

Victoria's second submission to the Productivity Commission Review of NDIS costs

Whole of Victorian Government submission

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The Secretary
Department of Treasury and Finance
1 Treasury Place
Melbourne Victoria 3002
Australia
Telephone: +61 3 9651 5111
Facsimile: +61 3 9651 2062
dtf.vic.gov.au

Authorised by the Victorian Government
1 Treasury Place, Melbourne, 3002

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Executive summary

The Victorian Government welcomes this further opportunity to input into the Productivity Commission (PC)'s Review of National Disability Insurance Scheme (NDIS) Costs.

Victoria reaffirms its strong commitment to a high quality NDIS and considers that the Review provides an important opportunity to shape the future of the NDIS. Victoria urges the PC to consider a broad range of risks and objectives to market development beyond scheme costs. The PC should consider whether the emerging market for disability support services is responding to participant needs and whether there are any current funding, governance, regulatory, workforce or operational matters that risk impeding the development of a high quality and sustainable market.

Victoria considers that its unique experience pioneering some of the NDIS' key features (including individual support packages) means that it is well placed to offer pathways and solutions to some emerging scheme issues.

At this very early stage of transition, there is no case for any major changes to core scheme design or to overall Commonwealth-State governance and funding arrangements.

The Review is being undertaken at a very early stage in the transition to full scheme and the market is at an early stage of its development – too soon to arrive at any conclusions about the scheme's ongoing costs or sustainability.

It may be several more years before total costs and lifetime costs are known. Little data is currently available and further experience is required to understand how the application of insurance principles can vary costs over a participant's lifetime. Victoria notes that the proper application of an insurance-based approach involves perceived higher costs in the early life of the scheme leading to lower costs in the medium to longer term.

Recommending major changes to core scheme design or to overall Commonwealth-state governance and funding arrangements at the current time would not be evidence-based and would be inconsistent with the inter-governmental agreement that Victoria struck with the Commonwealth in 2015.

Existing governance arrangements provide states and territories (hereafter, states) with a level of oversight in accordance with their role as joint stewards of the NDIS. Victoria's partnership approach to the NDIS is designed to ensure that the scheme produces high quality outcomes for participants.

Victoria supports another review of scheme funding arrangements in three years.

There are challenges with the transition that can and should be addressed without the need to delay scheme rollout.

While the NDIS rollout pace is ambitious, the aim is to allow people with disability to access the benefits of the scheme as soon as possible. Victoria has a three-year rollout, which is longer than some other jurisdictions.

Victoria does not support a slowdown in scheme rollout, which may hinder the development of the market in supply of disability services and delay improved outcomes for current or future participants.

The NDIA needs access to additional resources to build its capability within an insurance-based approach during this critical transition stage.

A significant cause of current performance problems can be attributed to low resourcing and a lack of specialisation within the NDIA.

The NDIA should also have more flexibility over its staffing arrangements (Draft Recommendation 10.2). This would enable it to rely less on secondments from the Commonwealth Department of Social Services, which risk compromising the NDIA's operational autonomy and may lead it to take an overly welfare-based approach.

The NDIA needs to prioritise developing an individualised approach for persons with complex needs, psychosocial disability and that are hard to reach.

Current access processes for these people are not operating satisfactorily, evidenced by the high (and growing) number of plan cancellations in Victoria particularly affecting persons with psychosocial needs.

Victoria supports the PC's suggestion for a dedicated psychosocial gateway and would welcome the opportunity to be involved in determining its optimal design.

Equally, the NDIS needs to continue to monitor the Early Childhood Early Intervention Approach to ensure that it delivers significant gains for young children with developmental delay and disability as well as managing demand for the scheme. Although there are signs that the NDIA is implementing more consistent planning and better communicating with families, more transparency is needed around the framework, how conflict of interest is being managed in contracts and how the efficacy of supports is being evaluated.

During transition, priority should be given to getting critical market and planning infrastructure in place, improving pricing and investing in workforce readiness.

For the NDIS to operate as intended, the focus on financial risks needs to be balanced against others risks that may impede a high-quality market developing as intended. This may require greater upfront investment but will pay off in the longer term. Regulation and quality assurance of a growing private market in service provision should be a priority focus. As it stands, two elements of NDIS infrastructure that are currently underdeveloped are Information, Linkages and Capacity Building and market intervention (including provider of last resort) arrangements.

Other key areas for improvement are action to address specific boundary issues and early investment in robust data collection to validate the scheme's insurance-based approach.

Victoria agrees that states should play a role in workforce development and is taking action on this front. Victoria's workforce plan for the NDIS highlights the State's commitment to workforce growth, readiness and capability. Victoria is also implementing a legislated registration and accreditation scheme, which will complement the NDIS Quality and Safeguarding Framework, and help ensure workers have suitable skills and qualifications.

Victoria supports clarifying NDIS governance arrangements to provide greater operational autonomy to the NDIA.

The NDIA needs to be provided with the necessary authority and resources to implement the NDIS on the basis of robust insurance principles. The NDIA's accountability for the performance of the NDIS also needs to be more broadly construed.

Victoria has found that an autonomous governance model (albeit with appropriate oversight) works effectively in the case of organisations such as the Transport Accident Commission that also operate within an insurance model.

Victoria welcomes the recommendation to move to an independent price regulator.

It is important to separate the price-setting function from the NDIA and then clarify the role and accountability to be retained by the NDIA.

Victoria considers that there is also an immediate need to consider areas where NDIS pricing may be inhibiting market growth or risking provider failure (particularly in areas or services in which there are thin markets).

In some areas, the NDIA appears to have applied flawed assumptions to its calculation of prices. Examples include low allowances to train, supervise and recruit direct support staff, unrealistic assumptions around the amount of time staff need to spend undertaking non-client facing functions, and low assumptions around the proportion of overall costs devoted to overheads (particularly during the transition period). Victoria considers that these areas should be corrected as soon as possible.

The NDIA rollout is revealing latent demand for services, which should not be confused with state governments withdrawing from services.

Under the NDIS, Victoria is significantly growing its investment in disability services. Victoria is also fully committed to providing continuity of services for persons with a disability that are not eligible for the NDIS.

Victoria is also making substantial investments in universal services (e.g. health, mental health, education, family violence, human services) to enhance access to services for people with disability. Victorians with disabilities' access to mainstream services are being further enhanced through the architecture Victoria has in place to make sure people with disability get what they need to live every-day lives.

States bear much of the risk of revealed demand being left with mainstream services, at greater financial costs to the states.

Current NDIS risk sharing arrangements rightly recognise the states bear much of the ongoing risk of cost shifting to mainstream services and that states have limited capacity to take on more risk without jeopardising service delivery in these areas. They also recognise the fiscal imbalance between the Commonwealth and states and relative inefficiency of state revenue bases.

Current arrangements expose state governments to costs associated with failure among service providers.

Victorian analysis suggests that many service providers will be challenged in the transition from block grant funding to pay-for-service funding models.

Victoria considers the market transition will need to take greater account of the transition of service providers and mitigate for potential failures in the market and the persistence of thin markets in some parts of Victoria.

Victoria is fulfilling its NIIS commitments.

Victoria fully meets the relevant benchmarks for no-fault lifetime care and support for people who are catastrophically injured in motor vehicle and work accidents.

Victoria also funds public hospital indemnity and public liability insurance. The NDIA has wide-ranging powers to recover compensation payments for care and support from payers and insurers under the *National Disability Insurance Scheme Act 2013* and can require participants to take action to obtain compensation, and recover past NDIS amounts from certain judgments

Although the NIIS may not currently operate as originally envisaged, it must also be recognised that the NDIS more generally looks very different to the scheme envisaged by the PC.

Victoria's commitments were made on the basis of DCAF revenue being shared as agreed.

Victoria's commitments were made on the basis of DCAF revenue being shared according to the timelines agreed with the Commonwealth. None of this revenue has yet been provided to state governments.

The escalation of state contributions was intended to maintain the states' fixed contributions in real per capita terms.

States never agreed to fund growth in scheme costs above growth in population and general price levels. Aside from the prematurity of seeking to link escalation parameters to scheme costs now, it is unclear by how much escalation parameters should be altered in such a way that would accurately take into account NDIS cost drivers over time, and the control over various risks held by the states versus the Commonwealth.

1. Opportunities to improve current scheme performance

1.1 Victoria considers the Review an important opportunity to shape the future of the NDIS

Victoria reaffirms its strong commitment to a high quality NDIS and considers the Review an important opportunity to shape the future of the NDIS.

The PC rightly highlights the cost risks for the NDIS, as financial sustainability is one of the central tenets of the scheme and crucial for it to operate as intended. However, Victoria considers that the risks of the scheme should be conceived more broadly and over a longer time horizon; successful implementation of the scheme must consider participant outcomes, use an insurance based approach and give greater consideration to market development.

Victoria recommends the PC consider whether the emerging market for disability support services is responding to participant needs and whether current funding, governance, regulatory, workforce or operational matters risk impeding the development of a high quality and sustainable market.

Inadequate management of market integrity risks longer term costs and also a loss of confidence in the NDIS and poorer outcomes for people with disability. Victoria's unique experience pioneering some of the NDIS' key features (see Box 1) means that it is well placed to offer pathways and solutions to some emerging scheme issues.

