

Review of National Disability Insurance Scheme (NDIS) Costs

Submission to Productivity Commission

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA started in 1994 as the Australian Plaintiff Lawyers Association, when a small group of personal injury lawyers decided to pool their knowledge and resources to secure better outcomes for their clients – victims of negligence. While maintaining our plaintiff common law focus, our advocacy has since expanded to criminal and administrative law, in line with our dedication to justice, freedom and rights.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

¹ <https://www.lawyersalliance.com.au/>.

Introduction

1. The ALA welcomes the opportunity to have input into the Productivity Commission's (PC) Review of National Disability Insurance Scheme (NDIS) Costs.
2. The NDIS is intended to be one of the most significant reforms in Australia in a generation. It aims to ensure that people receiving support to assist with managing a profound or severe permanent disability (the participant) have choice and control over the care that they receive and how it is provided.
3. The ALA's members have extensive experience working with clients living with catastrophic injury and other disability. We witness the delays and confusion they experience when trying to engage with the NDIS. It is clear to us that participants need greater certainty regarding their eligibility, and entitlements.
4. While there is no doubt that the motivations behind this reform are positive, aspects of its design and implementation may lead to negative outcomes for individual participants, and may result in a higher than necessary cost burden for the NDIS. Some of the challenges were and are avoidable. The undue haste in implementation has spawned many of the errors. Many participants have noted the excessive bureaucracy that they must navigate to be able to access their packages. Likewise, providers of services, initially enthusiastic about the NDIS, are often frustrated and disillusioned at their experience of the scheme.
5. Some of these challenges are being characterised as teething issues. We believe that many of the problems are of greater magnitude. Modelling of package costs, the number and demographic of participants, and supply and demand of services in different locations should be more comprehensively undertaken. Other problems will require greater expertise for decision-makers. It is important that all challenges

are identified and responded to early, to ensure that systemic problems do not persist in the finalised scheme. While this resetting might have cost ramifications in the immediate term, long-term costs will be more manageable and predictable if problems are identified and responded to now. One important response to the challenges ought in our view to be a reconsideration of the rollout schedule. As at the date of this submission, the rollout is less than nine months old, yet the level of dissatisfaction with the scheme, and the clarity with which problems are being identified, are both rapidly escalating.

6. In respect to the parallel National Injury Insurance Scheme (NIIS), it is essential that caution is exercised to ensure that the rights and interests of the participants are protected, and excessive bureaucracy is not creating waste in a financially stretched operating environment. The lives of people with disabilities are not enhanced by a diminution of existing rights. Moreover, the vision of the 2011 PC Report's authors was, by 2020, a system identical in basic design to NZ's Accident Compensation Corporation (ACC) scheme. That peculiar and unique scheme, as we shall explore below, has been a 40-plus year disaster on both economic and fairness grounds.
7. Enabling participants to manage their own needs in instances where they have recourse to common law damages and existing accident schemes will be key to managing costs and ensuring the best outcomes for individuals. To this end, restricting the NIIS to catastrophic injuries in motor vehicle and workplace accidents is likely to have a better outcome for the overall NDIS. Individuals whose disability arose from medical or general accidents retain access to full common law damages. Where they are not able to access common law or there is no existing scheme, such participants should have access to the NDIS.
8. Pushing participants into unsustainable schemes inevitably mean that benefits are diminished. New schemes also place unacceptable pressure upon government and the taxpayer.

