

SUBMISSION TO THE PRODUCTIVITY COMMISSION REVIEW OF NATIONAL DISABILITY INSURANCE SCHEME COSTS

This submission is in response to the Productivity Commission Position Paper on National Disability Insurance Scheme (NDIS or Scheme) costs.

An Appendix to this Submission includes responses to the Draft Findings, Draft Recommendations and Information Requests. It is especially important that the Final Report should recommend:

- an economic framework which facilitates the assessment and analysis of the necessary changes in the supply and demand curves in the disability market which are required to support the sustainability of the NDIS; the optimal way to deregulate prices; and, the essential NDIA ICT infrastructure to underpin the disability market so that it is efficient, accessible and supports innovation,
- even more flexibility and resourcing for the ILC than is proposed in the Position Paper and include detailed analysis of the “at risk” group within Tier 2, which should be the primary target for ILC supports and for whom outcomes should be measured,
- family members living at the same address as a participant should not be paid, because payments in this situation would endanger informal care arrangements,
- a much more sophisticated and nuanced approach to governance, funding and risk sharing which is aligned and supports the sustainability of the NDIS, including a mechanism for setting the annual escalation factor, which is currently fixed at 3.5 per cent, so that it provides key links to the National Disability Strategy, risk sharing and NDIS outcomes in line with the Objects of the NDIS Act, and
- protocols for NDIS data to be made widely available for independent research to accelerate optimisation of support for people with disability, their families and carers and the NDIS.

However, the main focus of this Submission is on two over-arching recommendations, designed to secure the long-term sustainability of the NDIS and provide for essential short-term operational flexibility within the Bilateral Agreements, to ensure a successful transition to the full NDIS. These recommendations should be regarded as inseparable and it should be possible for both to be completed before the end of 2017.

First, the Commonwealth Government should establish an NDIS Premium Reserve, through new Commonwealth legislation, which would be equivalent to the premium pool within which insurance companies usually operate and over time would provide a mechanism to build up a Contingency Reserve.

Second, the Commonwealth Minister, under Section 125 of the NDIS Act (2013) and with the agreement of the Disability Reform Council, should issue a new statement of strategic guidance for the National Disability Insurance Agency (NDIA or Agency) during transition to the full NDIS, to ensure that the NDIS is managed sustainably.

NDIS Premium Reserve

The Commonwealth Government should enact new legislation to establish a NDIS Premium Reserve (Reserve) before the end of 2017.

The funds in the Reserve could only be used for purposes included in the NDIS Act (2013) and the purpose of the Reserve would be to ensure the sustainability of the National Disability Insurance Scheme (NDIS or Scheme).

On an annual basis, funds would be appropriated to the Reserve to fund the Scheme, as part of the ordinary business of the Commonwealth Government.

During transition to the full NDIS, the total annual funds would reflect the Bilateral Agreements between the Commonwealth and States and territories.

From 2019 – 20, the first year of Full Scheme, the funds in the Reserve would reflect the actuarial estimate, which would initially be \$22 billion.

Thereafter, the annual amount appropriated to the Reserve would be indexed for inflation, population growth and ageing within the NDIS, reflecting the fact that participants who enter the NDIS before the age of 65 are permitted to age within the Scheme and this will add significantly to costs of the NDIS in the long-term, while simultaneously reducing expenditures which otherwise have been shown as part of aged care (see the Annual Financial Sustainability Report from the Scheme Actuary).

The funds contributed by the States and territories to the NDIS would be provided directly to the Commonwealth, who would be responsible for collecting these funds, and so would only indirectly form part of the Reserve.

Any funds not expended in a financial year would be permitted to accumulate in the Premium Reserve and so provide a mechanism to build up a Contingency Reserve.

There would be a number of advantages associated with establishing the Reserve.

First, a Premium Reserve would demonstrate to people with disability, their families and carers, that any NDIS funds which are not utilised would not result in reduced funding for people with disability. Maintaining the confidence and support of the disability sector is essential. Therefore, establishing a Premium Reserve is essential in the context of the proposed new Letter of Strategic Guidance (see below).

Second, the Premium Reserve would put into legislation the commitment of all political parties to fully fund the NDIS. By appropriating the full funding for the NDIS, rather than a portion of the funds such as those raised through the proposed surcharge on the Medicare levy, the proposed Reserve would be more effective in demonstrating the commitment of the Commonwealth Parliament to the NDIS than current proposals for either a NDIS Savings Fund or “fully funding the NDIS through the Medicare levy”.

It is also notable that suggestions that an increase in the Medicare Levy will “fully fund” the NDIS fail to take account of the fact that NDIS costs will increase from a projected 1.0 per cent of GDP to 1.5 per cent of GDP as the system matures, as a result of people with disability ageing in the Scheme. The first stage of this process is evident from the Position Paper, where it is estimated that in 2019 – 20 there will be 475,000 participants, including 15,285 participants aged 65 years and older. As the number of participants in the NDIS who were aged 65 and older builds up, there will be an ever-widening gap between NDIS costs and revenues from the Medicare Levy. This means that even with outstanding sustainable governance of the NDIS, increasing the Medicare Levy will not “fully fund” the NDIS.

Third, a Premium Reserve would move discussions away from current proposals for the hypothecation of revenues to fund the NDIS, which are fiscally very inefficient and, hence,

suboptimal. It is well-known that governments should raise revenues as efficiently and equitably as possible rather than hypothecate revenues for pre-determined purposes. It is also notable that hypothecation arguments are not being used to “fund” any other government expenditures or recent policy changes, such as increased defence spending on new submarines or proposals for corporate tax cuts.

Fourth, by allowing for the surplus funds to be accumulated, the Reserve would potentially allow the Agency to build up a funding buffer to allow for future contingencies, similar to the contingency reserve normally held by insurance companies. At the moment, the Agency has no additional reserves to meet unanticipated future costs and it would be prudent to allow the Contingency Reserve to build up to 20 per cent of annual full-scheme costs, implying an initial target of around \$4.5 billion.

Fifth, to ensure that the funds available through the Reserve are sufficient in the very long-term to meet the “reasonable and necessary” needs of participants eligible for the NDIS, the Scheme should be subject to periodic actuarial review, every five years.

The purpose of the five-year actuarial reviews would be to identify and measure any very long-term changes in rates and severity of disability in the population, sector productivity changes and the impact of technology. For example, it is to be expected that disability prevalence will change as the population age profile changes and as changing medical and health practices affect rates of disability. The independent actuarial reviews would also calculate the escalation factors. (See comments on Information Request 10.1.)

Any changes to necessary funding identified in the actuarial reviews should then be reflected in changes to funds allocated to the Reserve for the next five years, until the next actuarial review.

Finally, and most importantly, the purpose of the Reserve would be to provide a mechanism for the Agency to be properly accountable for delivering the NDIS within the annual funding allocation and sustainably over time.

The Reserve would effectively place accountability for the sustainability of the NDIS with the Agency and its Board and Management and ensure that the NDIS is managed in accordance with the Objects of the NDIS Act (2013).