1.2 There is no case for any major changes to scheme design, governance or funding arrangements

The Review is being undertaken at a very early stage in transition and the market is at an early stage of its development – too soon to arrive at any conclusions about the scheme's ongoing costs or sustainability.

Recommending major changes to scheme design or to overall Commonwealth-state governance and funding arrangements at the current time would not be evidence-based and risks undermining confidence in a still emerging reform.

Victoria notes that NDIS costs were contained within the funding envelope for the three years of trial, and the PC and NDIA both consider the PC's original projections to be the best estimate of long-term costs.

It may be several more years before total costs and lifetime costs are known. Little data is currently available and further experience is required to understand how the application of insurance principles can vary costs over a participant's lifetime.

Victoria notes that the proper application of an insurance-based approach involves perceived higher costs in the early life of the scheme leading to lower costs in the medium to longer term. Victoria's experience with Traffic Accident Commission (TAC) and Worksafe in understanding lifetime costs on an actuarial basis is instructive. TAC has for some years now recognised the importance to longer term financial sustainability of early investment in improving clients' lifetime outcomes. Yet it took more than a decade before TAC could amass meaningful benchmark data on which to base client support plans

because the return on investment, particularly around early intervention, takes time to be understood and fully realised.

Victoria supports another review of scheme costs in three years.

Box 1: Reflections from Victoria – disability reform

Victoria's unique experience pioneering individual support packages (ISPs) offering choice and control mean the State is well placed to offer pathways and solutions to some emerging scheme issues. This has included:

- designing practice guidelines rather than rules for people with disability to allow for more individualised supports;
- building self-management capability through investment in advocacy and capacity building; and
- developing intermediary services to encourage participants to self-direct and self-manage their supports.

In 2015-16, over 15 000 Victorians¹ were receiving ISPs which meant they were allocated funds to meet their disability related support needs and could direct the planning process and use of these funds.

The use of ISPs highlights the importance of flexible administrative options to balance each individual's appetite for control against their capacity to navigate the service system. Funding administration arrangements have included:

- **Direct payments:** monthly payments are transferred to the person with disability who spends it according to their agreed support plan. These payments provide the greatest level of control but also the highest level of accountability and responsibility for the person with disability.
- **Statewide financial intermediary service:** funding is held by a financial intermediary which, at the direction of the person with disability, uses it to pay for services chosen by the person with disability in accordance with an agreed support plan. This option has been a valuable half way step, with less flexibility for the person with disability but also less of a burden as it places the accountability and reporting requirements with the financial intermediary.
- **Direct transfer to a nominated disability service provider:** funding is transferred to a service provider. This option provides the least flexibility but has been preferred by some persons with disability.

¹ Victorian Budget 2017-18: Budget Paper No. 3, Disability Services, p 260.

Advocacy

The move to a user driven system underscores the importance of participants making informed choices.

Victoria funds a range of disability advocacy and self-advocacy organisations including the Victorian Disability Advocacy Program. This program receives around \$3 million each year for 24 disability advocacy organisations and supports 1 700 people. The program includes funding for the Self-advocacy Resource Unit and the Disability Advocacy Resource Unit.

A recent review² of the program highlighted opportunities to:

- improve access to advocacy through community education, assertive outreach to clients most vulnerable (e.g. those with complex needs) and dedicated advocacy for people with a disability who are Aboriginal or Lesbian, Gay, Bisexual, Trans and Gender Diverse or Intersex;
- improve measurement of performance and outcomes, including simplifying reporting, and aligning these to the National Disability Advocacy Program;
- responding to increasing demand and gaps in service delivery by creating greater links between the program and other safeguard and protection mechanisms (e.g. universal consumer services and other elements of the safeguard and protection system); and
- develop different models of advocacy including a stronger focus on self-advocacy and systemic advocacy to address system wide discrimination of Victorians with a disability.

Co-design

People with disability are the experts on their lives and the types of supports they need to live an ordinary life. Government should draw on this expertise at all levels of NDIS design and development.

A NDIS Implementation Taskforce (ITF) has been established to provide a forum for people with disability and other key stakeholders to work closely with the Victorian Government on the implementation of the NDIS. The ITF is co-chaired by Martin Foley MP, Minister for Housing, Disability and Ageing, and Gavin Jennings MLC, Special Minister of State. It includes people with disability and their advocates, the NDIA and organisations representing the views of carers, unions and service providers.

The ITF has established five working groups to allow more detailed consideration of specific issues identified as priorities for successful implementation of the NDIS.

² Victorian Disability Advocacy Program, Department of Health and Human Services, 2015
<<http://www.dhs.vic.gov.au/for-service-providers/disability/protecting-rights/disability-advocacy>>

1.3 There are challenges with scheme rollout that can and should be addressed without the need to delay scheme rollout

While the NDIS rollout pace is ambitious, the aim is to allow people with a disability to access the benefits of the scheme as soon as possible. Victoria has a three-year rollout which is longer than some other jurisdictions, and is doing considerable work to support participants and service providers in their transition.

Victoria does not support a slowdown in scheme rollout, which may hinder the development of the market in supply of disability services and delay improved outcomes for current or future participants. Delaying scheme roll out could also reduce public confidence in the NDIS.

Victoria also recognises there is some tension between allowing people to access the scheme as soon as possible and ensuring all necessary arrangements are in place to assure scheme quality and sustainability. However, many transition shortcomings can be resolved without delaying the full rollout; equally other problems require an active policy response (rather than delay) to resolve. Victoria welcomes the work being undertaken by the NDIA in their participant and provider pathway review processes and is looking forward to receiving detail advice on the review.

The Victorian Government is supporting Victorians with disability to transition smoothly into the NDIS and working closely with the NDIA and service providers to ensure high-quality services are delivered. Examples of Victoria's efforts are summarised below.

Figure 1 – Victorian efforts to support NDIS transition

Challenge	Support efforts
Meeting bilateral targets	<ul style="list-style-type: none"> • Allowing the NDIA greater flexibility with phasing to allow people into the NDIS earlier than expected. • Providing planning support to the NDIA to maximise entry of waitlist clients. • Established an integrated planning process with the NDIA to ensure participants with more complex needs are better supported to transition. • Establishing an Intensive Support Team to assist people with complex needs to review their current supports, prepare for the NDIS and to navigate the transition pathway. • Maximising the transfer of existing Victorian knowledge to the NDIA, including secondments of experienced Victorian Government staff to the NDIA to assist with planning. • Statewide recruitment process of NDIA positions as the NDIS is implemented in Victoria. • Investing \$20 million through its Transition Support Package to prepare providers for the NDIS and increase the capacity of disability support organisations.

Challenge	Support efforts
Delays with access for existing clients	<ul style="list-style-type: none"> • Supporting people to make telephone contact with NDIA access team and to complete and return the Access Request Form. • Engaging service providers to assist with completing Access Request Forms. • Engaging advocacy groups such as VALiD to support potential participants. • Allocating additional funds to allow more children on the Early Childhood Intervention Services waitlist to be supported while they wait to enter the NDIS. • Working with the NDIA to commission the Brotherhood of St Laurence (BSL) to undertake planning for ECIS children.
Quality of client data provided to the NDIA	<ul style="list-style-type: none"> • Improving the quality of client record data from state disability systems transmitted to the NDIA and development of data remediation procedures with the NDIA to assist clients to access the scheme.
Cash flow disruption for providers at plan activation	<ul style="list-style-type: none"> • Providing fortnightly data to service providers on their clients' access and plan status. • Varying contracts in arrears on average two to three months after plan approval.
Supporting provider registration	<ul style="list-style-type: none"> • Establishing a new single point registration triage unit within DHHS to manage the inflow of NDIS provider registration requests for state-approval. • Producing communication materials for Victorian providers to assist in understanding the transitional quality and safeguarding arrangements, and through the Transition Support Package, funded provider and consumer groups to support effective engagement around transitional arrangements. • Providing dedicated training and support for departmental staff responsible for managing contracts with funded service providers. • Worked with the NDIA to correct registration errors that arose from the migration of NDIA data records to its new Client Records Management System.

1.4 As a matter of priority, the NDIA needs flexibility to build its capability during this critical transition stage

Victoria considers that providing the NDIA with additional resourcing and clarifying roles and operational approaches – rather than elongating timelines – is the best way to address concerns.

The NDIS is an insurance scheme and, as such, it should seek to maximise lifetime opportunities for participants whilst minimising lifetime support costs. As with any insurance model, it should also continually compare experience with forecasts, using sophisticated data analytics to build a strong evidence base for determining reasonable and necessary supports and measuring optimal support arrangements and best practices.

It is essential that the insurance principles that underpin the NDIS, operate effectively so that the NDIS does not revert to the welfare model it replaces, which the PC originally criticised as inequitable, underfunded, fragmented, inefficient and giving people with disability little choice and no certainty of access to appropriate supports.

The NDIA has been set an operating cost target of 7 per cent of total scheme costs at full scheme. Given that the major risk to total scheme costs is package costs, which comprise around 90 per cent of total costs, it would be a mistake to hold the NDIA to an operating cost target if capping administrative costs threatened increases in package costs due to inadequate quality control or oversight.

