

Submission by the
Commonwealth Ombudsman

**RESPONSE TO PRODUCTIVITY
COMMISSION'S ISSUES PAPER, 'NATIONAL
DISABILITY INSURANCE SCHEME COSTS'**

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INTRODUCTION

The Commonwealth Ombudsman's office welcomes the opportunity to respond to the Productivity Commission's issues paper, *National Disability Insurance Scheme Costs*. This submission reflects issues raised with our office in individual complaints and in consultation with community and industry stakeholders.

BACKGROUND

The Commonwealth Ombudsman safeguards the community in its dealings with Australian Government agencies by:

- correcting administrative deficiencies through independent review of complaints about Australian Government administrative action
- fostering good public administration that is accountable, lawful, fair, transparent and responsive
- assisting people to resolve complaints about government administrative action
- developing policies and principles for accountability, and
- reviewing statutory compliance by law enforcement agencies with record keeping requirements applying to telephone interception, electronic surveillance and like powers.

The Commonwealth Ombudsman's unique position in the Australian administrative law system provides this office with an understanding of the individual experiences of members of the public, who are dissatisfied with the way government has dealt with their concerns. The Commonwealth Parliament has given the Ombudsman's office the power to investigate those complaints by obtaining records and information from the agency that would not ordinarily be available to a person acting on their own behalf. Over time, through investigating complaints about the actions of a Commonwealth department or agency, the Ombudsman's office can build up a detailed picture of an agency's operations.

The office also engages with peak bodies and community representatives that have direct access to stakeholders affected by government policies and programs. This engagement provides an opportunity for the office to develop a more holistic understanding of the public's experience of those programs, and is of particular value when affected parties (including people with disability) may be less inclined to make direct complaints.

RESPONSE TO TERMS OF REFERENCE

The Commonwealth Ombudsman's office plays an important role in safeguarding the Australian community in their dealings with Australian Government agencies. In recent years, we have focused on the way government policies and programs are administered for vulnerable and/or disadvantaged people including people with disability, Indigenous Australians and people from culturally and linguistically diverse backgrounds.

The NDIS is an important social reform that will impact heavily on all the above groups, as well as the broader community. Our office is committed to working closely with government (including the NDIA and the Department of Social Services), community, service providers

and people with disability and their families, to understand the way the Scheme is working in practice, and to point to ways in which its delivery can be improved.

We welcome the Productivity Commission's consideration of the costs of the NDIS, and trust our comments will be helpful in shaping government's understanding of the challenges and opportunities posed by the Scheme's significant financial and social investment.

Please note this submission is largely based on feedback given to our office, in the form of complaints and anecdotes, by participants, families, carers, providers, advocates, community organisations and peak bodies. Where relevant, we have tested that feedback with the NDIA and the agency's advice to us is referenced in the submission. Where we have made suggestions for change or review in this submission, these should not be taken as implying criticism of the NDIA's current approach but, rather, understood as constructive feedback on areas of the NDIS (or aspects of the NDIA's administration) that may benefit from further attention.

Scheme costs

Utilisation rates

The Commission's issues paper asks why the utilisation rates for plans are currently so low. While feedback to our office in the earlier stages of the NDIS indicated that some participants felt they were being given inappropriate supports they could not or would not use, subsequent changes to allow for more flexibility in the way plan funding is spent seems to have largely addressed this concern.

Our more recent experience suggests two main reasons why participants may under-spend against their plans.

Supply

The first reason is that the service they are seeking to access is either not available in their local area or there is not an adequate local supply. Lack of services appears to be a problem particularly in regional and remote areas, for example in the Barkly region in the Northern Territory, where there are very few local services and only a handful of other services that attend on a fly-in fly-out basis. We also heard from early childhood intervention providers in Townsville who told us about participants who travel more than nine hours from Mt Isa to access services because of a lack of local services in that community.

Families in the Hunter region (NSW) told us that, despite having an NDIS plan for their child, they are facing waits of up to six months for a place to become available with a local provider, simply because existing early childhood services are oversubscribed and no new providers are entering the market.

Some of the possible reasons for undersupply are discussed later in this submission.

Understanding and connection

The second reason we are aware participants may not access some (or any) of the supports in their plan is because they have trouble connecting with appropriate services. This may be due to not understanding their plan or how to use it, and/or because participants are not able or confident to connect with services without support.