New Letter of Strategic Guidance

Section 125 of the NDIS Act (2013) provides for the Commonwealth Minister, with the agreement of the Disability Reform Council, to issue a statement setting out strategic guidance for the NDIA.

The only letter of Strategic Guidance provided to the NDIA was in 2013 and related to the trial phase of the NDIS. It is therefore long overdue for updating. A new Letter of Strategic Guidance would also provide a potentially very flexible mechanism to respond to emerging challenges and opportunities.

The current financial year, 2017 – 18, and 2018 – 19 are the two most critical years in the transition to the full NDIS with more than 120,000 people scheduled to enter the Scheme this year and more than 150,000 next year. Demand for disability services will increase by around 40 per cent in both years.

In addition, plan reviews will multiply many times over this period reaching around 2,000 per day in 2019 – 20. Ensuring that initial plans are appropriate is essential to the smooth and efficient

operation of the NDIS. If there are too many plan reviews, the operational costs will be very burdensome and inefficient. Therefore, getting plans “right” first time is an essential precondition for setting up the Agency and NDIS for success.

The next two years therefore correspond with maximum demand growth and maximum operational pressure on the Agency.

As noted in Draft Findings 7.1:

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

It would therefore be a mistake to press ahead with the current transition timetable without some additional flexibility to respond to emerging supply shortages. Otherwise, demand will run ahead of supply causing participants to become frustrated and disappointed and inflationary pressures will emerge, which would pose a threat to the sustainability of the NDIS.

Further, data deficiencies, IT shortcomings and a planning and resource allocation process which is still being developed also point to the need for caution and flexibility.

At the same time, it is clear that for people with disability, their families and carers, the NDIS cannot come soon enough and there must be a commitment to deliver the NDIS in full and as soon as possible. Anything less would not be equitable.

The Productivity Commission in 2011 was very conscious of this and when it considered the timetable for the rollout of the NDIS, it recommended that there should be a one-year trial period followed by the full rollout over four years, with the NDIS to be fully implemented in mid-2019.

In the event, governments decided to trial the scheme over three years, while maintaining a target of completing the full roll-out in mid-2019, implying that transition to the full NDIS would occur over three years.

With the benefit of hindsight, it is clear that a one year trial of the NDIS would have been insufficient before moving to the full roll-out phase, as there would have been too little time to refine and improve the delivery of the NDIS. Now, one year into the transition phase it is clear that some supply shortages are already emerging and the pace of rollout of the NDIS is risking its quality.

The Market Position Statements prepared by the NDIA clearly indicate that the growth in demand will vary very significantly from region to region and by type of support. Further, there are very different gaps between future demand and actual and potential supplies of disability services.

The NDIS “market” is therefore actually multiple markets in multiple locations and this was not taken into account when setting the roll-out schedules in the Bilateral Agreements. Therefore, to press ahead with the roll-out schedule regardless of these local conditions would lead to further risks, which could compromise the long-term sustainability of the NDIS and undermine community and sector support.

At the same time, the Board and Management of the NDIA need flexibility to push ahead and even accelerate the rollout schedule where markets are sufficiently deep and the Agency’s tools to allocate resources in line with need are well-developed and robust.

The Position Paper seeks to deal with the market and operational challenges associated with implementing the NDIS by seeking information on how the rollout of the NDIS should be slowed down. This is not the most appropriate response.

In order to better balance competing pressures and take advantage of new opportunities, it is recommended that the Disability Reform Council should issue a new Letter of Strategic Guidance to the NDIA no later than the end of this year.

The new Letter of Strategic Guidance should:

- Instruct the NDIA Board to deliver the NDIS as quickly as possible, consistent with the bilateral agreements and the sustainability of the NDIS.
- Provide the NDIA with a definition of sustainability based on both good outcomes for participants, and financial metrics and key quality indicators, including participant satisfaction, plan reviews and AAT appeals, against which performance will be measured.
- Require the NDIA to provide advance notice of any changes to the rollout as set out in the Bilateral Agreements with an explanation and actions which are being taken to ensure the completion of the full rollout of the NDIS occurs as quickly as possible and how any surplus funds are being utilised.

Where the Bilateral Agreements cannot be implemented, because of supply shortages or other insurmountable challenges, where possible, the NDIA should be required to prioritise:

- early intervention, because the evidence demonstrates that early intervention is time critical and cannot be made up later in life,
- young adults transitioning from school to post-school options, because this is such an important transition with a major impact on life outcomes, and
- participants who are at risk of breakdown or loss of informal care arrangements, especially due to incapacity or death of an older carer.

Any funds which are not utilised on participant packages as set out in the Bilateral Agreements, should be used as follows:

- First, other participants who could be brought into the NDIS ahead of the schedule set out in the Bilateral Agreements, subject to funding. It should be noted that the States and territories are relying on existing clients to enter the NDIS, at which point 40 per cent of their support costs are paid for by the Commonwealth, to free up funds to allocate to new participants and fund the State share of additional funding for those already receiving disability services.
- Second, additional ILC supports as deemed necessary by the NDIA in order to ensure that this fundamental underpinning of the NDIS is robust and effective in supporting people with disability who are not eligible for the NDIS. During transition, these funds could only be drawn from Commonwealth contributions to the NDIS, as the Commonwealth is responsible for funding ILC during transition.
- Third, additional administration and IT expenditures considered necessary by the NDIA Board, in order to ensure the effective operations of the NDIS. It is paramount that the Agency has an ICT system that is fit for purpose, including a data warehouse and analytic software, seamless access for the Agency's community partners, a website which is fully accessible and an eMarket capability, which is cost-efficient, provides transaction level data,

is cashless and interfaces with information systems which support informed choices. During transition, these funds could only be drawn from Commonwealth contributions to the NDIS, because these costs are Commonwealth responsibilities during transition.

- Fourth, any additional surplus funds should build up within the Agency to form a Contingency Reserve, up to 20 per cent of NDIA annual expenditures, as suggested in the recommendation for an NDIS Premium Reserve.

Bruce Bonyhady AM

19 July 2017

APPENDIX

How is the scheme tracking?

The Final Report would benefit from a fuller introduction, an exposition of some key contextual opportunities and challenges and a Balanced Scorecard highlighting major results to date, as follows:

The results, since the inception of the NDIS, confirm that the conclusions reached by the Productivity Commission in its 2011 report are valid. In fact, the progress towards the full implementation of the NDIS and its vision of equitable and decent support for some of Australia's most vulnerable citizens, has been remarkable.

The NDIS is an economic as well as a social reform and is an example of governments doing what citizens cannot do for themselves, because the private market does not provide insurance for permanent and significant disability.

As the NDIS is being rolled out the key deficiencies of the old disability system, which led the Productivity Commission to describe it as "inequitable, underfunded, fragmented, inefficient and gives people with disability little choice and no certainty of access to appropriate supports" are being systematically addressed.

