

Productivity Commission Review of NDIS Costs: Issues Paper, March 2017

NSW Government submission

For questions and enquiries regarding this NSW Government submission, please contact Michael van Rosmalen, Department of Premier and Cabinet (02 9228 4094 or mvr@dpc.nsw.gov.au).

Contents

Overview	2
Market Design	3
Consumer Readiness	4
Supply	5
Provider of Last Resort (PoLR)	6
Pricing	8
Financial Sustainability	9
Transition Costs	10
The NDIS in NSW so far	11
Paying for the NDIS	12
Scheme Boundaries	13
Planning Process	15
Early Childhood Early Intervention approach (ECEI)	17
Role of Information, Linkages and Capacity Building (ILC) supports	18
In closing	18

Overview

The NSW Government is a strong advocate of the National Disability Insurance Scheme (NDIS). The improvement in the lives of people with disability, as outlined by the Productivity Commission (PC) in its 2011 inquiry report into Disability Care and Support, is a goal embraced by NSW.

The NSW Government is contributing to the Commonwealth implementation of a disability system that will enhance the quality of life and increase economic and social participation for people with disability, their families and carers, and bring broader social and economic benefits. We aim to empower people with disability with greater choice and control over:

- Their lives
- The supports they require
- The providers that deliver them

Unlike many human services reforms, developing and implementing the NDIS has involved a whole-of-system reform, guided by the objective of developing a market for disability supports that works in the long term interest of people with disability. This requires an informed consumer base and a competitive supplier market. With these two things in place there will be the efficient cost structure necessary for financial sustainability.

The primary risks to the achievement of the vision for the NDIS, and its financial sustainability, given where we are at in implementing the scheme are:

- A lack of recognition of the institutional and governance arrangements that are needed to facilitate the development of the new national disability market
- Participants need to more effectively engage in the NDIS with information and assistance to help them exercise choice
- The market for the provision of supports is developing, but this will likely be slow if there is uncertainty regarding the ability of service providers to recover their reasonable costs
- The significant increase in workforce required to support the NDIS

In short, the priority in NSW's view is to more clearly set out the framework for supporting the development of the market for disability support, grounded in the elements that are necessary to support the development of choice and competition.

The full benefits to participants in terms of improved services will only be realised once the market is operating effectively. While influenced by many factors, the continued underutilisation of participant's plans is a potential indicator of the need for more effort on market design and development.

These issues, and others, are discussed in the sections that follow.

Market Design

The NDIS is a new, national market for disability supports. It is not the transfer of existing contracting arrangements from the States to the Commonwealth. While NSW is transferring the participants we have previously been responsible for, we are transferring them into a new market for funding, supplying and consuming disability supports. This market relies on the interaction of participants' decisions and NDIS pricing arrangements to incentivise service providers to meet participants' needs. Choice and competition are key. Effectively competitive markets are generally characterised by:

- Engaged consumers that are willing and able to switch providers in response to price and quality differentials
- Sustainable suppliers that are able to recover their costs of supply, including a return for risk

In effectively competitive markets, providers (including NGOs) seek to bring products to market that are more highly valued by consumers than those of their competitors, using the least possible resources. They also seek to make new investments in order to keep pace with changing consumer preferences over time. In markets where consumers are engaged, providers that consistently fail to deliver products that consumers want at prices they are willing to pay will be forced to exit and will be replaced by more successful providers.

The nature and strength of choice and competition will enhance the lives of consumers and use society's resources more efficiently. A key feature of the NDIS is to harness choice and competition between providers of supports to benefit participants by:

- Promoting the provision of a support at an appropriate quality and at the lowest possible cost, by harnessing optimal scale of service provision (productive efficiency)
- Promoting delivery of supports at a price that recognises the value of those supports to participants irrespective of their geographic location thereby allocating society's resources efficiently (allocative efficiency)
- Providing support providers with a strong incentive to develop new and innovative supports or more cost efficient ways of providing supports (dynamic efficiency).

Transitioning to a market framework from government-led support provision will require ongoing market stewardship and oversight to ensure that the benefits of market-provided supports can be maintained over time.

It will also require proactive facilitation to ensure that it is operating effectively and responding to the needs and preferences of specific cohorts, including people in rural and remote areas, Aboriginal people, people from culturally and linguistically diverse backgrounds and people with complex and very high support needs.

Any review of costs should first consider whether the market architecture has been designed and implemented appropriately. This includes considered and methodical decisions about where roles and responsibilities are best placed (price setter, regulator, market oversight, provider of last resort, quality and safeguarding, complaints); what rules guide the actions of agents in the market; and whether this is likely to deliver on the objectives of the scheme, namely meeting the long term interests of people with disability.

Consumer Readiness

As the PC recommended in 2011, the NDIS aims to empower participants to achieve their life goals by providing them with choice and control over the supports they receive. However, this requires participants to be free from information asymmetries, have confidence to exercise their sovereignty, and know they are operating in a market with appropriate safeguards and protections.

