COAG CONSULTATION

REGULATION IMPACT STATEMENT

December 2012

Contents

ABBREVIATIONS 6
PURPOSE OF THIS COAG CONSULTATION REGULATION IMPACT STATEMENT (RIS) 7
INTRODUCTION 7
BACKGROUND TO THE DISABILITY SECTOR 8
Size and scope 8
Disability prevalence 8
Aboriginal and Torres Strait Islander people 9
Disability Services in Australia 9
Profile of disability providers 9
Disability users by States and Territories 11
Disability support services workforce 12
Role of governments 14
National Disability Agreement 14
Funding 15
Funding arrangements by State and Territories 16
Safeguards and quality assurance frameworks by States and Territories 20
Productivity Commission Report 25
Problems identified in the PC's report 26
State and Territory variations 28
The PC's vision for the provision of disability support in Australia 30
How the NDIS would operate under the PC's vision 31
Governments consideration of PC report to date 33
STATEMENT OF THE PROBLEM 35
The case for government intervention in a market for disability support 36
POLICY OBJECTIVES 38
STATEMENT OF THE OPTIONS 39
Option 1 – Choice limited to government funded providers 41
Option 2 – Choice from providers that meet regulatory standards. 42
Option 3 – Choice limited only in higher risk circumstances 44
Option 4 – No limit to choice 46

IMPACT ANALYSIS (COSTS AND BENEFITS) 48
Option 1 - Impacts 48
The Market 48
Participants - people with disability 48
Carers and families of people with disability 49
Providers 50
State and Territory governments 50
Australian Government 51
Community 51
Distributional impacts 51
Summary 51
Option 2 - Impacts 52
The market 52
Participants - people with disability 53
Carers and families of people with disability 54
Providers 55
State and Territory governments 60
Commonwealth Government 60
Community 61
Distributional impacts 61
Summary 61
Option 3 – Impacts 62
The market 62
Participants - people with disability 63
Carers and families of people with disability 64
Providers 64
Distributional impacts 65
Summary 65
Option 4 – Impacts 66
The market 66
Participants - people with disability 66
Carers and families of people with disability 67

Providers 67
State and Territory governments 67
Commonwealth Government 67
Community 68
Summary 68
Summary of costs and benefits relative to the status quo 69
CONSULTATION 71
Consultations to date 71
NDIS Engagement 71
NDIS Advisory Group 71
Expert Groups 71
Online engagement 72
National Disability and Carer Alliance 72
Engagement on the key design aspects of eligibility and reasonable and necessary support 73
Opportunity for further comment 73
EVALUATION AND CONCLUSION 74
IMPLEMENTATION AND REVIEW 76
NDIS Implementation 76
Implementation plans for each launch site 76
The NDIS at the five launch sites 77
Participants and the NDIS 77
Providers of disability supports and the NDIS 81
Further work 83
Implementation planning for launch sites 83
Review of the NDIS launch sites 84
Attachment A - Legislation Outline - National Disability Insurance Scheme 85
The National Disability Insurance Scheme Bill 86
Chapter 1 – Introduction 86
Chapter 2 – Assistance for people with disability and others 87
Chapter 3 – Participants and their plans 87
Chapter 4 - Administration 91

Chapter 5 - Compensation 96
Chapter 6 - NDIS Launch Transition Agency 97
Chapter 7 – Other Matters 102
Attachment B – your comments are sought by 1 February 2013 104

ABBREVIATIONS

ABI	Acquired Brain Injury
ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
AFDO	Australian Federation of Disability Organisations
AIHW	Australian Institute of Health and Welfare
ASD	Autism Spectrum Disorder
CAC Act	Commonwealth Authorities and Companies Act
CEO	Chief Executive Officer
COAG	Council of Australian Governments
CSDA	Commonwealth/State Disability Agreement
DAAWS	Disabled Australian Apprentice Wage Support
DCSI	Department of Communities and Social Inclusion
DES	Disability Employment Service
DS NMDS	Disability Services National Minimum Data Set
FTE	Full time equivalent
GDP	Gross Domestic Product
GP	General Practitioner
HACC	Home and Community Care
ICT	Information and communications technology
ISP	Individual Support Package
LACs	Local Area Coordinators
MS	Multiple Sclerosis
NATSISS	National Aboriginal and Torres Strait Islander Social Survey
NDA	National Disability Agreement
NDCA	National Disability Carers Alliance
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
NGO	Non-Government Organisation
NIIS	National Injury Insurance Scheme
NSW	New South Wales
NT	Northern Territory
PC	Productivity Commission
QA	Quality Assurance
QLD	Queensland
RIS	Regulation Impact Statement
RTO	Registered Training Organisation
SA	South Australia
SCRGSP	Steering Committee for the Review of Government Service Provision
TAS	Tasmania
TOR	Terms of Reference
TTY	Teletypewriter – a special type of phone
VIC	Victoria
WA	Western Australia

