

Tasmanian Government  
Submission to the  
Productivity Commission  
Review of NDIS Costs  
Position Paper June 2017

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# I Overview

The Tasmanian Government welcomes the opportunity to provide input to the Productivity Commission (PC)'s review of National Disability Insurance Scheme (NDIS) costs. The implementation of the NDIS is a key priority of the Tasmanian Government. Over a four year period Tasmania is contributing \$572 million to the scheme. The Tasmanian Government is committed to implementing the full scheme by July 2019. The Tasmanian Government also remains committed to the current funding and governance arrangements as set out in the *Heads of Agreement between the Australian and Tasmanian Government on the NDIS*.

This submission addresses the recommendations and findings set out in the PC's Position Paper. Most of the PC's draft findings and recommendations are supported, particularly in relation to how the National Disability Insurance Agency (NDIA) can improve its skills, practices and processes to support better outcomes for participants. The issues raised by the PC in respect of workforce supply issues, thin markets, boundaries and interfaces with other systems and the interpretation of reasonable and necessary supports are key concerns of the Tasmanian Government as the scheme rollout progresses. The Tasmanian Government does not support the proposed changes to funding and governance arrangements.

Further detail under each of the relevant headings is provided below.

## 2 How is the scheme tracking?

The Tasmanian Government notes the PC's draft findings concerning the scale and pace of the NDIS rollout (draft finding 2.1); that scheme costs are broadly consistent with the PC's 2011 modelling (draft finding 2.2); and that, despite early cost pressures, scheme costs are broadly on track based on the NDIA's long-term modelling of trial and transition data (draft finding 2.3). The Tasmanian Government also notes that the NDIS is improving the lives of many participants and their families, although some participants with complex support needs are not benefiting from the scheme as intended (draft finding 2.4).

The Tasmanian Government remains committed to the agreed rollout timeframes for the NDIS. Despite some delays early in the transition, Tasmanians are entering the scheme largely in line with agreed targets. Tasmania's statewide rollout approach was designed to ensure that participant intake reflects community expectations about timely access to the NDIS and is sustainable for the NDIA, providers and the Australian and Tasmanian Governments. Each year of the transition, the number of Tasmanians in the NDIS will double as new age cohorts enter every six months, meaning that:

- an estimated 1,117 people will become participants in 2016-17;
- an estimated 2,632 people will become participants in 2017-18; and
- an estimated 5,713 people will become participants in 2018-19.

Although Tasmania's transition is tracking well, there are concerns with the NDIA's planning approach, its impact on the participant experience and the quality of NDIS plans, and the consequences for the overall financial sustainability of the scheme. These are the subject of several PC recommendations which are addressed later in this submission.

There are also several key outstanding policy issues currently being addressed nationally, which affect the cashing out of State-run programs that are in-scope for the NDIS<sup>1</sup>, and, as a consequence, affect the implementation of the transition. These are covered in more detail later in this submission.

While scheme costs remain in line with expectations, the Tasmanian Government continues to be concerned about the levels of use of participants' plans. It remains unclear whether plan use levels (cited at 74 per cent in 2015-16) are a result of supply issues, inadequate planning or participant capacity. Plan use compared to committed supports, market responsiveness and participant outcomes are inextricably linked and require rigorous analysis and monitoring to ensure the scheme is performing as intended.

These issues notwithstanding, it is noted that Tasmanian participant satisfaction remains consistently high and participants report positive experiences with respect to the planning process<sup>2</sup>.

## 3 Scheme eligibility

Scheme eligibility is a critical lever in ensuring that the NDIS covers the people it is intended for and that it remains financially sustainable. NDIS eligibility also has significant impacts on state funding contributions and mainstream service systems. The requirement for states' agreement to the eligibility criteria in the NDIS Rules reflects the financial and service risks borne by the states, as well as the policy objectives of a national

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<sup>1</sup> NDIS in-scope programs are defined in the Council of Australian Governments' [Principles to Determine the Responsibilities of the NDIS and Other Service Systems](#)

<sup>2</sup> [NDIS COAG Disability Reform Council Quarterly Report - 31 March 2017](#)

system for disability supports based on insurance principles. The Tasmanian Government supports the need for ongoing analysis and monitoring of scheme eligibility parameters to ensure the NDIS is working as intended. The Tasmanian Government notes that the PC has found that the existing NDIS eligibility criteria reflect the PC's original proposed NDIS target population, noting the two additional criteria which were identified by governments in the development of the scheme following the PC's 2011 report. The inclusion of people with substantially reduced functional capacity to undertake learning or social interaction and children with developmental delay was not part of the PC's original costings, and further analysis is required to understand the impact on scheme sustainability.