In recent discussions with stakeholders we heard that many Indigenous people in the Barkly region had drawn very little, if any, funds against their plans. The stakeholders suggested this arose from a limited understanding of the plan and how it is meant to be used, combined with a lack of familiarity with the concept of being an active consumer of disability services as opposed to being a recipient of services under the previous block-funded model.

The NDIS allows for funding to be included in plans for participants to access support coordination where they require assistance in identifying and accessing supports, but the feedback to our office indicated this coordination was either not being provided or was not effective.

Ramifications of underspending

Our office has heard from participants who say that funding for under-spent supports had been reduced or removed in subsequent plans, seemingly on the assumption that if the funding wasn't used it wasn't needed. The NDIA has told us this should not occur automatically and that planners are expected to discuss with the participant the reasons the support funding wasn't fully spent. This conversation should inform the planner's decision about the funding required in the next plan, including whether the participant may require funded support coordination to maximise use of their supports in the future.

In our view, it will be important for the NDIA to carefully monitor the usage of plans to identify gaps in markets, as well as areas where capacity building and additional support coordination may be required to assist participants to more effectively use their NDIS funding. We suspect that many participants who underutilise their supports do so because they are already vulnerable and/or experiencing difficulty engaging with the Scheme, and will only be placed at greater risk if their plans are reduced without a considered assessment of their individual circumstances.

Intersection with mainstream services

Effectiveness of interface and division of responsibility

Many stakeholders have stressed to our office how difficult it can be to identify where a person's health condition ends and a disability begins or, in turn, to understand which supports should be funded by which system. For example, many parents and young people told us about the difficulties explaining to a school or tertiary institution their obligations to provide supports to enable attendance, even as administrators tell them those are 'health' or 'disability' issues.

While this is not a new problem, it seems the introduction of the NDIS has heightened the fears of people with disability about the need to clearly articulate every support they require and to then advocate to multiple institutions about their respective role in providing services. Inversely, we heard that some participants are placed at risk of not receiving adequate supports because they do not have awareness of what they need or who they can expect to provide it.

Transport

The bilateral agreements and the NDIS Act are clear that the NDIS must not fund supports that are more properly funded by another mainstream institution. Of all the problems highlighted with our office about the interaction between the NDIS and mainstream services, transport has been the most common. Transport for people with disability has also been the subject of media coverage in several states and territories.

The primary issue around transport has been the winding back of many disability-focused state transport programs on the basis that funding for those programs has been absorbed into the state or territory's NDIS outlays. At the same time, NDIS plans have been developed around the expectation that the transport system will provide affordable and accessible options for people with disability. Where this does not eventuate, there is a risk that transport barriers will prevent people with disability from accessing their NDIS-funded supports. We were told this was especially true of community participation activities, but may also apply to daily living activities such as therapy, education or employment.

We suggest that careful consideration be given to how government will manage inconsistencies between the *expectations* of what mainstream services will deliver and what they *actually* deliver, to ensure that people with disability are not disadvantaged as a result. The NDIS is a scheme aimed at assisting people with disability to access a normal life and, in our view, must be accompanied by a commitment from governments to work collaboratively to minimise the risk that, in the efforts to ensure services are not duplicated or costs shifted, services are underfunded or not provided at all.

The need for collaboration

Our office recently heard from community health services in the Northern Territory who told us that, although they are the primary health providers for many people with disability who are being transitioned into the NDIS, they are not included in planning discussions or provided with details of the finalised plan. They explained this can mean that important information held by the health service is not available to the planner when making their decision, and also means the health services cannot work effectively to support the goals in the plan (including collaborating with other services supporting the participant) because they do not have visibility of the agreed goals or supports.

Providers lamented the loss of the 'case management' approach that was possible when disability services were delivered at the state or territory level along with health, education and community services, whereby staff from each of the relevant departments or services could work together to negotiate outcomes for a person with disability.

We recently heard about work being done in NSW to include a participant's 'key workers' in their NDIS planning appointment, to ensure that all relevant information is collected and considered. We would be supportive of this kind of approach being applied more broadly, but especially for participants who have complex needs or who may have limited understanding or awareness of their support needs. While it may be more labour intensive in the first instance, stakeholders suggested it would pay off for the NDIS in the longer term as:

- plans would be more comprehensive from the outset
- providers across the disability sector and mainstream services would be able to work more collaboratively to ensure the participants' needs are met
- participants would be better placed to understand how and by whom each of their services (NDIS and mainstream) will be delivered.