The NDIS is also a very ambitious, large and complex reform based on the key principles of insurance, control and choice and community inclusion and which will result in an additional 0.5 per cent of GDP being allocated to the essential support needs of people with disability.

Each of these changes are very significant reforms in their own right and it is inevitable with all nation-building reforms that everything will not progress smoothly. Indeed, the reforms would not be nation-building without complexity and extreme difficulty.

It is therefore inevitable that there will be further challenges and setbacks, as well as continued significant progress and successes, given the very strong commitments to the vision of the NDIS from all stakeholders.

In order to navigate this new and ground-breaking reform successfully it is essential to continuously refine and improve the Scheme as more and more data is collected. This has led the NDIA to adopt a "learn, listen, build and deliver" philosophy.

To be implemented successfully, the NDIS also requires unprecedented collaboration between the Commonwealth and States and territories.

High collaboration across the Federation, is also essential for Australia to meet many of the challenges of the 21st century. The NDIS therefore provides a major opportunity for all governments to build robust and transparent processes requiring shared governance, long term solutions and innovative problem solving to meet the needs of Australian citizens.

Given that many interactions between the Commonwealth and States and territories are characterised by point scoring and often shifting of costs, the collaboration needed to deliver the NDIS is also very challenging. It is therefore essential that the NDIS includes mechanisms which align interests around the success of the NDIS as much as possible.

The NDIS also cannot be considered in isolation. It sits within a broader National Disability Strategy and progress on the NDIS is running well ahead of the National Disability Strategy. Currently there are no mechanisms for effectively monitoring progress on the National Disability Strategy or penalties for failure to deliver on the National Disability Strategy. This poses a major risk to the NDIS, because if mainstream services do not fulfil their universal service obligations to people with disability, the NDIS will not be sustainable.

The NDIS is implementing the consumer-directed human services, through control and choice, on a scale not seen anywhere in the world. Consumer-directed funding is also very challenging for governments and public servants to implement in practice because while they acknowledge that it is essential to empower citizens, it reduces their control. There is therefore an ever-present danger that the NDIS could be turned into a Centrelink—type model based on impairments and entitlements and there are some worrying signs that this is now occurring.

Markets offer the most efficient way of allocating resources and ensuring that supports best meet the needs of NDIS participants, but this is challenging when there are information asymmetries, high transaction costs and rapid growth. Therefore, ensuring that the market and workforces are developed to serve people with disability, their families and carers is an essential precondition for the success of the NDIS.

The NDIS is seeking a sustainable balance between formal and informal care. A quality life is based on loving relationships, friendships and sufficient funding. A life which is only supported through paid arrangements is both shallow and very vulnerable to abuse.

The NDIS is based on mutuality; on responsibilities as well as rights. It therefore differs significantly in its structure from compensation schemes which seek to return an individual, as much as possible, to the condition they enjoyed prior to the compensable injury. In compensation schemes, unlike the NDIS, family and informal care are not designated to have key supporting roles.

Finally, the NDIS is deeply embedded in community. The NDIS is making a major investment in LACs, in order to facilitate opening up communities and the mainstream for people with disability. For too long, people with disability have lived in communities without actually being part of those communities.

Therefore, the NDIS is making a direct contribution to a broader goal to encourage a more tolerant and accepting Australian society. Inclusive communities are also richer for all citizens. Subsidiarity is also an important principle underpinning the NDIS: decisions should be made as close as possible to the citizens affected by those decisions, thereby best meeting their needs and strengthening local decision making and communities.

DRAFT FINDING 2.1

There are a number of factors which pose risks to the financial sustainability of the NDIS. These include: poor data on participants before they join the NDIS, evolving planning and resourcing processes used by the NDIA, underdeveloped markets and risks of demand exceeding supply, lack of progress on the National Disability Strategy, cost shifting from other sectors and an NDIA IT system which is not fit for purpose.

The lack of Local Area Coordinators (LACs) on the ground, six months in advance of roll-out, has largely reflected delays in Bilateral Agreements by governments. This therefore also highlights the need for timely government decisions.

All of these factors and risks should be highlighted as part of a Balanced Scorecard, not just the pace of rollout of the NDIS.

DRAFT FINDING 2.2

Agreed.

DRAFT FINDING 2.3

Agreed.

DRAFT FINDING 2.4

It is to be expected that in a major reform, like the NDIS, not all participants will benefit immediately. For example, with any reform, there will be “early adopters”. They are likely to benefit sooner than other participants, while also providing opportunities for “followers” to learn from and potentially be inspired by their innovation.

The NDIA has had a major focus on supporting participants and their families from CALD backgrounds, Aboriginal and Torres Strait Islanders, the disadvantaged and participants with psychosocial disability, because the NDIS is designed to be equitable.

The key question is therefore whether sufficient effort and resources have been applied to ensure equitable access and, if not, what additional resources should be made available, as part of a more realistic operational cost target.

Scheme Eligibility

DRAFT RECOMMENDATION 3.1

In support of this recommendation it should also be noted that accurate data on the activity domains outlined in section 24 of the NDIS Act 2013 is essential for the further refinement of reference packages and reasonable and necessary supports and hence the sustainability of the NDIS.

INFORMATION REQUEST 3.1

At this stage, there does not seem to be any evidence that ‘List D – Permanent Impairment/Early Intervention, Under 7 years – No Further Assessment Required’ is contributing to the current higher than expected numbers of participants receiving early intervention support.

While the number of conditions identified in List D is very long, the higher than expected numbers are largely children diagnosed with autism or developmental delay. Therefore, if the current revised Early Childhood Early Intervention approach is not successful, it would be best to focus on definitions and diagnosis in those specific areas, rather than List D.

In particular, the analysis of the impact on the NDIS of a definition of Developmental Delay rather than Global Developmental Delay by Dyson et al, and on which the Commission has relied in its

Position Paper, was undertaken in 2015. This work may need to be updated and could then point to the need to a change in eligibility to Global Developmental Delay.

It could also be worthwhile utilising the same wording in List D that applies to List A. List A includes a severity requirement and states that the conditions in the List are “likely to meet the access criteria” rather than provide for automatic qualification.

However, an area where there should be greater focus in the Final Report is on the potential effects on the NDIS of the definition of “disability” which is now being used by Education Departments, as part of the Nationally Consistent Collection of Data on School Students with Disability. According to the most recent data (2016), 18.1 per cent of children in schools have a “disability”. These are mostly additional learning needs or having a learning disability.

This is a very different definition of disability than the one utilised by the NDIS, with its focus on children with the most significant disabilities. A major risk is therefore that children who are defined as having a disability in the school context seek eligibility for the NDIS, especially if their additional support needs at school are not being met.

INFORMATION REQUEST 3.2

There is no evidence that ‘List A – Conditions which are Likely to Meet the Disability Requirements in section 24 of the NDIS Act’ is contributing to people entering the NDIS who do not meet the disability requirements. Moreover, given that conditions in List A are “likely to meet the access criteria” and include a severity requirement, there are no grounds to be concerned about List A.

