme.

ACT Health Mental Health Services believe that definitional clarification is required for certain supports not currently identified as separate billable items under the NDIS. For example, medication 'prompting' (as opposed to medication dispensing or administration) for people with psychosocial disability is currently not able to be provided as a billable item. This is despite the fact that medication prompting is considered a critical service for such people to maintain their independence and participate in the community and in employment.

LOCAL AREA COORDINATION (INFORMATION REQUEST 4.2)

Local Area Coordinator (LAC) is a new role in the ACT. During the Trial the ACT theoretically had a combined planner/LAC role, but in reality the role only undertook planning and there was no local area coordination. The ACT opposed the combination of roles on the basis that this approach would result in higher costs to the ACT.

Concerns have been expressed by a number of ACT Disability providers that the LAC model is in essence replicating the ACT experience by having a planning and coordinator role combined and that the vital role of connecting people to mainstream services and community will be lost.

It is clear that the LAC role outlined in the *Information Linkages and Capacity Building Policy Framework* has become weighted towards the planning function, and less towards the connection function. As LAC rolls out in the ACT, there is concern that this risk will be exacerbated by the choice of a provider that has no existing presence in or connection to the ACT community and will therefore take some time to build up capacity in coordination and connection with mainstream services.

The use of LACs in setting participant plans that are a more balanced combination of mainstream services and individualised package costs should reduce scheme costs; however there is a risk that the LAC role will become over bureaucratized and be target driven rather than outcome focused. This risk will be further compounded if LAC providers have delegation to approve plans.

MARKET READINESS AND THIN MARKETS (INFORMATION REQUEST 6.1)

The ACT is keen to ensure that the development of markets including the possible impact on other mainstream services is examined as a local response and believes that jurisdictional input is essential. In particular, the ACT believes that local tailored solutions for Aboriginal and Torres Strait Islander Services and services for people who have high and complex needs is an effective approach to address thin or potentially thin markets. As part of the ACT NDIS readiness the ACT Government commissioned a project to look at developing culturally appropriate Aboriginal and Torres Strait Islander services in the ACT. Some of the recommendations from that work include:

- Assurance for providers that participation in the NDIS will not jeopardise block funding arrangements;
- A funded 'transition phase' to provide reassurance about the financial risks of embarking on operating a fee for service model;
- Specific assistance for small Aboriginal and Torres Strait Islander owned businesses to navigate the registration processes; and
- Linkages between the NDIA and small business support programs for Aboriginal and Torres Strait Islander businesses.

As governments transition from direct service provision it has become evident that more attention is required to address issues of *provider of last resort*. The issue of *provider of last resort*, is particularly apparent for the small number of people who have very high needs and behaviours of concern that touch all elements of the human service system.

To date this issue has not been addressed in the ACT and the NDIA has taken an individualised approach to concerns raised, rather than address the issue in a systemic way.

MARKET SUPPLY (INFORMATION REQUEST 6.2)

The current Fixed Pricing Structure for NDIS services has affected the overall development of sustainable business models. There appear to be services that are not, or are perceived to not be financially viable. For example: therapy hours which do not allow or acknowledge the time taken to research conditions and design treatments; the limited ability for workers to receive training and professional development; and the cost of the NDIS administration related to any invoice for service.

Payment for the intensive pre-planning needed for people with complex needs is not adequately costed in NDIS plans. For example: intensive pre-planning is required following a period of hospitalisation or another change in accommodation circumstances for people with escalating and complex behaviours. Planning to set up a comprehensive package of supports generally requires a high level of expertise and professional networks. Pre-planning may encompass case management with respect to outcomes across diverse areas requiring complex cross-directorate negotiations.

The application of benchmark payments for people with high needs living in supported accommodation means that package allocations are being determined not by individual circumstances but rather by the number of bedrooms in a person's house. It may be detrimental to the wellbeing and lifelong support costs of a person to require them to live with an additional person, and certainly conflicts with the principle of choice and control. However, under current arrangements, the provider may not be able to cover the cost of supporting a household of three people each getting a benchmark payment that assumes they share supports between four people because they live in a four bedroom house.

Organisations' responses to these situations have varied. Some have made a decision to invest further, others have begun to diversify and others have made decisions about withdrawing from (or not entering) the disability services market.

