

**NDIA Submission
in response to the
Productivity Commission
Position Paper
on NDIS Costs**

July 2017

Chairman's foreword

On behalf of the National Disability Insurance Agency (NDIA), I am pleased to provide this submission in response to the Productivity Commission's Position Paper on National Disability Insurance Scheme (NDIS) Costs.

The overall purpose of the NDIS is clear. It is to improve economic and social outcomes for Australians with a significant and permanent disability. We want to do that by putting participants (our customers) at the core of everything we do, while recognising and respecting the important role played by carers, providers and disability groups. That necessitates our working with participants to deliver an exceptional service and quality plans, while making it easy for providers to work with us. That objective cannot be achieved, however, unless, at the same time and over the long haul, we ensure the Scheme's financial sustainability. The strong public support that this ground-breaking Scheme has inspired requires that the Scheme be operated within the defined funding envelope.

As the Productivity Commission's Report points out, getting the balance right among these objectives—at the same time as rapidly ramping up the number of participants—has not been easy. Indeed, the Productivity Commission's review provides a welcome and comprehensive stocktake of the nature of those challenges; the Scheme's performance; and future priorities.

Much has been achieved to date. The Commission's findings indicate that the Scheme is already providing significant benefits for many participants, who are receiving more supports as well as greater choice and control. The Commission's recognition that "NDIS costs are broadly on track" is also welcome.

But more can and must be done. To name a few, which are highlighted in the Commission's report: Our first and key priority is to improve the quality of the participant and provider experience. Work is advancing on this critical issue, with extensive testing occurring with both participants and providers on options for improved service delivery. We are committed to getting this right before it is rolled out. Second, a major pricing review is underway to assist with the provision of an adequate and vibrant provider market. Third, we are closely monitoring evolving cost pressures within the Scheme and taking measures to assess the effectiveness of responses, such as Early Childhood Early Intervention. Fourth, we are focussed on investing in our staff as well as supporting technology to ensure we deliver value for participants. Finally, we are working actively to deliver on the bilateral estimates, while providing participants with a quality experience.

These issues are largely within the NDIA's control. But rightly, the Commission highlights other areas, which require input from and co-operation with other Australian Government agencies, as well as with State and local governments. This includes the way the NDIS interacts with mainstream services (including in relation to mental health); the need to ensure the ongoing vibrancy of disability service organisations; the challenges associated with greatly expanding the labour market; and the criticality of having adequate measures in place to ensure participant's safety. We welcome the Commission's highlighting the

importance of and challenges associated with these and other areas not completely within the Agency's control.

As this work progresses and the Commission delivers its final report, we look forward to continuing a dialogue with the community and all other stakeholders to ensure that the NDIS emerges as the ground-breaking Scheme of which all Australians can be proud.

Dr Helen Nugent AO

Chairman

National Disability Insurance Agency

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Executive summary

The National Disability Insurance Agency (NDIA) is the independent statutory agency responsible for implementing the National Disability Insurance Scheme (NDIS). The NDIA's purpose is to increase the ability of individuals with a significant and permanent disability (participants) to be more independent, and to engage more socially and economically, while also delivering a financially sustainable NDIS that inspires community and stakeholder confidence. The NDIA is overseen by the NDIA Board, which is responsible for setting the strategic direction of the NDIA and ensuring the effective and efficient performance of the NDIA's functions under section 124 of the *National Disability Insurance Scheme Act 2013* (the NDIS Act).

The NDIA welcomes the Productivity Commission's Position Paper on NDIS Costs. In particular, the NDIA acknowledges the constructive engagement of the Commission in its study of this ground-breaking Scheme.

The NDIA is pleased that the Commission considers that the benefits of the Scheme are starting to be realised within an appropriate funding envelope. As of 30 June 2017, 97,000 participants had joined the Scheme, with most of those participants seeing improved outcomes, including greater well-being and more choice and control over their lives. The NDIA also notes the Commission's finding that "NDIS costs are broadly on track with the NDIA's long-term modelling". At Full Scheme in 2019-20, the NDIS is expected to cost an estimated \$22 billion, while supporting around 460,000¹ participants. The NDIA is committed to operating within that funding envelope, while delivering a high-quality experience to all eligible participants.

The NDIA recognises the ambitious nature of this reform and the challenges this brings.

- It is well recognised that, immediately following the launch of Transition in July 2016, the NDIA experienced significant difficulties in meeting bilateral estimates. This impacted the ability of the NDIA to deliver the exceptional service for participants to which it aspires. As the Commission observes, this was due to a combination of the introduction of new systems and processes; the pace of the participant uptake; information and communication technology (ICT) challenges; and greater use of telephone planning.
- Over and above these factors, inherent uncertainties exist in relation to the Scheme's ability to meet rollout schedule estimates. These uncertainties include participant readiness to join or phase into the Scheme, and difficulties contacting participants due to multiple sources of contact data of varying quality. These factors, which have already contributed to a slower intake, are likely to continue.

¹ Includes all participants throughout Australia under the age of 65. The Commission's figure of 475,000 includes those above the age of 65.

The NDIA is cognisant of the risks inherent in the current rollout schedule, and is taking measures to understand and mitigate those risks.

- **The NDIA is unequivocally committed to delivering a quality experience for participants and providers** centred on an outcomes-focused approach. This is the overarching objective of the NDIS, which must guide the NDIA's decision-making and the speed of roll-out, while recognising the undoubted benefits that participants gain from entering the Scheme.
- **Significant work is underway to improve the Scheme's operation** in light of the difficulties that have emerged. More specifically, the NDIA has been working with participants and providers to identify what needs to be done to deliver a quality experience. While this work is progressing well, further consultation with the sector is underway to test the proposals. Pilots will then occur. In addition, a major pricing review is underway to address key provider feedback. To facilitate market development, work will be undertaken to make accessible more granular information on what supports are required and available in local markets.
- **The NDIA will continue to proactively manage cost pressures to ensure financial sustainability.** The NDIA is committed to the proactive management of costs within the available funding envelope. This is critical to the Scheme's ongoing sustainability.
 - One of the main advantages of the Scheme's insurance-based approach is that emerging cost pressures can be identified and responded to. This was evident in the NDIA's response to a higher than expected number of children entering the Scheme, which prompted the introduction of the NDIA's Early Childhood Early Intervention (ECEI) approach. While it is still too early to assess the impact of this initiative, it is hoped that it will provide a meaningful benefit for children with developmental delay, at the same time as assisting with Scheme sustainability.
 - While cost pressures have historically been partially offset by lower than expected plan utilisation, other cost pressures exist and will emerge in future. As highlighted by the Commission, it is essential that the NDIA has maximum flexibility to respond to and address such cost pressures. This might include making increased upfront investments, as the Commission suggests. At the same time, clarifying boundary issues with mainstream services, including those that exist in psychosocial areas, is essential.
 - Cost pressures can also be alleviated by an increased and early investment in Information, Linkages and Community (ILC) programmes, which are designed to connect people with disability—both inside and outside the NDIS—with appropriate (including mainstream) services. More specifically, the NDIA supports the Commission's view that it is a "false economy" to have too few resources for ILC activities during Transition. A well-functioning ILC program should help improve participant outcomes, while contributing to Scheme sustainability.

While the NDIA welcomes the Commission's findings overall, it considers that two recommendations, if implemented, would be counterproductive to the Scheme's success, both in the short and longer term:

- On Draft Recommendation 6.1, the NDIA considers that the introduction of an independent price regulator would adversely impact the NDIA's ability to contribute to effective market stewardship. The NDIA is committed to price deregulation once the

market is sufficiently mature to offer diverse, innovative choices to participants. In the interim, however, price control is critical to appropriately managing the Scheme’s rapid Transition. The NDIA considers the Agency is best placed to regulate price, including by ensuring that pricing of services is consistent with what the Agency determines to be the “reasonable and necessary” level of funding for particular supports.

- On Draft Recommendation 7.3, the NDIA considers that relaxing restrictions on paying informal carers could hinder social benefits for participants and their families, as well as disproportionately placing the sustainability of the NDIS at risk.

Notwithstanding its reservations in relation to these two recommendations, the NDIA commends the Productivity Commission for its comprehensive, fact-based analysis of the status of the Scheme.

In this submission, the NDIA’s responses are provided under chapter headings that mirror those of the Commission’s Position Paper. The table below summarises the NDIA’s responses.

Productivity Commission position	NDIA response
Draft Finding 2.1	Agree
Draft Finding 2.2	Agree
Draft Finding 2.3	Agree
Draft Finding 2.4	Agree
Draft Recommendation 3.1	Agree
Draft Recommendation 4.1	Agree
Draft Recommendation 4.2	Agree
Draft Finding 5.1	Agree
Draft Recommendation 5.1	Agree in part
Draft Recommendation 5.2	Agree
Draft Recommendation 5.3	Agree
Draft Recommendation 6.1	Disagree
Draft Finding 6.1	Agree
Draft Finding 7.1	Agree
Draft Recommendation 7.1	Agree
Draft Recommendation 7.2	Agree
Draft Recommendation 7.3	Disagree
Draft Recommendation 8.1	Agree
Draft Recommendation 9.1	Agree
Draft Recommendation 9.2	For Governments to decide
Draft Recommendation 9.3	Agree
Draft Recommendation 9.4	Agree
Draft Recommendation 9.5	Agree
Draft Finding 10.1	For Governments to decide
Draft Finding 10.2	For Governments to decide
Draft Recommendation 10.1	Agree
Draft Recommendation 10.2	Agree
Draft Recommendation 10.3	Agree

1. About this study

The NDIA has organised its response to the Productivity Commission's Position Paper according to the chapters of the Commission's Position Paper.

Each chapter of this response is organised into two parts: first, general observations; and second, specific responses to the draft findings of the Commission.

In the case of Chapter 1, there are no specific findings, so this chapter provides only general observations.

1.1 General observations

The NDIA welcomes the Productivity Commission's acknowledgement of the context within which the NDIA is operating. This includes:

- The objectives of the NDIS as embedded in the Act;
- The ground-breaking nature of the Scheme and the extent of the challenge involved, including:
 - The significant benefits that will accrue to participants as a result of an outcomes-focused approach;
 - The insurance-based, long-term nature of the Scheme; and
 - The magnitude of the change involved, particularly for providers;
- The overwhelming support for the Scheme;
- The way the Scheme is designed to interact with a broader system of supports; and
- The need to ensure financial sustainability, as well as to manage the variables that drive Scheme costs.

Equally, the NDIA supports the Commission's proposition that the long-term financial sustainability of the Scheme (for current and future participants) relies on it being customer focused while delivering "reasonable and necessary" benefits with an outcomes-focus. It also supports the notion that the ultimate test of sustainability will be the "taxpayers' continuing willingness to pay" for the Scheme. In that context, the NDIA recognises that it has an obligation to operate within the funding made available by Governments.

At the same time, the NDIA is acutely aware that it must not allow the transitional issues that have been experienced to date (due to the size, speed and complexity of the rollout) to become common practice in its operations. To that end, the NDIA has been moving rapidly to understand and address the Transition issues it has encountered.

The NDIA endorses the Productivity Commission's clear articulation of context outlined in Chapter 1.

2. How is the Scheme tracking?

This chapter provides the NDIA's response to Chapter 2 of the Commission's Position Paper.

2.1 General observations

The NDIA appreciates the Productivity Commission's comprehensive overview of how the Scheme is tracking.

The paper provides a timely reminder of the complexity and speed of the rollout; the challenges faced both during the Trial and early Transition (particularly in relation to ICT); and the extent to which the bilateral estimates were met during the Trial, as well as the Transition to date.

In addition, the NDIA acknowledges the Commission's recognition of the NDIA's enhancements to the way long-term cost projections are being made. This includes the way participant numbers are modelled, average package cost assumptions, and data on incidence and mortality rates. At the same time, the NDIA is indebted to the Commission's 2011 modelling, which has proven invaluable. In particular, the reconciliation of participant numbers and Scheme costs across the Commission's 2011 estimates, updated estimates, and the NDIA's projections is important. It demonstrates that the differences are small.

The Commission's analysis of participant profile and package costs, by disability type, age, function, and jurisdiction, as well as the level of utilisation and emerging cost pressures, is largely consistent with the thinking of the NDIA.

Finally, at this early stage of the Transition, the NDIA welcomes the assessment of the extent to which outcomes for participants, families and carers are being realised. Realising improved outcomes for participants is central to the NDIA's mission.

Specific feedback relating to the four Draft Recommendations outlined in Chapter 2 of the Commission's Position Paper are provided in Section 2.2.

2.2 Responses to the Commission's positions

Productivity Commission Draft Finding 2.1

The scale and pace of the National Disability Insurance Scheme (NDIS) roll out to Full Scheme is highly ambitious. It risks the National Disability Insurance Agency (NDIA) not being able to implement the NDIS as intended and it poses risks to the financial sustainability of the Scheme. The NDIA is cognisant of these risks.

NDIA's response:

The NDIA agrees with this Draft Finding.

The NDIA acknowledges the ambitious nature of the NDIS rollout to Full Scheme, and is cognisant of the inherent risks presented by the current rollout schedule (as agreed in the Bilateral Agreement between the Australian and State and Territory Governments). The NDIA continues to actively work to mitigate these risks.

The NDIA highlights the following contextual factors:

- The Commission’s acknowledgement that the estimated numbers of transitioning participants outlined in the Bilateral Agreements are “estimates, not hard targets”.
- The original estimates of the expected presentation rate were based on demographic data available at the time (e.g., geography, age, and the scope and nature of the previous State and Territory client bases). The early Transition experience indicates that other “real-time” factors are also determinants of the actual participant presentation rate (e.g., participant readiness to join or phase into the Scheme, and difficulties contacting participants due to multiple sources of contact data of varying quality). These factors have slowed intake, and this lag is likely to be reflected in intake figures for subsequent quarters until the Full Scheme is implemented.
- Should actual participant numbers lag behind estimates, this does not present a risk to the financial sustainability of the Scheme. Financial demands placed on the Scheme are principally the product of two factors: participant numbers and plan cost. Slower than expected participant presentation rollout therefore reduces financial pressure. The NDIA closely monitors and manages unexpected plan cost pressures through means other than a slowdown in rollout.

In its overview of the Position Paper, the Commission identified three key areas of challenge that have arisen from the NDIS rollout schedule: planning processes, market development, and the broader supporting infrastructure for the Scheme. These areas are addressed in detail in the relevant chapters of this response.