Scheme supports

INFORMATION REQUEST 4.1

There could be some advantages in providing legislative clarity around “reasonable and necessary”. In order to be beneficial, it would need to encompass a number of key concepts.

First, “reasonable and necessary” is aligned with an “ordinary life” and it is bounded because everyone has a budget constraint. “Reasonable and necessary” also applies in total and not to individual items within a package, because it is the expectation of the NDIS that participants will make individual choices within an overall total allocation which is “reasonable and necessary”. Then, participants are free to choose to maximise the utility of the package to them based on their individual preferences.

Second, “reasonable and necessary” is based on the functional impairments of the participant, their informal supports and their goals and potential. Each of these factors will affect what is reasonable and necessary.

Third, the NDIS is designed to meet the additional costs that a participant experiences as a result of their disability. For example, the NDIS should fund personal support needs associated with daily living activities, if for example an adult participant has a physical disability and cannot dress themselves, shower or eat a meal. The NDIS should also fund a support worker to accompany a participant to a sporting event or other recreation activity, if needed, but not the cost of the ticket for the participant. Similarly, the NDIS should not meet all transport costs because everyone has transport expenses and it is also normal to rely on friends and family for some transport.

Fourth, the NDIA has sub-divided support packages into three categories: core (consumption, in economic terms), capacity building (investment) and equipment (capital) and the application of the “reasonable and necessary” test is different for each of these groupings. In particular, capacity building is subject to a return on investment in the form of increased capacity and reduced future core support needs, as a result of increased functionality and capacity. Within core supports, participants are expected to budget in order to maximise utility and drive increased benefit and markets only work when consumers have a budget constraint.

Fifth, “reasonable and necessary” is dynamic and will change over time. For example, both technology and emerging evidence of best practice will change what is considered reasonable and necessary. Voice synthesisers cost \$10,000, 10 years ago. Today they are available on an iPad for less than \$1000 and so it is neither reasonable nor necessary to allocate \$10,000 for this item now. As the NDIS collects data on early intervention, this will also lead to refinements based on the evidence of what is effective and value for money, leading to either increased or decreased funding.

INFORMATION REQUEST 4.2

A key goal of the NDIS is to get the balance right between local decision making, as close as possible to the participant, and national consistency. Both equity and subsidiarity are essential.

However, a major challenge with the current planning process is a lack of inter-rater reliability. It should also be noted that any changes to the role of Local Area Coordinators would require a change in current contractual arrangements between the NDIA and LAC providers. Should the delegation functions then need to be further amended, as planning processes change, this would require another amendment to contracts.

This means that arrangements between the NDIA and its LAC providers are slow to adjust. More generally, outsource arrangements work best when the activities are clearly defined and stable.

It would therefore be unwise to delegate plan approval functions to Local Area Coordinators, at this time and any delegation of plan approvals to Local Area Coordinators should be deferred until the planning process is stable, reliable and equitable. Then subsidiarity should be prioritised.

DRAFT RECOMMENDATION 4.1

Agreed.

DRAFT RECOMMENDATION 4.2

Agreed.

Boundaries and interfaces with the NDIS

DRAFT FINDING 5.1

Agreed.

DRAFT RECOMMENDATION 5.1

The recommendations that funding for ILC should be increased to \$131 million immediately is welcome, but does not go far enough in two key respects.

First, the NDIA should have flexibility to move funds within the existing funding envelope to ILC supports, as a key mitigating strategy to avoid unnecessary medium- to long-term cost increases, rather than a pre-set amount.

Second, more analysis of Tier 2, in the original Productivity Commission Report, should be undertaken in order to identify the sub-group who have the potential to have significant disabilities, if they do not receive the essential supports they need. Many of these people will have psychosocial disabilities or mental health issues, which could become persistent complex psychosocial disabilities without appropriate supports.

The “at risk” group within Tier 2 should then be the primary target for ILC supports and measures to assess the success with supporting this group should be developed, focusing on their well-being and the sustainability of the NDIS. In the case of mental health, this should be coordinated and aligned with community mental health services.

DRAFT RECOMMENDATION 5.2

The future of continuity of support and the services that the Australian, State and Territory Governments intend to provide and supports beyond the NDIS will all have a major impact on the sustainability of the NDIS and ILC.

Therefore, this recommendation should include a requirement for governments to determine the implications of these decisions and to make any necessary adjustments prior to the completion of transition to the full NDIS, to ensure that the NDIS is sustainable.

DRAFT RECOMMENDATION 5.3

This recommendation is welcome, but does not go far enough. Unless there are financial consequences for governments for not implementing the National Disability Strategy, listing this issue for discussion at each COAG Council meeting will have no impact. It is therefore suggested that this recommendation should be linked to the escalation factors. (See Information Request 10.1.)

INFORMATION REQUEST 5.1

Progress on the National Injury Insurance Scheme (NIIS) has been disappointingly poor.

In particular, medical negligence reform, so that medical damages for costs of future care shift to a no-fault basis is an essential and long-overdue next step. The Commonwealth Government has very significant potential influence through the large subsidies it provides through the High Cost Claims Scheme and the Premium Support Scheme. However, progress in this area is complicated by the fact that it requires reform of State laws.

Nevertheless, given the significant benefits from the NIIS, the required coordination between jurisdictions should be achievable.

In the absence of a full NIIS, NDIS costs will be higher than originally estimated and so renewed commitments from all governments including a near-term deadline to implement the NIIS is needed.

One area of progress, which provides some lessons for implementing the NIIS more broadly, are the changes to motor vehicle compensation schemes since the NDIS commenced. There are now no-

fault schemes in all jurisdictions for costs of future care for everyone injured in motor vehicle accidents. This reflects the original agreements between governments in 2013 to implement the NDIS, which specified that if State and Territory Governments did not meet the agreed minimum no-fault standards for motor vehicle accidents, then they would be responsible for future costs and would need to reimburse the NDIA. It was this financial incentive that led to reform.

Therefore, if governments are serious about the National Injury Insurance Scheme they will need to agree on financial consequences if there is no action. Otherwise there is unlikely to be any progress.

Provider Readiness

This chapter, especially, and the next two chapters would benefit from very substantial additional analysis in the Final Report.

The approach in the Issues Paper to market readiness is to look at the key market players – the workforce, disability service providers and participants – and then to ask: Will they be ready? Secondly, roles and responsibilities of government in relation to pricing are reviewed.

This approach leads to the recommendations for an Independent Price Regulator to be established no later than 1 July 2019 and for immediate independent price monitoring and the need to build on work that has already been undertaken, including by the NDIA, on Market Position Statements, the Statement of Market Opportunity and Intent and benchmarking of disability service provider costs.

This is helpful but given that the major cost and market pressures on the NDIS are likely to be at their peak in the next two years more insights, urgent actions and tailored advice would be very helpful using a more strategic approach.