The Tasmanian Government supports the PC's observation that people with psychosocial disability require a tailored approach in respect of scheme access, and notes the proposal for a specific gateway for people with psychosocial disability to ensure that the appropriate expertise is available at the first point of contact with the NDIS.

A key feature of the scheme's insurance approach is early intervention which enables upfront investment to support the maintenance or development of an individual's functional capacity and contributes to improved outcomes and reduced costs over the long term. The Tasmanian Government supports the PC's observation that ongoing data collection and analysis of the effectiveness of the scheme's early intervention function is a vital performance indicator.

The NDIS Early Childhood Early Intervention (ECEI) approach commences in Tasmania from 1 July 2017, as children aged four to 11 begin to access the NDIS. It is therefore too early to provide a view on the effectiveness of the approach in Tasmania, although the Tasmanian Government notes that the model is based on best practice and other jurisdictions, notably New South Wales, have reported positive results. The challenging implementation timeframes for ECEI in Tasmania remain a concern, as does the need to ensure that the ECEI partners have appropriate early childhood development expertise to deliver quality outcomes for children and their families.

The Tasmanian Government supports the PC's draft recommendation 3.1 proposing that the NDIA collect data on individuals' relevant activity domains in respect of the disability requirements set out in the *National Disability Insurance Scheme Act 2013* (Cwth).

## 4 Scheme supports

As with scheme eligibility, the scope of supports available in the NDIS underpins both the effectiveness of the scheme in supporting individual outcomes and its future sustainability. The concept of "reasonable and necessary" supports is still relatively new and represents a significant change in the way resources are allocated to people with disability. The allocation of supports is highly dependent on the quality of the planning processes, and as noted by the PC, can result in varied outcomes for individuals who may have similar support needs. NDIS supports also affect the interfaces between the scheme and other service systems, and impacts on governments' continuity of support obligations. Maintaining a role in setting the policy for the scope of NDIS supports through the NDIS Rules therefore remains critically important to state and territory governments.

While the PC has found that many people are benefiting from the NDIS and have greater support, choice and control than previously, there is also evidence of some gaps in support for participants, particularly as funding for NDIS in-scope state and Australian Government programs is cashed out to the NDIS. The Tasmanian Government would welcome further clarity on the application of reasonable and necessary

criteria in NDIA decision-making and notes that the current Federal Court appeal<sup>3</sup> in respect of partial funding of reasonable and necessary supports has direct implications for Tasmanian participants.

The Tasmanian Government commenced cashing out its taxi subsidy program for NDIS participants in September 2016, under the expectation that former taxi subsidy program members would receive reasonable and necessary transport supports in their NDIS plans. NDIS reasonable and necessary transport supports may include transport training to assist participants to travel independently, vehicle modifications and funding for taxi travel or other private transport for participants who cannot travel independently or use public transport due to the impact of their disability. The Tasmanian taxi subsidy program is only available for individuals who cannot travel independently due to the impact of their disability or mobility impairment<sup>4</sup>. When the Tasmanian Government commenced cashing out taxi subsidies for NDIS participants, many participants reported that their NDIS plans did not have sufficient transport supports to enable them to achieve the same outcomes prior to becoming NDIS participants. A lack of transport supports may limit participants' access to other NDIS funded activities and may be contributing to the under-use of plan supports. For some participants there is confusion about the quantum of transport support in their NDIS plans as it may be represented as a separately identified item, or "bundled" into other items such as core supports, capacity building or capital. Part of this confusion may relate to identified deficiencies in the NDIA planning and review process. The Australian Government had previously commenced cashing out its Mobility Allowance for NDIS participants and transport assistance funding is represented in participants' plans at levels which appear to equate to the top two Mobility Allowance funding rates<sup>5</sup>. However, the NDIS transport assistance funding does not appear to include any additional funding that may have been accessed through state taxi subsidies, leading many participants to conclude that the funding had been cut.