The key issue for the NSW Government is that those in need of support may face impediments to their effective participation in the NDIS due to a lack of information about providers and / or a lack of effective bargaining power (perhaps due to the size of the market or the consumer's capacity to assess and make choices). This means a strong consumer protection framework is vital to give participants confidence that:

- The essential services they require will be provided when they are needed
- They will obtain adequate funding under the NDIS to purchase these services
- They will be able to obtain supports from service providers at a price that reflects the funding they have been allocated
- Private service providers will provide them with a best practice standard of service and that poor service performance will be identified and corrected

These issues cover a number of aspects of the scheme, including pricing, registration requirements for providers, market oversight and safeguarding arrangements. However, participants are particularly vulnerable to information asymmetries and / or a differential in bargaining power between themselves and suppliers (this includes participants that may require assistance to assess information and make choices).

Access to information, or mandated disclosure, is important for participants who would find it difficult to assess the quality of a service they should expect to be provided and the relative service quality of different providers. This is particularly true of disability where:

- Quality of service is valued highly (there are significant negative consequences from the provision of poor service)
- Consumers ideally do not want to switch on a regular basis (there are high costs / obstacles to switching in order to identify higher quality service providers)

NDIS participants and their families must have easily available information about the options for supports and the providers they may wish to select, as well as clear guidance about pricing and service standards. Online and mobile applications that allow contemporaneous access to reviews, service quality assessments, and pricing would be valuable developments for participants. Systems such as Google Maps and TripAdvisor provide examples of potential user review models. But complexity around product offerings is an issue in energy, telecommunications and health insurance markets.

Systems for participants sharing information / reviews about prices and quality may evolve naturally in the market. Consideration, however, should be given to an NDIA funded process to deliver a user review system.

There are particular risks for participants with complex needs. These participants will require particular consideration in designing strategies that promote benefit from choice and control. These

participants will require greater support to leverage opportunities, including decision supports and capacity building. The capacity of carers in this regard could also be an important factor.

The NDIS Quality and Safeguarding Framework includes recognition of developmental and preventative safeguarding measures such as providing participants with accessible information for informed decision making and building participants' capacity to exercise choice and control.

The ACCC has recently commented on potential synergies between the NDIS rollout and national Vocational Education and Training reforms, suggesting heightened risks for NDIS participants. The ACCC has indicated that these risks could be driven by the decisions of jurisdictions to withdraw their role as a provider of supports within the NDIS market, consolidating those services within the broader market.

The NDIS has mechanisms embedded within its design which recognise the rights of people with disability to make their own choices about their providers and their supports. The NDIS also provides a series of protections: a strong legislative framework; registration of providers; defining the types of supports that can be acquired under the scheme; consumer complaints management; and universal consumer protections.

The decisions of governments to remain or withdraw as direct providers of supports under the NDIS market will not, in and of itself, affect the safeguarding of people within the scheme. While potentially holding a large market share (around 40% in NSW), government providers generally provide only part of, rather than all, services in each state. And in some cases no services at all.

It is not feasible for governments to act as a universal service provider. If all or the majority of supports are delivered by a government provider this would significantly constrain the capacity for participants to exercise choice. It limits the scope for innovation and new types and ways of supporting participants. This would contradict some of the key objectives of the NDIS. Rather, an appropriate market structure and rules of engagement (including quality and safeguarding arrangements) must be designed, implemented and monitored (as identified in the preceding section).

The PC review could consider the scope for information asymmetries, if they are likely to constrain choice or lead to perverse outcomes, and options that can help to resolve them.

Information, Linkages and Capacity Building (ILS) will also play a role. It will build the capacity of people with disability to understand and exercise their rights, make informed and independent decisions and build support networks. However, the scheme's ILC infrastructure is yet to be established. The PC's 2011 Report highlighted the high transaction costs associated with participants in the current disability system being unable to identify support options and how to access them. Although the establishment of the NDIS will lower these transaction costs, it will take time for participants to fully understand the market.

Supply

It has been estimated that at full scheme the NDIS will require an increase in the disability workforce of 90,000 full-time equivalent employees, including up to 30,000 in NSW alone. This is a significant

increase in supply capacity, and is arguably the most important supply constraint (and therefore, cost driver) to address.

A lack of supply (quantum, composition, skills or location) will constrain the capacity for participants to exercise choice and control, and the capacity for providers to offer services. This will undermine participants' capacity to access services and negatively impact scheme costs.

There are particular challenges associated with delivering services in rural and remote communities: limited supply of skilled and professional workers. The inability of providers to attract allied health graduates to rural areas is an issue likely impacting supply.

However, not all workers need to be highly skilled or need extensive training. There is also workforce overlap with other sectors (such as the aged care sector and mainstream services). Given full scheme is to be implemented nationally by 2019-20, further detailed work is required to identify the type of workforce required, including skill sets and locations.