There is evidence that the operating cost limits for the NDIA during transition is having a detrimental impact. Plan approvals (including for children in the Early Childhood Early Intervention gateway) are below target, plan reviews have been deferred, and insufficient effort has been directed to pre-planning for participants. Local Area Coordinators (LAC) have not been able to engage in essential work on community inclusion or adequately assist with plan activation (see Box 2).

A significant cause of delays in Victoria can be attributed to NDIA personnel shortages. The NDIA is staffed to operate under 'business as usual' conditions, rather than to deliver the 500 plan approvals per day that the PC has estimated are required in transition. While additional staff will phase in as each area goes live, there is limited additional capacity within senior management to support operational staff to deliver their roles.

The NDIA should have more flexibility over its staffing arrangements (Draft Recommendation 10.2). This would also enable the NDIA to rely less on secondments from the Commonwealth Department of Social Services, which risk comprising the NDIA's operational autonomy and may lead the NDIA towards an overly welfare-based approach.

The NDIA should also be given greater flexibility to manage its overall budget within an agreed envelope (in support of Draft Recommendation 10.1). Current budget constraints are impeding the NDIA's ability to apply an insurance-based approach to participant plans, contributing to delays in rolling out LAC partner arrangements, the Information, Linkages and Capacity Building framework and other elements of market infrastructure that are critical to the success of the scheme.

Given the experience to date, imposing a hard cap on the NDIA's operating costs – to come into force at full scheme – will likely create a false economy. Until the scheme matures, devoting a greater proportion of the overall NDIS budget towards these costs is warranted.

Victoria supports establishing a future contingency reserve to allow the NDIA to manage fluctuations in expenditure and access a level of reserves that better reflect the level of risk it needs to manage.

Box 2: Reflections from Victoria – NDIS transition

There has been a significant lag in bringing Victorian participants, particularly existing state clients, into the scheme against bilateral estimates. The NDIA has indicated that its recovery strategy, implemented temporarily in 2016 to bring transition in line with its revised estimates, is now complete. While the NDIA has indicated that it will now implement a more integrated approach for participants and providers, this will require staff retraining, systems changes and improvements to communications.

The Victorian Government is working with the NDIA to support the transition remediation effort including through secondments of experienced Victorian Government staff to assist people to transition to the NDIS earlier, establishing an integrated planning process for staff to assist people with complex needs to navigate the access pathway, engaging providers and advocacy groups to assist with the planning process and improving the quality of service provider data to smooth the transition for people.

Other challenges have included a delay in having plans approved (after being assessed as meeting the eligibility requirements) and others missing out on the opportunity to enter the scheme as the eligibility process has not been as accessible as it needs to be.

For example, to date the NDIA has cancelled 2 600 plans in Victoria on the basis that it was unable to make contact with clients (following four calls and a letter). Anecdotal feedback from participants and service providers suggest that these contact attempts are not always reasonable or appropriate (e.g. cold calling, or considering an engaged signal a reasonable attempt at a phone call). The rate of uncontactable clients with a plan cancelled has increased by 4 per cent over the last three months.

To help rectify this, the Victorian Department of Health and Human Services has been following up on the uncontactable cohort via their corresponding service providers. For many their episodic engagement with multiple services made it difficult to verify contact details, highlighting some deficiencies with the current approach. This is a particular issue for people with complex needs and psychosocial disability.

1.5 The NDIA needs to develop an individualised approach for those with complex needs, psychosocial disability and that are hard to reach

Current access processes for people with complex needs, psychosocial disability and that are hard to reach are not operating satisfactorily as evidenced by the high number of plan cancellations and relatively low rates of access in Victoria (see Box 3).

Victoria considers that greater specialisation of planners as well as individualised gateways/outreach is required. Victoria supports the PC's suggestion for a dedicated psychosocial gateway and would welcome an opportunity to be involved in its optimal design. Victoria's Streamlined Access Approach for people on the Mental Health Community Support Services Needs Register could inform the development of this mechanism. The NDIA should also provide specialist planning for this group.

Victoria notes that merely dealing with gateway access will be insufficient to respond to the complex issues identified in the PC review. Recent research has found that in many places, 'gains in scheme were undermined, or difficulties compounded, by red tape' and, 'insufficient attention is being paid to promoting equity of outcomes among service users with diverse needs and circumstances.'³ To address these concerns, the NDIA should:

- Simplify planning processes (particularly for approvals that are low risk) and ensure communication materials focus on participant needs rather than administrative processes and back end systems (Draft Recommendation 4.1). Equally, simpler plan documents would enable increased self-direction on the part of participants.
- Bolster support coordination by improving training of support coordinators and developing specialist coordination (Information Request 8.1) as there has been inconsistent information about the expectations of support coordination and limited training of support coordinators to support people with complex or specialist needs.
- Allow intermediaries to play a role in both financial and support coordination, if coupled with clarity and training on what this role should cover, monitoring of outcomes for these participants and clear quality and safeguarding responsibilities for intermediaries (Information request 8.2).
- Develop diverse consumer supports. While Victoria supports the eMarketPlace platform to facilitate the matching of consumer demand with provider supply, it will need to be designed to maximise accessibility. It will also need to be complemented by other person-based supports for people who find technology difficult to use or access.

Victoria notes that many of the NDIA's recent efforts around its participant and provider pathways review may go some way to overcoming the transition issues encountered to date. However, this will require sufficient resourcing and prioritisation from within the NDIA.

Box 3: Reflections from Victoria – Access for vulnerable cohorts

Victoria is concerned that many prospective participants are not able to collect the evidence required to complete NDIS access and review processes. People with severe mental illness (particularly those on compulsory treatment orders), the homeless, people with a dual disability, and those with little informal support network, are often reluctant to engage with formal service systems or have no treating health professional.

People with psychosocial disability

While scheme participant numbers indicate that people with psychosocial disability are entering the NDIS⁴ this does not necessarily mean that eligibility and access processes for this cohort are operating as expected. This is because the majority of people entering the scheme are existing clients of Victoria's Mental Health Community Support Service (MHCSS) programs who are deemed to automatically meet the NDIS disability access criteria (on the basis that they have already demonstrated that their impairment is likely to be permanent).

Victoria is concerned that the relatively low number of 'new' applicants may mean the need to prove permanency of functional impairment is creating an unreasonable access barrier.

³ Warr, D, Dickinson, H, Olney, S, et. al. (2017) *Choice, Control and the NDIS*, Melbourne: University of Melbourne, page 9.

⁴ Productivity Commission Position Paper – NDIS Review of Costs, p. 143

This concern is consistent with the experience of people on the State's MHCSS Needs Register – while this cohort must also demonstrate that their impairment is likely to be permanent they receive support to do so. The Victorian MHCSS service has supported this cohort to access a psychiatrist to confirm they have a psychiatric condition and associated functional impairment. This is time consuming and costly and would be difficult for individuals to do on their own.

Victoria would welcome the opportunity to assist the NDIA to develop the evidence basis to:

- assess permanency of functional impairment associated with psychosocial disability;
- determine eligibility of people who experience significant psychosocial functional impacts episodically;
- develop a more effective entry pathway for people with severe mental illness and psychiatric disability who are hard to engage, cannot advocate for themselves or find it difficult to navigate the NDIS access process;
- attract specialist NDIA staff to determine eligibility for people with psychosocial disability, noting the MHCSS intake service uses occupational therapist, psychologists, mental health nurses and social workers;
- identify circumstances when this cohort would be eligible for early intervention supports and the types of supports that will improve psychosocial functioning and recovery outcomes; and
- ensure plan outcomes support the recovery of people with a psychosocial disability, noting the PC's assessment that a recovery orientation in psychosocial disability is consistent with the insurance principles of the scheme.

2. Other key areas for improvement

2.1 Priority should be given to getting critical market and planning infrastructure in place

For the NDIS to operate as intended, the focus on financial risks needs to be balanced against others risks that may impede a high quality market developing as intended. This may require greater upfront investment but will pay off in the longer term.

Regulation and quality assurance of a growing private market in service provision should be a priority focus. The experience of vocational educational training is instructive in this regard (Box 4).

Box 4: Reflections from Victoria – policy failures and VET

Commonwealth Government reforms to the VET system were not accompanied by adequate safeguards or oversight of providers.

In 2012, the Commonwealth expanded the VET FEE-HELP scheme, which allowed students undertaking certain courses at VET providers that did not have credit transfer arrangements with a higher education institution to access VET FEE-HELP loans. As a result, there was a sharp increase in the number of students accessing VET FEE-HELP. Many students accumulated large debts that many are unlikely to ever repay. Some private providers aggressively marketed their courses, emphasising to students that they would not have to pay upfront, and in some cases offering inducements (such as 'free' laptops). Thousands of students signed up for courses that they had little prospect of completing or received poor quality training that did not equip them with the skills they needed to gain meaningful employment.

Better oversight of providers, combined with quality standards and controls, and improved information for students, could have avoided some of these issues.

As it stands, two elements of NDIS infrastructure that are currently underdeveloped are Information, Linkages and Capacity Building (ILC) and market intervention arrangements.