In November 2016, in response to stakeholder concerns, the Tasmanian Government established a temporary taxi subsidy safety net for approximately 130 NDIS participants who were former members of the State's taxi subsidy program and who reported that their NDIS plans do not provide adequate funding for transport supports<sup>6</sup>. The temporary safety net was established to enable NDIS participants time to work with the NDIA to ensure that their transport needs were adequately reflected in their plans and to adjust to the new/different supports in their plans. As there continues to be uncertainty about the adequacy of transport supports in NDIS plans, the temporary safety net will extend to all State taxi subsidy cardholders who become NDIS participants during 2017-18 to ensure that Tasmanians are not disadvantaged in the transition to the NDIS. This gap in support effectively means that the Tasmanian Government is paying twice for this cohort of NDIS participants, and in-kind recognition of expenditure on taxi subsidies for relevant participants is currently being negotiated with the NDIA. National policy work to analyse the adequacy of NDIS transport supports is currently underway and is expected to inform future decisions about how the NDIA allocates reasonable and necessary transport support.

In light of the example provided above, the Tasmanian Government strongly supports the PC's draft recommendation 4.1 proposing that the NDIA implements a range of improvements to its planning

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<sup>3</sup> McGarrigle v National Disability Insurance Agency [2017] FCA 308

<sup>4</sup> Transport Access Scheme eligibility and guidelines [http://www.transport.tas.gov.au/\\_data/assets/pdf\\_file/0004/109651/PT200\\_-\\_TAS\\_Guidelines\\_and\\_Application.PDF](http://www.transport.tas.gov.au/_data/assets/pdf_file/0004/109651/PT200_-_TAS_Guidelines_and_Application.PDF)

<sup>5</sup> NDIA Transport Funding <https://www.ndis.gov.au/document/participant-transport-funding-informati.html> and Australian Government Mobility Allowance <https://www.humanservices.gov.au/customer/services/centrelink/mobility-allowance>

<sup>6</sup> Media releases [http://www.premier.tas.gov.au/releases/government\\_to\\_act\\_on\\_taxi\\_subsidy](http://www.premier.tas.gov.au/releases/government_to_act_on_taxi_subsidy) and [http://www.premier.tas.gov.au/releases/taxi\\_subsidy\\_safety\\_net\\_scheme\\_extended](http://www.premier.tas.gov.au/releases/taxi_subsidy_safety_net_scheme_extended)

processes. It is noted that the NDIA is already working to address stakeholder concerns about the quality of the planning processes. The Tasmanian Government further notes that performance data in respect of participant outcomes is still emerging and ongoing monitoring of the adequacy of NDIS plans, as well as the planning process itself, is required.

The Tasmanian Government also supports the PC's draft recommendation 4.2 concerning the appropriate skills mix required for planners to support person-centred planning, and the establishment of specialist planning teams for particular cohorts.

## 5 Boundaries and interfaces with the NDIS

Effective, consistent, and clear interfaces between the NDIS and other service systems is critically important to positive outcomes for NDIS participants. The Council of Australian Governments (COAG) committed through the *Principles to Determine the Responsibilities of the NDIS and Other Service Systems* (the COAG Principles) that the interactions of people with disability with the NDIS and other service systems should be as seamless as possible, and that the NDIS and other systems should work together to ensure integration, coordination and optimal transition between systems for participants. This area of the scheme's operation has the greatest scope for cost-shifting to the states, and the Tasmanian Government supports the concerns raised by the South Australian and ACT Governments about the budget risks of effectively paying twice for participants who continue to access state services that were expected to be in-scope for the NDIS. It is noted that the NDIA's operational documents for interpreting the COAG Principles have not yet been finalised, which contributes to the uncertainty in this area.