Mental health services

The full rollout of the NDIS will see the bulk of existing mental health funding (for programs such as Personal Helpers and Mentors (PHaMS) and Partners in Recovery) being absorbed into NDIS funding. This will occur even though only a relatively small proportion of people with mental health conditions will be eligible to access the NDIS. While funding in the health system will continue for clinical care, many stakeholders have expressed concern that

programs focused on wellness, recovery and community participation will no longer be directly funded.

Some existing mental health services told us they may not be able to continue to operate effectively under the NDIS funding model. As many mental health conditions are episodic, a participant may access a service several times in a short timeframe, but then not access the service again for many weeks or months when they experience another episode. In turn, providers say they are faced with uncertainty about demand from week to week, making it difficult to plan staffing and programs in advance and potentially making their business less financially viable. They point to these difficulties as clear downfalls of individual funding under the NDIS when compared to previous block-funded models that provided certainty of funding and programs even as demand fluctuated.

The Ombudsman's office recently made a submission to the Joint Standing Committee on the NDIS's inquiry into the provision of services under the NDIS to people with psychosocial disability arising from a mental health condition. That submission can be found on the Committee's inquiry page.¹

Information, Linkages and Capacity Building (ILC)

In our consultations with stakeholders around the country we identified confusion about what the ILC framework entails, as well as what role the Local Area Coordinators (LAC) play in assisting people with disability within and outside the NDIS.

In several locations, we were concerned to find that many participants, and even key support organisations (like advocates, peak groups and peer support groups), were not aware of the availability of LACs to assist with pre-planning work, plan implementation and/or to provide referrals to mainstream services. While we understand that, in some locations, this is because local area coordination is simply not yet available, the reasons for the lack of visibility and lack of information around LACs in other regions are not clear.

In discussions with our office many individuals and stakeholders expressed concern about whether LAC organisations would be appropriately resourced to ensure outcomes both for individuals and the community. In particular, they pointed to areas where there are significant levels of social disadvantage that may impact on the capacity or willingness of its citizens to participate in the Scheme. It may be that the NDIA needs to do more work to communicate the role and resourcing of LACs and the broader ILC framework, and how it will be implemented at a local level.

Planning processes

The planning process has been one of the most significant drivers of complaints to the Ombudsman's office. The types of complaints can be simplified into three main categories.

The method and timing of planning

When the Scheme first commenced in trial phase, almost all participants were able to attend a face to face planning meeting. The meetings allowed participants and key support people to discuss with the planner the types and amounts of supports they felt were 'reasonable and necessary'. While we received some complaints about the plans coming out of the

¹ <http://www.aph.gov.au/DocumentStore.ashx?id=1213a556-b3a8-45b3-8e53-963cc178ad8c&subId=463690>

meetings, we rarely heard about dissatisfaction with the way in which the meetings were conducted.

When the national rollout commenced in 2016, the NDIA moved to direct most participants into planning by phone. This preference was understandable, given the numbers of participants scheduled to enter the Scheme during 2016-17 and in subsequent years. However, our office soon began receiving complaints from participants and families who said they were told there was no option for a face to face meeting, even where it was clear a phone interview was not conducive to an effective planning conversation. (For example, a participant who required the use of communication boards or an iPad to participate in a conversation, or a participant with psychosocial disability who indicated they could not trust someone they could not meet face to face.)

In the early stages of national rollout, complainants also told us about being contacted by phone without warning for a planning conversation. Those complainants indicated they did not feel comfortable sharing personal information with someone who had called unannounced, and often said they did not believe they had been able to properly convey their support needs because of the lack of warning and prior preparation. Many stakeholders said they believed this approach resulted in many plans being inadequate or poorly matched to the participants' needs.

We understand the NDIA has done significant work to address these concerns. It recently advised our office that, while for resourcing reasons phone meetings will continue to be the first preference, face to face planning meetings will be available to those participants who request them. The NDIA also advised that participants who have a phone meeting will also be offered a 'pre-meeting' to talk about what the planning meeting will entail.

The NDIA has also contracted 'service partners' to conduct planning discussions on its behalf. We understand that, while these organisations are subject to quotas and generally conduct most appointments by phone, they are expected to provide a face to face appointment when requested.