9. Expectation management is one key to the success of the NDIS. For this, clear parameters are needed regarding who is covered by the scheme. Beyond focusing directly on participants, the changing nature of disability support work should be considered in this implementation stage, in view of the potential ramifications this might have for service providers to the Scheme. Workforce infrastructure planning has been almost wholly inadequate. The eligibility criteria were poorly framed by the 2011 PC, and that flaw carries through to the legislation. Any scheme of this type must have clear boundaries.
10. A fair and robust appeals procedure will also be key to managing both costs and fairness for the NDIS. Ensuring that costs are available for people seeking to appeal NDIS decisions will mean that appeal rights are genuine, and that the Scheme is truly able to meet its stated aims.
11. This submission details the importance of common law damages in ensuring that the NDIS budget remains predictable and manageable. Comparison is made with no-fault schemes, which have been shown to have worse outcomes for participants and increased costs for governments. Specific responses to the Issues Paper are then provided, before recommendations are made to ensure that a robust and sustainable Scheme is built.

The importance of access to common law damages

12. Common law damages are the fairest way to compensate people who are injured due to the fault of another. Compensation under common law is tailored to the individual, accounting for the unique impact that an injury will have on them by reference to their level of education, career prospects and other personal attributes. Damages grant maximum choice and control to the injured person by providing the compensation in a lump sum, to which well-understood legal safeguards, including trustee arrangements for some cases, apply. People can choose to spend the

compensation in a way that best meets their needs. They might choose to modify their house to accommodate their injury, or purchase a different home that will be easier to manage their injury in. They can invest their money to ensure that they will have an adequate income throughout their lives to live and get the treatment that they need, without having to navigate complex bureaucracy. They may choose to retrain so that they can earn money in a way that will accommodate their disability.

13. Access to common law presents the best option for recovering from injury and being able to earn some income again. By being able to tailor treatments to best meet individual needs, participants are better able to work towards a greater level of recovery. Removing the stress of continued engagement with bureaucracy will also improve health outcomes. Common law damages engender finality, a powerful and poorly understood dynamic for those with disabilities. Being 'off the system' is infinitely preferable for our members' clients than to being forced to rely on a no-fault pension-type scheme, often for decades.
14. Common law damages also have an impact on behaviour in the community. If people and organisations are aware that they will be held financially responsible should they cause an injury to someone else, they will modify their behaviour to minimise risk.
15. The time taken to resolve common law claims does not substantially disadvantage participants: most are able access interim supports while their injuries stabilise and litigation is finalised. Once compensation is received, a proportion of it goes to reimbursing providers of interim support services. For example, Centrelink refunds and preclusion periods arising from common law damages settlements, and Medicare refunds, lessen the impacts of disability which would otherwise be borne by each scheme.

16. It is the experience of ALA's members that lump sums are a key driver of self-determination, effective rehabilitation and return to meaningful work and activity. They deliver dignity, finality and lack of bureaucracy for participants. They also deliver smaller bureaucratic structures, and they minimise the cost-transfer to the Commonwealth.

No-fault schemes

17. Those who are injured outside of common law circumstances do not have access to damages.

18. The authors of the 2011 PC report sought, in Chapter 17 of that report, to promote a false dichotomy between no-fault schemes and the common law. Moreover, they engaged in a flawed critique of the common law potentially based on an existing bias of at least one of the authors.

19. The ALA understands and supports the safety-net which is the rationale for an element of no-fault benefits in the workers' compensation and Compulsory Third Party (CTP) contexts. However, critically, we believe that also having meaningful access to common law damages confers:

- a. Significant, albeit not always empirically measurable, benefits to participants: true choice and control,
- b. Safer workplaces, roads and communities from the deterrent effect of legal processes, and
- c. Major economic benefits in not having such persons become participants in long-tail, expensive, and bureaucracy-heavy schemes where choice and control may be a scheme mantra, but is not the lived experience for participants. Participants' prospects of entering the Centrelink system,

being fully reliant upon Medicare, and being reliant upon public housing, are all minimised where common law damages are available.