PURPOSE OF THIS COAG CONSULTATION REGULATION IMPACT STATEMENT (RIS)

The National Disability Insurance Scheme (NDIS) will be implemented in five launch sites in 2013 as a 'first stage, noting this will inform the move to a national insurance-based approach to disability care and support'. 'All governments also agreed that the funding and governance arrangements agreed for launch do not create a precedent for the full scheme.' (COAG Communiqué, 25 July 2012)

Early in 2013 Council of Australian Governments (COAG) will consider for agreement the design details of the NDIS that will be implemented at the five launch sites in July 2013.

The purpose of this COAG Consultation Regulation Impact Statement (RIS) is to elicit feedback on the options and impacts, including costs and benefits, of the proposed approaches to the design of the NDIS. The COAG Decision RIS will follow this COAG Consultation RIS. The Decision RIS will factor in your comments and other information provided. It will include the best conceptual approach and analysis of the design details that will underpin the NDIS.

The NDIS launch sites will be subjected to intensive scrutiny and evaluation. Information of the outcomes achieved, what works well and what requires modification will be provided to COAG for its consideration of any further roll out of the NDIS.

INTRODUCTION

COAG RISs are required when agreements or decision to be given effect through principal and delegated legislation, administrative directions or other measures (at the Commonwealth or State/Territory level or both) encourage or force businesses or individuals to pursue their interests in ways that would not otherwise have done. A RIS is not required for agreements or decisions that results in regulation that has minor regulatory or machinery impact on the business and not-for-profit sector in the first instance. A RIS is not required for the establishment of an NDIS administering agency since that is 'machinery of government'.

The NDIS changes have two categories of impact that will affect the disability service provider sector, both commercial and not-for-profit, therefore warranting a RIS:

1. Market impact – the change from 'block funding' to Individual Support Packages (ISPs) will mean that existing providers will need to modify the way they do business. This will happen progressively from July 2013 (depending on the transition arrangements still to be determined).

2. Regulatory impact - regulatory changes (for example, Quality Assurance (QA) and other safeguards, reporting requirements, registration requirements for payment, etc). In addition to potentially adding costs and/or modifying the way the existing providers do business, the level of regulation will impact on the degree of competition with commensurate flow-on consequences for consumers. Again regulation changes will happen progressively from July 2013.

This Consultation RIS is designed to capture further data, encourage further discussions and impacts to determine the optimal balance of regulation (where the benefits are maximised). To do this, the RIS outlines two market based mechanisms (Option 1 - largely status quo with disability supports obtained from block funded providers, compared with Options 2, 3 and 4 where providers would rely on the patronage of consumers since supports would be obtained by consumers through funded ISPs), with regulations ranging from Option 1, a greater degree of regulation specific to disability with less choice for participants (consumers of the NDIS), to Option 4, no specific regulations beyond generic protections provided to all consumers with maximum choice for participants.

Each option, therefore, involves a trade-off: greater regulatory involvement will mitigate risks to a higher degree but will commensurately limit choice and control for participants.

For the NDIS, this discussion and analysis is complicated since each jurisdiction is already some way through introducing a 'market' for disability supports although each is different, and each jurisdiction has different levels of regulation.

If the NDIS as described in the Decision RIS - and implemented in the launch sites – changes in any significant way, further RISs will be required to enable discussion and analysis. Further RISs may or may not be as significant as the current over-arching RIS process (Consultation and Decision), depending on the nature and scope of the changes proposed.