We are not aware of any research that may have been done to compare the outcomes, and satisfaction and/or review rates of face to face and phone planning discussions, but our complaint base² suggests this may be a useful exercise. While phone meetings likely provide the most cost effective method for planning when only simple administrative overheads are considered, there may be merit in considering whether – if participants who have phone meetings are more likely to subsequently complain or seek review – the time spent on those subsequent interactions detracts from the cost effectiveness of planning by phone.

The conduct of planners

Planners are tasked with the essential role of analysing the information provided in advance of, and during the planning meeting to develop a statement of participant supports. This statement outlines the types and amounts of supports that will be funded under the NDIS. In developing the plan, it is vital the planner is able to balance the participant's personal circumstances and needs against the 'reasonable and necessary' criteria set out in legislation.

² The bulk of complaints to our office about the planning process have been from people who participated in planning by phone

Unfortunately, our office has heard anecdotal reports of planners who have demonstrated a fundamental lack of understanding of certain disabilities and, even more disappointingly, of disability generally. Some stakeholders have told us about planners who asked parents when their child was likely to 'recover' from a life-long disability, and others who told people with psychosocial disabilities they should 'try to be more positive'.

We understand that, in the early days of the Scheme, many planners were allied health professionals and, in turn, probably had a better practical understanding of disability. For many reasons – presumably including the challenges in retaining highly qualified staff when the disability market is expanding, the availability of local staff and the NDIA's preference for non-ongoing employment offers – this is no longer the case. Notwithstanding this change, we suggest there are some key attributes that must be at the core of the NDIA's recruitment policies:

- disability awareness
- cultural competency
- understanding of the local population and culture.

This is important not only for the participants' experience during the meeting, but also because in our experience people who are dissatisfied with the conduct of a process are more likely to complain about, or seek review of a decision even if the original decision is sound. If front-end transactions, including planning, are not handled well the cost of additional transactions with dissatisfied participants, families and providers may escalate the overheads of the NDIA.

Planning outcomes

Our office regularly receives complaints from people who are dissatisfied with the type and/or amount of supports included in their plan. While responsibility for review of these decisions sits with the NDIA's internal review process and the Administrative Appeals Tribunal (AAT) appeals process, our office can consider the administrative actions leading up to those planning decisions.

Complaints to our office about planning outcomes reflect three key themes:

- dissatisfaction with the *types* of supports that are (or are not) included in a plan
- dissatisfaction with the *amount* of funding for supports included in a plan
- dissatisfaction about perceived inconsistencies between an individual's plan and that of another participant believed to have similar support needs.

While the first and second points are largely about the way in which individual circumstances have been assessed (and are ultimately subject to internal review and external appeal), the third goes directly to one of the Commission's questions about consistency and accountability. Stakeholders have told our office there is a widely-held view that the background of the planner impacts on the type and amounts of support they will approve in a plan. For example, there is a view that a physiotherapist is more likely to include greater amounts of physical therapies while a planner with a social work background is more likely to approve supports focused on community participation and general wellbeing.

Planning tools

Interestingly, our recent discussions with the NDIA indicate that planners tend to have limited latitude in deciding the final package of supports. We are aware the NDIA has developed a guided planning process which, via a series of targeted questions, leads the

planner to a 'reference package' that is considered the closest fit for that participant. As we understand it, these packages provide a 'standard' plan for certain conditions as a starting point. Planners can remove supports that are not needed but must make a compelling case and seek higher-level approval if they consider that additional funding should be allocated beyond the parameters set by the reference package.

We understand the reference package framework is quite different to the 'bottom up' approach taken in the days of the Scheme trials, whereby packages were tailor-made for each participant. As we don't have a role in reviewing the plans themselves, it's not clear to us whether some of the disquiet about changes or inconsistencies in packages may arise from the shift between the two approaches or whether there are still genuine inconsistencies between outcomes even when the reference package is used. With respect to the former, we understand the NDIA is monitoring the outcomes for those people who previously had a 'bottom up' plan and are now being reviewed for their first 'top down' plan, to identify whether there are substantial differences in the types and amounts of supports allocated.