ACT providers have also expressed concern that fixed pricing is compounded by the extensive administrative burden and delays when dealing with the NDIA. Some providers have made a decision to leave disability service provision and will instead focus on aged care.

The ACT Government welcomes the substantial work that the NDIA has recently undertaken on participant and provider pathways and hopes that this will address many of the concerns raised in response to the Productivity Commission's Issues Paper. We encourage the NDIA to continue work with participants and providers as it implements change.

Proposals to slow the pace of the NDIS rollout to full scheme could further inhibit provider sustainability, and consequently market supply, where access to a regional or national market may enable providers to develop stronger ongoing business models.

WORKFORCE (INFORMATION REQUEST 7.1)

With the introduction of the NDIS and the ageing of the general population, national and local workforce modelling forecasts an increasing demand for workers in a range of professional and non-professional occupations related to the disability sector. In the ACT, the disability sector was projected to need approximately 500 new workers each year from 2015 to 2018. Of these, 170 would be direct support workers.

People in the ACT who may experience barriers to participating, or fully participating, in paid employment include:

- a. Aboriginal and Torres Strait Islander people
- b. people from culturally and linguistically diverse (CALD) backgrounds (including migrants and refugees)
- c. women returning to work after an extended absence caring for family
- d. young people (18-25 years)
- e. people with a disability
- f. retrenched mature age workers (40+ years)
- g. older Canberrans (55+ years)

The ACT recognises the need to support the disability sector in terms of developing its workforce and for the workforce to adapt to the growth requirements of the NDIS. The ACT recognises strategies to address the workforce issues including enhancing employment, vocation education and training and tertiary pathways, policies and programs as well as developing business and provider supports. Solutions need to consider the broader context in a human service sector so as to not draw workers and/or potential workers to the disability sector at the expense of other sectors (such as aged care).

The ACT is concerned that the wage level underpinning the current pricing structure at the Social, Community Home Care and Disability Services Industry Award 2010 (SCHCADS) Level 2.3 is very low, and too low for the ACT labour market, with an unemployment rate of only 3.5 per cent. In addition, the main classification used by the community sector in the ACT is SCHCADS 4 or 5, so it is difficult to recruit and retain an NDIS workforce paid at a much lower level.

Research has found there are some fundamental issues with skilling vocational workers for the NDIS, and these are both national and local issues. A recent presentation from the National Institute of Labour Studies at the National Centre for Vocational Education and Research annual conference, suggests that whilst training is important for meeting the needs of the workforce, employers and indeed students have noted that a portion of training being delivered under the Certificate III in Individual Support (the entry level qualification for a disability support worker), is not relevant to the roles of a support worker. The development of training packages is overseen by the Australian Industry and Skills Committee.

The issue raised in the report of poor data capture of support workers is particularly relevant to the VET sector. Much of the workforce planning relies on an understanding of how many individuals are in an occupation at a given time. Currently, census data is only supplied at the 4-digit ANZSCO level, where disability support workers are grouped with aged care workers. It is fundamentally important to have an understanding of the size of each of these occupations when developing strategies and providing appropriate subsidies to target skills more effectively.

The nature of working arrangements in the sector has also been impacted with the move to the NDIS. Less certainty in work and funding for Disability Service Providers makes it more challenging to take on trainees in disability support roles (as these roles are often a commitment for 12 months). Furthermore, as providers operate on slim profit margins, meeting the "supervision requirements" under a training contract may be considered an inefficient allocation of resources.

The recently announced Skilling Australia Fund from the Commonwealth Government will provide an injection of funding to the VET sector, mainly targeted to support for Apprentices and Trainees. Due to the major workforce requirements of the disability sector, coupled with the issues in uptake of trainees, it is vital that the scope for this source of funding is broad enough to address the needs of this important sector, including non-traineeship pathways.

The ACT believes it is important that any workforce strategy is cognisant of the particular issues facing each jurisdiction and in the case of the ACT should ensure a regional focus. Therefore the ACT believes that any work to develop a strategy must have active jurisdictional and cross portfolio input.

A disability workforce strategy will cut across and affect a number of areas of the human services workforce and should engage with these broader issues and include input from relevant ministerial councils, including Health, Education and the Industry and Skills Council.