The review should consider whether this workforce is likely to be created naturally through market forces or if an active plan is required by the Commonwealth. States have capacity to support the Commonwealth in this, such as making TAFE training places available. However, more specific workforce demand analysis is required, combined with coordinated strategies to actively foster an increase in the workforce.

The NDIS also means a new way of working in the disability sector. While this is still work in progress for the sector as a whole, there are a number of pleasing examples in NSW of individual provider's willingness to respond to the opportunity to improve the services delivered to people with disability.

The NSW Government has provided the non-government sector with the opportunity in home care, supported accommodation and currently supported accommodation services. As an example we have recently contracted with an NGO to build new supported accommodation for residents currently in the Hunter large residential centres.

This will significantly improve the lives of some of those in greatest need. Key to this, and a credit to the NDIA, is the development of a price including the cost of capital that gives providers and the banks that support them the confidence to take the risks associated with owning disability assets. In our view this will lead to better services at a lower cost for a potentially vulnerable cohort of the NSW community.

The question that the PC could address is whether the Commonwealth / NDIA need to go further and develop policies that encourage a deeper provider market.

Provider of Last Resort (PoLR)

The Commonwealth / NDIA must ensure continuity of support in the event of market failures due to provider failure, crisis supports, or thin markets (could be due to geography or support type). These failures must not be allowed to result in discontinuity of supports for participants, which can result in poor participant outcomes and an increased burden on mainstream services (such as hospitals, schools and the justice system). This is not a viable solution. Historically, state government disability

agencies have facilitated this function through their contracted providers or in some cases have stepped-in directly as providers of last resort. The NDIA now has this responsibility.

A PoLR mechanism is required to ensure alternative providers are available to address market failures and meet the changing needs of participants. It will need to consider: the range of services; the way in which it would procure and fund services; the trigger for implementing PoLR provisions; and the criteria for removing these requirements. A provider of last resort should only be required:

- Where the failure is in relation to a disability and not the responsibility of mainstream services
- For high risk supports, where the provision of the support is essential to the immediate health or wellbeing of the participant (such as accommodation), is required in a short time frame and is unplanned
- Where the provision of the support is not effectively competitive
- Where there is insufficient excess capacity among service providers to ensure effective competition following provider failure (for example, if a provider was to fail, remaining providers would not have sufficient excess capacity to accommodate all affected participants).

For these supports, a mechanism could be funded under a range of different procurement models. For example, different procurement models have been applied in industries such as electricity retail, telecommunications and the insurance industry, including:

- Designation of responsibilities to an incumbent provider
- Tendering for responsibilities, whilst also appointing a default provider
- Re-insurance schemes

Securing services through a PoLR process means prices would likely be higher than the benchmark reasonable and necessary price in plans. This is entirely appropriate. The cost of supplying participants in immediate need at short notice is likely to be higher than the cost associated with servicing other participants in the ordinary course of business. This is the price of ensuring continuity of support for essential services.

The need for these arrangements may be removed where competition is effective and there is sufficient capacity among alternative providers to absorb demand should the existing provider be unable to manage the situation. Where this is the case:

- A provider of last resort is unlikely to be required – in an effectively competitive market one would expect all participants to be capable of acquiring the services of adequate quality at short notice
- Maintaining a provider of last resort may lead to inefficient market outcomes through the provision of a competitive advantage to one or more players that may not have the lowest cost of production
- All people with disability will have access to reasonable and necessary supports across their lifetime, limiting the circumstances in which crisis or short-term supports will be required or where thin markets limit the available supply

People with complex needs

In a market environment, providers also have a choice as to which participants they will or will not provide support. There is potential for providers to only select easier (lower cost) participants and to

avoid others. Participants with more complex needs may struggle to secure a provider if pricing and support provisions in their plans are inadequate to reflect higher service delivery cost and risk or unanticipated changes in support need.

The Commonwealth / NDIA must implement appropriate pricing and other mechanisms to ensure sufficient providers exist to deliver base support capacity for people with complex needs. This includes appropriate infrastructure for support planning and support coordination; appropriate composition of support types and prices (separate categories and prices for more complex supports / participants), and provider compliance with registration and Code of Conduct requirements. People with complex needs should not be supported through PoLR arrangements as a matter of usual practice as this is a higher cost delivery system.

Pricing

There may be a need to support development of the provider market through appropriate pricing levels and practices. The PC review should focus on the pricing framework of the NDIA and the incentives created for providers to enter and remain in the market. While higher prices may increase funding in plans, lower prices may cause a withdrawal / absence of providers in the market, subsequently resulting in cost pressures and service discontinuity for participants.

Pricing can also be considered in the context of an internal price and an external price. That is, the internal price that is used to form a participant's support package and the level of funding included within it: the external price being what a participant actually pays a provider.