Whatever the reasons for the view that outcomes are inconsistent for 'like' participants, we suggest participants and providers may benefit from clearer information about how plans are decided using the reference packages and what range of outcomes is possible and likely in their own case. As mentioned previously, we suggest that better information for participants, families and providers about the process underlying, and factors influencing the final decision would likely also minimise the number (and associated cost) of complaints and reviews sought by people who might currently use those processes simply because they are having difficulty understanding or accepting the logic underlying the final plan.

Budget based approach

Our discussions with stakeholders indicate that many participants and families are uncomfortable with the budget approach used in plans generated by the reference packages. They point to the way that supports are bundled in the budget, rather than accounted for separately, as making it difficult to assess if a participant's needs have been adequately considered and accommodated in the plan.

We understand the budget approach is aimed at providing greater choice and control, whereby participants can spend money within budgets as they wish rather than being limited by prescribed amounts being allocated to specific supports. On the other hand, stakeholders have argued this approach does not provide for transparency in decision making and essentially puts the onus on the person with disability or their supporters to reverse-engineer the plan, to work out precisely what they can buy with the budget allocated and to work out if this is sufficient for the participants' needs.

Stakeholders suggested it can take weeks or months to obtain quotes from providers to make this kind of assessment. They said that most participants would not be able to complete this assessment without significant assistance and indicated they may encourage participants to seek additional funding for support coordination specifically for this task.

Resolving disputes

The Commission asks whether the current methods for resolving disputes about participant supports are appropriate. Feedback to our office is that many participants and providers have trouble with the NDIA's complaints and review processes. Participants, via community support organisations, have also told us they find the AAT appeal process daunting and difficult to participate in.

Complaints

The Commonwealth Ombudsman encourages people and organisations who are dissatisfied with an Australian Government agency to first try to resolve their problem with the agency before approaching our office. In recent months our office has received many complaints from participants and providers who advised they have attempted to use the NDIA's complaints process but have experienced difficulty either lodging a complaint or having their complaint responded to.

As we understand it, these difficulties arose due to, among other things:

- significant wait times on the NDIA's 1800 number, with some complainants reporting they waited in queue for between 30 and 120 minutes for their call to be answered
- NDIA contact centre staff not having access to the customer records management system, which meant they could not:
 - find out the status of an existing complaint
 - record complaints directly and, instead, had to send an email to the local office to ask that they make contact with the participant or provider.

The NDIA recently advised it had commenced training for contact centre staff to allow them to access the customer records management system and to record complaints directly to participant and provider records. We will be monitoring our data in coming months to identify whether this service approach has reduced the number of complaints to our office about 'lost' or unactioned complaints.

Now that contact centre staff are being used to complete a greater number of simple transactions and, in turn, are spending more time with some callers, we understand that call wait times have, in fact, increased. It's likely the NDIA has a strategy for monitoring and managing wait times, but we do not have details of what this is.

The 1800 number is the single point of entry by phone to the agency and it is important that participants and providers are able to access timely and relevant information via this channel. In the absence of easy access, we suggest there is a risk the NDIA may see an escalation in formal complaints about its service delivery to the Ombudsman, Members of Parliament and the Minister. These types of complaints are often handled at more senior levels and, in turn, may further impact on the overall cost of the NDIA's complaint system.

Reviews and appeals

In recent months, our office has identified an increase in the number of complaints about the NDIA's review process. Complainants told us:

- they were told there was "no point" lodging a request for review
- they were told they had to fill out a form to seek a review, even when they advised staff they could not complete the form without help
- they phoned the NDIA several times to request a review only to be told later there was no record of them having made a request³
- review decisions were being made without contact with the participant or family to clarify key details or seek additional information if needed

³ We suspect this issue is tied to the previous inability of contact centre staff to access participant and provider records to directly record a request for review

- they had experienced delays of several months in having their review request completed
- they had received decision letters that were confusing or did not contain enough information to properly explain the review decision.

In discussions with the NDIA it acknowledged it has been receiving a high volume of review requests, particularly as more participants enter the Scheme. It advised that it does not currently have service standards or key performance indicators for review completion timeframes but may consider developing these in future.

Reviewing plans

The NDIS Act makes provision for two types of reviews of plans. The first is an internal review, under s 100, of the decision to approve a package of supports, which must be sought within three months of the date of the plan approval decision. If the person affected is dissatisfied with the reviewer's decision, they may then lodge an appeal with the AAT.