20. Pure no-fault schemes have the perverse impact of shifting the responsibility to ensure safe systems are in place from the individual/organisation (whose fault allowed the injury to arise) to the state. While it is important for governments to engage in public safety campaigns and ensure that regulations exist to encourage safe behaviour, it is equally incumbent on individuals and organisations to take responsibility for their actions and carry the consequences if their fault causes injury to another. Fault-based schemes constitute a strong incentive for individuals and business owners to ensure that they have safe systems in place, as financial signals are given to participants through well-understood insurance mechanisms. Pure no-fault schemes limit this potential disincentive.
21. Moreover, the introduction of pure no-fault schemes changes the private insurance market: companies and individuals no longer insure to cover the risk which has been transferred, by statutory abolition of common law rights, to the state.
22. If an injured person is able to access a statutory no-fault scheme only for a limited period, they can rely on the NDIS, subject to meeting eligibility criteria, once access to the support under the relevant no-fault scheme is no longer available.

Lessons from New Zealand and South Australia

23. Pure no-fault schemes do not work.
24. The ALA cautions strongly against moving towards a pure no-fault model for catastrophic injury. Two examples are instructive in the risks that such schemes can pose, both to participants and to public revenue.
25. In New Zealand (NZ), the ability to pursue compensation was abolished over 40 years ago. Those injured by the most egregious negligence, irrespective of how seriously

injured and disabled they may become, became legally disentitled from pursuing a claim to recover damages. The NZ scheme was, and remains, unique.

26. Central to the NZ scheme is a fundamental shifting of the cost burden from the wrongdoer and their insurer to the public purse. The results for participants have been poor. Costs blew out significantly compared to what was budgeted for early in the life of the scheme. Administration costs of the NZ system were more than those of the Australian systems in the last decade.² To accommodate this, funds were sourced from consolidated revenue to maintain solvency of the scheme, combined with reducing the rights and benefits available to participants. This problem has not been resolved, meaning that the scheme continues to need additional investment from consolidated funds, and benefits continue to be inadequate to meet participants' needs. To the extent that there has been any improvement in the finances of the ACC, this has been achieved largely by the stripping of benefits, and exiting participants from the scheme. The latter process has been cynically described as 'returning participants to independence.'
27. South Australia abolished access to compensation for negligence causing injury in the workplace in 1994, introducing a pure no-fault scheme. Elements of the NZ experience were repeated here, with costs exceeding revenue and benefits being increasingly restricted for participants. Premiums being paid by employers increased to about double those of the average other compensation scheme in jurisdictions in Australia. This workplace scheme led to poor outcomes for individuals.

² Access Economics, Toward a national disability care model, prepared for Maurice Blackburn, Slater & Gordon and Shine Lawyers (August 2010), <http://www.pc.gov.au/inquiries/completed/disability-support/submissions/sub0392.pdf>.

28. Hybrid schemes include a component of no-fault, combined with access to common law damages for more severe injuries. Most workers' compensation and CTP schemes around Australia fall into this category.

Responses to Issues Paper

29. Below we provide specific responses to chapters 2, 3, 4, 5 and 6 of the Issues Paper.

2. Scheme costs

Are there any cost drivers not identified above that should be considered in this study? If so: how do they impact costs in the short and long term?; how, and to what extent, can government influence them?

30. The ALA agrees with the PC that financial sustainability is fundamental to the success of the NDIS.³ Financial sustainability is essential if scheme participants are to consistently receive reasonable and necessary care while they remain in the Scheme. Cost overruns could jeopardise the level of care and support participants receive, or result in a return to some of the less desirable features of the previous system (including, for example, an inequitable rationing of support services). Cost overruns could also lead to pressure to reduce the scope and certainty of care and supports provided under the NDIS, or require governments to provide more funding at the expense of other programs.

31. Data available in the Issues Paper suggests that costs are not currently being adequately managed:

³ Issues Paper, 7.