BACKGROUND TO THE DISABILITY SECTOR

Size and scope

Disability prevalence

Estimates of the number of people with disability vary. A number of sources have been used in this RIS to describe various aspects of the nature of disability. These include ABS data, Productivity Commission (PC) and PricewaterhouseCoopers (PwC) research as well as the Australian Institute of Health and Welfare (AIHW).

Further information and data will be sought during the consultation process, especially from large service providers and regulators, in order to provide a more

accurate picture of the number of people with disability. This will assist in better assessment of the impacts of the various options considered in this RIS.

The ABS estimates that 1 in 5 people in the Australian population (4,026,213) had one or more disabilities (that is, a core activity limitation, a schooling or employment restriction or an impairment) in 2009 (ABS 2011), compared with 3,958,300 in 2003 (ABS 2004). Of the population aged 5–64 years in 2009 (ABS 2011), an estimated 16.0 per cent had a core activity limitation or specific restriction compared with 13.0 per cent in 2003 (ABS 2004). This proportion comprised 5.8 per cent who had a profound or severe core activity limitation, 8.6 per cent who had a mild to moderate core activity limitation and 1.6 per cent who had a schooling or employment restriction only (ABS 2011).

Based on the ABS statistics[1] – of all people aged less than 65 years:

- approximately 2.6 million people have a permanent disability;
- approximately 992,000 people have permanent disability and need assistance with mobility, self-care, communication and/or cognition;
- an estimated 583,000 people have a need for support of the type that would be provided by the NDIS either with or without a funded package; and
- it is estimated that about 410,000 people with permanent disability and severe functional limitation would require support through an individually funded package.

Aboriginal and Torres Strait Islander people

Indigenous people have significantly higher rates of profound or severe core activity limitation than non-Indigenous people. Disability data on 'core activity need for assistance' are available from the ABS 2008 National Aboriginal and Torres Strait Islander Social Survey (NATSISS).

Nationally, 10.3 per cent of Indigenous people aged 18 years and over reported a profound or severe core activity restriction in 2008, around twice the rate for non-Indigenous people (4.7 per cent) (ABS 2009). The disparity between Indigenous and non-Indigenous people is consistent across age groups. This is in part due to a range of risk factors such as poverty, discrimination, lower rates of education and higher rates of risky behaviours such as smoking, substance abuse and poor nutrition.[2]

Disability Services in Australia

Profile of disability providers

Historically, providers of support services to people with disability were often founded as charities or self-help groups of parents, families and friends of people with disability that became reliant on the support of government funding and community philanthropy.

[1] Population estimates based on 2009 ABS Survey of Disability, Ageing and Caring.

[2] Centre of Aboriginal Economic Policy Research and the Australian Institute of Health and Welfare, Indigenous Australian and the National Disability Insurance Scheme: The extent and nature of disability, measurement issues and service delivery models, October 2012, pages 8-10.

Today, the Australian disability service provider market is dominated by not-for-profit organisations. Their primary objective is to support improvement in the lives of people with a disability, rather than commercial objectives.[3] Government providers also play a significant role.

The majority of providers rely on 'block funding' payments from State/Territory governments as their major source of income to continue their day to day operations. As such government, as the main purchaser, determines the products, quantity and price of services provided to people with a disability, and government regulation provides for safety and quality standards. Services are provided according to the amount of block funding provided instead of the actual price of support for an individual. Reporting to government has focused on services and outputs with a limited focus on the outcomes achieved. In addition to block funding, the sector has relied on 'charitable' structures and contributions from the Australian public.[4]

In 2010-11 there were 2,283 disability support service agencies funded by State/Territory or Australian governments throughout Australia, managing 13,883 service type outlets.[5] The majority of service providers (82 per cent) were in the non-government sector and the majority of these (86 per cent) were income tax exempt charities. Together they provide services ranging from[6]:

- Accommodation support – large residential institutions (more than 20 people) offering 24 hour care , hostels, group homes, attendant/personal care, in-home accommodation support, alternative family placements, and other accommodation support;
- Community support – therapy for individuals, early childhood intervention, behaviour intervention, counselling, regional support and support teams, case management and coordination, other community support;
- Community access – learning and life skills development, recreation/holiday programs;
- Respite– in own home, centre-based, host family respite, and other flexible arrangements;
- Employment – open employment, supported employment or a combination of both;
- Advocacy, information/referral services, as well as mutual support or self-help groups, and alternative formats of communication; and