The second option is a plan review, under s 48, which can be requested by a participant at any time but will generally only be granted by the NDIA where there is a change of circumstances that warrants changes to the existing plan.

Stakeholders have expressed the view that the way the NDIA currently uses s 100 reviews and s 48 reviews makes it difficult for dissatisfied parties to obtain a decision they can take to the AAT. When a person requests an internal review of a planning decision (s 100(2)), the reviewer must either confirm, vary or set aside the original decision (s 100(6)). As we understand it from our discussions with the NDIA, if a review officer considers the reviewable decision should be varied or set aside they (or another staff member) conduct a plan review (s 48). This constitutes a new planning decision (under s 33(2)) and, if the participant remains dissatisfied – perhaps because only some of the changes they requested have been adopted – they must then make a further internal review request.

This means that, in theory, a participant might make several requests for internal review, and be subject to as many plan reviews, without satisfaction but still not have a decision they can appeal to the AAT.

Further, the distinction between an 'internal review' and a 'plan review' often seems to be lost on participants and their representatives. This situation was demonstrated in a recent AAT decision, *Bridgland and National Disability Insurance Agency*⁴, where the applicant had sought an internal review and then, remaining dissatisfied, lodged an appeal with the AAT. The Tribunal found that it did not have jurisdiction to review the matter because the NDIA reviewer had initiated a plan review, resulting in a new plan which attracted internal review rights the applicant had not yet exercised. Senior Member Toohey commented at paragraph 21:

...it appears that, in the course of discussions and negotiations between Gerry Bridgland and the NDIA, the lines between *reviewable decisions*, requests for internal review, and decisions by a reviewer, have become blurred...

In another similar case⁵ Senior Member Toohey stated:

⁴ [2017] AATA 69

⁵ *Rodrigues and National Disability Insurance Agency* [2016] AATA 1095

The review provisions might appear straightforward but it is not hard to see how they can become confused, especially where plans have been remade.

It is clear the NDIA is committed to resolving as many matters as possible at the internal review level, rather than requiring participants to appeal to the AAT. However, it should be noted that the sometimes-circular nature of the current review arrangements may significantly increase the number (and cost) of reviews the NDIA must handle, particularly as the number of Scheme participants continues to grow during national implementation.

On the other hand, there is a risk that affected parties will experience 'review fatigue' and opt out of the review process, rather than continuing to press their rights even when they remain dissatisfied. We suggest that both are concerning prospects requiring further consideration.

Alternative methods of dispute resolution

The complaints and review processes are vital in resolving disputes between the NDIA and participants or providers. Putting aside the seeming confusion arising from the intersection between internal reviews and plan reviews discussed above, we also see situations where participants or families have accessed the complaints and/or review process on multiple occasions without obtaining a satisfactory result. This does not necessarily mean the NDIA was not administering its resolution processes properly, but it does raise questions about what options are available to the NDIA when disputes cannot be effectively resolved using a standard complaint or review approach.

It must be remembered that, for most participants, their relationship with the NDIA will be life-long. This means that any breakdown in that relationship, especially at an early stage, may impact on their willingness to continue to engage with the NDIS.

We suggest that, in situations where disputed the issues are particularly complex or the NDIS considers its relationship with a participant may be at risk, consideration be given to providing an Alternative Dispute Resolution or mediation pathway that would allow the NDIA to use an independent arbiter to facilitate discussion between the Agency and the aggrieved party with a view to reaching a mutually agreed outcome. This is not dissimilar to the case conference approach used at the AAT, and would allow the NDIA to resolve some of its more complex matters in a timelier manner.

This sort of approach would arguably benefit the participant, the NDIA and the costs of the NDIS by way of:

- relationships being recovered
- unnecessary complaints and reviews to the NDIA being avoided
- fewer matters being escalated to the Commonwealth Ombudsman, Members of Parliament and the AAT.

Administrative Appeals Tribunal

Many participants report that, notwithstanding the adjustments that have been made to the hearing process in the NDIS Division of the Tribunal, they find the appeals process lengthy, intrusive and upsetting. The AAT hearing process falls outside the Ombudsman's jurisdiction, so we do not have a sense of what could be done differently to account for participants' concerns.

Market readiness

Supply and demand

As we have already discussed, our office has been alerted to many instances where demand for services far outweighs the existing supply. Some of these are in rural and remote locations, where the difficulties with sector development are well known, but others are in metropolitan areas and regional hubs where there are simply not enough providers in the market.