In particular, the Final Report should identify and provide some greater insights into:

- key economic analysis of demand and supply, that needs to underpin development of the disability market(s),
- price regulation and deregulation, and
- the role of the NDIA IT System, as essential infrastructure underpinning and facilitating the market(s) for disability services.

Demand and Supply Analysis

Through the lens of demand and supply analysis, it is clear that the introduction of the NDIS implies a big demand shock, with demand effectively doubling in a very short period of time.

At the same time, the NDIA's "efficient prices", which are calibrated to the expected full costs of the NDIS of \$22 billion, imply that prices for disability services need to fall. Effectively, the supply curve needs to shift to the right and downwards.

However, when demand expands rapidly the more usual market response is for supply either to expand along the existing supply curve or for the supply curve to move upwards. This implies a very unusual and very challenging market shift.

Further, as people with disability become full citizens, we should not just think about supply as the supply of specialist disability services. Engaging mainstream services effectively opens up new sources of supply.

New social capital in the form of volunteering and donations will shift the supply curve down. Conversely, a loss of social capital will move the existing supply curve upwards. Building social capital and how best to do this should also therefore be an important element in this market analysis.

On the demand side of the market, it is essential that demand for individual services is highly value for money elastic. This implies a need for the demand curve to flatten, so that a relatively small rise in prices generates a large decline in demand.

There is also a requirement for the nature of NDIS services to change and this implies a significant shift in the attitude and approach of many disability organisations and support workers to provide “transformational benefits”, e.g. increased capacity to prepare future meals, as well as “transactional benefits”, e.g. cooking a meal. This implies that supports should always seek to increase the knowledge and social capital of participants over time, so they can achieve their potential, rather than limit them.

In effect, a new and vastly expanded disability market place is emerging and participants and their families and carers need to become highly discerning buyers, who have reliable, accessible and timely information at their fingertips, enabling them to navigate effectively and overcome inherently high transaction costs. The high transaction costs particularly apply when changing personal care and support arrangements.

To gauge progress towards an efficient market, it would be particularly valuable to measure buyer effectiveness, through regular consumer surveys which would then inform market stewardship actions on the demand side of the market. This would complement current and proposed supply-side surveys, such as benchmarking of disability service provider operational costs.

The evidence from the past three and a half years indicates that the disability sector is in fact adjusting and, in some cases, rapidly. It is also pleasing to see new and innovative providers entering the disability sector from adjacent sectors and, especially, start-ups and there are also numerous examples of participants exercising control and choice.

However, it is also clear that the need for rapid structural change is even greater than is currently underway in the disability sector—on both the demand and supply sides—in response to the imminent aggregate demand shock.

Given the Productivity Commission’s expertise in market dynamics, structural adjustment and sectoral analysis, recommendations from the Productivity Commission, in the Final Report, on the most effective practical measures to facilitate the required shifts in the demand and supply curves and changes in their respective shapes would be invaluable.

Price Regulation and Deregulation

The Agency has been fixing prices, since the inception of the NDIS. This has been essential, in order to ensure that inefficiencies in the old disability system were not locked into the NDIS, before sufficient competitive forces emerged. It is pleasing that this is supported in the Position Paper.

However, some of the potential consequences of this approach are that it limits innovation and also effectively sets not just prices, but also service levels. It is therefore essential that NDIS prices are deregulated as quickly as possible consistent with the sustainability of the NDIS. In the meantime, better measures of the effects of regulation should be identified.

It is therefore necessary to identify the preconditions for deregulation which should include evidence that markets are competitive. This is likely to emerge on a location-by-location and service-by-service basis and so identifying sub-markets ready to be deregulated will be essential. Safeguards when prices are deregulated, such as price transparency, which clearly show and explain prices set above the efficient price will also be important.

The deregulation of prices therefore represents a significant structural and strategic risk, as well as a major opportunity to develop an efficient, diverse and innovative market. Again, given the Productivity Commission's expertise, recommendations from the Productivity Commission in the Final Report on the most effective way to deregulate NDIS prices has great potential to assist with the on-going sustainability of the NDIS.

NDIA ICT System

The NDIA ICT System represents essential infrastructure on which the disability market place is being built and will have a major impact on NDIS costs. This has not been sufficiently recognised in the Position Paper. It affects service providers participants and the efficiency and effectiveness of the NDIA. It also has a major impact on accessibility, the potential role of self-management and fraud and quality control.

The NDIA needs an ICT system which is fit for purpose. Requirements include:

- a transaction and payment capability, which will enable the Agency to establish fit-for-purpose pricing and funding controls and see all transaction level data and so enable the Scheme Actuary to monitor Scheme outcomes and provide essential information for monitoring of any inappropriate use of NDIS funding,
- a fully accessible website which meet the needs of people with disability, their families, carers and providers and gives them the information they need to understand and navigate the NDIS,
- an 'eMarket' which provides the Agency, participants and a community of users with access to real-time, accurate and relevant information about service design, availability, price and quality,
- seamless straight through processing from registered providers and participants,
- an opportunity for participants to review draft plans and support for self-management,
- establishing dynamic linkages and clear commercial operating rules between the Agency's eMarket and payment and account systems and the emerging ecosystem of financial intermediaries and external eMarkets,
- functionality to implement efficient workflow management within the NDIA and the necessary automated quality control and business assurance for planning decisions, payments and provider registration that underpin a large social insurance scheme,
- 'real time' monitoring for the NDIA together with sophisticated data warehouse and data analytics software for the Scheme Actuary, and
- full access to the NDIA ICT system for the NDIA community partners delivering local area coordination and early intervention services.

The Agency also needs to clearly outline the expected functionality of the NDIA ICT system and create an enabling environment to encourage innovation around it. This requires clear communications, advance notice of all significant changes and protocols, such as APIs.

DRAFT RECOMMENDATION 6.1

If an Independent Price Regulator is to be established it will be essential to:

- require the Regulator to ensure that its actions are consistent with the sustainability of the NDIS,
- set an objective that deregulation of prices should be implemented as quickly as possible consistent with the sustainability of the NDIS,
- set prices consistent with an efficient disability sector and which provides an adequate risk-adjusted return on investment, while noting that disability is a much less capital-intensive business than many other regulated businesses such as aged care or the energy sector,
- consider how land and buildings, much of which has been donated or gifted to disability service providers should be treated,
- minimise inflation,
- facilitate structural adjustment and ensure that the disability service sector is sustainable, because without a sustainable sector the sustainability of the NDIS will be at risk,
- consider actual and potential synergies with allied sectors such as health and aged care when setting prices, and
- take account of special factors affecting costs, e.g. remote service delivery.

In addition, this recommendation in the Final Report should address protocols to ensure the new Independent Price Regulator will be able to access the necessary information it will need from the NDIA.

Further, the NDIA has not been properly resourced to undertake its market stewardship role, since the inception of the NDIS and so immediate resourcing of the NDIA should also be addressed, given the significant additional market(s) challenges in the next two years. A particular challenge will be that if responsibilities for pricing are going to transfer to a new independent regulator, which is most unlikely to be located in Geelong, it will be very difficult to attract the necessary high calibre's staff to the NDIA in the interim.