Information, Linkages and Capacity Building

The ILC intends to connect people with disability, their families and carers to supports beyond the scheme and to facilitate community awareness and capacity building within mainstream services and supporting organisations.⁵ It is therefore integral to the scheme as a social insurance model. It is also a key way to manage financial sustainability, by making sure people with disability access appropriate mainstream services and early intervention supports in their plans.

Much of this is to be implemented by LAC partners. This is the only component of ILC that has been implemented to date. There are widely acknowledged concerns that LAC partners do not have sufficient time and capabilities to perform their role (e.g. only 20 per cent of their effort, and funding, is allocated to the delivery of ILC activities).

⁵ ILC Policy Framework (NDIA 2015a)

More rapid rollout of the ILC framework and LAC arrangements should receive priority. Victoria supports increased investment in ILC to full scheme levels in transition (Draft Recommendation 5.1) and more clarity on how ILC will work as soon as possible. This includes further articulation in the ILC commissioning framework on what outcomes the NDIA expects to be delivered. Further investment should focus on:

- building the planning capability and capacity of LAC's, particularly in relation to supporting linkages to mainstream service systems and supporting integrated planning;
- building relationship between LAC's and the NDIA to ensure consistency of approach;
- leveraging the expertise of the State disability system to perform key tasks critical to the transition effort; and
- adopting more flexible models of service delivery to address transition challenges facing the NDIS, including recognising and building on the various states equivalent ILC arrangements.

Market intervention

Greater certainty surrounding market intervention and provider of last resort arrangements is also required as thin markets and provider viability could compromise the scheme's capacity to deliver choice to participants.

Victorian analysis suggests that many service providers will be challenged in the transition from block grant funding to pay-for-service funding models. Victoria considers the market transition may need to take into account the transition of service providers and mitigate for potential failures in the market and the persistence of thin markets in some parts of Victoria (see Box 5).

Victoria considers that the best initial approach to address thin markets is to ensure prices take into account the real cost of service delivery in those markets.

The NDIA is ultimately the market steward: there are significant risks to participants, providers and states if its capability to identify and intervene in thin markets is not in place by full scheme.

Victoria is pleased that work has commenced with the Commonwealth, NDIA and jurisdictions to construct a range of NDIS market risk scenarios to inform how market risks and crises will be managed (i.e. the Provider of Last Resort framework and broader Market Intervention Framework). This work needs to quickly move to firm up operational details on:

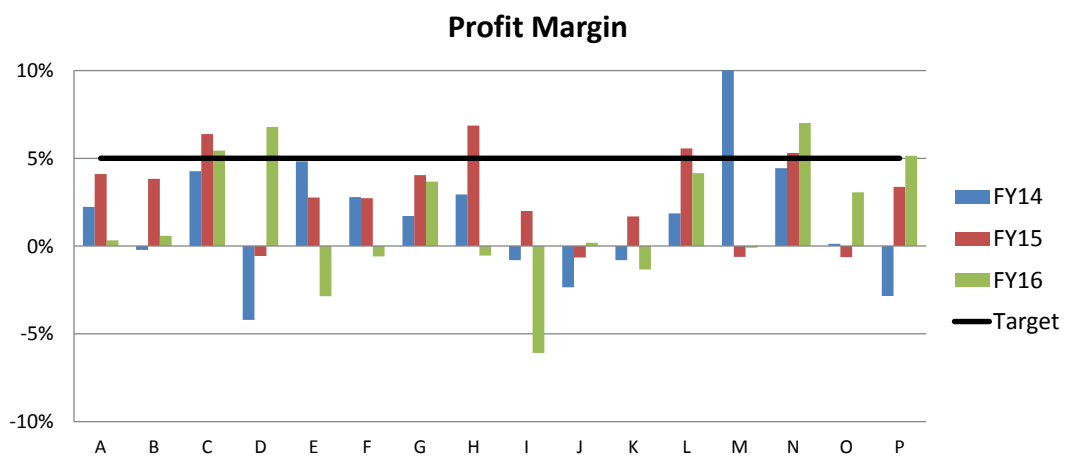
- how the NDIA collects data and monitors markets;
- arrangements for early intervention through to crisis/emergency response; and
- respective roles and responsibilities between the NDIA, NDIS Quality and Safeguarding Regulator and Commonwealth and state governments.

Box 5: Reflections from Victoria – provider readiness and thin markets

Analysis of audited 2015-16 financial statements (published on the Australian Charities and Not-for-profits Commission website) of 16 dominant disability services providers highlights notable vulnerability as they transition to the NDIS.

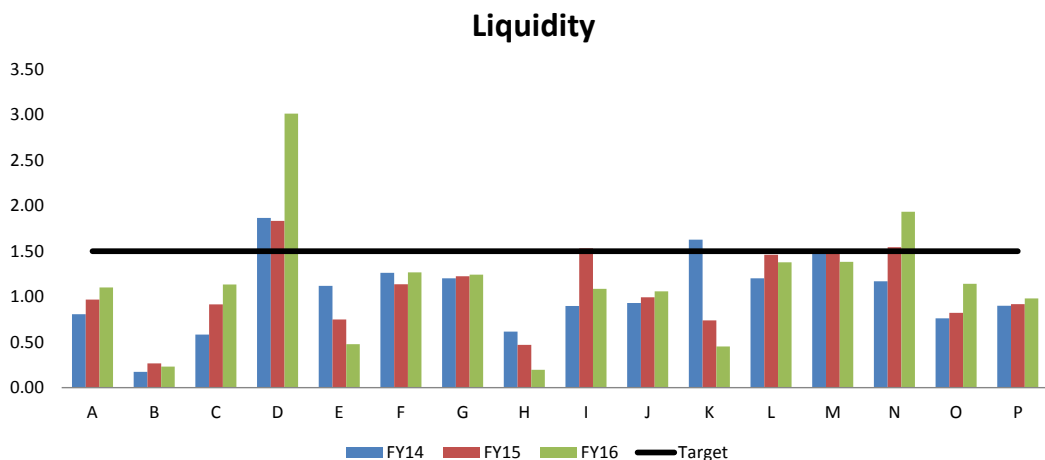
Profit margin

The NDIA has factored into its prices a five per cent profit margin to allow for improvements to infrastructure, investment in innovation and the provision of reserves. Of the service providers profiled, 12 of 16 providers had a profit margin of less than 5 per cent in 2015-16, with more than 40 percent (seven providers) recording a loss in 2016-17. None had achieved the target profit margin over the three consecutive financial years.



Liquidity

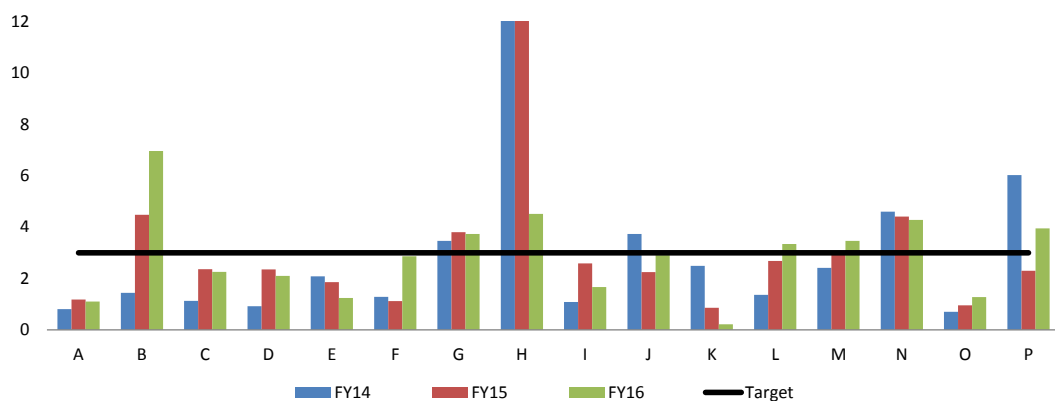
National Disability Services, the main provider peak body, has prepared guidelines which recommend that disability service providers have a liquidity ratio above 1.5. In 2015-16, only two of the service providers in the selective analysis exceed the recommended level. Although a point in time ratio, around 30 per cent of providers had a liquidity ratio below one, which could indicate less capability to manage cash flow fluctuations under NDIS pricing and risks to



Cash reserves

National Disability Services also recommends providers have enough cash reserves to cover at least three months' worth of operating expenses; the analysis indicates 60 per cent of the sampled providers did not meet this measure in 2015-16.

Number of months that cash reserves will cover



2.2 Other key areas for improvement include action on specific boundary issues and robust data collection

There is more work to be done to resolve NDIS/mainstream boundaries in several areas. Work needs to occur between the NDIA and mainstream agencies to ensure seamless support for NDIS participants. Further issues can arise as a result of delayed plan decisions, disputed eligibility or a narrower than anticipated scope of NDIS supports (see Box 6). To help resolve these issues, Victoria is working with the NDIA and other jurisdictions to agree operational guidelines for collaborative practice particularly in clinical health care, family violence, child protection and justice interfaces.

In other areas, the boundaries are still being drawn. For example:

(a) School transport for children with a disability

States and individual schools currently provide school transport for children with a disability but where deemed a reasonable and necessary support this will now be funded by the NDIS. Transitioning school transport has a range of complexities, including:

- a lack of consistency in eligibility criteria in existing programs across different jurisdictions;
- the need to ensure quality and safeguards; and
- balancing individual choice and control while delivering value for money.