With respect to the planning process—which has presented the most pressing challenges to Scheme rollout from July 2016 to date—significant work is being undertaken to improve the Scheme’s operation. Work to improve the participant and provider pathways (discussed in detail in Chapter 4) is well underway and, in close consultation with stakeholders, is focusing on reforms that will make processes more responsive and flexible to participant and provider needs, and more focused on outcomes across participant lifetimes. These reforms will assist the NDIS to keep pace with the rollout schedule, while achieving participant goals. The quality of participant outcome is the NDIA’s primary consideration relative to the speed of the rollout.

Productivity Commission Draft Finding 2.2

While a different methodology is used, the National Disability Insurance Agency projections of Scheme costs are broadly consistent with the Productivity Commission’s modelling of the Scheme in 2011, after accounting for sector-specific wage increases, population changes, and costs associated with participants aged over 65 years (who were not included in the Commission’s estimates).

NDIA's response:

The NDIA agrees with this Draft Finding.

The NDIA's Quarterly Report (published on 31 March 2017) indicated that the Commission's estimate of the longer-term cost of the NDIS remains the best estimate of a well-managed NDIS. It also highlighted risks to the Scheme's financial sustainability, and the effectiveness of early mitigation strategies to address these risks.

Productivity Commission Draft Finding 2.3

The National Disability Insurance Scheme, at the end of Trial, came in under budget. This was in large part because not all committed supports were used (in 2015-16 the utilisation rate was 74 per cent).

Based on Trial and Transition data, Scheme costs are broadly on track compared to the National Disability Insurance Agency's (NDIA) long-term modelling. At this stage, early cost pressures (such as greater-than-expected numbers of children and higher-than-expected package costs) have been offset by lower-than-expected levels of utilisation.

The NDIA has put in place initiatives to address emerging cost pressures. It is too early to assess the effectiveness of these initiatives.

NDIA's response

The NDIA agrees with this Draft Finding.

To ensure that Scheme costs remain on track, the NDIA is committed to carefully managing cost pressures so that participant outcomes are delivered within the Scheme's funding envelope.

Notwithstanding that commitment, higher than expected numbers of children entering the Scheme and the profile of package costs have been issues that the NDIA has sought to address. The trend for plan size to increase after plan reviews is being closely monitored.

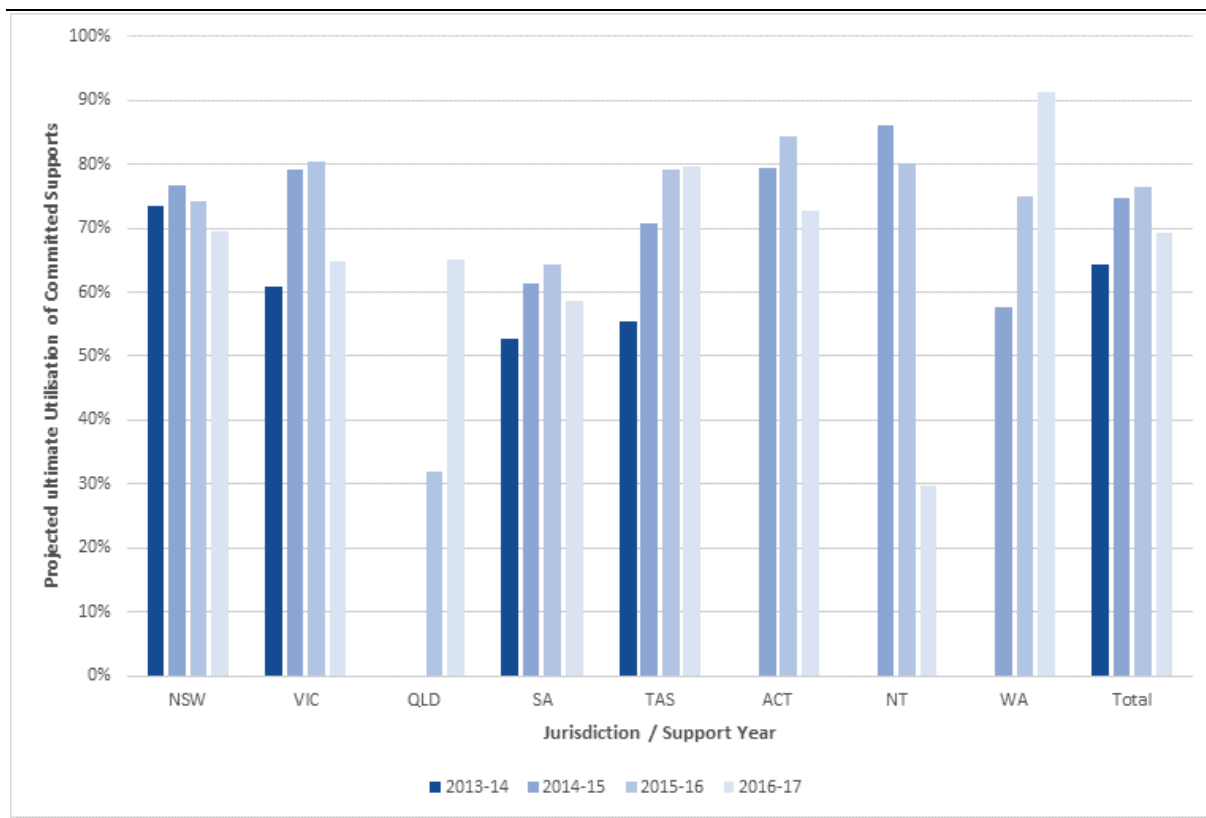
The Early Childhood Early Intervention (ECEI) approach has sought to meet the needs of children, at the same time as addressing the issues of ongoing financial sustainability. While it is too early to assess the impact of this programme, the NDIA is actively monitoring its effectiveness. Initiatives are also underway to better understand the nature of package costs.

Low utilisation rates have offset these pressures, as the Commission recognises. On the ground experience indicates that the reasons for low utilisation rates vary depending on the individuals and their circumstances. Reasons include participants experiencing difficulties understanding and navigating the system; insufficient supply of existing types of supports to meet demand; lack of participant choice for innovative supports or supports that meet participant preferences; and lack of information for participants on how much of their supports are available. The NDIA's work on improving participant pathways (which is currently underway) is designed to assist with many of these issues.

It should also be noted that participant utilisation rates have increased as participants spend more time in the Scheme. A participant’s initial plan typically has lower utilisation of committed supports than subsequent plans, and there are lower utilisation rates for capacity building supports for those who have been in the Scheme for lesser periods of time.

Although the average utilisation for participants in 2016–17 appears lower than previously (see Exhibit 1), this is due to the greater proportion of participants who were new to the Scheme. The lower utilisation rates in 2016–17 coincided with an uptick in participant intake into the Scheme (with approximately 48,500² new participants, versus a total of approximately 30,000 participants at the end of the Trial). Since utilisation rates are typically lower for new participants, average utilisation is expected to return to higher levels in the future. This will require proactive management of other aspects of Scheme costs to offset this trend.

EXHIBIT 1 – EXPECTED³ UTILISATION OF SUPPORTS BY JURISDICTION AND SUPPORT YEAR, USING DATA AS OF 30 JUNE 2017



² If children in the ECEI gateway are included, this figure is approximately 54,500.

³ Payments often lag behind service provision. The estimate is therefore adjusted for expected future payments (i.e., where a support service has been provided but payment not yet made).

Productivity Commission Draft Finding 2.4

Early evidence suggests that the National Disability Insurance Scheme is improving the lives of many participants and their families and carers. Many participants report more choice and control over the supports they receive and an increase in the amount of support provided.

However, not all participants are benefiting from the Scheme. Participants with psychosocial disability, and those who struggle to navigate the Scheme, are most at risk of experiencing poor outcomes.

NDIA's response:

The NDIA agrees with this Draft Finding.

The NDIA welcomes the positive affirmation that the lives of many participants, along with their families and carers, are being significantly improved. This is consistent with monitoring undertaken by the NDIA.

However, the NDIA recognises that this is not yet universally the case—for example, for participants with psychosocial disability, and for those who find it difficult to navigate the Scheme.

- The NDIA acknowledges, that the ease and confidence with which participants can navigate the planning pathway is an overarching factor that is critical to achieving better participant outcomes. The NDIA is making concerted efforts to improve participant experience in the Scheme, while the NDIS Outcomes Framework will ensure continuous monitoring and reporting of participant outcomes.
- Furthermore, the NDIA is aware of sector-based concerns that having to identify as having a permanent disability does not align with the mental health sector's focus on recovery. There is, however, growing understanding within the sector that the emphasis on recovery is entirely consistent with the approach of the NDIS, which focuses on outcomes. While the health and mental health systems have responsibility for assisting participants with the clinical and medical treatment necessary for their recovery, the NDIS can help participants by providing choice and control over supports that can increase their independence and social and economic participation, and which can aid with their recovery. If necessary, such supports can be provided throughout a participant's lifetime, recognising that some psychosocial disabilities are episodic. Notwithstanding these issues, the number of people entering the Scheme with psychosocial disability is in line with expectations in the all age sites that commenced the Trial in 2013–14.
- In response to concerns from the psychosocial disability sector, the NDIA has a rolling program of work to address other issues that have been raised. This includes:
 - Development of staff skills (i.e., training in mental health, subject matter expertise, community of practice) and production of resources (such as practice guides) to support staff to engage and work effectively with people with psychosocial disability;
 - Factsheets and resources to help people with psychosocial disability, their families, carers and service providers to navigate the participant pathway; and

- Engagement and communication with key stakeholders through the National Mental Health Sector Reference Group to provide information on the transition of mental health services to the NDIA, understand the progress of people with psychosocial disability in the Scheme, and work collaboratively to address barriers and challenges for the mental health sector (such as understanding the NDIA access process).

3. Scheme eligibility

This chapter provides the NDIA's response to Chapter 3 of the Commission's Position Paper.

3.1 General observations

The NDIA agrees with the Commission's view that clarity and control in relation to eligibility criteria are critical to controlling costs in an uncapped Scheme. The NDIA is committed to ensuring that it operates within its defined funding envelope.

The NDIA notes the Commission's observation that the eligibility criteria (as defined in the NDIS Act) are broader than those proposed by the Commission in its 2011 report, including where an individual has substantially reduced functional capacity to undertake the activities of *learning or social interaction* (as opposed to restricted mobility, self-care, self-management and communication), and including children receiving individualised support under the early intervention requirements if they have developmental delay.

More specifically, the NDIA notes and agrees with the Position Paper's general observations in relation to children:

- Access to early intervention is likely to lead to improved outcomes;
- A firm rationale exists for children with developmental delay to be included, but the bar for meeting criteria for individualised supports should be high;
- The NDIA should focus on developing an evidence base for the impact of early intervention on developmental delay;
- The process of direct transfer from the States through which children are entering the Scheme is more likely to have led to increased numbers than the eligibility criteria;
- The ECEI approach has an important role to play, although it is too early to tell if it has been successful in upholding the Scheme criteria for individualised supports;
- Once the processes have been reviewed, the situation should be closely monitored to identify if a disproportionate number of children continue to enter the Scheme;
- There is a need for all Governments to work together to ensure that there are supports outside of the NDIS for children who do not meet the eligibility criteria; and
- The NDIA remains strongly of the view that increased accountability and reporting of other service systems that are most appropriately responsible for assisting children with developmental delay is imperative.

In relation to individuals with a psychosocial disability, the NDIA supports the following views expressed by the Commission:

- The NDIS investment approach and the mental health recovery model are well aligned, despite concerns in some sectors about incompatibility. More specifically, the Commission stated that "permanence is about the irreversible nature of a disability

which may be of an episodic nature”, and this is accepted in the operational guidelines of the NDIA;

- The Commission considers it would be unwise to relax or loosen the definition of permanency and how it relates to psychosocial disability;
- The NDIS is not meant to support everyone with a psychosocial disability and other systems need to fulfil their roles;
- In the interest of improving outcomes for participants with a psychosocial disability, the NDIA’s process for interaction could be improved, including by:
 - Only using telephone planning where that is the preference of the participant; and
 - Improving the knowledge and skills of partners and planners about the types of supports and interactions that are most effective for people with psychosocial disability.

More specific feedback in relation to the Draft Recommendation and two Information Requests outlined in Chapter 3 of the Commission’s Position Paper are provided in Section 3.2.

3.2 Responses to the Commission’s positions

Productivity Commission Draft Recommendation 3.1

When determining that an individual is eligible for individualised support through the National Disability Insurance Scheme under the disability requirements, the National Disability Insurance Agency should collect data on which of the activity domains outlined in section 24 of the *National Disability Insurance Scheme Act 2013* (Cwlth) are relevant for each individual when they enter the Scheme.

NDIA’s response:

The NDIA agrees with this Draft Recommendation.

The NDIA agrees that collecting data at entry, about which domains apply to each participant would provide useful information on the drivers of Scheme costs.

The activity domains highlighted in Section 24 of the *National Disability Insurance Scheme Act 2013* (Cth) include communication, social interaction, learning, mobility, self-care and self-management. As the NDIA does not currently collect information for each of these activity domains in any structured format, it is not possible to assess the extent to which one particular domain is driving entry into the Scheme, or how common it is for participants to have reduced functional capacity across multiple domains.

Instead, the NDIA currently uses a number of functional measures to determine a person’s level of function. This indirectly captures activity domain information for a participant. For example:

- Autism and intellectual disability are grouped into four categories (mild, moderate, severe or profound), using the assessment tools DSM-5, Vineland II or the Paediatric Evaluation

of Disability Inventory – Computer Adaptive Test (PEDI-CAT) for children. These assessment tools have domain level scores that indirectly map to the activity domain information. For example, if the disability has been deemed profound, it means the person is unable to do, or always needs help with a core activity task. PEDI-CAT measures abilities in four domains: daily activities, mobility, social-cognitive and responsibility.

- Acquired brain injuries are assessed using the Care and Needs Scale, which evaluates the expected level of attendant care needs for participants based on a needs assessment.
- Spinal cord injuries are assessed based on the level of the lesion and the completeness of the injury, which determine the functional impairment as a result of a spinal cord injury.
- A number of other tools are used for other types of disabilities, but where no specific tool is available, the WHODAS 2.0 is used for adults and the PEDI-CAT is used for children. WHODAS 2.0 measures cognition, mobility, self-care, getting along with others, life activities and participation through a questionnaire.
- A number of mental health outcome measures are used, including Health of the National Outcome Scale (HONOS) and Life Skills Profile 16 (LSP16), as is routinely the case in the mental health sector.

Collecting specific data on the activity domains highlighted in Section 24 of the Act will require data definitions and response formats to be developed. The Survey of Disability, Ageing and Carers (SDAC) has developed questionnaires for some of these activity domains and can be used for initial guidance. This information would be captured at access and review points in the participant pathway. From Full Scheme (1 July 2019), the NDIA will be in a position to commence publishing the recommended information.