DRAFT FINDING 6.1

Agreed. It should also be noted that thin markets have been a major area of focus for the NDIA through its Rural and Remote Strategy and Aboriginal and Torres Strait Islander Strategy.

INFORMATION REQUEST 6.1

The key to addressing thin markets is to take a strengths-based approach and build on existing capabilities on a location-by-location basis. This could be leveraging established community organisations, hub and spoke models, collaborating with other government efforts or relying on other mainstream providers. There is also the potential for technology, combined with hub and spoke models, to build supply.

The analysis and identification of optimal solutions therefore need to be undertaken on a case-by-case basis.

However, one area that should be prioritised is the need to link up with other government programs, particularly in the most remote parts of Australia which are seeking to build employment opportunities for Aboriginal and Torres Strait Islanders. This represents a major opportunity and the

NDIA should be working very collaboratively in these parts of Australia, for example, to expand the successful Aboriginal Health Worker program to Aboriginal Disability Workers.

INFORMATION REQUEST 6.2

The combination of very rapid growth in disability services and the leading role that the NDIS is taking in the shift towards consumer-directed supports, together with the need to embed those supports within a framework of mutuality and community inclusion suggest that looking at other sectors or internationally will not provide great insight into the most appropriate approach to sectoral adjustment. It is for this reason that this submission recommends a focus on demand and supply analysis, price deregulation and ICT infrastructure for the new disability marketplace.

Workforce Readiness

DRAFT FINDING 7.1

This Finding needs to be strengthened and given much more prominence.

The Bilateral Agreements imply that in the current fiscal year of 2017 – 18 demand for disability services will increase by 40 per cent. The lack of progress on workforce readiness for the NDIS means that shortages and, potentially, significant shortages will appear in many areas within the next 12 months.

This means that the transition to the full NDIS by mid-2019 is not achievable.

DRAFT RECOMMENDATION 7.1

It is not sufficient to recommend that the roles and responsibilities of different parties to develop the National Disability Insurance Scheme workforce should be clarified and made public. Additional resources and prioritisation are also required.

DRAFT RECOMMENDATION 7.2

It was always intended that the Market Position Statements would be published annually and would evolve as more information becomes available. Therefore, it would be better to rephrase this recommendation to:

The NDIA should collect information by local government area or at a more local level relevant to inform current and prospective providers, including on the number of participants, committed supports, existing providers and previous actual expenditure.

If a new independent price regulator is established, it will need to be able to obtain market data for it to undertake its functions without duplicating efforts by the NDIA and vice versa.

While data from the Australian Bureau of Statistics (ABS) on the disability workforce has been recommended, it will be difficult to undertake meaningful analysis without corresponding data on the health and aged care workforces at the same level of disaggregation, given the potential for workers to move across these three sectors. The recommendations should therefore be expanded to include ABS data on the human services workforce and its key sub-sectors of disability, health and aged care.

DRAFT RECOMMENDATION 7.3

The recommendations that the NDIA guidelines on paying informal carers who live at the same residence as a participant should be relaxed, in order to quickly build the disability workforce, is strongly rejected. It risks undermining informal care and opens up potential for major fraud and abuse.

Instead, innovative programs such as the development of peer support worker models, which have operated very successfully in mental health, should be targeted, as an example of a specific program to increase the disability workforce.

INFORMATION REQUEST 7.2

Nurturing and supporting informal care from families and carers and helping people with disability build new informal networks are both essential parts of achieving good outcomes from the NDIS.

In the old disability system, respite services provided one of the very few opportunities for families to get a break and for people with disability to experience different living arrangements. The NDIS opens up a much wider set of possibilities for people with disability and their families.

Therefore, the singular focus on respite services, as a way of providing increased support to families and carers in the Position Paper is unfortunate, especially given that the term “respite” has a connotation to many people with disability of them being a burden.

The focus on informal care should be broadened in the Final Report, starting with the planning process. In particular, a Carer Statement should be given much greater emphasis.

Then, the results should be linked to the Outcomes Framework, which explicitly includes outcomes for Families and Carers. For example, the Outcomes Framework includes sustainability of current care arrangements and whether families have a succession plan as parents age.

Participant Readiness

INFORMATION REQUEST 8.1

It is difficult to judge whether support coordination, in all circumstances, is being appropriately targeted to meet the aims for which it was designed. However, it would seem important to emphasise the following points.

First, the terms “planning” and “planner” continue to cause some confusion and create expectations that cannot be met. The term planning was adopted because there was a desire not to use the term “assessment” with all of its medical overtones, when the NDIS was being designed. However, planning is a complicated process involving many discussions and deep trust, especially when anticipating big life changes such as moving out of home.

The realities of the large and complex rollout of the NDIS mean that NDIA “planners” do not have the time to engage very deeply. Moreover, the real aim of plans is to quantify and allocate resources from the NDIS, based on functional impairments, goals and sustaining and nurturing informal care arrangements.

Consideration should therefore be given to changing terminology. The “planning process” would be more accurately described as a “planning and resourcing process” and the role of “planner” would

be better described as an “Agency representative”. The suggestion of the term “resourcing” rather than “funding” is important as it reflects the need for participants to build personal capacity, including knowledge, skills and social networks and aligns with the Quality and Safeguards Framework.

Second, it is essential that support coordination is used to build the skills of participants and their families to navigate the new NDIS marketplace. The statistic in the Position Paper that 4 per cent of supports are now being allocated to support coordination is an early warning that support coordination may be reinforcing dependency rather than building independence. The allocation of funding to support coordination should therefore be monitored closely by the NDIA. It should be expected to reduce quickly.

DRAFT RECOMMENDATION 8.1

The eMarket and NDIS ICT system have vital roles to play in the operations of the NDIS which go well beyond the provision of information. They are essential infrastructure which will affect NDIS costs, efficiency, accessibility, quality and risk management. This is not recognised in the Position Paper and should be addressed in the Final Report. (See my comments on Chapter 6, Provider Readiness.)

INFORMATION REQUEST 8.2

There is certainly scope for Disability Support Organisations (DSOs) to play a greater role in supporting participants. One area is in helping to shape demand and to build the capacity of participants to navigate the NDIS through peer support. This has been supported by the NDIA.

Further building the capacity of participants to maximise utility from their packages, stimulate innovation and drive efficiency through a desire for value for money will help to shape the success of the NDIS.

However, it will also be important not to be too prescriptive about the roles of DSOs (and other market players) and to leave room for the market to evolve and, hence, shape organisational roles and responsibilities.

The experience of other sectors, such as financial planning and vocational educational training, is that where conflicted arrangements are allowed to develop, consumers are very vulnerable to exploitation. The risks of exploitation are further heightened where purchasers have low educational attainment or an intellectual disability, as will apply to many participants in the NDIS. Cultural and linguistic differences also add to the risk of miss-selling, especially given that contracts for disability services can be complex.