States and the Commonwealth are working on the transition of school transport to provide participants with certainty and to inform existing and planned procurement arrangements with providers (often involving long-term contracts).

(b) Personal care in schools

The Council of Australian Governments (COAG) agreed that, under the NDIS, Personal Care in Schools (PCIS) will be funded by the NDIS when full scheme commences on 1 July 2019. PCIS includes activities such as mealtime assistance, dressing, toileting assistance and complex care.

There remains considerable uncertainty about which PCIS supports are the funding responsibility of NDIS and what remain within the school system (as part of universal service obligations and 'reasonable adjustments' required under disability discrimination law).

There are also operational challenges; schools will need support to implement NDIS-funded PCIS.

At the request of COAG's Disability Reform Council, the Victorian Department of Education and Training is leading a national project to provide a stronger evidence base around the most desirable PCIS options and future operational arrangements. COAG will clarify the scope of PCIS supports to be funded under the NDIS based on this evidence.

As these examples show, a number of critical and complex policy decisions are needed to resolve key NDIS/mainstream services boundary issues. Victoria is actively working with other states and the Commonwealth to implement appropriate policy responses, including putting in place interim measures while alternative delivery models are given time to develop.

To further help with this, Victoria would support a standing item on the agenda of each COAG Council that interfaces with the NDIA (Draft Recommendation 5.3). A necessary first step is to put in place robust public reporting on how the scheme as a whole is progressing. This would identify whether there is a need for further reporting by the states that can be efficiently and effectively progressed through existing COAG avenues.

Box 6: Reflections from Victoria – NDIS for people with psychosocial disability

Victoria has made plans for its mental health community support services at full scheme based on an agreed understanding of how the NDIS will assess and support people with a psychosocial disability.

The NDIS disability criteria states an individual must have a disability attributable to an impairment that is permanent or likely to be permanent and that substantially impacts their functional ability to take part in everyday activities. However there are a number of areas where this criteria is not being applied as expected, which are described below.

Evidence of permanency

Emerging evidence suggests that in some cases the NDIA National Assessment Team is requiring people with a psychiatric condition to provide evidence that they have exhausted all mental health treatment interventions (as a form of 'early interventions') to prove the impairment cannot be 'remedied'.

Most people with a severe and enduring mental illness have to manage their illness throughout their life and experience frequent relapse which may be unpredictable. Mental health treatment is not a 'cure/remedy' and as such mental health treatment is not a form of 'early intervention'. This is a false premise on which to apply the NDIS requirement that an 'impairment is, or is likely to be permanent, only if there are no known, available and appropriate evidence-based clinical, medical or other treatments that would likely remedy the impairment'.

Evidence of functional impairment

Evidence from the Streamlined Access Approach also suggests some people with a history of episodic relapse are being routinely assessed as ineligible by the NDIS as they appear 'high functioning' at a point in time. For people with severe and enduring mental illness and history of hospitalisation and relapse, mental health treatment is optimised when it is delivered alongside psychosocial disability supports in order to maintain/improve the person's psychosocial functionality (including capacity to engage in work) and support symptom stability/improvement (which in turn reduces the risk of relapse).

Victoria therefore considers it vital that care coordination is recognised and funded as a critical component of support. There are useful lessons from the Commonwealth Partners in Recovery program that could inform the NDIA in relation to these benefits.

Assessment of functional impairment

Victoria is concerned that the NDIA National Assessment Team may be using mental health diagnosis as a 'proxy' indicator for functional impairment and/or its permanency, particularly for people with depression and anxiety disorders.

However, Victoria would expect that eligibility be based on the impact of the psychiatric condition on the person's functional capacity and not based on the nature/type of their mental health diagnosis, i.e. the assessment against this criteria should be diagnostically 'blind'.

2.3 Victoria agrees that states can play a role in workforce development and is taking action on this front

Growing the required workforce will be a key challenge as the sector goes through this unprecedented period of reform. Victoria agrees that state and territory Governments are well placed to play a role in addressing workforce readiness gaps (Draft Recommendation 7.1).

Victoria is already investing in workforce readiness and capability (see Box 7). Victoria considers that greater sharing of data and information between the NDIA, the Commonwealth and providers is needed to ensure that workforce development strategies are aligned. Victoria seeks to engage with the Commonwealth to inform national workforce development approaches and outline respective roles and responsibilities to support the development of the market. Victoria expects that the Commonwealth will:

- lead national workforce activities and coordinate and facilitate responses to workforce challenges;
- take the lead in coordinating Commonwealth agencies to provide a comprehensive approach to workforce supply;
- lead the development of a coordinated response to meet the demand for allied health services and appropriate alternatives by working with professional bodies, tertiary institutions including Universities Australia, and the Commonwealth Department of Health;
- monitor the Fair Work Commission's review of the Social Community Home Care and Disability Services award for potential impacts for NDIS providers and workforce; and
- engage with states to ensure that regional differences are addressed and learnings applied across all jurisdictions.

Box 7: Reflections from Victoria – Workforce readiness

Workforce growth

Victoria has invested \$26 million in delivering Keeping our Sector Strong: Victoria's workforce plan for the NDIS. The plan contains a number of initiatives, some of which include:

- establishing a NDIS Regional Readiness Fund to resource rural and regional communities to respond to local workforce and service system challenges (e.g. where workforce supply is low);
- attracting a diverse range of people to the workforce, developed in collaboration with the disability sector;
- building capability in the Vocational Education and Training sector to deliver best-practice training;
- consulting with the disability sector to design and test innovative work placement approaches to ensure work-ready graduates enter the disability workforce;
- ensuring that the workforce has appropriate qualifications, and that learning, development, and training opportunities meet the needs of the NDIS; and
- developing an NDIS Workforce Data Strategy to share workforce data between the NDIA and states to inform project implementation and align respective workforce readiness activities.

Quality and safeguards

While Victoria's current disability service safeguarding system is one of the strongest in the country, there remains an unacceptable level of abuse of people with disability. In 2016, the Parliament of Victoria undertook an Inquiry into Abuse in Disability Services and found widespread evidence of sexual and physical assault, verbal abuse, financial abuse, and neglect across the sector.

The Inquiry drew on findings from the Victorian Ombudsman's 2015 Investigation into disability abuse reporting, which also found that the system was failing to deliver protection in a coherent and consistent way. These findings, coupled with the Commonwealth Senate's own 2015 Inquiry into violence, abuse and neglect against people with disability, demonstrate there is an urgent need to improve and strengthen safeguarding arrangements across Australia.

Victoria is currently amending its legislation to introduce a 'zero tolerance' approach to abuse in disability services and to strengthen the Disability Services Commissioner's independent oversight role, prior to full transition of the NDIS.

Victoria has also committed to establish a legislated Victorian registration and accreditation scheme to ensure that, as the workforce grows, service quality does not diminish and the rights of people with disability are protected. The scheme will help support workers to have suitable skills and experience.

2.4 Victoria supports clarifying governance arrangements to provide greater operational autonomy to the NDIA

Victoria supports clarifying governance and accountability arrangements so as to provide the NDIA with the operational autonomy that was originally envisaged (see section 4 for details of jurisdictional governance arrangements, as opposed to those specific to the NDIA). The NDIA needs to be properly resourced and operate with sufficient authority so that it can implement the NDIS on the basis of robust insurance principles.

Victoria supports governance arrangements that are as responsive and streamlined as possible. Victoria supports relaxing the requirement of unanimous agreement of all jurisdictions to change some Category A NDIS Rules (Draft Recommendation 9.1; Information Request 10.2) to either require majority agreement or, in some cases, consultation.

Victoria has also been willing to relinquish governance control on operational matters that could be best decided by the NDIA and is willing to consider ways of streamlining the approval processes for rules.

Greater operational autonomy should be accompanied by broadly construed accountability. In particular, the NDIA could be more transparent in how and why it makes decisions. Reviews of decisions (as suggested under Draft Recommendation 9.3) as well as other key reviews of the NDIA's approach (e.g. the recently announced review by McKinsey on the NDIA's price setting process) should be publicly reported where it will increase accountability without creating onerous reporting requirements. Victoria has commenced performance outcomes negotiations with the NDIA on its reporting framework to enable greater visibility on client transfers and participants' use of NDIS funding. A robust data and reporting framework should be used to improve participant experience and to underpin an insurance based approach to plan development (in support of Draft Recommendation 9.4).