The review should consider the process, governance and methodology used by the Commonwealth and the NDIA to set prices. Key questions to be clarified include:

- Are external prices expected to align with internal prices and should some prices be regulated?
- Is the process to determine (internal or regulated external) prices known and transparent to the market?
- Is it governed such that providers and participants have capacity to provide input to the process?
- Who determines the final price (internal governance and decision making)?
- What formula, inputs and assumptions are used to set prices?
- Are providers able to recover costs and make a return on their investment (small to large providers, urban to remote, low need to complex)?
- For how long are prices set?

NDIA pricing must deliver certainty and confidence in the price and the process such that providers are prepared to offer a service. That this is possible is shown by the entry of providers into the Hunter Residences tender based on the supported accommodation prices provided by the NDIA. There are likely aspects of the electricity, health, water or other sectors from which to draw appropriate design elements for pricing.

A key market design question is whether prices are best set by the NDIA or an independent price regulator, and how does this accord with overall market design for the NDIS. In other markets, market development has been assisted by independent regulation of prices. Regardless of who sets and monitors prices, there needs to be sufficient incentive for providers to offer services, innovate

and remain in the market. They require transparency and certainty of prices to take risks and to invest in physical and human capital.

It may be the case that higher prices during transition and early years of full scheme are reasonable. Higher prices may be needed to encourage entry, reconfiguration and innovation in the sector. Higher interim prices may provide time to adjust service offerings (including adjusting to ex-post payments), increase capacity, and improve capability and quality. Over time prices may settle (or be regulated to more stable levels) as the market matures and competition evolves.

There is a need to support development of the provider market, including:

- Principles for determining the price used in building participant's plans that affords providers a reasonable opportunity to recover the efficient cost of support provision, including a return
- A formal and transparent process for setting and reviewing prices periodically
- The need, if any, for price regulation and for determining regulated prices
- The establishment of a body with responsibility for assessing the development and effectiveness of competition in the provider market, price reviews and proposing the removal of price regulation for supports that are effectively competitive
- Sufficient data and information about demand (quantum, composition, location) so that providers can make decisions about entering the market and their service offerings
- Transparent and appropriate provider requirements and regulation (registration, quality and safeguarding requirements)

Financial Sustainability

As noted in the PC's Issues Paper, assessing financial sustainability requires examining a number of aspects of the scheme. The term warrants definition and should be contextualised.

Any review of costs and sustainability isn't necessarily about minimising short term costs. Costs must be considered in relation to the objectives of the NDIS (reasonable and necessary support; choice and control; increased social and economic participation;). It should also be considered with reference to the composition and quality of supports provided to participants now and in the future.

When considered narrowly, the term 'financial sustainability' can imply a pre-determined funding or growth constraint within which expenditure must remain. This is a blunt approach to assessing sustainability as it means capping, rationing or constraining eligibility or introducing a tighter threshold about what is reasonable and necessary. In effect, this implies reducing service quality. However, this may be at the expense of the longer term social and economic benefits identified in the PCs 2011 report and put pressure on other less suitable service systems. This does not represent improved financial sustainability. It is a short term and closed assessment of financial impacts.

Financial sustainability must be considered against a long term view of costs. The lifetime costs for supporting participants must be considered and an investment approach taken. Early intervention principles are appropriate (including beyond just early childhood), and may increase costs in the short term before delivering lower lifetime costs. The alternative is immediate cost reductions that deliver worse social or economic outcomes for participants or the need for acute responses later in life: this is not an improvement to financial sustainability.

A robust actuarial approach is required to measure scheme performance, including against agreed indicators and broader factors impacting on scheme outcomes. This will provide longitudinal data to refine reference packages as the scheme matures, and support market facilitation in areas where the supply of supports is limited.

Existing state-based disability systems that largely operate on a block-funded and capped and rationed basis serve as an example of what must be avoided in attempts to reduce costs. Financial sustainability must be considered with reference to a suite of indicators, with a long-term view, and with consideration of broader impacts elsewhere. Cost minimisation is not the objective (or the definition) of financial sustainability.

In particular, evolving budget pressures should not lead to regular changes to eligibility criteria or assessment of what is reasonable and necessary. We want providers to invest in the disability sector and to provide innovative services to people with disability. Changing eligibility will introduce greater risk and uncertainty. It will reduce provider enthusiasm to participate in this market. It will erode participant confidence and trust in the scheme.

Transition Costs

The PC noted in its Issues Paper that estimating future scheme costs poses a number of challenges. Transition is not necessarily representative of full scheme. Transition is based on a constrained intake that prioritises cohorts based on geography, service type, age or other variables. The provider market and participant capacity for choice is not yet mature.

For example, in NSW, client phasing arrangements have prioritised high needs participants (such as people in group homes and people receiving higher cost community supports). This increases NDIS average costs above their expected full scheme level for a period of time.