One issue providers have pointed to as limiting their desire to deliver services in the NDIS market is the pricing schedule, saying that it is not competitive when compared to pricing schedules for other service systems. For example, at a recent consultation a provider told us they could bill around \$10 per hour more for providing in-home domestic assistance for aged care clients than they could for providing the same service to an NDIS participant. They suggested it was difficult to understand the rationale for this difference and said it created a risk that service providers would focus their service provision on areas that were more financially sustainable, leaving NDIS participants with even fewer choices.

Other providers have pointed to the challenges of meeting the NDIS registration requirements, particularly where they operate across states and are therefore required to demonstrate compliance with multiple state registration arrangements. Providers have told us that, even when they have only one state to register with, the process is not always clearly explained. In a recent complaint, the provider told us they have been waiting more than 12 months for their registration to be processed because of confusion between the state government and the NDIA about whether they were required to comply with the registration requirements in place at the time of their application, or with requirements subsequently imposed on new providers.

The NDIS National Quality and Safeguarding Framework will hopefully address some of this confusion but, as we understand it, there is still at least a year before that framework will commence.

Assistance for carers

Under the previous state models of disability services, respite was a key support provided to many families caring for a person with disability. In many instances, this provided an important break from caring responsibilities that allowed family members to regroup and refresh and, in turn, boosted their capacity to keep delivering informal support to the person with disability.

Stakeholders have expressed concern that many families have lost access to respite-type services under the NDIS, saying they are told by planners that respite cannot be funded in NDIS plans. However, as we understand it, respite can be funded under the NDIS, provided it is linked to achieving one or more of the participant's goals.

It is concerning that families may not be given assistance to articulate a request for access to respite via their family members' plans, even when it is clear their ability to continue providing support to that family member is contingent on periodic respite.

Peak groups have suggested that, if respite is not available to those who need it, this may result in greater reliance on formal packaged supports to bridge the gaps resulting from emotional and physical fatigue of those family members. This seems to be a concern particularly for people whose caring responsibilities may place them at an increased risk of

physical harm or emotional exhaustion, such as elderly parents, carers who have a disability, and families caring for a person with complex mental health or behavioural problems.

Provider readiness

In our consultations with providers, they reported varying levels of readiness to deliver services as the NDIS moves to full Scheme. However, there are consistent themes in the areas in which many providers feel less equipped.

Staff skills and training

There is a recognised skills shortage across the disability workforce generally, but particularly in remote and rural areas. Many providers in these areas have told us they are already having trouble attracting suitably qualified staff and were not confident they could afford to provide training to new staff even if they could find them.

Providers across Australia told us the NDIA's pricing schedule does not make adequate provision for recruiting and training staff in the first instance, let alone ongoing development activities such as mentoring, learning support or continued education.

Transition to fee-for-service

Stakeholders told us about the difficulties in transitioning from block-funding to fee-for-service, saying that without an assurance of ongoing and consistent funding it is almost impossible to plan for the future. They pointed to issues around accommodation leases, recruiting and developing staff, and financing arrangements as being particularly problematic, given these require periodic injections of income to maintain. Feedback to our office indicates the transition to fee-for-service will be especially difficult for providers who may not engage with their clients on a regular basis and therefore cannot rely on consistent cash flow. Mental health services are a key example, in that they must maintain operations on a day to day basis but will often only provide services to clients during an episode or crisis.

Many providers have told us that, although they entered the market with cash reserves to buffer the impacts of transition to fee-for-service, after only two or three years much of the reserves have been worn down by fluctuations in the market, the need to change business practices to account for the NDIS delivery and accounting models, and the shift to payment in arrears.

Some providers have suggested the only organisations who could realistically deliver services for the NDIA's scheduled prices in the long term, particularly in rural and remote areas where costs are very high, are large multinational companies who use unskilled labour or who have other service income streams that can subsidise their disability service operation. Indeed, there is concern among those providers that – contrary to the intention of the Scheme, being to offer greater choice – large service providers are likely to be the only ones to succeed under the established conditions. They expressed fear this may lead to a reduction in competition and, in turn, a downturn in quality.

Services for CALD and Indigenous participants

The challenges in delivering services for people from culturally and linguistically diverse (CALD) backgrounds, including Indigenous Australians, are widely known but are even more acute in the NDIS.