The Tasmanian Government supports the PC's draft finding 5.1 and draft recommendation 5.1 concerning the appropriate resourcing of Information Linkages and Capacity Building (ILC), particularly during the transition period. ILC commissioning will not occur in Tasmania until 2019 and there remains a level of uncertainty among providers and participants about how ILC will function. In addition, the national approach to ILC commissioning could potentially disadvantage Tasmanian-based providers which may be best placed to provide local solutions that more effectively interface with local mainstream services, particularly in regional areas.

Draft recommendation 5.2 proposes that governments publish their approach to providing continuity of support, which the Tasmanian Government supports in-principle. However, as noted in the previous section, whether continuity of support is required *outside* the NDIS may be subject to the NDIA's decisions on reasonable and necessary supports and may not be able to be predicted before an individual accesses the scheme and undergoes planning. The taxi subsidy safety net example provided above demonstrates one such area where the COAG Principles have been interpreted differently to the Tasmanian Government's expectation. Other areas where policy is still under development and boundaries are yet to be tested include school transport, accommodation for children aged under 18 (due to their disability) and providing personal care in schools. The PC also notes that access and planning decisions for people with psychosocial disability are also variable, which will impact the continuity of support requirements for this cohort. It therefore may not be possible to fully describe or anticipate continuity of support arrangements in full scheme agreements as proposed by the PC, especially where interface issues are still being tested and detailed policy is yet to be determined.

The Tasmanian Government notes draft recommendation 5.3, which proposes that relevant COAG Councils should have a standing agenda item on NDIS interface issues, and that National Agreements

should be strengthened to include more details around how interface issues are being dealt with. In practice, the relevant COAG Councils have already been deliberating on NDIS interface issues as they arise, as is appropriate. COAG will continue to have oversight of the NDIS, including of the COAG Principles, which are then represented in legislative instruments under the NDIS Act. The proposal to incorporate interface and boundary issues into National Agreements is not supported, given that the issues are highly dynamic and driven by a range of factors, including the NDIA's evolving planning processes, court and tribunal rulings and national policy development. Further, it is the Tasmanian Government's longstanding position that National Agreements should not be unnecessarily onerous and should relate only to the objectives of the agreement.

## 6 Provider readiness

Most specialist disability providers in Tasmania have been exposed to the NDIS through the statewide trial, although individual provider readiness varies. Changes to the NDIA's administrative processes since the commencement of transition have been disruptive and time-consuming for providers, and reports of payment delays and overly burdensome procedures for quoting and claiming persist. Although the NDIA is working to address issues with its automated systems, many providers are still having to resort to manual systems to do business in the NDIS. Meeting the requirements to operate under the National Quality and Safeguards Framework may affect provider viability if there are excessive financial or administrative burdens to meet registration, code of conduct and worker screening requirements. Tasmanian providers continue to adapt to the challenge of a market driven approach, and while evidence of service innovation is emerging, better NDIA market data would assist providers to respond on likely participant demand. The Tasmanian Government has been calling for greater market analysis for some time. Meanwhile low plan usage rates are a possible indication of gaps in the range of supports sought by participants.

Performance indicators for the NDIS market will be critical tools for monitoring readiness and anticipating supply shortages and provider failure. The Tasmanian Government supports draft finding 6.1 concerning thin markets, particularly for regional and remote areas, cohorts with complex, high intensity needs or very challenging behaviours, or in acute need. In these circumstances, it is appropriate that consideration be given to direct commissioning in order to ensure that supports are guaranteed, especially where participant safety is concerned. The Tasmanian Government notes that the NDIA's "Provider of Last Resort" arrangements, referenced in the PC Position Paper, have not yet been negotiated for Tasmania.

In respect of NDIS pricing, the Tasmanian Government agrees with the PC's observation that independent, transparent and evidence-based price controls are a necessary step on the pathway to a mature NDIS market. The Tasmanian Government supports the PC's proposed staged approach to establishing an independent price regulator as set out in draft recommendation 6.1. The Tasmanian Government also supports in-principle the proposed high-level functions of the price regulator, in particular the recognition that transitional pricing is required and efficient prices will differ between states and territories. In the PC's proposed further work for this proposed body, it will be important to specify that in-kind pricing arrangements which are set by the states as agreed under bilateral agreements, are not within the scope of the regulator's role. Further comments on in-kind arrangements are provided under the section on funding below.