'In the first quarter of the transition phase, an additional 28,684 people were deemed eligible to enter the scheme (however only 7,440 of these received an approved plan in the period due to delays linked to the transition to a new ICT system).'⁴

32. The PC 2011 Report on Disability Care and Support provided an ambitious, and probably unrealistic, design for the NDIS and the NIIS.
33. The NIIS design sought to reduce the costs associated with the NDIS by shifting the support of some people living with disabilities arising from catastrophic injuries to a federated insurance model, incorporating no-fault insurance support. Commonwealth-State agreements have since enlivened the motor and workplace accident elements of the design. Crucially, to date in those two contexts, this has been:
 - a. carefully circumscribed to catastrophic injuries only to minimise numbers in schemes which do not reach actuarial maturity for circa 50 years;
 - b. implemented within or a closely aligned to existing workers' compensation and CTP administrative infrastructure; and
 - c. where existing funding streams have been adapted, rather than new funding streams hypothesised.
34. Implementing the full 2011 'Vision' of the NIIS would add costs drivers that would be difficult for governments to manage.

⁴ Issues Paper, 10.

35. Were the PC 2011's version of the NIS to be implemented, with diminution of common law access as a consequence, it is certain that pressure would increase upon support services such as Medicare and Centrelink.
36. The ALA believes that it is not appropriate to extend the NIS to medical events and general accidents.
37. With respect to medical events, the definitional issue is fraught and complex in the extreme: differentiation between the 'event' on the one hand, and the medical circumstances leading to the medical presentation on the other, would often be impossible. The Australian Medical Association has, in our view correctly, opined that the two-schemes model (NDIS and NIS) is unwise, and that if individuals meet NDIS criteria, that is the correct scheme for them. Further, there is no natural or obvious funding stream for this arm of the NIS, other than perhaps to levy doctors and hospitals.
38. With respect to general accidents, there is no obvious funding stream. The 2011 PC opined, without further exploration, that local councils could levy fees, and that levies could be placed on boat registrations. The challenges in that regard are obvious.
39. The NDIS safety net, with retention of common law entitlements, strikes the right balance.

Clarity on eligibility criteria and numbers modelling

40. There is an urgent need for specific clarity on eligibility and more accurate modelling on the number of expected participants. These aspects will have decisive effects on the funding needed to ensure the scheme's long-term sustainability. The wastage that comes from unclear eligibility parameters was from the earliest PC draft report, and remains, a foreseeable and avoidable risk. Fortitude will be required in clearly

defining where the eligibility parameters lie: much inflating of community expectations of the NDIS has unfortunately occurred. The NDIS's eligibility boundaries being – as they must be – recast; will mean that some expectations will be unmet. If the Scheme is to be sustainable, the numbers of participants must be limited.

Certainty and safety for service providers and workers

41. Providers report to our members many problems with the National Disability Insurance Agency (NDIA) and its administration of the scheme.
42. The paucity of scrutiny of workforce readiness by the 2011 PC report, exacerbated by inadequate attention to workforce issues by the governance structure presently being overhauled – mean that there is considerable doubt about workforce readiness.
43. Without addressing the genesis of the workforce planning omissions and errors, the readiness of Australia's workforce for an undertaking of the size of the NDIS is likely to be unsatisfactory for years.
44. We believe that many risks emerge from the present situation. First, disability workers' pay and conditions must be protected. Secondly, workers' occupational health and safety must be safeguarded, as workers move away from working in institutions to supporting participants at home or in the community. Care work can be inherently dangerous, often involving heavy lifting and responding to foreseeable risks. Thirdly, disability workers being secured under novel or exploitative arrangements. Fourthly, the emergence of providers who engage in behaviours which risk the safety, and lives, of participants. All of these matters are major risks. The last one is certain to occur without a change to workforce planning.

45. Workforce uncertainty has the potential to increase staff turnover if not managed effectively, as workers seek positions with greater job security. Staff turnover could have a negative impact for participants, as well as increasing costs for providers, who will need to spend more on training new staff and could struggle to retain experienced staff.
46. In our experience, the magnitude of those risks is much greater in rural and regional areas, where the approach taken by the NDIA to date – a central command and control model with little flexibility – gives scant credence to the realities of local market dynamics.
47. In our view, the establishment and clear explanation of a cohesive workforce infrastructure model ought to be a precondition to the continued rollout. Without such clarity, the problems which numerous stakeholders have identified will become far worse.