During our community engagement, we met peak organisations focused on the unique service needs of CALD and Indigenous participants, who expressed concern about the ability

of service providers to effectively engage with and assist these cohorts. They pointed to the need for providers to have an awareness of a participant's culture, language, family arrangements and understanding of the concept of disability before they can effectively engage them in service delivery. Stakeholders stressed that if providers are not able to deliver services in a culturally sensitive way there is a very real risk that CALD and Indigenous participants may disengage from the Scheme entirely.

There are currently many organisations across Australia who specialise in servicing CALD and Indigenous people with disability. These organisations have become specialist either because their location means the bulk of their clients are CALD or Indigenous, or because they have made a conscious decision to specialise their service delivery. Interestingly, though, some of these organisations have told us the barriers to registering and adjusting their business model for the NDIS are so great that their organisation will not be able to continue delivering services if their clients transition to the Scheme. This seems to be a particular challenge for community operated organisations with little or no cash reserves to buffer the impacts of the transition.

To minimise the risk that CALD and Indigenous people – who are already underrepresented in transition figures – disengage from the NDIS, we suggest careful consideration be given to:

- identifying ways to assist existing services with experience in engaging with CALD and/or Indigenous people with disability to enter the NDIS market
- encouraging existing and new providers to consider cultural competency training and culturally competent business practices to ensure their business can effectively service CALD and/or Indigenous clients as demand grows
- creating opportunities for CALD and Indigenous communities to engage with local providers about how they can best service participants in the area.

The Ombudsman's office recently made a submission to the Productivity Commission's inquiry into the increased application of competition, contestability and informed user choice to human services, with a focus on the way services are delivered to Indigenous Australians in remote communities. That submission can be found on the Commission's inquiry page.⁶

Governance and administration

Quality and safeguarding controls

Providers have told us the current, fragmented approach to provider registration and regulation is difficult to understand. Participants have expressed confusion about where to go if they encounter problems with the NDIA or their NDIS service provider. Our office has been working closely with state and territory disability oversight bodies with the aim of providing a 'no wrong door' approach to complaints about the NDIS, whereby (with the complainant's consent) complaints can be easily transferred to another organisation that is better placed to handle it. However, we acknowledge this is only a temporary arrangement and will not work to address people's confusion in all cases.

The Ombudsman's office welcomes the recent release of the NDIS National Quality and Safeguarding Framework. We consider that, if administered well, the proposed arrangements for developing a single, national approach to the regulation and complaints

⁶ http://www.pc.gov.au/data/assets/pdf_file/0003/213807/sub402-human-services-reform.pdf

functions for NDIS services should provide participants and providers with greater clarity about the options for escalating their concerns.

In our submission to the Department of Social Services' consultation on the national framework in May 2015, we stressed the importance of a strong community engagement and capacity building function for the national oversight body. In our view, it will be vital to ensure that participants, families and providers are informed about their rights and responsibilities under the NDIS, and supported to access the complaints and serious incident reporting functions. Without adequate resourcing to conduct an effective public education campaign and, when necessary, to actively seek out complaints, we suggest there is a risk the national oversight body will not receive the kind of intelligence it will need to effectively inform and carry out its oversight role.

Provider of last resort

In our recent work with stakeholders in the Barkly region, we were told about gaps in that market which are impacting on participants' ability to fully utilise their package of supports. These same gaps exist in other markets and will be difficult to fill in many instances, especially where the market is thin or is geographically isolated. In those instances where the market cannot be developed, the question arises of who will ensure participants have access to suitable services.

Some have suggested the NDIA should fill this gap. Others have argued there may be a need for government to reinstate block funding for certain supports in difficult markets. Block funding gives a provider certainty of funding, irrespective of thin markets, and allows them to commit to ongoing service delivery during a time they would otherwise not be able to provide that certainty. Providers in remote locations have told us the costs of transport and other increased overheads cut into participants' therapy times, so being able to roll these into block funding (rather than having to build them into a pricing structure charged to participants individually) would ease this pressure and ensure that participants received the full benefit of the service.

Our office does not have a view on the best approach, but is supportive of a 'provider of last resort' approach that would give participants certainty they will be able to receive supports as and when they need them, irrespective of a difficult (or non-existent) market.