Productivity Commission Information Request 3.1

The Commission is seeking feedback on the advantages and disadvantages of maintaining “List D – Permanent Impairment/Early Intervention, Under 7 years – No Further Assessment Required” in the National Disability Insurance Agency’s operational guidelines on access. Feedback is sought on the extent to which the list:

- *Reduces the burden on families to demonstrate that their child will benefit from early intervention and/or provides certainty that support will be provided*
 - *Reduces the burden on the National Disability Insurance Agency of assessing whether children are eligible for early intervention support under the National Disability Insurance Scheme Act 2013 (Cwlth)*
 - *May be contributing to supports being provided to children who are unlikely to benefit from such supports*
 - *May be discouraging or inhibiting exit from the Scheme.*
-

NDIA’s response:

The NDIA supports the maintenance of List D.

As outlined by the Commission, List D represents a number of tradeoffs.

It has a series of advantages: it places less responsibility on families to demonstrate eligibility; it reduces the administrative burden on the NDIA; it provides a degree of certainty; and it is a useful communication tool that helps the community to understand the difference between diagnosis and impairment/loss of function. For example, for those with a psychiatric diagnosis, this diagnosis is not a requirement to access NDIS (although this may be helpful, if available), because it is essential to understand the impairment (or the functional impact) resulting from the diagnosis.

It also has disadvantages, primarily that it creates an overly generous entry gateway if set too expansively, and that it risks increased pressure through diagnosis-based entry to the Scheme.

The NDIA is of the opinion that List D does not result in supports being provided to children who are unlikely to benefit from them. Rather, it facilitates streamlined access for children with the listed diagnoses.

On balance, the NDIA considers that the benefits of List D are worth the associated risks. In particular:

- Facilitating streamlined access to the Scheme promotes the best possible outcomes for the child by providing timely access to assistive technology (AT) equipment. This access may serve to sustain informal supports and thereby also aid Scheme sustainability.
- When read in conjunction with other lists, List D facilitates a clear articulation across the early childhood sector that not all diagnoses result in functional impairments that meet the eligibility requirements for the Scheme. It therefore contributes to decreasing the demand for access to the Scheme.

However, it is important to ensure that List D remains up to date. The NDIA will be establishing mechanisms to ensure the expert and independent assessment of List D over time. Robust monitoring systems also need to be activated to avoid sharp practice and/or fraud.

Productivity Commission Information Request 3.2

The Commission is seeking feedback on the benefits and risks of maintaining “List A – Conditions which are Likely to Meet the Disability Requirements in section 24 of the NDIS Act”. In particular:

- *To what extent does List A reduce the burden for people with permanent and significant disability of entering the National Disability Insurance Scheme under the disability requirements?*
 - *Is there any evidence that people who do not meet the disability requirements are entering the scheme under List A?*
-

NDIA’s response:

The NDIA supports the maintenance of List A.

List A was developed in the early stages of the Trial in response to requests for increased clarity around the application of access requirements. In particular, people with disability emphasised that they were frustrated at having to prove their disability to government agencies on an ongoing basis, particularly where this was a permanent, genetic or congenital disorder.

There is little evidence to suggest that the entry pathway for people under disability requirements is putting pressure on Scheme costs. However, the NDIA has noted that Autism Spectrum Disorders may represent a difficulty for List A, and there is evidence to suggest that use of the diagnosis process for autism may differ from the process's intent (resulting in access to the Scheme where eligibility requirements would not otherwise be met). A wide range of people conduct DSM-5 assessments, including paediatricians, psychologists and therapists (for example, speech pathologists). The NDIA is currently working with the Autism Cooperative Research Centre (CRC) to establish guidelines for the diagnosis of Autism.

The NDIA's comment under "A clarifying note on assessment of children's eligibility to enter the Scheme" below should be noted. This relates to the use of diagnostic criteria to assess eligibility.

A clarifying note on assessment of children's eligibility to enter the Scheme

In its Executive Summary (page 21; and related to the discussion in Section 3.2 of the Commission's Position paper), the Productivity Commission made the following statement, which is quoted in full:

"Assessment of the functional capacity of children in the scheme suggests that the entry pathway may not be sufficiently robust, as 40 percent of children in the Scheme do not have any identified defects compared to the normal range for their age. This points to a problem with eligibility screening, and underscores the importance of rigorous entry and exit pathways in moderating scheme costs. The development of the ECEI pathway for children to enter the scheme seeks to tighten the entry pathway for children aged 0-6 years".

The NDIA considers that the ECEI pathway has an important role to play in assisting children under the age of six who are showing signs of developmental delay and/or autism, as well as being useful in assisting with assessing eligibility.

However, the NDIA would like to provide additional contextual and clarifying information in relation to the Productivity Commission's observation, given the broader public attention the above statement has received. In particular, the 40 percent refers to a sample of children who entered the Scheme during the Trial, and does not reflect figures for the Full Scheme rollout or the subsequent introduction of the ECEI approach. More specifically:

- There are a variety of approaches that can be used to assess children's eligibility for the Scheme, including medical diagnosis or use of a functional assessment tool.
 - A medical diagnosis approach was used during the Trial to both transfer children who were previously in State and Commonwealth Schemes, as well as to assess new children for entry into the Scheme.

- An alternate approach is to use an assessment tool such as the PEDI-CAT, which provides information on a child’s function in four domains: daily activities, mobility, social/cognitive and responsibility.
- During the Trial (when children entered based on a medical diagnosis), the NDIA identified that some Trial sites had higher than expected numbers of children (particularly with developmental delay and autism). Based on that observation, the NDIA was concerned that reliance on a diagnosis approach might not adequately capture the level of function (and hence the level of support needed by participants).
- In 2016, the NDIA sought to understand the extent to which the medical diagnosis approach and the PEDI-CAT assessment tool were producing similar results. To that end, 4000 children who had entered the Scheme during the Trial (not Full Scheme rollout) under the medical diagnosis approach were back-tested using the PEDI-CAT assessment tool. The results of that evaluation showed that 40 percent of children who had entered under the medical diagnosis approach did not appear to have the same level of functional impairment as indicated by the results produced by the PEDI-CAT approach.⁴
- As a result of that work, the NDIA moved to implement the ECEI approach from 1 July 2016. Under this approach, children under the age of six who do not have a defined and clear disability do not enter the Scheme as a participant, but instead are supported through therapy until (at a specified point) they can be assessed by the PEDI-CAT tool. The ECEI gateway supports children in the following ways:
 - Identifies children who will need ongoing support from the NDIA and assists them in obtaining an individual support package;
 - Identifies children who will need an individual early intervention support package and then assists those children to exit the Scheme once they are appropriately supported in community and mainstream settings; and
 - Assists children who do not need an individual package from the NDIA but would benefit from some support to increase their inclusion in community and mainstream settings.

In this way, eligibility for entry into the Scheme has been significantly tightened, while also providing early intervention for children who show signs of autism and can benefit from therapy.

⁴ The threshold used is two standard deviations from the mean (i.e., 40 percent of children were not in the bottom 2.5% of their age group for any domain).

4. Scheme supports

This chapter provides the NDIA's response to Chapter 4 of the Commission's Position Paper.

4.1 General observations

The NDIA acknowledges and supports the following observations made by the Productivity Commission in relation to Scheme supports:

- It is essential that the NDIA strikes the right balance in relation to supports:
 - Over-coverage could create cost pressures and pose a risk to financial sustainability; but
 - Under-coverage could mean that the benefits of the NDIS are not fully realised;
- The NDIS is not meant to replace mainstream or other specialist services;
- Section 34(1) of the NDIS Act defines the criteria for determining supports within the parameters of “reasonable and necessary”:
 - Will assist the participant in achieving their stated goals and aspirations;
 - Will facilitate the participant's social and economic participation;
 - Represents good value for money;
 - Will (or is likely to) be effective and beneficial for the participant;
 - Should (within reasonable expectations) be provided by families, carers, informal networks or the community; and
 - Is most appropriately funded or provided through the NDIS.
- What is “reasonable and necessary” is not specifically defined within the legislative framework and is likely to be shaped over time by court and tribunal decisions, which may have adverse implications for the Scheme's financial sustainability.

In addition, and consistent with work the NDIA has been undertaking since April, the NDIA agrees with the following observations made by the Productivity Commission in relation to the planning process:

- The planning process should be underpinned by the following core principles:
 - Outcomes-focused;
 - Person-centred with an individualised approach;
 - Consistent and fair;
 - Aligned with achieving financial sustainability; and
 - Investment-based.
- Improving the planning process can make a difference to the following:

- The outcomes achieved for participants;
 - The quality of the participant experience;
 - The Scheme’s financial sustainability; and
 - The achievement of the bilateral estimates.
- Addressing the following issues in a revised planning process is important:
 - Developing an outcomes-focused conversation from the outset;
 - Providing essential pre-planning support;
 - Engaging face to face with participants (rather than over the telephone);
 - Providing more constant points of contact over time;
 - Reducing the number of hand-offs for participants;
 - Increasing the time spent with participants about plan content;
 - Increasing the transparency of the planning process;
 - Increasing access to planners and partners;
 - Ensuring a more tailored planning approach that reflects:
 - Needs arising from the type of disability; and
 - Language and cultural barriers;
 - Increasing the transparency of what will be in the plan; and
 - Increasing the skills and training of planners and partners, reducing the variability in the quality of the experience and increasing specialist skills as required.

In a nutshell, a relationship rather than a transactional approach needs to be adopted.

The NDIA has recognised and been cognisant of these issues for some time. Since early April 2017, the NDIA has been working individually and in workshops with more than 200 participants and their families, providers, peak disability bodies, front-line staff, the Department of Human Services (DHS), Department of Social Services (DSS) and other stakeholders from all States and Territories to identify what needs to improve and how that might occur. Stakeholder submissions to the Productivity Commission outlining improvement opportunities have also been recognised, as has feedback from the Independent Advisory Council and views expressed at the Joint Standing Committee.

From that process, 400 specific improvement ideas and 200 potential solutions have been generated. Detailed work is currently underway to incorporate participants’ and providers’ insights to ensure that the NDIA delivers a high-quality, outcomes-focused participant and provider experience that is simple, clear and accessible, while also ensuring the Scheme’s financial sustainability.

A new integrated end-to-end approach to participant and provider pathways has been developed, but it is still being fully tested with participants and providers and is, therefore, subject to modification. It will also be piloted before it is implemented.

More specific feedback in relation to the two Draft Information Requests and Draft Recommendations outlined in Chapter 4 of the Commission's Position Paper are provided in Section 4.2.

4.2 Responses to the Commission's positions

Productivity Commission Information Request 4.1

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

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

NDIA's response:

The NDIA is not currently seeking a change to the test or the criteria outlined in s 34(1) of the NDIS Act.

The "reasonable and necessary" criterion is a hallmark of the insurance principle and is crucial to ensuring that participants receive the support they need to enhance their social and economic participation and independence, and to realise their personal aspirations. Any legislative change at this stage may lead to participants experiencing a "fixed menu" of support options, which is inconsistent with the principles of choice and control, individualisation and innovation.

Over time, the definition and scope of "reasonable and necessary" will be shaped by court and tribunal decisions, and these decisions will be critical to the future sustainability of the Scheme. As noted in the NDIA's previous submission (in response to the Commission's Issues Paper), the NDIA has developed operational guidelines to assist decision-makers apply the legislative criteria for "reasonable and necessary". The NDIA accepts that this guidance will need to be constantly refined to remain current with good practice, and to reflect outcomes of AAT and court decisions.

However, the NDIA recognises that the "reasonable and necessary" test is often difficult for participants, staff and the participants' communities to understand. For example:

- The NDIA's experience during the Trial was that the consistent and effective application of these principles can be challenging; and
- Interface issues can further increase the difficulty because a participant might need to access services outside the NDIS (for example, through the education, health, justice or transport systems), that may not be provided by those systems in a consistent manner.

To improve participants' experience, the NDIA can provide more examples of what constitutes "reasonable and necessary". The use of the "typical support package" as a basis

for a conversation can also enhance participants' understanding of the meaning of "reasonable and necessary".

Productivity Commission Information Request 4.2

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

NDIA's response:

Local Area Coordinator (LAC) partners are close to communities and provide vital assistance to participants with pre-planning, planning in some instances, and implementation.

However, under the NDIS Act, plan approval rests with the delegated NDIA staff member who makes a funding decision.

The NDIA is not currently seeking legislative change to allow the delegation of plan approval to LAC partners.

In taking this approach, the NDIA has assessed the benefits, costs and risks.

The primary benefit of delegating plan approval is that it would enable participants to have a single point of contact, not just for pre-planning, but also for information gathering through to plan implementation. This would improve the participant experience and reduce hand-offs.

On the other hand, there are costs and risks:

- It would require a significant additional investment in the LAC partnership;
- It would require a larger investment in quality assurance and oversight to ensure that performance risks are managed;
- It could reduce oversight and control of the Scheme, potentially reducing speed of responsiveness if financial sustainability issues emerge;
- It might reduce the ability of the NDIA to respond expeditiously to participant complaints;
- It would require the renegotiation of LAC contracts; and
- There is a risk that it will reduce consistency across the country in terms of the participant experience, given the diversity of LAC organisations.

Productivity Commission Draft Recommendation 4.1

The National Disability Insurance Agency should:

- Implement a process for allowing minor amendments or adjustments to plans without triggering a full plan review
- Review its protocols relating to how phone planning is used
- Provide clear, comprehensive and up-to-date information about how the planning process operates, what to expect during the planning process, and participants' rights and options
- Ensure that Local Area Coordinators are on the ground 6 months before the scheme is rolled out in an area and are engaging in pre-planning with participants.

NDIA's response:

The NDIA agrees with this Draft Recommendation.

The NDIA's response to each of the four points is provided below.

As an overarching comment (and as outlined in Section 4.1), the NDIA is currently undertaking significant work to improve participant and provider pathways. This work will address the Productivity Commission's first three recommendations:

(a) Implement a process for allowing minor amendments or adjustments to plans without triggering a full plan review

The NDIA agrees that a streamlined approach to making minor changes to a participant's plan in specified instances would enhance the participant experience and improve efficiency.

Currently, minor changes to plans (for example, to alter plan management or add quotes) trigger a plan review. The participant pathway work that is currently underway will streamline this process, enabling small plan changes,

(b) Review its protocols relating to how phone planning is used

The NDIA is moving to make face-to-face planning the default approach, with other channels available for participants who prefer an alternate form of interaction.

This reflects the stated preference of participants, as expressed in workshops with the NDIA.