SUPPORT COORDINATION AND INTERMEDIARIES (INFORMATION REQUEST 8.1)

While there are many stories of participants and families who have found great support through the NDIS, there are also a significant proportion of participants and families who don't know how to activate plans, especially as they have to find providers themselves. Families who are either used to being "in the system" or have never accessed support before may have an expectation that the NDIA will do this for them, or at least make recommendations.

The NDIA and the ACT Government acknowledge that Support Coordination forms a new part of the disability services market. This specific role and function has not been a core feature of the ACT's existing service delivery. This function represents a significant area for potential market growth. It also represents an area of service delivery that requires further

development in terms of consistency in practice and quality across service providers, and is subject to conflict of interest issues.

Without clear definition and practice guidance on the role and functions of this new support coordination function, there may be a significant number of people with NDIS plans that are approved but not activated. The ACT Government has proposed that the NDIA investigate the scope for Support Coordinators to have authority to fast track changes to participants' plans where material items are missing. Such changes should not trigger a full plan review, and the ACT Government supports the productivity Commission's broader conclusion that a process should be implemented allowing minor amendments or adjustments to plans without triggering a full plan review.

The level of information given to participants by the NDIA continues to be a problem. Examples continue of participants not being aware that their plans have been approved and that they have been ready to be used for weeks or even months.

During the ACT trial, disability providers were active in supporting participants to enter the scheme. They brought with them an extensive understanding of participant needs and were able to support and facilitate good planning outcomes. This was particularly evident in people with psychosocial disability where providers were able to supplement the lack of NDIA planner knowledge of this disability.

The ACT supports the concept of disability providers participating in planning as part of a range of responses. However, this must reflect the participant's genuine wishes and the issues of conflict of interest would need to be carefully addressed and alternative intermediary options available. Additionally, support coordination for Aboriginal and Torres Strait Islander people must be provided in a culturally appropriate way.

ESCALATION PARAMETERS (INFORMATION REQUEST 10.1)

If there is a departure from the current indexation rate of 3.5 per cent, the ACT suggests that most appropriate alternative would be to set rates on the basis of maintaining a real per capita contribution to the NDIS as this is in line with the design of the scheme and the original agreement.

If the escalation rate maintains the proportion of funding allocated to the Australian and the State and Territory Governments, this would effectively result in the States and Territories taking on a level of risk equal to their proportional share of the funding allocation. Given that assigning risk is the subject of another section of the report, it would be appropriate to maintain real funding per capita and allow cost increases due to other factors to be managed through the risk sharing arrangements.

COST OVERRUNS (INFORMATION REQUEST 10.2)

The ACT Government reiterates its concerns regarding future risk sharing arrangements. The position paper suggests that states and territories should assume a share of the financial risk as underinvestment by states and territories in mainstream services could increase NDIS costs. One of the limited examples provided is that poor public transport options in regional, remote and rural areas could increase NDIS costs as participants (who otherwise could have used public transport) may require funding for taxis.

However, as highlighted in our original Submission, decisions to limit the scope of NDIS activities could also increase costs for states and territories by increasing reliance on mainstream services. The potential for these costs is very large, notably in the health and education systems, but also across the full range of state and territory services. In the

education sector this would place additional pressure on schools in a climate where new Commonwealth funding arrangements have created resourcing uncertainty for schools and there are increasing parent/carer expectations in relation to the supports provided to their children behind the school gate. Importantly, whereas any additional costs under the NDIS are transparent (through their inclusion in packages), it is much harder for states and territories to quantify and/or seek recourse for NDIS-related cost pressures incurred in mainstream service provision.

While the position paper briefly mentions the potential cost shift to states and territories, the overwhelming focus is on the potential cost shift to the NDIA, with no quantitative data to support this. Given the significant financial impacts for states and territories, we suggest that any recommendation to change risk sharing and/or governance arrangements on the basis of cost shifting from mainstream state and territory services would need to be informed by a comprehensive analysis of potential financial impacts.

CONTINGENCY RESERVE (INFORMATION REQUEST 10.3)

The ACT Government does not agree that there is a genuine need for a contingency reserve. Government funding is fungible, and given the NDIA has the financial backing of the Australian, State and Territory Governments, an alternative arrangement should be considered to make funding available for use in a manner consistent with the use of a contingency reserve, but without the need for a large pool of cash to be quarantined for that purpose.



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