3 Scheme boundaries

Are there other aspects of the eligibility criteria of the NDIS that are affecting participation in the Scheme (to a greater or lesser extent than what was expected)? If so, what changes could be made to improve the eligibility criteria?

48. There is an urgent need for clarity regarding eligibility for the NDIS, as discussed above.

Is the current split between the services agreed to be provided by the NDIS and those provided by mainstream services efficient and sufficiently clear? If not, how can arrangements be improved?

49. A number of matters have already been adjudicated in the Administrative Appeals Tribunal (AAT) on the issue of NDIS coverage for matters which may also be covered by our health system. This would suggest a lack of clarity. Educating participants, and potential participants about what is likely to be covered, or not, in a funded package will be important to stakeholder satisfaction.

Is there any evidence of cost-shifting, duplication of services or service gaps between the NDIS and mainstream services or scope creep in relation to services provided within the NDIS? If so, how should these be resolved?

50. No submission on this point.

How has the interface between the NDIS and mainstream services been working? Can the way the NDIS interacts with mainstream services be improved?

51. Our members report that prior to the NDIS, people with disabilities would most commonly access services which included state-based (and funded) services. We presume that such services are 'mainstream'.

52. After the NDIS was announced, but before funding was secured, and well before the NDIS commenced full rollout on 1 July 2016, a range of developments occurred:

- a. State services were defunded by state governments,

- b. Such services were informed that they would not be funded beyond their current funding window,
 - c. Some services amalgamated with others or became defunct, and
 - d. Such services experienced substantial delays and difficulties in becoming registered to provide NDIS services and/or in actually securing NDIS funding commitments.
53. Individually or collectively, those issues have led to people with disabilities falling between the widening crack between State-based services, and a far-from-ready NDIS.
54. In our view, it is crucial to re-engage state governments and services, but in a different way to that which is reported at present. Providers report that to date, messages from the NDIA have a clear ‘this is the way we will do it, and if you don’t like it, you won’t be funded’ tone. This is hardly surprising given the disparagement of state schemes implicit in the PC’s 2011 report. Moreover, some state governments have succumbed to, uncritically, the NDIA’s central command and control ethos. Federal governments have an exceptionally poor record of delivery of services. There is much to suggest that the NDIA’s oversight of service delivery is heading in the wrong direction.
55. In our view therefore, recognition of the efficacy of many organisations’ abilities on service delivery, and a willingness to engage in a flexible and pragmatic way, will result in better outcomes for participants.

How will the NIIS affect the supply and demand for disability care services?

56. It is likely that demand for services will vary significantly with the introduction of choice and control for participants in the Scheme. Demand for some services will increase, while the demand for others decrease. Similarly, there may be a mismatch between the services that are available and the services that are sought as more participants enter the Scheme. Nevertheless, with over \$22 billion annually being allocated to the scheme in full rollout, the overall demand for services, logically, will greatly increase.
57. It is essential that service providers are supported to supply the services demanded in the locations that they are needed. The NDIA's inflexible 'we're the price-setter' approach to pricing requires change. Funding levels should reflect the fact that it will be more expensive to provide services in certain locations. No participant should be disadvantaged as a result of living remotely, or in an area where their preferred service is not currently available.

What impact will the full establishment of the NIIS have on the costs of the NDIS?

58. The ALA has played a constructive role in assisting states and territories in introducing the initial pillars of the NIIS. Ultimately, however, we believe that the priority should be on getting the NDIS right.
59. To ensure a fair and effective operation of the NDIS and NIIS, we believe that the NIIS should be restricted to motor vehicle accidents and workplace accidents, as outlined above. Extending the NIIS to injuries arising from medical care or general accidents would be too complex and result in administrative wastage, financial risks

for the taxpayer and worse outcomes for our members' current and prospective clients.