It will not only allow for a more accurate assessment of a participant's circumstances, but will also create greater engagement, which should lead to better outcomes, higher quality plans and reduced unscheduled reviews.

Furthermore, the NDIA is considering integrating the information-gathering and plan-building meetings into a single face-to-face conversation in order to reinforce the link between the information provided by the participant and the resultant plan.

(c) Provide clear, comprehensive and up-to-date information about how the planning process operates, what to expect during the planning process, and participants' rights and options

The NDIA acknowledges that, as part of the participant pathway work that is currently underway, participants have expressed the desire for greater transparency in the planning process and what is required of them.

The NDIA intends to significantly improve participant readiness for planning and implementation by:

- Supporting participants with preparation tools that provide a guide to the process, and by allowing participants to pre-fill basic information before meetings;
- Ensuring participants are oriented at each interaction, with clear next steps agreed before the conversation concludes (e.g., by confirming the date and purpose of the next meeting, and what actions the participant can take in the interim in order to prepare for that meeting);
- Clarifying services that should be sought from mainstream providers (for example, in education, health, transport and the justice systems); and
- Improving existing information communication in areas such as the website, plan documentation and the portal.

(d) Have LACs on the ground six months in advance.

The NDIA supports this recommendation.

In the initial phasing period in each local area, there is a need for active and dedicated engagement and awareness raising. During this time, the NDIA works closely with LAC partners and other community organisations to provide forums, information and support. Six months is supported as a desirable period over which such engagement should occur.

To date, such engagement has taken many forms, including through the funding of Disability Support Organisations to build peer based discussion groups, contribution of funding to existing state-based ILC-type activities, and the funding of a range of ILC grants in the Australian Capital Territory (where the Scheme has completed Transition).

Nonetheless, it has not always been possible to have LACs on the ground six months in advance when timeframes are shortened because of a decision to change the Scheme rollout timetable in a specific area. Shortened timeframes can have implications for procuring LAC services, particularly in thin markets. In these cases, interim community connector arrangements have been implemented.

The NDIA also acknowledges that the building of partner capabilities is a major shift for the sector, and requires organisations with both deep connection to their local community and professional organisational capabilities to deliver the bilateral obligations. Over the next six months, the NDIA will increase efforts where there are thin markets for these capabilities.

Productivity Commission Draft Recommendation 4.2

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

NDIA's response:

The NDIA agrees with this Draft Recommendation.

The NDIA is addressing this recommendation as part of the work that is currently underway on improving the participant and provider pathways.

More specifically, work is underway to enhance workforce capability over the short, medium and longer term. This will include ensuring an enhanced understanding of a wider array of disabilities, as well as employing specialists to work with participants in areas such as intellectual and psychosocial disabilities and degenerative conditions.

The NDIA has also established a National Technical Advisory Team, with a primary focus on:

- Driving consistency in the application of the NDIA's "reasonable and necessary" decision-making framework, tools and operational guidelines;
- Providing technical advice and support to NDIA staff and partners in relation to unusual or rare disability-related needs, or complex service delivery matters;
- Contributing to tactical research that informs best-practice service delivery; and,
- Supporting the application of insurance principles within the disability sector.

The technical advisors support planners, partners and delegates to develop and approve "reasonable and necessary" NDIS support plans in areas requiring specialist knowledge. Advisors work directly with internal and external staff in coaching and mentoring roles.

5. Boundaries and interfaces with the NDIS

This chapter provides the NDIA's response to Chapter 5 of the Commission's Position Paper.

5.1 General observations

The NDIA welcomes the Commission's acknowledgement that the boundaries and interfaces between the NDIS and mainstream and other services are essential for positive outcomes for participants and the financial sustainability of the Scheme.

The Commission's view that providing too few resources for Information, Linkages and Capacity Building (ILC) activities is a "false economy", particularly during the Transition, is shared by the NDIA. This is especially important because the ILC program is designed to ensure that people with disability—both inside and outside of the NDIS—are connected with the appropriate services. As observed by the Commission, the transition between the levels of "services available to people who just qualify for the NDIS and those who just miss out should be as seamless as possible".

With this in mind, the NDIA acknowledges that there is commitment from the Australian, State and Territory Governments to provide continuity of support, especially for people with disability who are currently receiving services from those Governments but who do not meet the eligibility requirements for the NDIS. The NDIA agrees with the Commission that there is value for participants in taking measures to ensure that participants clearly understand the defined responsibilities of the NDIA, DSS, Commonwealth, States and Territories for various activities related to disability support, including both boundary issues for NDIA participants and continuity of care concerns for those outside the Scheme.

More specific feedback in relation to the Draft Finding, three Draft Recommendations and Information Request outlined in Chapter 5 of the Commission's Position Paper are provided in Section 5.2.

5.2 Responses to the Commission's positions

Productivity Commission Draft Finding 5.1

It is a false economy to have too few resources for Information Linkages and Capacity Building, particularly during the Transition period when it is critical to have structures in place to ensure people with disability (both inside and outside the National Disability Insurance Scheme) are adequately connected with appropriate services.

NDIA's response:

The NDIA agrees with this Draft Finding.

The NDIS is underpinned by an insurance approach, developed and overseen by the Sustainability Committee of the NDIS Board, in conjunction with the Scheme Actuary. The NDIA has adopted these insurance principles and applies them when making decisions about supports:

- **Actuarial evidence**, to gain an understanding of the actual experience of the individual and evidence of their requirements;
- **A lifetime approach**, planning for supports that might be required throughout a person's life, creating a cost-effective view of resources required in all stages of life;
- **Investment in research and innovation throughout the NDIS**, to continually improve and access new opportunities for plans; and
- **Building the capacity for independence** (or social capital) in the disability sector and the community, allowing greater independence through learning.

The focus of ILC is community inclusion—that is, making sure that people with disability (both inside and outside the NDIS)—are connected to their communities. This makes ILC a critical feature of the insurance approach outlined above, given its potential to have a significant impact on managing and reducing NDIS costs over time.

ILC activities are focused on:

- Personal capacity-building (making sure that people with disability have the skills, resources and confidence they need to participate in the community or access the same opportunities as other people); and
- Community capacity-building (making sure that mainstream services or community programs or organisations become more inclusive of people with disability).

The expected cost reduction achieved by ILC will be the result of:

- Reducing the demand for individualised packages;
- Reducing the need for funded supports within packages; and
- Making supports more effective in helping people achieve goals.

The NDIA has also released an ILC Outcomes Framework Discussion Starter that outlines its approach to monitoring, measuring and reporting outcomes from ILC-funded activities. The NDIA will evaluate the outputs and outcomes of ILC activity to report on the performance of ILC investment. The NDIA also notes that:

- The effectiveness of ILC funding as an innovative means to increase inclusion of people with disability in the community is constrained by the need to also use this funding for legacy programs to ensure continuity of service delivery (i.e., the funding is also being used to provide transitional funding to States and Territories for existing ILC-like activities in each jurisdiction). As a result, the full innovative benefits of ILC funding will take time to measure; and
- While the evidence base for the choice of effective ILC interventions is still evolving, it is clear that the absence of ILC infrastructure poses a Scheme sustainability risk, and

the NDIA is committed to ensuring this evidence is developed and reflected in future ILC expenditure decisions.

Productivity Commission Draft Recommendation 5.1

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

The effectiveness of the ILC program in improving outcomes for people with disability and its impact on the sustainability of the National Disability Insurance Scheme should be reviewed as part of the next COAG agreed 5-yearly review of Scheme costs. The ILC budget should be maintained at a minimum of \$131 million per annum until results from this review are available.

NDIA's response:

The NDIA agrees in part with this Draft Recommendation.

The NDIA supports the need for additional funding for ILC during the Transition because it considers that ILC plays a critical role in supporting Scheme sustainability. However, the NDIA is of the view that a more appropriate source of funding should be identified, as it is counterproductive for this funding to be diverted from the NDIA's operating budget.

- The DSS has commissioned modelling and advice to determine an appropriate funding level for ILC, but limitations exist in determining an amount in the absence of a strong evidence base. This will continue to be monitored over time, including through evaluating the outcomes of ILC grants.
- Regardless of the findings of that work, the NDIA considers that a more appropriate source for this funding must be identified (rather than the NDIA operating budget).
 - A detailed, activity-based costing model was developed to determine the NDIA's operating budget. While some funding could be diverted from operational underspends, a reduction in the operating budget would ultimately require a reduction in staffing in regional offices which could have a detrimental impact on the NDIA's ability to conduct effective and essential planning activities. The NDIA would need to consider the impact on overall phasing of participant intake and the resource intensity of participant planning (e.g., limits on the capacity to provide face-to-face planning).
 - An alternative approach could be a policy change which enables flexibility between participant packages and ILC. This would contribute to increased choice and control by enabling more flexible funding arrangements across participant packages, and greater scope for the NDIA to invest in ILC activities that may contribute to Scheme sustainability and lower demand for funded supports.
- The NDIA further notes that ILC can only be effective if it functions as a complement to (and not a substitute for) mainstream services delivered by States and Territories. More detail on mainstream interfaces is provided in the response to Draft Recommendation 5.3.

The NDIA agrees that the effectiveness of the ILC program, in terms of both improving outcomes for people with disability and ensuring the financial sustainability of the Scheme (i.e., in comparison to the sustainability risks of discontinuation of the ILC program), should be evaluated at the next Council of Australian Governments (COAG) five-yearly review of Scheme costs. However, the NDIA notes that it is constantly reviewing the effectiveness of ILC activities through the NDIS Outcomes Framework.

Productivity Commission Draft Recommendation 5.2

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

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

NDIA's response:

The NDIA agrees with this Draft Recommendation.

- The NDIA acknowledges that there is a commitment from the Australian, State and Territory Governments to provide continuity of support, especially for people with disability who are currently receiving services from those Governments but do not meet the eligibility requirements for NDIS. The NDIA agrees that Governments should make their approach public.
- The NDIA proposes that the Productivity Commission considers reporting annually (rather than quarterly) to the COAG Disability Reform Council (DRC) on boundary issues. This would better reflect the Commonwealth, State and Territory Governments' responsibilities for reporting on mainstream services (including service gaps, duplications and other boundary issues), while still providing a regular NDIA perspective on where participant experience might diverge from the expectation of government service delivery. Further comment is provided under the response to Draft Recommendation 5.3 because the two recommendations are inherently linked.

Recognising that these issues are complex, the NDIA considers that the Integrated Services Response Project (ISRP; a three-year pilot program) may be helpful in illustrating both the challenge and a potential approach.

- Outcomes for participants with complex needs who require support from multiple service systems (e.g., health, disability, justice) are better where services are coordinated. However, transition to the NDIS creates challenges for mainstream service systems (e.g., health and justice), which may need to reconfigure their services when responses provided by States and Territories are not provided by the NDIS.
- For example, where "complex case managers" are embedded in State and Territory Government programs, they have access to intergovernmental relationships, escalation

pathways and the authority required to resolve interface issues, including negotiating a non-typical solution where required. These arrangements have not yet developed between the NDIS and State and Territory programs.

- In response to these mainstream interface challenges, the New South Wales Government is implementing the ISRP. The ISRP will establish a network of “mainstream interface leads” employed by the New South Wales Government. These mainstream interface leads will be co-located at NDIA offices and will provide a single point of contact, enabling short-term responses that coordinate and broker solutions among departments.
- The project will also establish a joint senior governance structure with representatives from key New South Wales systems such as health, justice, out-of-home care and the Office of the Children’s Guardian. This structure will give the mainstream interface leads authority and a forum to raise interface issues on behalf of individual participants, and will provide an escalation point to consider and resolve identified system gaps that have resulted from transition to the NDIS.

Productivity Commission Draft Recommendation 5.3

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

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

NDIA’s response:

The NDIA agrees with this Draft Recommendation.

The NDIA agrees with the Productivity Commission that establishing clear and robust boundaries is essential for the NDIS to work efficiently and effectively. This is an important element of Scheme sustainability.

COAG’s *Applied Principles to Determine the Responsibilities of the NDIS and Other Services Systems* helps to delineate boundaries/interfaces between the NDIS and other government service systems, including health, education, transport and justice. The NDIA will continue to work with Governments on operationalising these applied principles, and it suggests consideration be given to additional clarification of these principles via a Rule or changes to legislation, as well as the inclusion of tangible targets and outcomes to ensure accountability on all parties. This would help to resolve boundary issues and provide an increased level of certainty for people accessing services and transitioning between the NDIS and other services (for example, for people who have attained outcomes that mean they can now rely solely on mainstream supports in order to live an ordinary life).

In terms of specific commitments and reporting obligations for Commonwealth, State and Territory Governments under the National Disability Strategy, the NDIA proposes the following:

- COAG Councils with responsibility for service areas that interface with the NDIS should have a standing item to define the mainstream service offering and consider issues including service gaps, duplications and other boundary issues;
- To facilitate appropriate referrals for participants and non-participants, it would be beneficial for Governments to be responsible for reporting on mainstream services, including service gaps, duplications and other boundary issues;
- The NDIA can contribute to this effort by validating reports from State and Territory Governments, drawing on its on the ground perspectives and data (a responsibility of the Scheme Actuary under the NDIS Rules);
- The NDIA supports the Commission's comment that "ILC programs and LACs should also assist in identifying any gaps and reporting them back to the NDIA", while also noting the current pressures on LACs in respect of planning.

Productivity Commission Information Request 5.1

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

NDIA's response:

The NDIA notes that the original modelling underpinning projections for Scheme costs assumed that the National Injury Insurance Scheme (NIIS) would cover costs as intended. Wherever State and Territory NIIS schemes do not bear this cost, the additional cost borne by the NDIS places Scheme sustainability at risk.

A mechanism to ensure that States and Territories bear intended NIIS costs would require the collection of sufficient data, as well as the means for apportioning and paying costs. There are several possible paths to achieving this. The NDIA provides an example approach:

- **Collecting sufficient data:** Appropriate data is required to calculate costs that were intended to be covered by the NIIS. While the NDIA collects information on participants who have received past compensation for their disability or injury, this information has proven incomplete and unreliable. Since 1 July 2016, the NDIA's customer relationship management (CRM) application has collected this information, although an assessment of the reliability of this information has not yet been completed. The NDIA is also investigating the establishment of a series of Memoranda of Understanding (MOU) with the NIIS across Australia in order to obtain more reliable information on participants who may have received, or may be receiving, compensation from these schemes. Lastly, the NDIA will need to collect data on all participants who enter the Scheme with a traumatic injury, regardless of whether or not the participant received compensation for the injury. This is because the proposal for the NIIS included all traumatic injury (both fault and no-fault).