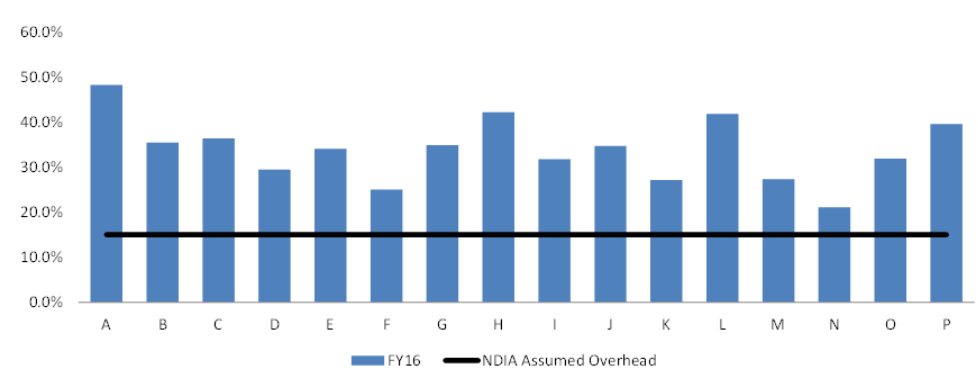
2.5 Victoria welcomes the recommendation to move to an independent price regulator

More confidence in NDIA pricing is required as soon as possible to encourage growth in supply and incentivise market transition. Victoria welcomes the recommendation to move to an independent price regulator by July 2019 (Draft Recommendation 6.1). It is important to separate the price-setting function from the NDIA and then clarify the role and accountability to be retained by the NDIA.

In the immediate term, there is more that the PC could do to address concerns about the adequacy of NDIA prices. Stakeholders have consistently raised concerns around:

- **True cost of delivery** – In some areas current transitional prices may not reflect the costs of service delivery or what can be realistically achieved as providers transition from block funding. To take the ‘Overhead Assumption’ as an example, Victorian analysis of service providers’ audited 2015-16 financial statements shows that estimated overhead/indirect cost percentages are mostly around 30 per cent, but range up to almost 50 per cent (see Figure 5). For most providers a reduction to the current NDIA overhead allowance of 15 per cent is not achievable in the short term, and this gap will widen with the 9 per cent overhead assumed in the NDIA efficient price.
- **Skilled workforce** – Current pricing may incentivise existing skilled workers to seek roles in other parts of the caring sector (for example the aged care sector).
- **High quality and safe services** – It is unclear if the current pricing structure makes provision for adequate professional development, which may lower the quality of services.
- **Reasonable and necessary supports for clients with complex needs** – Across all areas of service provision there are cost drivers for people with complex support needs that do not appear to have not been appropriately factored into NDIS pricing.

Figure 5 – Analysis of the proportion of overhead/indirect costs amongst providers⁶



⁶ Based on Department of Treasury and Finance analysis of audited 2015-16 financial statements published on the Australian Charities and Not-for-profits Commission (ACNC) website. The overhead estimate is calculated by taking total operating costs, less total salaries, less depreciation and plus eight percent of total salaries for corporate and local management.

Consistent with Victoria’s first submission to the PC, there would be value in:

- examining cost and price challenges experienced by current NDIS providers (the table below lists specific price components that are being consistently questioned);
- analysing the impact of this gap on provider attitudes and intentions, workforce growth and development, and ultimately service quality; and
- making recommendations, considering the timing of the NDIA’s recently announced independent review by McKinsey and potential implications for providers.

To support a strong and diverse provider market to drive choice over time, it is proposed the PC also examine the case for a transitional price path which tapers over time.

Figure 6: Price component for further consideration

Component	Areas of confusion about adequacy of price
Productivity	The percentage of available direct support staff hours that is assumed to be client facing is too high (i.e. currently assumed to be 95 per cent of total available hours).
Training	Allowance for training of direct support staff.
Personal Leave	Number of days assumed to be taken in price.
Public Holidays	It is not clear whether the NDIA has factored into the hourly rate a loading for public holidays, which vary across jurisdictions.
Overhead Assumption	Clear detail on what is assumed to be covered by the overhead percentage and what is deemed not recoverable under NDIS pricing (e.g. cost of capital/buildings).
Travel Time	Travel time between clients greater than 20 minutes is not currently costed in hourly rates. It is unclear how providers are assumed to cover these costs (see Box 8).
Staff Turnover	Allowance for direct support staff turnover to accommodate for the costs of staff recruitment, induction/training, shadow shifts and supervision of new staff.
Communication	Allowance factored in for the use of mobile phones by direct support workers.
Agency staff costs	Allowance for the additional cost associated with using agency staff, noting that as demand increases for services there may be an increased dependency on agency staff.

Box 8: Reflections from Victoria – HACC transition challenges

Under the NDIS, responsibility for Home and Community Care (HACC) services will be split three ways:

- HACC services for older people (people aged 65 and over and Aboriginal people aged 50 and over) will become a Commonwealth responsibility;
- a proportion of people in Victoria's HACC Program for Younger People will be eligible to participate in the NDIS. The experience of the NDIS trial in the Barwon area has been that about 25-30 per cent of HACC clients aged less than 65 will become NDIS participants; and
- current younger HACC clients who are not eligible for the NDIS will continue to be eligible for services under the Victorian HACC program.

As major providers of HACC services throughout Victoria, councils have a keen interest in successfully transitioning HACC services to the NDIS and maintaining existing services for ineligible clients. The Municipal Association of Victoria has raised the following concerns:

- NDIS pricing for supports to under 65 year olds who were previously HACC clients does not cover travel costs in rural and regional areas (where many HACC clients are located); and
- the lack of sustainable pricing is resulting in some local councils deciding not to register as NDIS service providers. This could exacerbate the risk of thin markets or market failure in areas where local councils are the only provider.

Market failure could put people at risk in emergency/crisis situations. Currently, local HACC networks enable clients to be contacted and supported quickly in emergency situations. Further, if local councils do not retain their skilled workforce in home and community care services, they will not have sufficient capability to be providers of last resort.

3. Understanding Victoria's role

3.1 The NDIS roll out is revealing latent demand for services, which should not be confused with state governments withdrawing from services

The NDIS is revealing some latent demand and also some lack of clarity over the boundaries between the NDIS and selected other services. This should not be confused with state governments withdrawing services.

Australian governments are endeavouring to align an insurance-based entitlement scheme with state-funded mainstream services where access is often prioritised according to need. As the NDIS takes shape alongside state and Commonwealth-funded services, it is important to distinguish between:

- jurisdictions withdrawing funding from services; and
- the NDIS revealing latent and new demand for certain services as more people are able to access assistance or a greater scope of supports.

What was previously 'latent' demand may present as an increase in expressed demand for mainstream services.

For example, there has been increased demand on Victoria's health system for clinical health functions/services generated by NDIS implementation. One driver is the requirement for the health system to provide evidence of impairment to support NDIS access or plan review. In particular, community health services are reporting a significant increase in the demand for medical assessment of children in search of autism diagnosis to support NDIS access/eligibility.

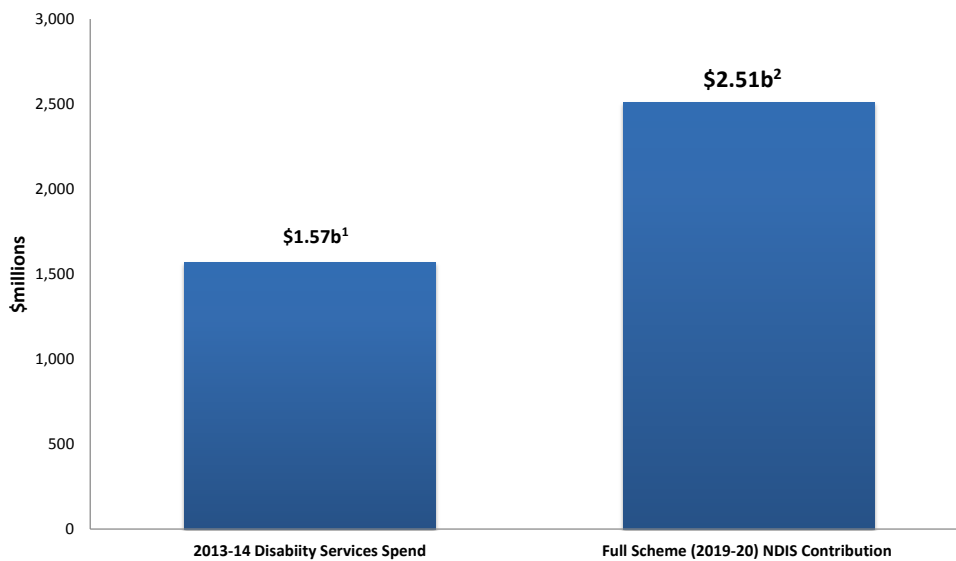
There is also an increased demand on Victoria's health system for NDIS funded health services as people have therapy and other supports included in NDIS participant plans that they could previously not access.

Where problems arise in satisfying latent demand exposed by NDIS entitlements this should not be misconstrued as a withdrawal of services.

3.2 Under the NDIS, Victoria is significantly growing its investment in disability services

In 2013-14 (which broadly represents Victoria's spend on disability services ahead of Victoria committing to the NDIS) Victoria invested \$1.57 billion in the provision of care and support services for people with disabilities. At full scheme, Victoria will contribute \$2.5 billion to the NDIS (compared to the Commonwealth spend of \$2.6 million).

Figure 7: Victoria's estimated disability spend 2013-14 to 2019-20



(1) Figures are sourced from the 2016-17 Victorian budget paper number 3.

(2) Figures are sourced from the *Bilateral Agreement between the Commonwealth and Victoria*:

Furthermore, the NDIS contribution does not represent Victoria's full investment in disability services; Victoria also provides broader support and funding for disability-related services under its ongoing disability scheme and in the areas such as support for students with disabilities and social housing.