[3] PricewaterhouseCoopers draft Final Report: Planning for a sustainable disability sector, pages 14, for the Department of Families, and Housing, Community Services and Indigenous Affairs.
[4] PricewaterhouseCoopers draft Final Report: Planning for a sustainable disability sector, page 14, for the Department of Families, and Housing, Community Services and Indigenous Affairs.
[5] Australian Institute of Health and Welfare, Disability support services, services provided under the National Disability Agreement 2010-11, pages 3- 4.
[6] Australian Institute of Health and Welfare, Disability support services, services provided under the National Disability Agreement 2010-11, pages 4, 52-57.

- Other support services provided by the sector include research and evaluation, training and development, peak bodies and other support services (such as one-off funding for promotional activities or buying aids and equipment).

Mainstream services[7] are services provided to the community as a whole. Mainstream services complement specialist disability services. Under the National Disability Strategy all Australian governments have agreed to 'strive' to ensure that all people with disability have access to mainstream government services within their jurisdictions. Some mainstream services give priority to people with disability (for example, public housing) or have programs to meet the special needs of people with disability (for example, school education).

Statistics on the profile of the totality of service providers around Australia are scarce. A nationwide survey of disability service providers undertaken by PricewaterhouseCoopers in mid-2012 shows that overall a large number of providers support a small number of clients. Approximately 280 providers support around 1,500 clients while the four largest providers service around 95,000 clients. In addition, the next 56 largest providers support around 66,000 clients. Overall, a large number of providers receive a small amount of funding but the majority of funding is taken up by a few of the largest providers. About 295 service providers receive less than $200,000 in disability funding or $25 million of total disability funding. In contrast, the largest 18 providers receive over $1 billion of total disability funding while the next 34 largest receive about $0.5 billion.[8]

The survey showed that about 80 per cent of those surveyed relied on government funding for 60 per cent or more of their income, with other income being fees charged for services, income from commercial revenue, income from fundraising, and investment and other income.[9]

Disability users by States and Territories

The Australian Institute of Health and Welfare estimates that in 2010-11 there were 314,252 users of disability services.

[7] Productivity Commission, Report of Government Services 2012, Chapter 14 Services for people with disability, page 14.6.
[8] PricewaterhouseCoopers draft Final Report: Planning for a sustainable disability sector, pages 30-31, for the Department of Families, and Housing, Community Services and Indigenous Affairs.
[9] PricewaterhouseCoopers draft Final Report: Planning for a sustainable disability sector, page 15, for the Department of Families, and Housing, Community Services and Indigenous Affairs.

Table 1: Users of disability support services provided under the National Disability Agreement 2010-11, service group by State and Territory, 2010-11[10]

Service Group	NSW	VIC	Qld	WA	SA	TAS	ACT	NT	Total
Accommodation Support	9,487	15,486	6,899	3,308	5,468	1,280	454	211	42,579
Community Support	35,479	48,219	16,653	13,385	16,727	4,527	3,733	1,956	140,156
Community Access	14,490	23,052	9,334	4,630	6,719	1,579	486	255	60,509
Respite	9,499	15,676	5,191	3,315	1,735	461	341	97	36,266
Total State/Territory services	*50,993*	*77,657*	*25,012*	*16,577*	*21,822*	*6,356*	*4,213*	*2,378*	*204,226*
% of total: Total State/Territory services	*25.0%*	*38.0%*	*12.2%*	*8.1%*	*10.7%*	*3.1%*	*2.1%*	*1.2%*	*100%*
Employment	42,266	32,213	26,175	10,631	11,914	3,139	1,578	596	128,321
Total Number	**88,822**	**105,309**	**48,478**	**24,344**	**31,052**	**9,100**	**5,523**	**2,908**	**314,252**
% of total: Total No.	**28.3%**	**33.5%**	**15.4%**	**7.7%**	**9.9%**	**2.9%**	**1.8%**	**0.9%**	**100%**

Note: (i) Totals may not sum the components since individuals may have accessed more than one service group and/or in more than one jurisdiction.
(ii) the mix of services is different within categories across jurisdictions. For example, in Victoria, the Accommodation Support figure includes a wide range of quite different accommodation types – large residential/institution, hostels, group homes, attendant care/personal care, in-home accommodation support, alternative family placement, other accommodation support. Data for Vic, Qld and WA includes Psychiatric Disability Rehabilitation and Support Services activity which is not included in other jurisdictions.