## 7 Workforce readiness

The Tasmanian Government notes the PC's draft finding 7.1 concerning the likelihood that the NDIS workforce will not be sufficient to deliver the required supports by 2020. The Tasmanian Government is investing more than \$8 million over six years in skills development to increase the disability workforce in Tasmania, in recognition that an estimated 2,500 additional workers will be needed at full scheme.

The Tasmanian Government notes draft recommendation 7.1 and agrees that further clarification of roles and responsibilities to develop the NDIS workforce is needed. Different levels of government have different policy levers available to influence workforce supply. Existing workforce data sets are limited and some data may not be available on a statewide basis. Where state and territory governments and providers have relevant data to contribute to workforce mapping this should be, and in the case of Tasmania already is, used to understand workforce gaps. However, the NDIA has the most comprehensive market data, and through its market position statements is best placed to assist providers and governments to identify and remedy workforce challenges. The Tasmanian Government supports draft recommendation 7.2 proposing that the NDIA publish more detailed annual market position statements. The Tasmanian Government notes that the sector is awaiting an updated statement for Tasmania, given Tasmania's interim market position statement is now over 12 months old<sup>7</sup> and does not provide data on market disaggregation by even broad segments or services (for example allied health, home care, behavioural support).

Although workforce shortages are a critical risk to the scheme, the Tasmanian Government urges caution around draft recommendation 7.3, which proposes that the NDIA's guidelines on payment for informal carers are relaxed during the transition. In the absence of robust data about workforce supply, the rationale for payment of informal carers needs further development. There is a risk that this may set a precedent in terms of community expectations about payment for providing informal supports more generally, which would undermine the sustainability of the whole scheme. Further consideration of the potential risks of this proposal is needed, including how it would work under the National Quality and Safeguards Framework. It is also not clear how the Tasmanian Government could meet its transitional quality and safeguards obligations under the Bilateral Agreement under this approach.

## 8 Participant readiness

Evidence from both the trial and early stage of the transition confirms that many participants and their families require greater support and capacity building to access the scheme, participate effectively in the planning process, and use the support in their plans. The role of Local Area Coordinators (LACs) and support coordinators is critical in assisting participants understand the NDIS and implement their plans. However, these roles are still maturing and require particular skills and, in the case of support coordinators, specialist expertise that is not readily available in thin markets. Additional resourcing for support coordinators, LACs and ILC should be considered as a key intervention to improve participant outcomes and overall scheme performance.

The Tasmanian Government supports draft recommendation 8.1 proposing the implementation of the NDIA's eMarketplace as a priority. It is noted that in parts of Australia, including Tasmania, the sector is already developing its own online marketplace in the absence of an overarching NDIS eMarketplace. However, there is a concern that alternative sites may lack transparency, increase the fragmentation of

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<sup>7</sup> [NDIA Market Position Statement for Tasmania](#) July 2016

information about the scheme or be driven by service providers rather than consumers.

## 9 Governance

The shared governance of the NDIS, in which all jurisdictions have a role in decision-making over scheme design features, reflects the shared funding arrangements established under the Heads of Agreement between the Australian Government and participating jurisdictions. All governments have an interest in ensuring that the NDIS is financially sustainable and is able to quickly respond to a changing environment. There has been significant work undertaken by Disability Reform Council senior officials to examine options for streamlining decision-making, and the Tasmanian Government is always willing to explore ways to ensure that the scheme is able to quickly respond to emerging challenges.

As has been noted earlier in this submission, NDIS design features such as eligibility and scope of supports have direct and indirect consequences for, and costs to, state systems. It is therefore appropriate that these features, established through the NDIS Category A Rules under the NDIS Act, remain subject to the agreement of all host jurisdictions. The Tasmanian Government does not support any changes to the current Rule-making arrangements with respect to Category A Rules concerning access and reasonable and necessary supports. Despite the one example cited in the PC's position paper, the majority of Category A Rules, covering complex, detailed and technical matters, including how the scheme interacts with state and territory systems, have been developed and agreed by jurisdictions in a highly collaborative and timely manner.