In this environment, accessible, timely and reliable information sources are a necessary but not sufficient condition to ensure that markets operate effectively.

It therefore seems prudent at this stage of the development of the NDIS to:

- prioritise the independence of advice over any potential benefits that might arise from allowing intermediaries to also provide support services,
- require intermediaries to fully disclose all fees. In particular, any fee rebates from providers or other discounts or inducements to intermediaries should not be permitted or, at the very least, disclosed to participants and their families, and,

- the NDIA should be required to report on and monitor the costs and benefits of intermediaries with a view to determining whether intermediaries should be regulated in terms of qualifications, costs, etc.

Governance

Governance, funding and risk sharing are all related and this should be reflected in the recommendations and findings relating to these issues.

First, the chapter on Governance should acknowledge that the Commonwealth Government has a very high degree of control over the NDIA and the NDIS because:

- the NDIS is set up under Commonwealth legislation and specifies a role for the Commonwealth Minister. State and territory Ministers only have a role as members of the Disability Reform Council,
- it is the Commonwealth Government which determines any proposed changes to the NDIS Act because it is an Act of the Commonwealth Parliament,
- the Commonwealth Government has ultimate control of all Board appointments through Section 127 (4A) and exercised this control in December 2016,
- all NDIA staff are Commonwealth public servants and so subject to Commonwealth employment standards and conditions, while the remuneration levels of the NDIA Board and CEO are set by the Commonwealth Remuneration Tribunal,
- the appointment of the CEO of the NDIA is subject to Commonwealth Cabinet approval, as is the case with the heads of all Commonwealth statutory authorities,
- the CEO of the NDIA, as a Commonwealth public servant, has an effective reporting line to a portfolio secretary, currently the Secretary of the Department of Social Services, and
- the Commonwealth Government controls the DisabilityCare Australia Fund.

These controls and influences need to be taken into account when considering all governance arrangements, funding and risk sharing.

Second, the current arrangements for the Commonwealth to fund around 51 per cent of scheme costs at full scheme and for the States and territories to contribute 49 per cent. This means that all levels of government have significant “skin in the game” and maintain a balance in these financial contributions should contribute to continued engagement from all governments in the future of the NDIS and quality outcomes for people with disability, their families and carers.

Third, the current risk-sharing arrangements require the Commonwealth to meet at least 75 per cent of cost overruns in the event that the funding envelope is exceeded, while the States and territories are liable for up to 25 per cent. This is appropriate given that the Commonwealth has much deeper and broader revenue sources and it would not be possible for States and territories to underwrite the NDIS.

These arrangements and principles provide an appropriate starting point, which is designed to be consistent with the sustainability of the NDIS, but which should not be immutable in the face of future demographic, inflation, technological developments and actions of governments given their different roles, responsibilities and capacities to affect NDIS costs.

DRAFT RECOMMENDATION 9.1

The Category A Rules go to the heart of the NDIS and its purpose and they are subject to two approval processes, not just the one set out in the Position Paper.

First, as noted in the Position Paper, States and territories must currently provide unanimous agreement before Category A Rules can be altered. This reflects the fact that States and territories only agreed to cede control of disability services to the NDIA on the condition that they could veto any changes to the NDIS Rules.

It therefore seems unlikely that all jurisdictions will agree to drop the requirement for their agreement before these Rules can be changed.

Second, Rules are Disallowable Instruments in the Commonwealth Parliament and so do not become law until the Parliament has had 15 Sitting Days to consider the proposed changes. If no Objection is lodged, then the Rule is effectively endorsed.

There are two significant advantages with the disallowance process compared with the current process for seeking agreement between jurisdictions on Rule changes: it is open and transparent and, hence, provides an opportunity for wider consultation and comment from the disability sector, and sets a timeframe for decision.

Irrespective of whether or not the requirement to obtain unanimous agreement from all jurisdictions to Category A Rules is retained or changed, governance of the NDIS would be improved by requiring:

- any government which is seeking changes to the Rules, to make its proposed changes (with reasons) public, and
- all other governments to publicly state their support or objections (with reasons) within a set period of, say, 45 days.

This transparency would increase confidence in the NDIS and facilitate decisions designed to ensure that the NDIS is sustainable.

DRAFT RECOMMENDATION 9.2

Agreed.

DRAFT RECOMMENDATION 9.3

Agreed.

DRAFT RECOMMENDATION 9.4

Agreed. In addition, reporting metrics which are now considered out of date or inappropriate should be deleted.

DRAFT RECOMMENDATION 9.5

Agreed. A range of quality measures, assessing the experience of participants and families, should be developed alongside existing quantity measures.

INFORMATION REQUEST 9.1

As noted earlier, it would be a mistake to simply seek to slow down the rollout of the NDIS. A much more sophisticated approach to operationalising the NDIS is needed and, as noted earlier, this should be achieved through a new Letter of Strategic Guidance to the NDIA under Section 125 of the NDIS Act (2013).

Funding Arrangements

DRAFT FINDING 10.1

Agreed. This finding should also note that it would not be optimal for the Australian Government to automatically bear a higher share of NDIS costs over time.

INFORMATION REQUEST 10.1

The escalation parameters should be designed to ensure accountability within the shared governance arrangements for the NDIS and contribute to its sustainability.

These objectives are very important and central to the good governance of the NDIS.

The current annual escalation factor to the financial contributions to the NDIS from States and territories of 3.5 per cent is consistent with current population growth of around 1.75 per cent per annum, current wages growth of 2.25 per cent per annum and an annual productivity saving of 0.5 per cent. However, any divergences between these assumptions and actual outcomes would lead to the escalation factor being inappropriate.

The most significant risk is that Australia could return to much higher rates of wage inflation than the historically low current rates. Then, the contributions from States and territories would decline significantly in real terms and through the cumulative effects of inflation they would have less responsibility for the NDIS. Higher population growth or lower productivity would also erode shared responsibilities. It would be undesirable for these macroeconomic factors to affect the sharing of financial responsibilities for the NDIS between jurisdictions.

At the same time, as noted by the New South Wales Government in its submission to this Review, the NDIS is administered under Commonwealth legislation, and, as noted by the Victorian Government, the States have very limited ability to take on any greater financial risks.

All of these factors need to be balanced and a much more sophisticated approach to setting the escalation factors should be adopted, as follows.

First, a base-line escalation factor should be calculated based on population changes, underlying changes in NDIS costs and productivity changes. The underlying changes in NDIS costs would largely reflect wage movements in the sector because wages represent about 85 per cent of NDIS costs. It should therefore take account of key applicable Fair Work Case decisions, while also recognising other special underlying cost drivers such as the prospective increases in supported employment wages as a result of recent decisions by the High Court. This analysis should be able to draw on work by the proposed Independent Price Regulator, as some similar factors will influence price setting and monitoring.

Second, the actual increase in NDIS costs should be compared with this base-line escalation factor. If actual costs exceed the baseline because of cost-shifting, the responsible jurisdiction should be subject to a surcharge on its escalation factor so that it meets these additional NDIS costs in full. This would provide an important mechanism to link the outcomes from the National Disability Strategy to the NDIS.