- **Apportioning the costs:** The NDIA has also developed a model that estimates the number of people expected to be covered by a NIIS. This includes both injuries that have occurred in the past and expectations for future injuries, based on an expected phasing in of NIIS arrangements in each State and Territory. Once Full Scheme has been reached, the NDIA expects to be able to develop a high-level perspective on whether there are more participants in the Scheme from injuries covered by the NIIS arrangements than expected. In developing its Position Paper, the Commission was provided with access to this model.
- **Paying the costs:** The Full Scheme funding mechanism is yet to be determined by the Commonwealth, States and Territories. If the States and Territories cover the costs of their NIIS participants, this could simply be added to the annual or monthly amounts already paid to the NDIA.

6. Provider readiness

This chapter provides the NDIA's response to Chapter 6 of the Commission's Position Paper.

6.1 General observations

The NDIA appreciates the Commission's approach to examining provider readiness issues, and the opportunity to explore concerns around thin markets and encouraging suppliers to enter the disability supports market.

The Position Paper also stimulates an important discussion on the need to carefully manage the market during the Transition to Full Scheme—that is, until the point at which the market is mature enough for the choice and control of participants to be the “main factor driving the price of disability supports”.

In particular, the Position Paper proposes an independent price regulator (separate from the NDIA). Currently, the NDIA sets maximum prices for disability supports that can be charged by NDIA-registered providers. While the NDIA acknowledges that there is (necessary and deliberate) tension between the three priorities of promoting participant outcomes, market development and financial sustainability, the NDIA disagrees with the Commission's stance. As detailed under the response to Draft Recommendation 6.1, the NDIA sees its price-setting role as fundamental to successful market stewardship through the period of Transition to Full Scheme, with the intent of ultimately deregulating as the market matures.

A separate pricing body to the NDIA would replicate work already underway at the NDIA, face the same trade-offs as the NDIA does today, and suffer from poorer access to timely market information. The NDIA is best placed to conduct these activities.

The NDIA remains fully committed to deregulation when markets are stable and competitive. This will occur in particular regions at a time after Full Scheme is reached, when the necessary elements of a mature, deregulated market are in place in that region.

The Commission's Position Paper also finds that thin markets will persist for some groups, and invites perspectives on measures to address thin markets and to ensure a greater supply of disability supports over the transition period. The NDIA is focused on establishing vibrant, competitive and innovative markets, and seeks to minimise barriers within its control, as well as to foster emerging alternative models of care (as discussed in Chapter 7, in response to Information Request 7.1).

More specific feedback in relation to the Draft Finding, Draft Recommendation, and two Information Requests outlined in Chapter 6 of the Commission's Position Paper are provided in Section 6.2.

6.2 Responses to the Commission's positions

Productivity Commission Draft Recommendation 6.1

The Australian Government should:

- Immediately introduce an independent price monitor to review the transitional and efficient maximum prices for Scheme supports set by the National Disability Insurance Agency (NDIA).
- Transfer the NDIA's power to set price caps for Scheme supports to an independent price regulator by no later than 1 July 2019.

The body tasked with price regulation for Scheme supports should:

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

NDIA's response:

The NDIA does not support this Draft Recommendation.

To contribute effectively to market stewardship, the NDIA is mandated to deliver and tightly manage three interdependent priorities: participant outcomes, market development, and financial sustainability.⁵ While the NDIA does not directly deliver or purchase supports (it funds supports for participants), the NDIA has a responsibility to preserve (or protect) Scheme sustainability, and the setting of prices cannot be separated from this responsibility. As such, the NDIA perceives its situation not as a conflict of interest, but as a defining element of why it has been established—as a unified body with the access and the tools to effectively and efficiently manage the necessary tension between all three aspirations simultaneously.

The NDIA has a critical role in contributing to successful market stewardship

COAG DRC has set clear expectations for the NDIA to support market development as part of its shared market stewardship role—that is, to work with participants and other stakeholders (including the DSS, States and Territories) to facilitate the growth of a market of adequate size, quality and innovation to serve participants' needs. Underestimating efficient prices over the long term would be counterproductive to the NDIA's market development efforts, making the market inadequately attractive to providers, decreasing

⁵ Under section 172 of the NDIS Act, an annual report is to be prepared by the NDIA Board, which must include an annual financial sustainability report prepared by the Scheme Actuary under section 180B.

provider expansion and market entry, and resulting in an inadequate supply of providers. Inadequate supply would compromise the NDIA's ability to deliver on its core purpose of improved economic and social outcomes. This includes supporting individuals with significant and permanent disability to be more independent in their communities, as well as providing greater care choices. The NDIA cannot place a special emphasis on any one of its three priorities without compromising the others. The NDIS can only succeed if it is in a position to carefully balance all three priorities.

The NDIA's situation is, therefore, different to those seen in other disability programs, such as Aged Care and Energy, in two fundamental ways. Its mandate is to manage market growth rather than market power; and it is a funder, not a purchaser or provider of services. In the NDIS, participants make purchasing decisions, while private providers supply supports in an open market (within the bounds of the NDIA's price limits). As such, the NDIA does not have a commercial conflict of interest beyond its limited role as Provider of Last Resort.

It is critical that the NDIA retains price setting power through the Scheme Transition

During the transitional phase, the NDIA must actively balance its shared market stewardship goals against the equal priorities of facilitating quality participant outcomes and financial sustainability. It can only do this if it has the right tools to effect targeted change. The ability to set prices allows it to directly guide provider growth using price signals, and thereby to react rapidly to evolving consumer needs and market dynamics.

The NDIA is of the opinion that it is best placed to continue to manage this responsibility for as long as there is a need for price regulation. The NDIA centralises market intelligence (through its direct links with providers and participants), capabilities (including policy, clinical and actuarial support) and access to Governments (as a public agency that is separate from but an integral part of the DSS).

As the Commission notes in a separate section of its report,⁶ "Good risk management requires those who are best placed to manage the risk have responsibility for it". The NDIA considers that by removing its ability to set price limits, the NDIA's market risk responsibility would be compromised by effectively removing its ability to manage this risk.

The introduction of an independent pricing regulator would be detrimental to the NDIS during the transitional phase

An independent pricing regulator would face the same trade-offs as the NDIA. If it were to prioritise supply growth (for example, by raising price caps in order to improve the attractiveness of the market to providers), that would necessarily require either an increase in the total NDIS budget to maintain the same level of supports to the same population, or a decrease in the quantity of supports or the number of participants served. Both would place Scheme rollout at risk.

⁶Cost overruns, page 337.

Changes made by an independent regulator would restrict the NDIA's ability to perform its role effectively, while also adding unnecessary fragmentation and inefficiency to the service delivery system through:

- Fragmentation of market information, impairing coordination of potential market/pricing interventions;
- Duplication of efforts, and additional layers of communication needed to disseminate, integrate and reconcile intelligence on market conditions;
- Duplication of networks with providers and participants;
- Additional cost overheads to support a new statutory body, and competition for capable staff; and
- Missed opportunities to use non-price mechanisms for effecting provider change.

Ultimately, this may result in a poorly coordinated Transition, increasing uncertainty for providers and participants, and destabilisation of market development and Scheme Transition.

Current NDIA pricing activities

The NDIA agrees that actively monitoring price is critical to effective market stewardship. For this reason, it has commissioned an independent pricing review, which will offer recommendations in relation to improved pricing effectiveness; the approach used to set prices; the adequacy of provider returns; the role of pricing in managing thin and undersupplied markets; and a glide path towards price deregulation in mature sub-markets. The independent pricing review commenced in July 2017, and its findings and recommendations are expected in the fourth quarter of 2017.

The NDIA also recognises that appropriate internal governance controls are critical to ensuring that prices are set appropriately. To that end, it currently undertakes a number of the functions outlined in Draft Recommendation 6.1:

- **Collecting data on providers:** The NDIA has commissioned a comprehensive independent pricing review. An external party that does not represent provider or participant interests is conducting the review, ensuring that it is fully independent. Its Terms of Reference include the provision of recommendations in relation to improved pricing effectiveness, potential early deregulation of price in more mature sub-markets, and the glide path for the eventual deregulation of price more generally. The review will collect data and consult widely with providers, participants and other stakeholders to inform the NDIA's understanding of the appropriateness of pricing and its impact on providers.
- **Communicating to the market:** The NDIA has communicated publicly the principles and processes that it intends to apply to its shared market stewardship responsibilities via its Market Approach document. This approach explicitly seeks to reduce the potential regulatory risks that providers wanting to enter the NDIS market may perceive. The NDIA also undertakes regular informal engagement with providers (for example, the Markets & Providers Division directly engages with providers on a daily basis to

better understand providers' issues and economics). Finally, the NDIA has commenced a Provider Benchmarking study, which will independently survey providers annually and produce data for both public and internal reports.

- **Conducting and publishing annual pricing model reviews:** The NDIA is committed to improving the transparency of its pricing methodology, decisions and analysis. To date, NDIA's price review has included public consultation, goal-oriented review and the publishing of pricing model assumptions. The process also includes extensive consultation with providers to understand their characteristics and costs. During the 2017–18 Price Review, 85 submissions were received, from both providers and other stakeholders. These views were taken into account.
- **Sending granular and targeted price signals:** To achieve good participant outcomes, the NDIA intends to review specific sub-markets for vibrancy, competitiveness and efficiency. This would involve reviewing the pricing, administrative arrangements, policies, and market health for specific sub-markets (such as in rural or remote regions or for psychosocial disability support). The NDIA's registration and payment system is also a valuable tool for analysing the impact of pricing on providers, thereby enabling a more precise calibration of the impact of price signals.
- **Considering the timing of deregulation:** The NDIA places great importance on its role of closely monitoring data and market trends in order to make assessments about the degree of market maturity. Furthermore, the independent pricing review will explicitly provide an additional body of information to inform the optimum timing for price deregulation.

Productivity Commission Draft Finding 6.1

In a market-based model for disability supports, thin markets will persist for some groups, including some participants:

- Living in outer regional, remote and very remote areas
- With complex, specialised or high intensity needs, or very challenging behaviours
- From culturally and linguistically diverse backgrounds
- Who are Aboriginal and Torres Strait Islander Australians
- Who have an acute and immediate need (crisis care and accommodation).

In the absence of effective government intervention, such market failure is likely to result in greater shortages, less competition and poorer participant outcomes.

NDIA's response:

The NDIA agrees with this Draft Finding.

The NDIA agrees that thin markets are likely to be an issue in the scenarios the Commission has noted.

To this end, the NDIA released the *Market Approach – Statement of Opportunity and Intent* in November 2016, which signalled to participants, support suppliers and the wider community that the NDIA will play the role of active market steward, guiding, developing and supporting the market to achieve the Scheme's aspirations.

To operationalise its market approach, the NDIA is now developing a Market Intervention Strategy and an analytical framework (accompanied by a Local Market Analysis Tool) to create a process for identifying and responding to thin markets. Further details on these can be found in the response to Information Request 6.1.

The NDIA is prepared to act to reinforce thin markets where intervention is necessary to ensure market supply, and to act as a Provider of Last Resort where the market fails to provide this supply.

Productivity Commission Information Request 6.1

In what circumstances are measures such as:

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

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

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

Are there any other measures to address thin markets?

NDIA's response:

All of the Commission's identified measures have a role to play in managing each scenario, but there are no easy and consistent answers to the problem as a whole.

- The appropriate response for a particular thin market depends on factors including remoteness, existing infrastructure, cultural norms, availability of community, mainstream capabilities and local participant characteristics.
- In appreciation of these complexities, the NDIA has initiated several programs to provide guidance on practical responses to specific types of thin market: the NDIA's *Market Approach* and the resultant *Market Intervention Strategy* and *Local Market Analysis Tool*, along with the recently commissioned independent pricing review. These are described below.
- Transitional market readiness working arrangements are currently being developed as well. These will enable cross-Government collaboration to support market development. Agreements have already been made between the NDIS, New South Wales and Victoria.

The *Market Approach* commits the NDIA to market interventions on the following basis:

- Interventions should be selected with a view to minimising unnecessary disruption to the market;
- An intervention should be limited to the shortest effective period of time possible;

- Options available for market intervention range from light touch to highly interventionist; and
- Specific decisions on which particular intervention to implement will be determined based on the specific circumstances (taking into account factors such as risk to participants and time available for response).

The Market Intervention Strategy and analytical framework will operationalise these principles. They include:

- Comprehensive definitions for the various types of market intervention the NDIA may seek to deploy;
- Details on the factors, triggers and thresholds used to determine whether a market intervention response is necessary, and what type of response is most appropriate (noting that the NDIA will seek to adopt the least interventionist approach possible); and
- An evaluation framework/system for monitoring the effectiveness of the interventions.

The Local Market Analysis Tool will incorporate:

- Detail to be used by the Agency in its market steward role in assessing sub-market health and identifying areas of market risk, as well as decision criteria for potential intervention; and
- Suitable metrics that can be used by the NDIA to quantify the causal factors and risks, such as the level of specificity that enables the best possible and most tailored intervention to occur.

Through these wide-ranging reviews, the NDIA is developing a comprehensive suite of policy tools to manage thin markets, as well as a clear and prescriptive guide that outlines when each tool is best used.

The NDIA is also consulting with relevant government agencies and stakeholders to inform this work as it evolves.

Productivity Commission Information Request 6.2

What changes would be necessary to encourage a greater supply of disability supports over the transition period? Are there any approaches from other consumer-directed care sectors — such as aged care — that could be adopted to make supplying services more attractive?

NDIA's response:

The NDIA is focused on establishing a vibrant, open and competitive market for disability supports and services. A combination of approaches could be considered, including:

- **Reducing regulatory barriers to entry:** Processes could be harmonised across jurisdictions—for example, cross-recognition of provider registration across different jurisdictions. Furthermore, regulatory and compliance requirements could be tailored so that they are proportionate and risk-based. For example, the systems and processes that are required to be in place for smaller providers in low-risk settings should reflect

the greater relative burden of compliance overheads (e.g., well-developed, standardised complaints management systems) and the lower risk these providers pose to the Scheme.