The Tasmanian Government supports draft recommendations 9.3 and 9.4 concerning the NDIA's review process and performance reporting, and notes that in respect of the NDIA's reporting on plan review activity, information about the reasons for an unexpected plan review would be a useful additional indicator.

## 10 Funding arrangements

In its 2011 Inquiry into Disability Care and Support, the PC devoted significant consideration to the broader implications of the choice of funding mechanism that could support the NDIS. That analysis was based within principles of efficient taxation and the productivity impacts of the choice of funding source, as well as the long term sustainability of the scheme. On that basis the PC concluded that the optimal mechanism was that the Australian Government should be the sole funder of the NDIS via a hypothecated tax stream. It also concluded that a pooled funding approach, which was ultimately adopted, was a "weaker alternative".

The Tasmanian Government would encourage the PC to consider its Terms of Reference for the current review relating to funding of the NDIS within its overarching legislated functions, as was done in its 2011 Inquiry into Disability Care and Support. The Tasmanian Government notes that the PC's governing legislation requires it to consider matters relating to industry, industry development or productivity. It is unclear in the Position Paper what the implications of the principles purported as possibly underpinning different approaches to the setting of escalation parameters would be in terms of productivity or industry development. Reference to the theory of efficient taxation as the most appropriate means of raising the NDIS "insurance premium" from Australians, as was done in the 2011 Inquiry, would be welcome.

State funding contributions to the NDIS during transition and at full scheme are fixed and capped, in recognition of states' need for budget certainty and their limited capacity to raise additional funds. As pointed out in the New South Wales submission to the PC's earlier Issues Paper, state contributions were never intended to cover the costs of the scheme. The Tasmanian Government notes that the DisabilityCare

Australia Fund (DCAF) was established to reimburse governments for expenditure incurred in relation to the NDIS, and to fund the implementation of the NDIS in its initial period of operation. Although DCAF was established in July 2014, payments to the states have not yet commenced. Ongoing delays to Tasmania's access to its DCAF allocation is a significant budget risk for Tasmania during transition, and the Tasmanian Government is seeking urgent finalisation of the DCAF National Partnership Agreement. The Tasmanian Government does not support any change to the agreed funding escalation parameters at this time. Given that the PC has found that scheme costs are on track and that there continues to be significant under-use of plans, the rationale for increasing escalation parameters is not clear.

Similarly, the current agreed arrangements for bearing the risk of cost overruns appropriately reside with the Australian Government as the level of government that is best able to fund this liability. The Tasmanian Government notes that the Australian Government stands to benefit if actual scheme expenditure continues to fall short of committed expenditure. Cost overruns outside the scheme largely remain the liability of the states, and the shared responsibility for agreeing key scheme cost drivers such as eligibility and reasonable and necessary supports reflects the shared funding risks. The PC has also identified that a primary driver of future projected cost growth is for those 65 and over, which is an Australian Government funding responsibility.

The ability for the NDIA to retain up to three months of reserves was agreed by governments as part of the funding mechanism for transition in recognition of the NDIA's need to have access to a buffer to fund a surge in claims during the rollout. Any decision on a proposed reserve for full scheme must be informed by detailed actuarial data and analysis, which may be too early to provide at this stage in transition given delays to participant intake and claims for supports.

The Tasmanian Government supports draft recommendations 10.1 and 10.2 concerning targets for the NDIA's annual operating budget and reconsideration of the NDIA's staffing cap to allow development of internal capability, noting that these are matters for the NDIA and the Australian Government respectively.

In respect of draft recommendation 10.3 concerning the phasing out of in-kind funding arrangements by the end of transition, the Tasmanian Government notes that while all governments have agreed to minimise and, where possible, phase out in-kind funding arrangements by the commencement of full scheme, there may be some instances where in-kind arrangements will need to continue beyond 2019-20. Some areas, such as transport and personal care in schools, are still undergoing national policy development and the implementation of an agreed approach in respect of these areas may not be possible by 2019-20. Indeed, the Tasmanian Government has sought in good faith to cash out some services, only to be requested by the NDIA to defer the cashing out until after the transition period. The Tasmanian Government therefore does not support this recommendation due the need to retain some flexibility for these programs where policy is yet to be finalised.



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