Victoria is fully committed to providing continuity of services for persons with a disability that are not eligible for the NDIS. This means that as the NDIS is rolled out, Victoria will be responsible for continuing to support people under the age of 65 (under the age of 50 for Aboriginal Victorians) receiving Victorian disability services who are ineligible for the NDIS.

Over the past two years, the State has invested an additional \$300 million into disability-related initiatives. This includes approximately \$150 million to ensure services and systems, as well as workforce, clients and their families are ready to transition to the NDIS. The Government has funded investments in areas such as the State Disability Plan, strengthening oversight to reduce abuse in disability services, and additional placements in disability services.

3.3 Victoria is making substantial investments in universal services (rather than withdrawing funding from service delivery)

During the NDIS transition, Victoria's investment in mainstream services has grown strongly, such that the NDIS should not be perceived as an 'oasis of support' surrounded by little else.⁷

Victoria's investments recognise that access to mainstream services is critical to enhance the quality of life of people with disability. An inclusive mainstream service system will also help reduce reliance on specialist disability supports and allow people with disability to participate more in their communities.

⁷ Productivity Commission Position Paper – NDIS Review of Costs, pg 30

The scale of investments in mainstream services that wrap around the scheme are significant:

- **Health** – as part of the Victorian Government’s objective for Victorians to enjoy good physical and mental health, the service system has been strengthened with an additional \$5.8 billion over the past three years, including over \$500 million for mental health. As a result of these investments the annual allocation for health services (which includes clinical mental health) grew by 19 per cent from 2015-16 to \$17.3 billion in 2017-18.
- **Education** – an additional \$3.6 billion has been allocated to education services over the past three years including \$192 million specifically for students with disabilities. This brings expenditure for schools in 2017-18 to \$11 billion (an increase of 12 per cent over the three years) with almost \$1 billion of this directed specifically to deliver programs for students with disabilities, transport, welfare and support services for students with special needs.
- **Early childhood** – Over \$400 million additional funding has been allocated for early childhood services including Maternal and Child Health programs over the past three years. A strong early childhood service system aims to provide children with disabilities or developmental delay and their families with timely access to support.
- **Housing** – Victoria has committed \$1 billion to establish a new Social Housing Growth Fund to deliver an extra 2 200 social housing homes over the next five years. This is part of a broader development announced within *Homes for Victorians* (2016) that also includes an additional 1 200 social housing dwellings and renewal of up to 2 500 ageing public housing dwellings.
- **Family violence** – \$2.5 billion has been committed over the past two years to strengthen and reform family violence and broader social service systems such as family support and child protection services, to improve safety for victims and their children, and hold perpetrators to account.

These substantial growth investments reflect the Victorian Government’s commitment to optimising outcomes by ensuring that people have access to both specialist and mainstream services.

Beyond Victoria’s financial commitments, Victorians with disabilities’ access to mainstream services are being further enhanced through Victoria’s approach in the State Disability Plan and the architecture Victoria has in place to make sure people with disability get what they need to live everyday lives. As part of *Absolutely everyone, the state disability plan 2017–2020*, the Victorian Government committed to:

- work with the NDIA to implement the agreed division of responsibility between the NDIS and Victorian Government services;
- support mainstream Victorian services to work with the NDIA to ensure that people with disability receive seamless support; and
- ensure that mainstream services are inclusive of people with disability and meet continuity of support expectations.

In parallel, Victoria has a detailed NDIS ‘readiness planning’ process underway – across 11 mainstream service interface areas identified by the Applied Tables and Principles of Support – to support this commitment. The centrally coordinated readiness planning process has seen each portfolio develop strategies on issues including adequacy of support, system collaboration, linkages and referrals, financial risk, workforce capacity, market transition, access and early intervention and quality and safeguarding. Through this work, Victoria has identified priority areas for further work for successful transition to the NDIS.

3.4 As the primary funder of universal services and the State's ongoing disability system, Victoria already bears significant funding risk from the NDIS

Strong mainstream and ongoing disability services are the foundation for a successful and financially sustainable NDIS. Equally, a well-functioning NDIS places less pressure on mainstream services. While the NDIS is not intended to replace mainstream services (and vice versa), the financial sustainability of both relies on the entire system continuing efforts to support people with disability. All governments consequently have an interest in a financially sustainable NDIS that implements insurance principles to reduce lifetime costs of disability support.

The NDIS is already placing additional strain on state-funded universal services and ongoing disability services. These strains are in part due to lack of clarity regarding the boundaries between the NDIS and the mainstream system, but also reflect acknowledged operational shortcomings that have arisen in the initial stages of the scheme rollout. These include:

- where NDIA pricing is insufficient to provide a supply of agreed supports;
- where the administrative burden associated with NDIS funding is discouraging providers from registering with the scheme;
- where poor or inconsistent NDIS planning is forcing participants back onto State services; and
- where support coordinators are inadequately equipped to ensure a smooth transition from transitioning programs to the NDIS.

Some examples of these shortcomings are set out in Box 9. Victoria therefore already bears significant funding risks as the primary funder of mainstream services. Given this ongoing financial risk to states, it is important that governance around scheme scope and design is shared equally between the Commonwealth and states.

Box 9: Reflections from Victoria – risk of cost shifting onto state funded services

Health

Victoria is aware of some health service providers choosing not to register as NDIS providers. Instead, they are providing NDIS billable services through their service agreements with Victoria.

Many of the contributing factors to this situation are beyond Victoria's direct control, including:

- an emerging concern that NDIS prices for some support items are too low or not available e.g. funding for continence support does not cover the cost of a nurse with the appropriate qualifications for complex cases, there are no NDIS-funded items to cover supervision of allied health assistants and professional development, administration and prices for services delivered in regional areas may not reflect true costs;
- the significant administration involved in becoming an NDIS provider and billing the NDIA;
- feedback from health service providers that inconsistent decision making by NDIS planners restricts their ability to deliver evidence based and interdisciplinary care; and
- funding and provision of prosthetics through the public hospital system due to patients not wanting to go through NDIS access and planning processes, operational issues and delays in NDIS plan approvals (to avoid hospital bed-blocking) and NDIS provider registration requirements deterring health services from considering provider status.

The lack of clarity around responsibilities between the NDIS and the mainstream health system is exacerbating this situation. While this remains unresolved, Victoria is funding a number of supports that the State would otherwise consider the responsibility of the NDIS when they are linked to a functional need. Such supports include some maintenance therapies, equipment, food supplements and dietetics for the Home Enteral Nutrition Program, meal assistance, continence nursing, community nursing, wound management, tracheostomy care and ventilator support.

Early Childhood Intervention

Early experience with service providers transitioning into the NDIS market indicates a strong reliance on State funding to support the providers financial viability as clients transition into the NDIS. Issues gaining access to the NDIS Portal to input billable service and delays in clients drawing down on their NDIS plans is placing a significant burden on service providers during transition.

Providers have also expressed a concern that notwithstanding the expected individualisation of plans that there is overall a reduction in plan values.

Specialised equipment for young children has emerged as a particular budget pressure, as the NDIA is typically funding only one piece of equipment for a young child (e.g. a standing frame) as this is deemed 'reasonable and necessary'. However, this home based equipment is not necessarily transportable to kindergartens putting pressure back on these services to supply additional equipment or seek help from the Victorian government to do so.

Support coordination and crisis/emergency response

Experience to date has shown that some NDIS funded support coordinators have not been equipped to assist participants with complex needs. State departments have consequently been re-engaged to cover the capability gap and provide crisis management and care coordination, despite the person involved having an approved NDIS plan and no longer being a client.

Hospital discharge is a further example of the cost implications from inadequate coordination and planning under the NDIS; current NDIS access and planning timelines are not consistent with average length of stay for non-complex patients with NDIS needs following discharge.

Some Victorians have had significantly protracted hospital stays because they require a NDIS plan and related services to be able to be discharged. For example, in one instance in Victoria an individual who was high-level ventilator dependent and quadriplegic remained in an acute hospital bed for more than six months pending a decision by NDIA on his care needs and consideration of health and disability interface in relation to specific ventilator support needs. Victoria would expect a collaborative interim solution to be negotiated between health and NDIA to enable a better outcome for the participant while working through the higher level principles of the health and disability interface for a person who is ventilator dependent.

This has multiple consequential impacts – on the health and wellbeing of the participant, on the capacity of the hospital and on-costs to Victoria (an acute bed is costed at \$782 per day for a shared ward). The situation also increases the risk of the participant being admitted to residential aged care.

Psychosocial disability

Victoria and the NDIA have agreed on transition arrangements for people currently receiving Mental Health Community Support Services. This includes:

- people who have been receiving Victorian Mental Health Community Support Services programs approved for transition will not have to provide additional evidence of their disability and the level of functional impairment associated with their disability. Rather, they will become NDIS participants provided they also meet age and residency requirements. Victoria will provide continuity of support to those existing state-funded clients who do not meet the NDIS age or residency requirements (estimated to be approximately 200 people);
- people who have been on Victoria's Mental Health Community Support Services Needs Register can apply to become a participant in the NDIS via a streamlined process; and
- people that have not previously received support will be considered 'new' clients and can apply to become a participant in the NDIS with supporting evidence of their psychiatric condition and related psychosocial disability.