- **Increasing information to potential market entrants:** This could be achieved by:
 - Providing general market information, such as through the NDIA’s Market Position Statements and through quarterly reporting; and
 - Utilising a segmented Provider Engagement Strategy. The factors that are attractive to potential market entrants may differ depending on the adjacent industry to which the organisation currently provides services, although information could be targeted to such organisations. For example:
 - Players in the aged-care industry may be interested in entering the market because of the potential to grow their understanding of individualised commissioning and an insurance-based approach, ahead of similar approaches being adopted in other consumer-directed sectors;
 - Offshore entrants may be interested because of their experiences with NDIS-like models in overseas jurisdictions, such as the United Kingdom;
 - Financial services firms may be interested in the NDIS’s new support models, such as the use of plan management and financial intermediaries, which are designed to help participants manage the supports in their plan. These firms bring payments expertise and ready-made channels for supporting their existing customers.
- **Increasing information to participants (to reduce switching costs):** This could be achieved by:
 - Developing and promoting the Provider Benchmarking Initiative to improve transparency on provider performance for participants, and to reward growing/new providers who perform well; and
 - Developing and promoting the planned NDIS eMarketPlace to reduce search costs for providers and participants.
- **Targeting latent capacity:** Established community organisations could be leveraged to draw on latent capacity in regional and remote communities to support local residents, particularly for thin markets. An example would be the local service station providing maintenance supports for AT and wheelchairs.

(Also see the NDIA’s response to Information Request 7.1, in relation to the emergence and role of alternative/innovative models of care)

7. Workforce readiness

This chapter provides the NDIA's response to Chapter 7 of the Commission's Position Paper.

7.1 General observations

The NDIA welcomes the Commission's work on the challenges to workforce growth in the disability care sector. As noted by the Commission, the disability care workforce will need to more than double from its 2014–15 level to meet the increase in demand by Full Scheme.⁷

While the NDIS provides unprecedented opportunity in the disability care sector, with one in five new jobs forecast to be NDIS-related during the Transition period,^{8,9} there will also be a number of challenges, as outlined by the Commission. These include:¹⁰

- Finding carers to meet high participant demand at particular times of the day;
- Ensuring there are enough quality carers to provide a reasonable standard of care;
- Growing rates of retirement among workers from the sector as they age; and
- Addressing regional challenges—for example, growth will need to more than double in some regions.

The NDIA is committed to working with all stakeholders to ensure that participant demand can be met. In working closely with industry stakeholders, key departments and agencies, the NDIA is able to provide deep insight into the market. Participant experience data, for example, provides insight into the diverse participant needs that must be met by the disability care workforce, while actuarial data provides clarity and transparency on market conditions.

However, the NDIA does not support relaxing its policy on paying informal carers. Such a change may have a detrimental effect on the social benefits of the Scheme for participants, as well as Scheme sustainability. The NDIA recommends that current arrangements stand, and that family members should only be funded to provide supports in exceptional cases (as is currently the case), and then only on a temporary basis.

More specific feedback in relation to the Draft Finding, three Draft Recommendations and two Information Requests outlined in Chapter 7 of the Commission's Position Paper are provided in Section 7.2.

⁷ The Productivity Commission's NDIS Costs Position Paper, p. 34

⁸ The Productivity Commission's NDIS Costs Position Paper, p. 10

⁹ The Productivity Commission's NDIS Costs Position Paper, p. 249, cf Bonyhady, B. 2016, Letter to the Chair of the Disability Reform Council, 22 December, Canberra.

¹⁰ The Productivity Commission's NDIS Costs Position Paper, p. 245

7.2 Responses to the Commission's positions

Productivity Commission Draft Finding 7.1

It is unlikely that the disability care workforce will be sufficient to deliver the supports expected to be allocated by the National Disability Insurance Agency by 2020.

NDIA's response:

The NDIA agrees with this Draft Finding.

The NDIA shares the Productivity Commission's concern and is working on workforce issues in collaboration with other government bodies. The NDIA's ability to directly influence workforce growth relies on the publication of market information and the use of price signals.

The national rollout of the NDIS will require an unprecedented increase in the number of workers entering the disability services industry:

- The national disability care workforce is currently growing at approximately 6 percent per year,¹¹ but the rollout will require workforce growth of 18 percent per year in the next three years (creating up to 80,000 jobs directly in the disability sector).¹²
- The majority of the required workforce growth is in the service provider sector (approximately 40,000 additional staff at Full Scheme). This reflects the fact that the majority of Scheme expenditure is focused on in-home care and supports for daily living.

As demonstrated in the NDIS market position statements, the required workforce growth is spread very unevenly across different regions and local government areas, reflecting historic supply and funding of support services by State Governments. In specific regions, the required increase could be more than 100 percent over the next 12 months due to the regional timing of the rollout and low levels of existing capacity in those regions. This underlines the importance of looking at workforce development through a regional lens.

The required growth will also be uneven across time because the phasing of different jurisdictions into the NDIS was not necessarily driven by workforce growth considerations. The pace of growth required between different States varies dramatically over time.

In addition, there are some calls for mandatory entry-level qualifications for personal support care workers. The NDIA considers that this would create a significant barrier to workforce growth, without convincing evidence that it would improve the quality of care or participant outcomes.

¹¹ The Productivity Commission's NDIS Costs Position Paper, p. 249. This figure is based on data collected on the workforce by National Disability Services (NDS), which indicates that the number of workers in the sector is growing at a rate of about 12% each year. However, the Commission has suggested halving the rates of reported 'headcount' growth to account for the proportion of part-time to full-time positions.

¹² The Productivity Commission's NDIS Costs Position Paper, p. 249.

Taking a risk-based approach to building the personal care workforce would be consistent with feedback from people with disability and their advocates, which suggests that attitude and aptitude are more important than formal qualifications for the majority of supports provided (especially the attendant care supports that constitute the majority of workforce needs). It would also enable a more rapid scale-up of the workforce, while taking a prudent approach to those tasks within the personal care sphere that require technical skills.

For a number of specific supports that may carry additional risk, the NDIA agrees that there is a need for quality and safeguard measures, including training. These supports might include areas such as the provision of behaviour supports, supports for complex needs and feeding via a percutaneous endoscopic gastrostomy (PEG) tube.

Productivity Commission Draft Recommendation 7.1

The roles and responsibilities of different parties to develop the National Disability Insurance Scheme workforce should be clarified and made public.

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

NDIA's response:

The NDIA agrees with this Draft Recommendation.

Clear roles and accountabilities in relation to the roles of Commonwealth and State and Territory Governments will ensure that all aspects of market development are accounted for, and that there are no significant gaps that could lead to market failures.

States and Territories formally agreed on market readiness roles and responsibilities at the September 2016 DRC meeting. Lead responsibility for workforce development was allocated to DSS.

- The NDIA is committed to supporting a range of stakeholders (such as participants, providers, DSS, States and Territories) in ensuring that the market is of sufficient scale at a national and local level that participants can utilise their plans (see response to Draft Finding 2.1).
- There are many interdependencies among the Commonwealth, State and Territory Governments, the NDIA and the sector. Some aspects of market development require joint activity by necessity, or as a strategic choice to ensure effective market development. For example, while the Commonwealth has responsibility for the

macroeconomic influences on the workforce (such as industrial relations, employment services, tertiary education, infrastructure and immigration), all Governments are active in areas influencing or affected by high unemployment or otherwise low job growth.

- In particular, the NDIS is competing with other sectors (such as childcare, aged care, community care and the health sector), and success will reflect the attrition rate of the existing workforce and the extent to which workers seek employment in the NDIS market.
- The NDIA will continue to use mechanisms to share information and data during the Transition to facilitate market transition and workforce growth. Relevant initiatives include Market Readiness Working Arrangements and more timely (sub-market focused) Market Position Statements. At this time, the NDIA possesses limited workforce data, but it has a growing data capability to identify service gaps (as a proxy for identifying workforce needs).

Productivity Commission Information Request 7.1

What is the best way for governments and the National Disability Insurance Agency to work together to develop a holistic workforce strategy to meet the workforce needs of the National Disability Insurance Scheme?

NDIA's response:

The NDIA is committed to supporting DSS (the lead for workforce policy) to meet workforce needs during Scheme rollout, through each of the three sources of growth (as described in the response to Draft Finding 7.1).

In particular, it is committed to supporting DSS by reducing barriers to market entry for new providers. It will do so by:

- Providing the market with greater policy certainty on workforce compliance requirements;
- Engaging potential new suppliers from adjacent markets; and
- Publishing market information as it becomes available to de-risk market entry and growth.

The NDIA has identified three main sources of workforce growth:

- **Existing provider growth** through an increase in service provision, as well as new service offerings, as a result of increased demand (e.g., the NDIA should work jointly as a market steward to target existing providers in the disability support sector, as well as adjacent sectors, with the potential to scale).
- **Growth in new providers**, particularly from adjacent sectors such as aged care, as they enter the disability support market.
- **Efficiency gains** through improved efficiency of operations and staff utilisation of incumbent providers (e.g., through improved workforce utilisation and other operational improvements).

While no single source of growth is likely to fully meet demand for the NDIS, the NDIA considers that new providers will be the largest potential source of growth.

The NDIA is cognisant of two factors that contribute to successful workforce growth:

- Workforce growth needs to be tailored at a regional/submarket and role level because the growth requirements vary significantly; and
- The supporting infrastructure needs to keep pace with demand. This can be done by:
 - Reducing provider registration and compliance costs that discourage entry into the market;
 - Standardising and minimising cumbersome workforce checks while ensuring quality and safeguard risks are managed; and
 - Reducing switching costs for participants through an eMarketPlace platform that matches demand and supply.

Finally, the NDIA notes that projections of workforce need have assumed a continuation of the current model of care. However, the Scheme's emphasis on participant choice and control is expected to support innovation and growth in alternative models of care. These alternative models may reduce the overall number of disability care workers needed, as well as alter the mix of workers required, as discussed below.

- **Connecting participants directly with workers:** There are a number of new methods (including online platforms) that connect participants directly with their choice of worker. This can improve the utilisation of the existing disability workforce (i.e., matching unfulfilled demand to existing workers who are looking for more hours/have gaps in their schedules), and it can draw in part-time workers who would otherwise find it difficult to locate opportunities or who are unable to commit to regular hours.
- **Building informal networks of support:** Using services designed to match volunteers with participants can help to build informal networks and facilitate greater independence and social inclusion.¹³ Over time, this can reduce the reliance on or preference for paid supports among some participants. These programs involve rigorous on-boarding and carefully match participants and volunteers to increase the likelihood of a relationship forming. There are a number of existing services that connect volunteers with participants, such as Volunteering and Contact ACT, and Inclusion Melbourne.
- **Increasing engagement and accessibility services:** It is becoming more common to use non-traditional providers from the mainstream market to address barriers and offer more accessible mainstream service access (for example, tele-linked consultations and support to overcome distance/remoteness).
- **Increasing independence with the use of AT:** As noted in the NDIA's submission to the Commission's earlier Issues Paper, appropriate use of AT can reduce participants' dependence on carers for routine tasks and appointments (e.g., getting a drink, or

¹³ Submission from Kim Windsor to the Commission's Issues Paper on NDIS Costs.

going to the toilet) and allow care and interventions to focus on activities or periods that require human input (e.g., preparing a meal or managing a period of muscle spasm).

The uptake of innovative models of care is supported particularly through the ability of participants to self-manage. Self-managed participants have more flexibility to control the 'what, when, where and by whom of support', and to target their supports to allow them to achieve greater independence and social inclusion (e.g., attending a community drawing class), rather than spending their packages on traditional disability support (e.g., in-home care). As a result, self-managed participants can build strong informal support networks and better leverage mainstream services and community supports. This can lead to some participants desiring less paid supports over time.

Productivity Commission Draft Recommendation 7.2

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

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

The NDIA agrees with this Draft Recommendation.

Improved data availability would help market stewards to direct and support the sector in a way that enables it to develop sustainably. In particular, it would help them to understand the degree to which supply and demand are well matched at the intersection of specific geographies and support types.

The NDIA agrees with the recommendation that more targeted workforce statistics should be produced. The mechanism to undertake this should be agreed by the Australian Government, but the NDIA will actively engage in mapping the current availability of supports against demand for those supports for local markets.

On the demand side, the NDIA's market position statements provide information on when and where workers will be needed, as the Commission notes, and these should be updated regularly. The NDIA has data on the number of participants, committed supports, existing providers and previous actual expenditure by local government area for participants who have an active approved plan.

The NDIA will produce a more fulsome report following the 2017–18 year, by which time around half of the expected participants will have entered the Scheme. In the interim, the NDIA will continue to release quarterly reports on the number of participants, committed supports, registered providers and previous actual expenditure. The NDIA will consider publishing this information by local government area. In 2017–18, the NDIA will also produce more detailed market intelligence on sub-market areas.

Productivity Commission Draft Recommendation 7.3

The National Disability Insurance Agency's (NDIA) guidelines on paying informal carers who live at the same residence as a participant should be relaxed for core supports for the period of the National Disability Insurance Scheme (NDIS) Transition. Such payments should be:

- Accessible under clearly defined and public guidelines, which make reference to worker shortages in the relevant market using the NDIA's information about providers and supports in the participant's region
- Set at a single rate determined by the NDIS price regulator in a transparent manner
- Reviewed by the NDIA as part of plan reviews.

NDIA's response:

The NDIA does not support a relaxation of NDIA guidelines on paying informal carers as suggested by this Draft Recommendation.

Informal carers are already able to receive NDIS funding in exceptional circumstances, as a transitional arrangement.

The NDIA considers that the unintended side effects of such a change will cause social and financial problems that outweigh the workforce supply benefits. Wherever possible, the NDIA favours care delivery by formal carers, for two key reasons:

Paid informal care by family members has the potential to negatively affect the social bonds between participants and families

While some level of informal care can be expected in almost all cases, it is generally undesirable for an adult or child to continue to receive personal care support solely from his or her parents, or for one spouse to provide personal care support to another on an ongoing basis without respite. The maintenance of ordinary family relationships, and the increased independence this entails for the participant, is central to the purpose of the Scheme.

- The primary purpose of the NDIS is to assist people with disability to live an ordinary life, as far as they are able. This is intended to apply to all areas of their lives, including their personal relationships. To this end, a focus of the NDIS is to support the sustainability of ordinary family relationships.
- In an unpaid environment, informal carer-participant relationships are based on deeply held family values of love, trust and duty. Introducing a financial incentive into such a relationship has the potential to fundamentally undermine this dynamic by altering the perceptions of both the carer and the participant, whether or not the payment actually changes behaviour directly. This transformation of caregiving from a labour of love into semi-formal work can strain family bonds and, by applying a monetary value, result in a questioning of the true value of time spent providing care.
- The reverse situation can also occur. NDIS funding falls under the purview of the participant. In order to receive reimbursement for expenditures on care, the participant must engage the services of formal sector providers, subject to the usual commercial laws and regulations. By formally engaging a family member in paid work, the participant would effectively be employing the carer. This too can negatively affect

relationship dynamics and add to feelings of exploitation on both sides. In addition, as an employer the participant becomes responsible for arrangements including workers' compensation and superannuation payments for the carer.