60. Removing these two streams from the NIIS will save both time and money, which can be used to support the viability of the NDIS more broadly. It will also enhance predictability and certainty for participants and government.
61. A two-pillar NIIS will ensure fairness and consistency where there are mature state-based insurers for accidents. The retention of maximum access to common law damages where an individual is able to prove fault keeps financial pressure off the taxpayer. Conversely, any move to a comprehensive no-fault model will increase the costs of bureaucracy and existing government services, such as Medicare, Centrelink and other social services funded at the Commonwealth, state and territory level.
62. Retaining choice for people who have been catastrophically injured is essential to ensure that the Scheme is fair. Choice will also ultimately reduce costs for the NDIS, as those who choose to opt out of the scheme and pursue fault-based damages at common law will not need to rely on the NDIS, thereby reducing the number of people it needs to support.

Are sufficiently robust safeguards in place to prevent cost shifting between the NIIS and the NDIS?

63. The most effective way to minimise cost-shifting from the NIIS to the NDIS is to ensure that common law damages are available for participants who need them. This includes all individuals who will experience long-term or ongoing challenges working in their chosen field as a result of an injury.
64. Where fault cannot be proven, it is appropriate that the NDIS assist the participant, subject to their meeting the eligibility criteria.

4 Planning processes

Do NDIA assessment tools meet these criteria? What measures or evidence are available for evaluating the performance of assessment tools used by the NDIA?

What are the likely challenges for monitoring and refining the assessment process and tools over time? What implications do these have for Scheme costs?

65. Our members and their clients report challenges in interacting with planners. They suggest that many planners, whilst well-intentioned, lack skills. The NDIA has according to media reports, set a benchmark for planners to formulate two plans per day. A high proportion of NDIS participants, and intending participants have complex, multifactorial needs. Their supports are usually multi-disciplinary. Hence, the formulation of a plan is an exercise requiring considerable skills and experience, and time. A formulaic and time-constrained approach to the production of plans is:
- a. Generally inconsistent with stated the 'choice and control' for participants ethos. Clients have put it differently: 'We want to make the choice, but it is clear the NDIS wants to exert control'; and
 - b. Likely to generate dissatisfaction and disputes.
66. The recalibration of a workforce readiness strategy must, in our view, have as a high priority a clear approach to:
- a. The numbers of planners;
 - b. The timing of the appointments of planners relative to the staged rollout schedule;

- c. The skillsets of the planners;
- d. The time quotient to be allocated for each plan, with flexibility to reflect that each participant has different needs.

5 Market readiness

How well-equipped are NDIS-eligible individuals (and their families and carers) to understand and interact with the Scheme, negotiate plans, and find and negotiate supports with providers?

67. A varied picture. Our members report that those with intellectual disabilities, acquired brain injuries, and mental illnesses all face greater difficulty in interacting with the NDIS. There is a high risk that without skilled and appropriately remunerated advocacy supports, those cohorts will:

- a. not enter the scheme at all;
- b. enter late; or
- c. when entering, do so with a package which fails to reflect their needs.

68. Accordingly, the workforce planning ought to be sufficiently broad to encompass the issue of advocacy supports for participants and intending participants.

6 Governance and administration of the NDIS

69. The ALA supports the renewal of the NDIA Board, providing greater capacity in delivering systemic reform and stronger governance oversight. The previous Board composition may have been a risk in its own right, given the wider agenda to pursue a New Zealand ACC-style scheme.

70. This Board renewal, coupled with the engagement of a new CEO and their commencement later this year will give a thorough focus on the practicalities of implementation and managing the expectations of clients.
71. We would also suggest that an emphasis be placed on collaboration with those in the sector that have professional experience in supporting those who have suffered catastrophic injuries. Our members have spent their working lives supporting individuals in their situation, and can add significant detail in scheme design questions as well as implementation.