Given the above arrangement, Victoria does not believe there should be a service 'gap' for existing clients of Mental Health Community Support Services. However this does depend on how the scheme is implemented. For example, if the scheme:

- applies an overly narrow definition of 'reasonable and necessary' supports (i.e. offers lower supports than people could previously access) – Victoria will need to provide greater continuity of support arrangements to make sure no one is left worse off;
- applies disability criteria and access pathways for 'new clients' in unexpected ways) i.e. rejects clients that would have otherwise been able to access a Mental Health Community Support Services defined program) – Victoria will need to cater for this cohort via the its ongoing community and clinical mental health services.

Similarly the Commonwealth's administration of their continuity of support commitments to non-eligible clients of Commonwealth mental health programs (e.g. Partners in Recovery, Support for Day-to-Day Living in the Community and Personal Helpers and Mentors Service) may result in an increased demand for State emergency department and mental health services where people with severe and persistent mental illness can no longer access support services.

4. Appropriate cost and risk sharing arrangements

4.1 Current NDIS risk sharing arrangements rightly recognise the states bear much of the ongoing risk

Existing administrative and governance arrangements provide states with a level of oversight in accordance with their role as joint stewards of the NDIS. Victoria has maintained an emphasis on the partnership approach to the NDIS to ensure that the scheme produces high quality outcomes for participants.

For full scheme, Victoria considers that the ongoing role of the Commonwealth and states in scheme governance should be commensurate with the ongoing risks that each bears and genuinely reflect a joint partner model.

In understanding the Scheme risks and who bears them, Victoria recommends the PC take a broad approach and consider:

- the emergence of gaps in supports for people with disability;
- risks to continuity of care and arrangements for a provider of last resort;
- risks to the development and maintenance of a sustainable market that provides people with safe and quality services; and
- greater demand placed on mainstream services or state ongoing disability services (particularly as a result of changes to scheme scope, design and eligibility).

Victoria has a strong interest in effectively managing these risks, and has the ability to work in partnership with the Commonwealth and the NDIA to do so.

Current NDIS risk sharing arrangements rightly recognise the states bear much of the ongoing risk of cost shifting to mainstream state funded services and that states have limited capacity to take on more risk without jeopardising service delivery in these areas. They also recognise the fiscal imbalance between the Commonwealth and states and relative inefficiency of state revenue bases.

Current arrangements also expose state governments to costs associated with any failure among service providers. Given this ongoing financial risk to states, it is important that governance around scheme scope and design is shared equally between the Commonwealth and states.

4.2 Victoria is fulfilling its National Injury Insurance Scheme commitments

Victoria fully meets the relevant benchmarks for no-fault lifetime care and support for people who are catastrophically injured in motor vehicle and work accidents through Victoria's Transport Accident Commission (TAC) and WorkSafe Victoria schemes. Other jurisdictions now have no-fault catastrophic motor vehicle coverage and have made significant progress on minimum benchmarks for workplace accidents.

WorkSafe is funded by insurance premiums paid by Victorian employers amounting to over \$2 billion in 2015-16, augmented by investment income totalling \$430 million. In 2015-16, the TAC provided \$1.2 billion to injured Victorians to cover necessary supports following an accident.

A key rationale for the mostly premium-based funding sources of the proposed National Injury Insurance Scheme (NIIS) was the capacity for risk- and experience-rate insurance to reduce accidents. It was hoped that aligning insurance premiums with the risk of accident would deter risky behaviour.

States have made considerable progress where there is a clear link between the risk and an appropriate insurance premium. But there are substantial complexities to work through in the remaining two insurance streams (medical insurance and general accident insurance). These complexities reduce some of the benefits expected to be achieved from implementing a NIIS.

States have worked with the Commonwealth to examine the feasibility of a medical injury stream of the NIIS. Unlike the case of motor vehicle and workplace accidents, determining whether a medical treatment has directly caused a catastrophic injury can be challenging. Work by the Commonwealth and states indicates that, unlike the motor vehicle and workplace injury schemes, it is unclear that a medical treatment injury NIIS would reduce overall costs.

Although general injury is yet to be considered, a potential challenge is the extent to which premiums could appropriately align to the risks of injury.

At COAG in June 2017, First Ministers agreed with Treasurers' advice not to proceed with a medical treatment stream of the NIIS at this time. Leaders asked Treasurers to review the cost implications of this decision in the context of the PC Review. Leaders also asked Treasurers, in consultation with the Disability Reform Council, for advice on a general accident stream of the NIIS for the first COAG meeting in 2018. Victoria will work with the Commonwealth and states to provide advice on these matters particularly in the context of the NDIS at full scheme.

Victoria's medical indemnity insurance arrangements cover a large proportion of medical injuries. Victoria currently provides public hospital indemnity insurance through the Victorian Managed Insurance Authority.

In considering any impacts on NDIS costs, the PC needs to take into account the NDIA's wide-ranging powers to recover compensation payments for care and support from payers and insurers under the *National Disability Insurance Scheme Act 2013*. The NDIA can require a person to take action to obtain compensation, and may recover past NDIS amounts from certain judgments.

In the Heads of Agreement to roll out the NDIS, Victoria agreed to continue negotiations on medical treatment injury through intergovernmental fora, but did not agree to fund or implement this stream and made no commitments regarding general injury.

Although the NIIS may not currently operate as was originally envisaged by the PC, it must also be recognised that the NDIS more generally looks very different to the scheme envisaged by the PC. States are contributing significantly more to NDIS scheme costs than the PC originally recommended. It must also be recognised that the states bear the ongoing risks of cost shifting to mainstream state funded services.

4.3 Victoria's commitments were made on the basis of DCAF revenue being shared as agreed

Victoria's commitments were made on the basis of the *DisabilityCare Fund's* (DCAF) revenue being shared according to the timelines agreed with the Commonwealth. None of this revenue has yet been provided to state governments.

From 1 July 2014, the Medicare levy increased from 1.5 to 2 per cent to help pay for the NDIS. The additional revenue from the Medicare levy paid by Victorian taxpayers is held in the DCAF. The purpose of DCAF was clear. It was intended to contribute towards reimbursing states for NDIS costs. Victoria entered into the NDIS on the understanding of receiving its share of DCAF revenue according to timelines agreed with the Commonwealth, with a funding allocation from 2014-15. The Commonwealth's 2017-18 Budget has provided for a further 0.5 per cent increase in the Medicare levy.

Victoria's entitlement to DCAF is significant, worth around \$240 million a year (\$2.4 billion over 10 years). It is determined on Victoria's population share and client numbers, and indexed at 3.5 per cent. Despite not receiving funding, scheme transition is well underway. Substantial up-front investments have been made by Victoria to facilitate scheme rollout. Substantial costs are being borne by Victoria in readying potential participants for the NDIS. Victoria had expected to use DCAF revenue as one funding source towards meeting its contributions to the NDIS.

A draft agreement and offer has only recently been provided by the Commonwealth and only provide for a one-off payment from DCAF. The full terms of that proposed agreement and offer are under consideration.

4.4 The escalation of state contributions was intended to maintain the states' fixed contributions in real per capita terms

In the transition to the full NDIS, states contribute towards an agreed reasonable average package cost on a per participant basis for up to a set number of participants. That is, state funding is linked to agreed (not actual) scheme costs. Once at full scheme, state funding contributions are fixed subject to an indexation factor of 3.5 per cent a year.

Victoria considers it is clear from the wording of the bilateral agreements that the objective of the escalation factor to be applied to state contributions to NDIS costs was to maintain the real value of those contributions over time against growth in population and economy-wide movements in prices and wages.

The states clearly did not agree to meet increased costs arising from a higher than expected participant numbers and/or higher average per person care and support costs. Under the bilateral agreements, 100 per cent of the risk of scheme cost overruns due to such factors was clearly apportioned to the Commonwealth.

States' NDIS contributions have been carefully formulated and agreed. The Commonwealth cannot keep shifting the goalposts.

As acknowledged by the PC, it is too early to assess whether scheme costs to date are inconsistent with original estimates.

Aside from the prematurity of seeking to link escalation parameters to scheme costs now, it is unclear whether and by how much escalation parameters should be altered, and how they could be calibrated in such a way that would accurately take into account NDIS cost drivers over time, and the control over various risks held by the states versus the Commonwealth.

A successful NDIA and NDIS scheme generally requires genuine intergovernmental cooperation. This cooperation needs to be based on the Intergovernmental Agreement on Federal Financial Relations principles of fair and sustainable arrangements between governments in the context of the fiscal imbalance that exists between the Commonwealth and the states.

As noted in the joint submission from the governments of Victoria, Queensland, South Australia and the ACT (submission 201), increasing the proportion of state funding or the indexation of the state contribution would increase budgetary pressures on states and may affect the delivery, quality and access to mainstream services, which are also necessary for the sustainability of the NDIS.

States will continue to bear responsibility for substantial mainstream services that interface with the NDIS, and bear significant risk from growth in these services. Increasing the NDIS' dependence on smaller state budgets that rely on Commonwealth grants and less efficient taxes may result in a backwards step – towards an NDIS that is not fully funded.