- Unfortunately, allowing paid informal care in some family relationships would also represent an unacceptable risk to participant wellbeing. It would be considerably more difficult to monitor whether or not family members actually provide the supports they are paid to provide, and vulnerable participants are less likely to report mistreatment by family members than by formal carers. Undelivered supports come at the expense of the participant, and if additional formal supports are needed to make up for this, this is ultimately at the expense of the Scheme.

Paid Informal care is likely to compromise the sustainability of the NDIS

Under the current NDIS payment system, the total package of funding a participant is granted already takes into account (i.e., deducts) the level of reasonable and sustainable informal support he or she receives. In a paid informal carer environment, the NDIA would need to be careful that payment is targeted to where a formal worker is not available to fulfil a plan, rather than paying for care that is currently not funded in participant plans. This presents both a policy and compliance challenge. (In practice, it is difficult to verify whether an informal carer who lives at the same residence as the participant has provided funded or unfunded support.)

Furthermore, the experience of New Zealand suggests that such a payment is extremely difficult to withdraw once it has been put in place, regardless of any pre-stated intention or mechanism for withdrawal. The NDIA recommends that the Productivity Commission further investigates New Zealand's experience with this.

The NDIS supports making full use of alternative workforce growth policies, as detailed in response to Draft Finding 7.1, Draft Recommendation 7.1 and Information Request 7.1.

Productivity Commission Information Request 7.2

How has the introduction of the National Disability Insurance Scheme affected the supply and demand for respite services? Are there policy changes that should be made to allow for more effective provision of respite services, and how would these affect the net costs of the Scheme and net costs to the community?

NDIA's response:

It is too early in the Transition to provide a view on whether the NDIS has affected supply and demand for respite services. However, the NDIA offers the following observations:

- Experience from the Trial has not highlighted demand and supply issues in relation to traditional respite services, beyond those under previous state-funded arrangements;
- There appears to have been little change in the market place for those participants who have a physical disability, because they are often reluctant to access traditional facility-based respite services that largely cater for those with an intellectual disability;

- There is anecdotal evidence of a growing confidence in community-based activities such as camps and innovative daytime opportunities that connect a person to their community, which may provide respite for some families;
- The NDIA encourages participants to use their core supports flexibly to explore different opportunities, and there is anecdotal evidence that this enhanced choice is opening up opportunities in mainstream activities, particularly in recreational areas; and
- Current bilateral arrangements in some jurisdictions have included facility-based respite as in-kind arrangements. This means that families seeking short-term supported accommodation may be limited in their choice of provider until all in-kind offerings have been accounted for. This may be distorting the market response because total demand is not evident.

In making this information request, the Commission states: “the shift towards participant-driven demand means that there are few avenues for informal carers to be assured of respite care. For informal carers to receive NDIS-funded respite care, it must form part of a participant’s plan”.

The NDIA would like to clarify that, while there are no specific line items¹⁴ for respite care in participant plans, supports funded by NDIS include items within support clusters that provide a respite-like option. For example, some participants may receive line items for short-term supported accommodation in their plans (e.g., for a period of four weeks or 28 days) that would traditionally have been considered ‘respite’. In addition, a participant’s core support can currently be used to purchase additional in-home support or provide support in shared facilities. The participant (and their family/carer) has the flexibility to use core supports in this way.

It is also important for the Commission to note that, as part of the independent pricing review, the NDIA has asked for advice on improving pricing effectiveness for the pricing of short-stay support, and for emergency and crisis supports. This will inform the NDIA’s position on whether respite services can be more effectively provided.

¹⁴ On the advice of the NDIS Independent Advisory Council (IAC), ‘respite’ is not a distinct service listed on participant plans. The IAC notes that the ‘respite’ paradigm sets up an unhelpful dynamic portraying people with disability as ‘burdens of care’. Parents and other carers do not need ‘respite’, but may need ‘rest, recovery, re-energising and inspiration’. The IAC favours reframing the question to “What would it take to enable the family and the person with disability to get a life?” Participant plans under the NDIS list specific services instead (such as short-stay supported accommodation). Please see here for further information: <https://www.ndis.gov.au/about-us/governance/IAC/iac-reasonable-necessary-families.html#respite>

As there are no specific line-items for respite care, there is also no specific data available on demand for respite services.

8. Participant readiness

This chapter provides the NDIA's response to Chapter 8 of the Commission's Position Paper.

8.1 General observations

The NDIA considers that the Commission's work on participant readiness is particularly significant in the context of the change the NDIS is driving for people with disability—specifically, moving to a Scheme that allows participants to have more choice and exercise a much greater degree of control. However, the NDIA acknowledges the Commission's concern that some participants, as well as their carers and families, are experiencing challenges interacting with the NDIS.

In its Position Paper, the Commission identified a number of factors that contribute to how readily participants make the most of their NDIS plan, including:

- An individual's capacity;
- Their network, informal carers and peers;
- The assistance provided under the NDIS;
- The level of market readiness to provide supports; and
- The complexity of the Scheme.

The NDIA agrees with the Commission's observation that more clarity is needed around the role of support coordination, the effectiveness of support coordination, and the allocation of support coordination to the participants who most need it.

The NDIA appreciates the Commission's comments on the rollout of the online portal and acknowledges the difficulties that have been experienced. As part of the work that is currently underway to improve the participant and provider pathways, the NDIA affirms its commitment to providing an improved online portal. In addition, the NDIA agrees with the Commission's recommendation that the eMarketPlace should be introduced as a critical step towards providing timely and useful information to minimise transaction costs for participants.

More specific feedback in relation to the Draft Recommendation, and two Information Requests outlined in Chapter 8 of the Commission's Position Paper is provided in Section 8.2.

8.2 Responses to the Commission's positions

Productivity Commission Information Request 8.1

Is support coordination being appropriately targeted to meet the aims for which it was designed?

NDIA's response:

Although the Commission has noted that “it is too early to evaluate the efficacy of support coordination”, ensuring that it is appropriately targeted is a core focus of the NDIA's Outcomes Framework. The NDIA has captured baseline outcomes data on participants who entered the scheme in 2016–17, and it will continue to capture this information as participants receive plan reviews. The resultant longitudinal history of outcomes for each participant will be used to make comparisons between participants with similar characteristics—with and without support coordination—in order to understand its impact on outcomes.

Currently, the NDIA considers there are three different levels of support coordination, targeted to participants with differing levels of need:¹⁵ Support Connection, Support Coordination and Specialist Support Coordination.

- **Support Connection:** This involves time-limited assistance to strengthen a participant's ability to connect with informal, mainstream and funded supports, and to increase capacity to maintain support relationships, resolve service delivery issues, and participate independently in NDIA processes (e.g., through LACs).
- **Support Coordination:** This allows assistance to strengthen a participant's abilities to connect to and coordinate informal, mainstream and funded supports in a complex service delivery environment. This includes resolving points of crisis, developing capacity and resilience in a participant's network and coordinating supports from a range of sources
- **Specialist Support Coordination:** This allows the provision of Support Coordination within a specialist framework necessitated by specific high-level risks in a participant's situation. This support is time-limited and focuses on addressing barriers and reducing complexity in the support environment, while assisting the participant to connect with supports and build capacity and resilience. It may also involve developing an intervention plan, which will be put in place by disability support workers.

To target support coordination appropriately, the NDIA has also provided example indicators of participants likely to benefit from the service. Such participants might include:

- People with severe and multifaceted disability requiring multiple supports;
- Young people in nursing care;

¹⁵ The NDIA Price Guide 2017/18

- People with conditions of a degenerative nature, and supports requiring regular active management and ongoing adjustment due to the participant's changing needs;
- People with episodic mental or ill health support needs;
- People requiring regular crisis management;
- People with poorly resourced families or limited or no informal support networks;
- People requiring child protection or criminal justice involvement; and
- People with a history of changing and challenging support provision.

Productivity Commission Draft Recommendation 8.1

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

NDIA's response:

The NDIA agrees with this Draft Recommendation.

The NDIA is committed to delivering the eMarketPlace. It is actively working to deliver this in conjunction with the end-to-end improvements that it intends to make to the participant and provider pathways.

- As the Commission has stated, participants can be vulnerable to information asymmetries and the difference in bargaining power between themselves and providers. For this reason, "they must have access to information about options for supports and providers that is timely, accurate, relevant, clear and accessible". An eMarketPlace is also expected to reduce transaction costs for participants, providers and the NDIA.
 - Working with people with disabilities, the NDIA has done significant work to design the requirements of the NDIS eMarketPlace. This remains core to its approach in the delivery of an eMarketPlace. The NDIA is also in the process of confirming the requirements of an effective eMarketPlace with DSS. Functional requirements are likely to include the ability to find providers and connect them to participants, trade, make payments, rate services, and collect data.
 - The eMarketPlace will also include cognitive intelligence capabilities. These capabilities will provide choice for individuals in how they interact with Government and the market beyond traditional channels, such as call centres and shopfronts.
 - In addition, the NDIA is cognisant of the need to maintain data integrity and availability, maintain privacy, and ensure cybersecurity.
- The next stage of the NDIA's eMarketPlace development will be to assess the current infrastructure and identify capability and gaps in order to determine what infrastructure changes may be required.
- The NDIA has previously indicated an intention to conduct a Request for Information (RFI) to gather advice from industry stakeholders about innovative solutions and commercial models that could deliver the NDIS eMarketPlace. The NDIA is working

closely with the DHS (the NDIA's shared services partner) to confirm the utility and timing of an RFI.

- The NDIA is already aware of a range of small e-markets emerging around the country. For example, app-based plan management and financial management platforms are emerging to enable payments to be made to providers from participant plans, alleviating the burden on participants and providers. Another emerging e-market provides the ability to match available housing with people who are looking for specialist disability housing.

Productivity Commission Information Request 8.2

Is there scope for disability support organisations and private intermediaries to play a greater role in supporting participants? If so, how? How would their role compare to Local Area Coordinators and other support coordinators?

Are there any barriers to entry for intermediaries? Should intermediaries be able to provide supports when they also manage a participant's plan? Are there sufficient safeguards for the operation of intermediaries to protect participants?

NDIA's response:

The NDIA considers there is merit in reviewing the scope of the role of Disability Support Organisations (DSOs).

- In particular, there are different models of peer-to-peer support delivery, and there is a need to evaluate both the impact (effectiveness) and scalability (efficiency) pending an expansion of the NDIA's investment in DSOs.
- The Australia and New Zealand School of Government (ANZSOG) is currently undertaking an evaluation of peer-to-peer models of support focused on outcomes/impact, with a view to using this to inform future ILC investment in individual capacity-building activities, such as peer support.
- The NDIA has almost completed work on the role and performance of intermediaries in the Scheme to date, and the issues raised by the Commission will form part of the deliberations regarding further action.

Intermediaries currently help participants design their supports, recommend support options, and help participants connect to providers and mainstream and community supports. Participants can choose the level and type of support they receive from intermediaries to implement their plans.

Noting the need to review the scope of the role of DSOs and other intermediaries, the NDIA proposes that, in the interim, the Scheme's investment in intermediaries could be leveraged by:

- **Providing greater clarity on the roles of intermediaries:** The NDIA is making efforts to provide greater clarity on the roles, rights and responsibilities of intermediary support providers in order to improve consistency in planning decisions and reduce confusion in the sector.
- **Reducing barriers to entry:**

- Market development and growth can be facilitated by removing administrative barriers (e.g., tight definitions of intermediary supports, fungibility in rules, price controls).
- Opportunities to improve the NDIA's processes and policies to better support the operation and growth of the intermediaries market have recently been identified, and these will be prioritised as part of the NDIA's work in implementing improved provider pathways.
- Processes could be harmonised across jurisdictions (e.g., recognition of provider registration across jurisdictions). Furthermore, regulatory and compliance requirements could be tailored so that they are proportionate and risk-based. For example, systems and processes that are required to be in place for smaller providers in low-risk settings should reflect the greater relative burden of compliance overheads (e.g., well-developed, standardised complaints management systems) and the lower risk these providers pose to the Scheme.

9. Governance

This chapter provides the NDIA's response to Chapter 9 of the Commission's Position Paper.

9.1 General observations

The NDIA is indebted to the Commission for its initial work on the governance of the NDIS, noting that the current governance arrangements almost mirror the early recommendations made by the Commission in its 2011 inquiry on *Disability Care and Support*.

Nevertheless, the NDIA acknowledges the concerns raised in the Commission's Position Paper regarding the current governance arrangements of the NDIS, including:

- A lack of clarity around some roles and responsibility, including LACs, mainstream services and market development;
- A need for more flexibility in changing NDIS rules, noting that the impact of delays to implementing or varying Category A Rules in response to risks to financial sustainability is often greater than the benefits of requiring unanimous agreement;
- A potential for internal and external review processes to increase Scheme costs, exacerbated by poor planning processes that can increase the number of reviews; and
- A need for increased focus on plan quality in NDIS performance reporting, and further development of reporting on Scheme participants' outcomes and the attainment of participants' goals.

The Commission's view that the timeframe to implement the NDIS Quality and Safeguarding Framework is ambitious is noted. The NDIA is actively working to ensure that the intersections of responsibility between the NDIS Quality and Safeguard Commission and the NDIA are clarified and agreed before implementation.

More specific feedback in relation to the five Draft Recommendations and Information Request outlined in Chapter 9 of the Commission's Position Paper are provided in Section 9.2.

9.2 Responses to the Commission's positions

Productivity Commission Draft Recommendation 9.1

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

NDIA's response:

The NDIA agrees with this Draft Recommendation.

The NDIA supports the position that the process for implementing NDIS Rules needs to be sufficiently flexible to be able to respond to changing circumstances where the financial sustainability of the Scheme could be put at risk. As noted by the Commission, this is “especially important during the transition period of the NDIS, when the compressed timeframes increase the potential for poor arrangements to lead to poorer outcomes in the longer term”.

In the response to the Issue Paper, the NDIA and DSS raised the example of the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* (Cth) (Category A Rules), which requires unanimous agreement from the Australian, State and Territory Governments. According to the DSS, it took 10 months to draft and agree these Rules. The NDIA experienced similar implementation times with the *Registered Providers of Support Amendment Rules* and the *NSW Prescribed Program Rules*.

The NDIA also reaffirms that it supports greater protection for the role of Operational Guidelines in managing NDIS costs. An amendment to the NDIS Rules that gives greater coverage to operational policy, or a limited delegation to the NDIA CEO to create legislative instruments in certain circumstances (anticipated by s.201 of the NDIS Act), would enhance the NDIA’s ability to manage risks by quickly responding to adverse findings by the Administrative Appeals Tribunal (AAT), where a finding could jeopardise the Scheme’s financial sustainability.