Review and appeal procedure

72. While not explicitly referred to in the Issues Paper, having a fair and accessible appeals procedure is essential to facilitating fairness in the system. As with the establishment of any large-scale decision-making scheme, incorrect or unfair assessments will be made from time to time. Such decisions must be able to be challenged if people are to have faith in the system and for the NDIS to be seen as a fair and positive development in disability care.
73. Participants will need an avenue to challenge decisions that they think are incorrect or unfair that is accessible and allows both parties to approach the appeal on an equal footing. Consideration should be given to the disabilities with which participants are living in designing an accessible appeals process. Equality in bargaining power is essential in the administration of this Scheme. This will only be possible if participants can access legal assistance in appealing decisions where they feel it is necessary.
74. Appeals of decisions under the Scheme are currently available to the AAT, although costs are not recoverable nor are funds available to assist participants in their preparations.

75. It is appropriate for costs to be available to participants and potential participants if they are appealing decisions. Many participants will be particularly vulnerable and need legal advice and assistance to prepare their appeal. Preventing costs being awarded in such circumstances effectively means that the NDIA's decision-making will be unreviewable by the vast majority of participants. This is unfair and will result in incorrect outcomes being forced on participants who are unable to access justice.
76. The PC's 2011 report, was an overtly "lawyers out" model. The legislation flowing from that report fails to recognise the gross inequality of power as between the participants and their families, and the bureaucracy. Participants will require legal support to advocate on their behalf in some matters. Increasingly, and in our view unsurprisingly, our members report participants' distrust in the scheme is increasing. The notion of judicial and administrative scrutiny of the NDIS may have been inconvenient and uncomfortable to the authors of the 2011 PC report, and perhaps to the outgoing leadership at the NDIA; but it is essential to the health of the scheme. It is also essential; to participants and their families.
77. The ALA believes that the model in place for appealing Comcare decisions to the AAT could appropriately be replicated for the NDIS. This could involve participants being entitled to 75 per cent of costs on the Federal Court scale if they are successful at the AAT, but no adverse costs being awarded if they are unsuccessful.

Recommendations

The ALA makes the following recommendations:

- Common law damages represent the best option for people living with a disability to exercise choice and control over their own care, and to minimise costs to the NDIS.

- No-fault schemes under the NIIS can assist in managing costs under the NDIS only if access to common law damages is retained for those who can demonstrate fault. Hybrid schemes maximising access to common law should be employed by states and territories in implementing their NIIS commitments, as they will ensure that costs under the NDIS remain manageable and able to be influenced by governments.
- Pure no-fault schemes are economically unwise, and invariably generate unfair outcomes.
- Restricting the NIIS to motor vehicle and workplace accidents limbs will allow the greatest level of budgetary certainty for the NDIS. Reforms to medical and general injuries under the NIIS should be scrapped.
- Eligibility criteria should be clarified urgently.
- Workforce infrastructure planning requires urgent attention. This is a very significant undertaking.
- In view of the emergent clarity on the nature and serious extent of the NDIS's problems, and consistent with our view that it is essential to implement the NDIS properly, a temporary suspension of the rollout on a specific regional basis should be considered, or the schedule for rollout otherwise altered until all key stakeholders can be satisfied that the framework exists for an affordable, sustainable scheme. Where regional rollouts are likely to fail, then delay is a far better outcome for Australians with disabilities and their families.
- Uncertainty for service providers and workers should be resolved as quickly as possible. This should be a subset of effective workforce planning.
- Service providers should be supported in ensuring that the services in demand are able to be provided, and no participant should be disadvantaged as a result of living remotely or in a region where their preferred service is less available or more expensive.
- Assessing costs should be done in a broad manner, looking not only at the NDIS budget but also other social support budgets at the federal, state and territory level.

- Participants and potential participants should have access to costs if they successfully appeal a decision by the NDIA, in a similar model to those seeking to appeal Comcare decisions.