It is also possible that the quantum, composition and utilisation of supports for participants will change over time. That is, the plans implemented during transition may not be representative of a participant's ongoing needs or the ongoing practices of the NDIA. Plans and expenditure will evolve as participants begin to experience the NDIS and gain confidence as consumers and as the supply market matures. This will occur as the NDIA refines its processes and decision making criteria (such as intake, eligibility and consideration of 'reasonable and necessary'); as participants become more adept at expressing their objectives and preferences (with the NDIA and providers) and as providers identify new types and models of support in response. For some, these changes may be minor; for others more significant. The changes may happen quickly (within the first plan) or over time.

Transition experience should inform estimates of full scheme costs, but must not be automatically extrapolated. Costs during transition must be considered with reference to the expected costs during this period (not with reference to full scheme costs).

The rate of utilisation within plans is influenced by many factors, including the appropriateness of plan funding, consumer readiness and the provider market. The sustained under-utilisation experienced to date is potentially an indication that the market is not yet mature even after several years of trial.

Underutilisation could be due to insufficient supply (quantum or type) in the market. Providers may have reached capacity, lack skilled staff or be unwilling or unable to work with people with complex support needs. Providers may also prefer to only support 'full plan' services. That is, plan supports and support coordination, and so are unwilling to provide one service without the other.

Regardless, when assessing scheme costs, consideration needs to be given to the extent of utilisation of plan supports, not just the 'committed supports'.

Utilisation rates could be improved by considering the adequacy of the communication material sent to participants once a plan is finalised, in addition to the LAC / support coordinator supports that are provided once a plan is finalised to support activation of a plan.

Notwithstanding the caveats proposed here, the costs experienced during transition should be used to inform full scheme estimates where appropriate. Consideration needs to be given to the expected quantum, composition and utilisation of supports in plans and how this compares to expectations for transition (not just against full scheme estimates).

The NDIS in NSW so far

Early experience from the NSW Hunter trial, early roll out in the Nepean Blue Mountains and the first six months of full scheme transition demonstrates that the parameters of the NSW agreement are sound. There is no expectation that the participation rates will exceed the estimated capacity of around 140,000 people by the time full scheme is in place in NSW.

The Hunter trial concluded on 30 June 2016 with 8,099 eligible participants, 80% of the expected 10,111 participants. However, people living in the Hunter trial are continuing to access the scheme during full scheme transition, with over 1,000 new participants from the trial LGAs transitioning since July 2016.

This recognises that people may have sporadic need for disability supports and may or may not have required NDIS support during the three-year trial. For example, participants of Community Support and Community Care cohorts experience high rates of 'churn' (access services sporadically). These participants may enter the NDIS beyond the trial or transition period.

As an outcome of the NSW trial, NSW reviewed its modelling and estimates for how people would phase into the scheme, and is confident that NSW transition numbers will reflect modelling and phasing arrangements. Between July and December 2016, there were 19,169 participants that entered the NDIS in NSW (cumulative total of 28,778 participants). This represents around 78% of the bilateral estimate, and is similar to the Hunter trial result. Currently, the number of participants in the NSW client census counts for transition is below bilateral estimates.

The average annualised cost per support plan in the Hunter trial was approximately \$50,000 as at June 2016. This is higher than the actuarial estimate of around \$38,000. However, the trial cohort is not necessarily representative of full scheme. The average cost was impacted by participants with high cost plans: in particular, residents from Stockton and Kanangra large residential centres. As a broader range of participants enter the scheme, we would expect the average cost to trend downward. Similar impacts will occur during transition.

Transition bilateral agreements identified an expected average package cost during transition based on the expected quantum, timing and composition of people to enter the NDIS during this period. The expected average package cost in NSW is \$54,514 in 2016-17 and \$49,259 in 2017-18. Again, this is higher than estimated full scheme average costs because of the prioritised intake of high support participants from State systems (residents of group homes and large residential centres enter earlier).

Participant intake to date (quantum, timing and composition) has not matched the expected intake outlined in transition bilateral agreements. High support participants have mostly entered the scheme as expected (early). However, there have been fewer than expected lower support participants entering the scheme. Average package costs in 2016-17 are around \$65,000. This is not unexpected given participant intake that has occurred to date. But it is not representative of full scheme and does not represent a risk to full scheme costs.

Paying for the NDIS

State contributions to the NDIS should be considered in the context of the principles of the Intergovernmental Agreement of Federal Financial Relations. That is, principles relating to:

- Primary responsibility for service delivery: the Commonwealth will have primary responsibility for the (national) disability system. States are transferring their responsibilities and funding to the Commonwealth.
- Improving well-being of Australians: the NDIS is intended to improve the well-being of people with disability, their families and carers. It is expected to deliver improvements to social and economic participation.
- Accountability: the NDIS is administered by a Commonwealth authority under Commonwealth legislation and the direction of a Commonwealth Minister. Appropriate monitoring and performance arrangements for full scheme are expected to report on Commonwealth performance.
- Financial support: Specific Purpose Payments from the States to the Commonwealth for the NDIS will provide ongoing financial support for the national disability service system.
- Coordinated federal action: States will continue to support the Commonwealth to establish the national market and the transfer of responsibilities. Once implemented, ongoing coordination will be required in relation to scheme boundaries and interfaces with other state services.