Productivity Commission Draft Recommendation 9.2

The Western Australian Government and Australian Government should put in place arrangements for Western Australia to transition to the National Disability Insurance Scheme. Any decision to join the national Scheme should be made public as soon as possible.

NDIA’s response:

This is a matter for Governments to decide.

Whichever model is agreed, the NDIA notes the benefits of ensuring a consistent NDIS experience for participants regardless of where they live. In particular, the NDIA considers that a single national body administering the Scheme may offer benefits in portability and seamless entry transition of participants, their families and carers. It would also be useful if data was captured consistently across Australia to allow nationwide reporting.

Productivity Commission Draft Recommendation 9.3

The National Disability Insurance Agency should publicly report on the number of unexpected plan reviews and reviews of decisions, review timeframes and the outcomes of reviews.

NDIA’s response:

The NDIA agrees with this Draft Recommendation.

The NDIA agrees that it can improve its reporting in this area and has already made progress towards better availability and reporting of the number of unexpected plan reviews.

This is being further addressed through the work that is currently underway on improving participant and provider pathways (outlined in Chapter 4).

The Agency has improved data fields to enable it to capture unexpected plan reviews. This is now reported daily. While more work remains to be done, the NDIA is working on a number of approaches that are designed to reduce the need for plan reviews and allow a more rapid response to existing plan review requests. These include:

- Improving external communication (website, social media, letters) and including training for support coordination providers;
- Improving internal training for staff and partners;
- Establishing a tiered approach to dealing with requests, so that minor changes can be achieved in a streamlined manner;
- Developing additional key performance indicators (KPIs) for staff and partners around the profile of submitted reviews, which declined due to participant misunderstanding or incorrect information;
- Simplifying quoting procedures for AT so that they do not trigger a plan review; and
- Promoting more specific AT questions to ensure that requests for AT assessment in participants' initial plans are "reasonable and necessary".

It is likely that successfully implementing these changes over the next period will require sequenced ICT changes, process and task card redesigns, and dedicated communications to participants, providers and intermediaries.

The pathways work also proposes a focus on data and business intelligence throughout the planning process, which will better capture review timeframes and outcomes reviews.

Productivity Commission Draft Recommendation 9.4

The performance of the National Disability Insurance Scheme (NDIS) should be monitored and reported on by the National Disability Insurance Agency (NDIA) with improved and comprehensive output and outcome performance indicators that directly measure performance against the Scheme's objectives.

The NDIA should continue to develop and expand its performance reporting, particularly on outcomes, and Local Area Coordination and Information, Linkages and Capacity Building activities.

The NDIA should also fill gaps in its performance reporting, including reporting on plan quality (such as participant satisfaction with their plans and their planning experience, plans completed by phone versus face-to-face, and plan reviews).

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

NDIA's response:

The NDIA agrees with this Draft Recommendation.

Indeed, the NDIA is already taking active measures to address each of the three actions identified in the Commission's Draft Recommendation.

- **Improve and provide comprehensive output and outcome performance indicators:** The NDIA will continue to use existing mechanisms (such as the NDIS Outcomes Framework) and will also invest in new mechanisms to broaden their measurement and focus on priority areas of attention (e.g., plan quality).
- **Develop and expand performance reporting, particularly on outcomes, LAC and ILC activities:** The NDIA is committed to taking an outcomes-based approach to delivering ILC, and to reporting on the performance of ILC investments. To this end, the NDIA has released an ILC Outcomes Framework Discussion Starter that outlines this approach. This will incorporate data from LACs, ILC-funded organisations and the NDIS Actuary.
- **Fill gaps in performance reporting, including plan quality:** The NDIA is reviewing the way it collects information about participant satisfaction, with the aim of increasing the number of participants who provide information about their experience throughout the participant pathway, and in a timely manner.

The NDIA agrees that the Integrated NDIS Performance Reporting Framework should be regularly reviewed by the NDIA and the COAG DRC and refined as needed. At present, the NDIA Board provides quarterly reports to the COAG DRC.

Productivity Commission Draft Recommendation 9.5

In undertaking its role in delivering the National Disability Insurance Scheme, the National Disability Insurance Agency needs to find a better balance between participant intake, the quality of plans, participant outcomes and financial sustainability.

NDIA's response:

The NDIA agrees with this Draft Recommendation.

Please see the responses in Chapter 4 regarding the NDIA's current work on improving participant and provider pathways.

Productivity Commission Information Request 9.1

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

- *Prioritising potential participants with more urgent and complex needs*
- *Delaying the transition in some areas*
- *An across-the-board slowdown in the rate that participants are added to the Scheme.*

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

NDIA's response:

The NDIA notes that a decision to implement slowing down of the rollout, including which participants are prioritised, is a matter for decision by Governments. In relation to the implications of slowing down, the NDIA offers the following observations:

- The NDIA considers that the risks identified in Draft Finding 2.1 should be considered alongside the potential implications of slowing down the rollout, noting that both scenarios bring challenges in service delivery, governance and funding. Slowing down the rollout would require significant resources to ensure careful planning and risk management to prevent the loss of public support for the NDIS.
- In particular, the NDIA notes that participants, providers and States/Territories may have made plans based on the expectation that the Scheme rollout schedule is maintained.
 - Careful planning would be required to avoid service gaps and undue disruption or uncertainty for participants and providers. This is particularly important where:
 - States/Territories may be planning (or are undergoing) withdrawal from service provision; and,
 - Providers have begun changing business models to accommodate the transition to a fee-for-service environment.
 - If a slowdown were to be implemented, it should occur in a way that minimises uncertainty for providers, noting that regulatory risk may contribute to an escalating 'risk premium' expected by potential market entrants. This risk premium may deter further market entry.
- The NDIA also notes that a slowdown may require renegotiation of governance and funding arrangements between the Commonwealth and State and Territory Governments. In the meantime, the NDIA is committed to trying to meet the bilateral estimates.

10. NDIS funding arrangements

This chapter provides the NDIA's response to Chapter 10 of the Commission's Position Paper.

10.1 General observations

The NDIA welcomes the clarity of understanding that the Commission has brought to the complex funding arrangements that exist for the NDIA.

As the Commission has identified, it is anticipated that the cost of the NDIS will be around \$22 billion at Full Scheme in 2019–20. The Board of the NDIA is committed to living within that funding envelope.

However, the NDIA concurs with many of the general observations made by the Productivity Commission in relation to funding arrangements for the NDIS:

- The funding arrangements are complex, both between Transition and Full Scheme, and between the Australian and the State Governments;
- To effectively manage costs and the associated funding risk, “good risk management requires those who are best placed to manage the risk have responsibility for it”¹⁶;
- Unintended consequences can arise if such alignment does not exist. More specifically, the NDIA notes the Commission's observations in relation to:
 - In-kind funding;
 - The cap on NDIA staffing and operating costs;
 - The absence of a reserve fund to support the underlying insurance principles of the NDIA;
 - The funding arrangements between the Australian and State Governments, including the longer-term escalation provisions;
 - The interrelationship between NDIS and mainstream funding;
 - The potential for a lack of certainty about future funding to create unintended participant behaviour, with a flow-on impact on Scheme costs; and
 - The risk of cost-shifting among and within Governments.

More specific feedback in relation to the two Draft Findings, three Draft Recommendations and three Information Requests outlined in Chapter 6 of the Commission's Position Paper are provided in Section 10.2.

¹⁶ Productivity Commission Report, p. 337.

10.2 Responses to the Commission's position

Productivity Commission Draft Finding 10.1

The objective of the escalation parameters is not specified in the Bilateral Agreements between the Australian Government and the State and Territory Governments at Full Scheme.

The existing escalation parameters are unlikely to reflect the full increase in National Disability Insurance Scheme (NDIS) costs over time, which would result in the Australian Government bearing a higher share of NDIS costs over time.

NDIA's response:

The NDIA notes that this matter (Draft Finding 10.1, and Information Request 10.1) is outside NDIA's direct purview, but agrees that the key drivers of NDIS cost increases will be wage growth, population growth and participants ageing in the Scheme. Current longer-term assumptions in actuarial modelling reflect:

- Longer-term projected wage growth; and
- Population growth for people aged 0–64 in line with Australian Bureau of Statistics (ABS) projections.

These parameters do not include any allowance for gains through early intervention over the longer term, or inflation over and above normal inflation, which need to be monitored closely over time.

Productivity Commission Information Request 10.1

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

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

NDIA's response:

This request relates to matters outside NDIA's direct purview. Please refer to the response to Draft Finding 10.1

Productivity Commission Draft Finding 10.2

Responsibility for funding National Disability Insurance Scheme (NDIS) cost overruns should be apportioned according to the parties best able to manage the risk. This is not the case in the Transition period, as the Australian Government bears all the risk of any cost overruns, but not all the control.

The governance arrangements for the NDIS do not allow the National Disability Insurance Agency to respond swiftly when factors outside its control threaten to impose cost overruns.

NDIA's response:

The NDIA agrees with this Draft Finding.

The NDIA considers that mechanisms for monitoring potential cost overruns are required. Depending on the source of the Scheme's inflation, the NDIS may need to rapidly respond.

- The NDIA is committed to operating the NDIS within the designated funding envelope and will do so by using levers within its control to address risks.
- Where cost risks are outside the control of the NDIA, the NDIA will make recommendations to the Commonwealth Minister and the Disability Reform Council for amendments to legislation and Rules. (Also see response to Draft Recommendation 9.1, regarding Category A rules).

Productivity Commission Information Request 10.2

The Commission is seeking information on the best way to align the ability to control cost overruns with the liability to fund cost overruns. Possible options include:

- *Estimating the proportion of cost overruns that the Australian and State and Territory Governments are responsible for and allocating funding responsibility accordingly*
- *Altering the governance arrangements of the National Disability Insurance Scheme to give the Australian Government greater authority to manage the risk of cost overruns, to better reflect their funding liability.*

NDIA's response:

The NDIA notes that this matter is outside NDIA's direct purview, but notes the following:

- The NDIA has developed an Insurance Principles Manual. The manual is a framework for monitoring and managing the financial sustainability of the NDIS using an insurance-based approach. The manual sets out the steps undertaken to monitor and manage financial sustainability within a prudential governance framework.
- These steps will allow early identification of any cost overruns resulting in changes to the original forecast. The model will also be able to characterise the source of changes from the original forecast (e.g. specific participant groups, specific supports, etc.). This could assist in determining the most appropriate way to address the cost overrun.
- Where necessary, the NDIA Board will manage Scheme sustainability by taking actions that may include process redesign or improvement; realignment of support expectations, community support and development; or proposals for legislative change

with respect to support entitlements, scope of available supports or the eligible population.

Productivity Commission Draft Recommendation 10.1

At Full Scheme, the annual operating budget for the National Disability Insurance Agency should be set within a funding target of 7-10 per cent of package costs with the expectation that, on average, it would sit at the lower end of the band.

The National Disability Insurance Agency should be required, in its annual report, to state reasons why it has not met this target in any given year.

NDIA's response:

The NDIA agrees with this Draft Recommendation.

The NDIA is committed to operating effectively and efficiently. Providing expenditure flexibility at Full Scheme¹⁷, within a range of 7 percent to 10 percent of package costs would allow the NDIA to make appropriate upfront investments, consistent with insurance principles. The investments would seek to optimise overall Scheme experience and participant outcomes, while reducing future Scheme outlays.

Commonwealth agencies are expected to operate effectively within their appropriated operating budgets in each financial year. The NDIA considers that annual reporting on the reasons why the 7 percent to 10 percent target has not been met in any given year would be an appropriate component of fulfilling this expectation.

Productivity Commission Draft Recommendation 10.2

The Australian Government should reconsider the staffing cap on the National Disability Insurance Agency, given the importance of developing internal capability and expertise.

NDIA's response:

The NDIA agrees with this Draft Recommendation.

Currently, the NDIA has a phased staffing cap that will grow from 1,749 in the 2017 financial year to 2,757 by the 2019 financial year. The NDIA may consider providing a recommendation to Government to consider bringing forward the ramp-up of staffing numbers into earlier years, potentially allowing it greater flexibility to redefine the participant and provider pathways.

- The current Average Staffing Level (ASL) arrangements may constrain the NDIA's ability to pursue new service delivery models, such as those arising from its work on the participant and provider pathways. Work is currently underway to better understand the extent to which this might be the case. This work is subject to additional

¹⁷ The annual operating budget, as a percentage of package costs, is higher during the Transition than is expected at Full Scheme. The NDIA operating budget is currently approximately 15% of package costs.

engagement with participants and providers, as well as pilots that will test the operation of any pathway revisions.

- While economies of scale in terms of staffing are likely at Full Scheme, the complexities of the Transition to Full Scheme require upfront resources. This may include managing issues such as the provision of transports, the management of in-kind contributions, the role of intermediaries and consistency across planners.
- To respond flexibly to demand for different capabilities and to ensure a surge capacity, the NDIA has established a mix of Australian Public Service (APS) workforce supported by contractors, consultants and secondments from other APS agencies in order to deliver the scale of transformation required. Although a mixed workforce allows the NDIA some flexibility, it also makes it more challenging to develop internal capability and retain expertise (a key concern identified in the NDIA's discussions with participants).
- In addition, a high number of contractors can result in inefficiencies in internal workflow processes because they lack the authority to make decisions under the respective delegations in the *NDIS Act 2013* (Cth), *Public Service Act 1999* (Cth) and the *PGPA Act 2013* (Cth).

Productivity Commission Information Request 10.3

The Commission seeks feedback on the level of a future contingency reserve that would enable the National Disability Insurance Agency to operate like an insurance scheme, and how this would best be implemented, including any transitional arrangements.

NDIA's response:

Insurance companies and most other existing injury support schemes typically hold significant reserves on their balance sheet.

The NDIA notes that any future contingency reserve could only be built from Full Scheme. This is in comparison to the Transition, where States and Territories pay the NDIA in arrears.

The appropriate level of any future contingency reserve depends on the specific purposes identified for the reserve (related to operating "like an insurance scheme").

At the same time, the NDIA notes that it would be undesirable during the Transition to fund the creation of a contingency reserve through removal of the NDIA's current cash buffer because this would reduce operating flexibility, particularly as the NDIA strives to review the appropriateness of the NDIA participant and provider pathways.

Productivity Commission Draft Recommendation 10.3

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

NDIA's response:

The NDIA agrees with this Draft Recommendation.

The NDIA considers that in-kind funding arrangements are limiting choice and control for participants, imposing additional burdens on the NDIA, and may also be limiting growth in certain parts of the market. Accordingly, the NDIA welcomes the Productivity Commission's Draft Recommendation regarding the time-limited nature of in-kind support.