Third, should actual costs exceed the base-line due to higher than expected prevalence of disability or increased severity of disability or because of a failure of the NDIA to manage the NDIS sustainably, the Commonwealth should meet at least 75 per cent of these costs under the risk-sharing arrangements and because of its high degree of control over the NDIA.

Fourth, should actual cost increases be lower than the base-line escalation factor, there should be an assessment of outcomes for Scheme participants. Provided that the outcomes are meeting the Objects of the NDIS Act and there are sufficient funds in the Premium and Contingency Reserves, the Commonwealth would then benefit from the good management of the NDIS.

This structure implies the need for an independent and sophisticated actuarial review of the NDIS costs every five years. These reviews should be informed by the work of the proposed Independent Price Regulator and calculate the Premium Reserve and optimal Contingency Reserve, as well as the annual escalation factors.

DRAFT FINDING 10.2

As noted above, the Commonwealth Government has a much higher degree of control and influence over the NDIA and the NDIS than is acknowledged in the Position Paper.

The governance arrangements also need to balance the need to respond quickly to emerging issues with careful consideration based on evidence. In particular, a long term scheme like the NDIS needs to guard against over-reacting to short-term pressures. For example, in the first six months of the NDIS, it was suggested that costs were running out of control, when in fact the results reflected the higher than average needs of the first participants in the Scheme.

Further it also needs to be recognised that the emerging issues may be much broader than costs and include, for example, quality.

All of these points highlight the need for very sophisticated governance, funding and risk sharing arrangements and these are not sufficiently nuanced in this Draft Finding.

INFORMATION REQUEST 10.2

As noted earlier, the NDIS is an example of a very sophisticated approach, utilising a long-term framework and markets to solving one of Australia's most intractable economic and social problems and it is based on shared governance. Without a shared and ongoing commitment to the vision of the NDIS, through shared governance, it will not succeed.

Further, approaching the governance, funding and risk sharing aspects of the NDIS using old approaches will fail.

The solution to the on-going good governance of the NDIS and its funding lies in a combination of instruments and approaches which are outlined in this submission and include:

- the establishment of an NDIS Premium Reserve, which would be equivalent to a premium pool for an insurance company, rather than framing NDIS costs as being “fully funded” through the Medicare Levy,
- provision for a Contingency Reserve, up to 20 per cent of NDIS costs, to enable the NDIA to respond to short-term cost pressures,
- issuing a new letter of Strategic Guidance to the NDIA which prioritises the sustainability of the NDIS and allows the NDIA to be accountable and to operate with a degree of independence as envisaged in the 2011 Productivity Commission Report on the NDIS,
- maintaining a commitment to shared governance of the NDIS, including through a careful balancing of financial contributions,
- recognising the dominant control and influence of the Commonwealth Government over the NDIA and NDIS, compared with the states and territories, because the NDIS is set up under Commonwealth legislation,
- acknowledging that it is only the Commonwealth Government, with its deep and broad revenues, which can underwrite a long-term scheme like the NDIS and therefore manage its risks,
- establishing a transparent and time-limited approach to Rule changes for all governments, and
- linking the escalation factors for the NDIS to any cost-shifting due to a failure to deliver the National Disability Strategy and delivery of the Scheme outcomes in line with the Objects of the NDIS Act.

DRAFT RECOMMENDATION 10.1

The recommendations for the NDIA to be set an operating budget of 7 to 10 per cent of package costs is more realistic than the current target of 7 per cent. The NDIA should also report on these costs in its Annual Report.

However, it needs to be explicitly recognised that the NDIA faces two very significant transition challenges compared with accident compensation schemes.

First, accident compensation schemes essentially deal with three types of catastrophic injuries: spinal cord injuries, brain injuries and burns, and because these accident compensation schemes have been running for many years there is now highly detailed data available to determine optimal support arrangements and how they will change over time, as the injured person recovers, potentially slowly, and then ages. The NDIS is dealing with many more types of disability and the data that is being collected is being used to refine the reference packages. The need for more accurate and detail data, which can only be analysed as the NDIS builds its longitudinal and cross-sectional database means that definitions of “reasonable and necessary” supports will change over time. This will require very time-consuming and challenging reviews of resource allocations and means that the NDIS is much more complex operationally than accident compensation schemes. This will result in higher on-going operational costs into the medium term, compared with the benchmark organisations in the Position Paper.

Second, accident compensation schemes seek to assist the person who was injured to be in as close a position as they were prior to injury. This means that informal care is not taken into account when determining funding. In contrast, the NDIS is built on requirements for individual responsibility and mutuality. Again, getting these balances right implies operational complexity, which implies higher operational costs than accident compensation schemes.

Therefore, it would seem premature to conclude that NDIS operational costs should be less than 10 per cent at full scheme, although this should be achievable when the NDIS is fully mature.

DRAFT RECOMMENDATION 10.2

The staffing limit on the NDIA is arbitrary and reflects the fact that the Commonwealth Government has set an overall staff limit for the Social Services portfolio, within which the NDIA is a component.

This constraint is very different to what was envisaged by the Productivity Commission, which saw the NDIA staffing being a matter for the NDIA to determine and then report on its actions to governments and publicly.

It makes no sense to set an arbitrary staffing level for the NDIA and it could be counterproductive. It should be abolished and other more appropriate mechanisms put in its place to ensure that the NDIA is accountable for taxpayers' funds. In fact, the key goal for the NDIA, as noted previously, is sustainability and additional targets for the NDIA should only be set so that they are consistent with this goal and help to achieve it.

INFORMATION REQUEST 10.3

As noted earlier a Contingency Reserve equal to 20 per cent of Scheme costs should be established and this should be built up over time reflecting any under-utilisation of NDIS funding.

DRAFT RECOMMENDATION 10.3

Agreed.

OTHER ISSUES

Data

The NDIA is building the most comprehensive population-based longitudinal database on disability in the world. There is also the potential to link this data to other national databases to provide a unique evidence base on which to improve the lives of people with disability, their families and carers and contribute to the sustainability of the NDIS. This database should be valued, protected and resourced adequately and will grow and become more useful for research over time. It has the potential to place Australia at the cutting-edge of disability research globally.

The NDIA is utilising this database to refine and improve the operations of the NDIS, as part of a "learn and build" philosophy. This includes the NDIA actuarial team, which is analysing the data as well as preparing reports. However, because the NDIS is a pay-as-you-go scheme, the NDIA does not have a corpus of funds, which would enable it to invest significantly in large-scale research that would make a major contribution to scheme sustainability, as part of a total return investments strategy.

The disability data that is being collected by the NDIA is world-leading and should be made available for research, as a matter of high priority, subject to appropriate safeguards. As the Productivity Commission has recently concluded an Inquiry into Data Availability and Use, this Review should include recommendations on how best to ensure that the NDIA data will be made available for research to improve the lives of people with disability, their families and carers.