The NSW Government accepted the PC's 2011 arguments that the interests of people with disability were best met by having clear roles and responsibilities and in particular a nationally based governance structure. Unlike other sectors like electricity the NDIS is administered under Commonwealth, not State legislation.

In this context, NSW contributed its full disability funding to the NDIS at 2018-19, namely a fixed \$3.2 billion per annum plus escalation (3.5%). This is akin to how the Commonwealth provides Specific Purpose Payments to States for health, education, housing and disability. That is, having made a contribution and defined indexation rate the Commonwealth does not vary its payments based on actual costs.

Currently, States are expected to administer state service systems using Commonwealth and State funds. States receive a set level of funding with a specified level of escalation and are responsible for administering service systems and meeting any costs over and above the Commonwealth contribution. The Commonwealth does not fund on an actual cost basis (funding may be based on activity level, but not actual cost of delivery).

Similarly, this was the framework that underpinned the NDIS agreement. NSW's disability funding was our contribution towards the NDIS, not a commitment to meet actual costs or activity levels as the scheme evolved. This is clear in paragraphs 15 and 16 of the Heads of Agreement between the Commonwealth and NSW Governments.

The NDIS is administered by the Commonwealth. As such, the Commonwealth has the requisite power and authority to administer the scheme, and ultimately manage scheme costs. The Commonwealth should be expected to report on scheme performance and outcomes and the impact on the well-being of people with disability.

NSW has always been open to considering governance changes, if required, to provide the Commonwealth with greater capacity to effectively administer the scheme, including managing cost risks and ensuring positive outcomes for participants.

There is scope for even greater funding efficiency and clearer accountability through a funding swap between the Commonwealth and States. This would reduce inter-jurisdictional funding and interference.

Scheme Boundaries

The boundaries of the NDIS are also the boundaries of other service systems, such as health, education and the justice systems. As noted by the PC, there is scope for the creation of gaps and duplication.

Scheme boundaries must be clearly defined to provide certainty to participants, providers, NDIA planners, and staff in other service systems. Governments require certainty so they can plan and budget for the ongoing delivery of services without concern of unexpected changes to responsibilities and increases (or decreases) in demand.

The boundaries of the NDIS should not be at the discretion of the Commonwealth alone or the NDIA. Rather, boundaries must reflect the realities of disability and mainstream service delivery and be negotiated and agreed between governments. Boundaries will be influenced by a number of factors (policy, operational, clinical), and when decided in isolation will have significant impacts on how individuals interact with other service systems. To the extent possible, boundaries should be nationally consistent.

The COAG agreed *Principles to Determine the Responsibilities of the NDIS and Other Service Systems* and the *Applied Principles and Tables of Supports* outline the boundaries of the NDIS with other service systems. The Applied Principles are broad and high-level and were reviewed in 2015 to reflect early experiences of NDIS trials. Extensive further work is required by the States and the Commonwealth to scope, agree and communicate service boundaries. Any movement of boundaries

(existing responsibilities) between the NDIS and other service systems should be implemented with associated resourcing considerations.

Once resolved, scheme boundary issues may have some bearing on the long term financial commitments of the scheme. However, at this early stage, NSW considers reviewing scheme boundaries by the PC to be of limited value given extensive work is still required by governments to define and agree boundaries.

Mental Health

The mental health interface is emerging as an area of particular concern. There is a lack of clarity about what people and supports will sit within the NDIS and what will remain in mental health service systems; the gateway into the NDIS for people that require psychosocial supports; how the NDIS will determine eligibility and reasonable and necessary; how the NDIS will interface with mental health systems; and how people may move between them. Further work is required by the Commonwealth and States to identify those people currently accessing state-administered psychosocial support services likely to be eligible for the NDIS.

The recovery focus in contemporary mental health practice does not align neatly with the NDIS requirement that psychosocial disability is considered a permanent disability. It is important that NDIS participants with psychosocial disability are monitored with reference to a recovery paradigm. Further, the principle of early intervention should be applied when assessing the needs of mental health participants.

Psychosocial supports often involve immediate or high-level support to address critical needs (and prevent the need for more acute / clinical responses). These are then used to stabilise and step-down the level of support required over time. This allows participants to be supported back into social and economic activities.

If a tightly constrained eligibility requirement develops for psychosocial disability in the NDIS, then a two-tiered system may evolve: low level psychosocial supports in the NDIS and more acute psychosocial services in State systems. Participants would then need to move between systems as their needs increase or decrease. This would have a detrimental impact on participant recovery and well-being. It would be susceptible to gaps and duplications.

Information and data

There are cost and administrative efficiencies and improved outcomes for participants to be experienced from appropriate data and information sharing. Mainstream services have little visibility of who is accessing NDIS supports. This constrains the assistance that can be provided. It foregoes the capacity for improved planning, coordination and integration of services across service systems to a client. Equity of access and quality of outcomes can also be compromised.

Information and data sharing also facilitates assessment of financial sustainability of the scheme and the effectiveness of reasonable and necessary supports being funded through the NDIS. For example, assessing the types of supports that participant's access in other service systems and how these evolve over time.

For people with complex needs, a shared care planning process between the NDIA and health systems may deliver improved results. Appropriately protected data sharing for service alignment would facilitate scheme aims such as equity between participants, support the credibility of the scheme and increase community confidence. Incorporation of an NDIS participant's plan onto My Health Record could enable better integration of NDIS supports with the delivery of public and privately provided health services.

Planning Process

The planning process is fundamental to scheme performance and financial sustainability. Planning influences the scheme through decisions about what is reasonable and necessary, consistency in application and appropriateness to participant needs. Poor planning processes have the potential to compromise the integrity of the NDIS and peoples' perceptions of the scheme. They also directly impact scheme costs and compromise the quality and application of analysis and projections of costs.

The NDIA has experienced a range of operational issues and constraints which have impacted its capacity. This is partly the result of the transitional environment in which the scheme is currently operating, and partly due to other constraints associated with the NDIA's ICT platform and the capacity of its new workforce.

It is recognised that the transition is a significant logistical exercise. However, a compromised planning process can mean that people may feel their plans are not sufficiently individualised, do not meet their needs, and will not help them to achieve their goals.

There are reports that for some participants the planning process is rushed and unclear. And it appears that plans are inconsistent and show variability in the quality, quantity and types of supports approved.

There are reports that participants may have only a single conversation with a planner, often over the phone. In some cases, existing reports and assessments undertaken for a participant through other service systems are not being used to inform what reasonable and necessary supports are needed.

It also appears that planner knowledge and capability is highly varied, as is their interpretation of reasonable and necessary supports and understanding of interim working arrangements with mainstream services. Approved supports are less likely to be based on a participant's needs and more on a planner's knowledge of the disability and / or how effectively the participant or their carer advocate for certain supports.

Also, there is some indication that plans are not reflecting the participant's needs because the right stakeholders haven't been engaged, or they have been contacted at short notice, limiting their ability to advise. A participant's carers and family may also not have the experience and skills to support them in the NDIS process. Costs associated with urgent plan reviews are likely to place pressure on the NDIA through increased administrative effort and costs (plan reviews) and poor participant outcomes.

NSW has worked closely with direct services and funded service providers to support the collection and collation of existing state client information. The aim was to make a material difference in the development of quality NDIS plans which appropriately reflect the reasonable and necessary supports that individuals require. However, it appears that the NDIA has not utilised this information, and relied predominantly on reference packages based on actuarial modelling, with limited information collected from participants. Additionally, it appears that the NDIA has not been comparing the level of supports in participants' NDIS plans with those which were previously funded by the NSW government. This would provide a useful measure of whether the NDIS plan appropriately meets the needs of the participant.

There is also insufficient support for participants to activate their plans with providers and to purchase their supports (which can lead to under-utilisation).

There is capacity to improve the planning process, including:

- Participants should have the choice of how they would like the information gathering and planning to be conducted: by phone or in person
- The NDIA should utilise existing state information to inform determination of the level of need and supports required during plan development
- The NDIA should consider conducting an analysis of participant support costs pre and post NDIS planning
- The NDIA should consider allowing the participant and their family / carer to review the plan prior to final approval
- Pre-planning meetings would provide an opportunity for better planning and may reduce the need for plan reviews
- Plans could also undergo moderation to ensure quality, appropriateness and consistency
- The NDIA should consider alternate, more supportive, methods for plan activation other than through web-based programs

The NDIA must continue to improve systems and processes. In particular, strategies are required to build the capacity and capability of NDIA operational staff to deliver person-centred planning.

During transition, the NDIA also needs to work in close partnership with and utilise the expertise of State governments, recognising that governments will continue to play a significant role during the transition to full scheme.

Further consideration is also required for Aboriginal and Torres Strait Islander people and their communities. Delays in finalising the Aboriginal Engagement Strategy and its implementation have impacted on the planning experience for this group.

Early childhood education

Early childhood education providers have the potential for a valuable contributing role in the NDIS process of referrals, planning and providing information to the child's family about the NDIS. Early childhood educators are well placed to comment on a child's need from an objective perspective. In practice, referrals to the access partners often come from early childhood educators who notice a child's developmental delay and discuss options with the families.

The early childhood education sector could be trained and supported to screen children using a standardised process, such as the Ages & Stages Questionnaire (ASQ), to assist in the planning process. This would provide consistent input into the participant's NDIS plan. NSW has early childhood education participation rates of over 95% in the year before school so this approach would capture most children.

Participants with complex needs

Many NDIS participants that are participants of other state services (justice, mental health) do not have the capacity or capability to interact with the NDIS without intensive support. They may have no natural supports, like family or friends in their lives; they may have family that do not support their best interests; or they may have limited experience as consumers generally and may not be able to exert their rights as participants in the NDIS.

Some people with complex needs may not be able to define their needs or understand what reasonable and necessary supports they would need to support them. A planning meeting may be unlikely to draw out all their needs.

For this cohort, the administration associated with the NDIS would be difficult to manage: from accessing the National Access Team, to attending planning meetings, to using the portal. And service agreements with providers can be difficult to comprehend for these participants. This may place participants and families at significant disadvantage and create vulnerability.

Difficulty in navigating and negotiating creates situations where guardianship systems are expected to support and assist, increasing the demand on substitute decision making services. There is a need for such people to have access to sufficient decision making support in their plans to actively build their capacity.

Early Childhood Early Intervention approach (ECEI)

As at January 2017, 9% of all participants with plans in NSW (Hunter trial, NBM early rollout and Year 1 transition) are 0-6 years, below the scheme actuary projections.

ECEI functions in NSW will continue to be delivered by existing NSW Early Childhood Intervention providers for the period of transition and will be replaced by a full scheme ECEI model to be developed by the NDIA. This ensures that established referral pathways and the capability and capacity for providers to provide information and short term support to children and families are maintained. This will reduce unnecessary access requests and allows for joint industry development between the NSW government and the NDIA.

The aim of ECEI is inclusion, with children supported in a range of mainstream early childhood settings, such as preschool, meaning increased opportunities to learn and develop positive social relationships. NSW believes that the ECEI process represents best practice for children under 7 years, building the resilience of families and their capacity to self-manage, as well as supporting referral to mainstream and community-based supports where appropriate. In this sense, the ECEI model supports scheme sustainability by reducing pathways into long-term specialist support options.

A version of the ECEI approach was part of the early NDIS transition in the Nepean Blue Mountains, which commenced from July 2015 for children and young people under 18 years. Anecdotal evidence from this process suggests the effectiveness of the model in diverting children from specialist disability supports funded by the NDIS to mainstream and community based support options.

Role of Information, Linkages and Capacity Building (ILC) supports

ILC is a key component of the NDIS insurance model and investment in ILC infrastructure will be critical to the long term sustainability of the scheme. ILC will contribute to the sustainability of the NDIS by building the capacity of the community, people with disability, their families and carers, thereby reducing the need for specialist supports funded by the scheme.

The level of investment in ILC under the full scheme is a critical consideration for the Commonwealth government. The PC should test whether the planned Commonwealth investment is sufficient to achieve the vision for ILC endorsed by Governments. Ongoing investment will also need regular review as the market and society matures in how people with disability are supported to participate in society.

A social insurance model invests in formal, disability-specific support to reduce the lifetime cost of disability, at both the population level and individual level. Investment in community education, broad-based interventions and capacity building and supports for carers and families has been shown to reduce the long term need for more intensive supports.

This investment sustains and strengthens informal support and promotes the social and economic inclusion and meaningful participation of people with disability in their communities, including through the mainstream support systems that are available to all citizens.

To facilitate ILC implementation, the NDIA has released the ILC Commissioning Framework and the ILC Program Guidelines, which contain application details and funding criteria. However, there is still a gap in the information presented in relation to the Commissioning Framework not setting out what activities the NDIA will actually fund under the ILC budget for full scheme. Further work by the NDIA is urgently required to map specific ILC infrastructure required for full scheme, including how the ILC environment will develop over time as the scheme and market mature.

NSW's Ability Links program supports people with disability, their families and carers to connect with their local community through a range of community awareness and capacity building projects. It focuses on enabling people to engage with their communities by using existing community infrastructure and relying less on high cost specialist disability supports. There is evidence that the program provides value for money, generating strong social and economic benefits to both Government and the broader community. A cost benefit analysis revealed it provides a return of \$3 for every \$1 invested.

In closing

As outlined in this paper, NSW supports a PC review of scheme costs. However, there are many factors that influence costs. A review should first consider the market architecture and parameters

in establishing the new national market. It should review the characteristics and behaviours of the provider and consumer sectors to determine if the right conditions have been established to foster competitive behaviours with the appropriate oversight, quality and safeguarding arrangements.

Scheme costs must be considered with reference to their expected levels during transition, which is characterised by constrained intake and immature consumer and provider markets. Discussions about scheme sustainability must be with reference to the broad social and economic objectives of the NDIS and not a pre-determined funding envelope.

If needed, we are happy to discuss or provide further input on the issues outlined in this paper.