Disability support services workforce

The disability services workforce includes a wide range of people who are either in the formal paid workforce, formal unpaid workforce (voluntary workforce), or informal care workers (families and friends. The formal paid workforce can be split into the following categories: support workers/social workers; community and mental health nurses; allied health professionals/therapists; planners, case managers and coordinators, social work and counselling staff; and management and administrative staff. The disability workforce is characterised by a high proportion of casual and part-time staff, and high staff turnover.[11]

In 2006, it is estimated that around 62,000 employees (about 11,000 government employees and 51,000 non-government employees) or about 46,000 full time equivalent (FTE) staff worked in the disability sector with females making up about 78 per cent of the workforce (Table 2)[12]. About 20 per cent of the workforce worked up to 15 hours a week, 36 per cent worked 16 to 34 hours a week, 32 per cent 35 to 44 hours a week, and 10 per cent

[10] Taken and derived from Table 2.5, Australian Institute of Health and Welfare, Disability support services, services provided under the National Disability Agreement 2010-11, page 7.
[11] PricewaterhouseCoopers draft Final Report: Planning for a sustainable disability workforce, page 14, for the Department of Families, and Housing, Community Services and Indigenous Affairs.
[12] PricewaterhouseCoopers draft Final Report: Planning for a sustainable disability workforce, pages 17-21 and 27, for the Department of Families, and Housing, Community Services and Indigenous Affairs.

45 hours or more. About 49 per cent were aged 45 to 64 years.[13] It is estimated that nearly 70 per cent are support workers and case managers, 20 per cent are management and administration and 10 per cent are professionals (mainly nurses, allied health).[14]

Table 2: Estimate based on 2006 Census data - Disability number and occupations working (formal paid workforce) in disability services by jurisdiction - FTEs[15]

Occupation Group	NSW	VIC	SA	WA	Qld	TAS	NT	ACT	Total
Nursing	991	250	168	155	158	44	18	23	1,807
Direct care workers	7,795	7,228	2,629	3,146	5,547	1,179	262	384	28,169
Planners, facilitators, and case managers	4,224	3,917	1,249	1,236	2,067	539	237	267	13,736
Allied Health	526	506	181	187	335	71	23	29	1,858
Total (Number)	**13,536**	**11,902**	**4,228**	**4,724**	**8,108**	**1,832**	**539**	**703**	**45,571**
Percentage of Total	**29.7%**	**26.1%**	**9.3%**	**10.4%**	**17.8%**	**4.0%**	**1.2%**	**1.5%**	**100%**

Source: PWC. NB: Excluding managerial and administrative staff.

In 2009, non-professional workers made up about 76 per cent (62 per cent of FTE staff) of disability workers (personal carers, home care workers, community care workers, and disability and residential support workers), nine per cent (12 per cent of FTE staff) were professional service providers (allied health, social workers and disability care managers), and 14 per cent (25 per cent FTE staff) were service managers, coordinators or administrators. Most of the non-professional disability workforce (79 per cent) had some form of post school qualification, typically Certificates III or IV or Diploma. About 75 per cent were either permanent full-time or permanent part-time.[16]

In 2006, there were about 155,000 voluntary workers (8,750 FTE) that provided a total of 15.7 million hours of assistance in the disability sector.[17] This is currently estimated at between 3,000 and 8,000 FTE staff.[18]

People with disabilities also use informal carers (family, friends and work colleagues) as primary care providers. In 2009, it is estimated there were 746,344 primary care givers of which 44 per cent worked less than 20 hours a week and 35 per cent worked 40 hours or

[13] PricewaterhouseCoopers draft Final Report: Planning for a sustainable disability workforce, page 19, for the Department of Families, and Housing, Community Services and Indigenous Affairs.
[14] PricewaterhouseCoopers draft Final Report: Planning for a sustainable disability workforce, page 1, for the Department of Families, and Housing, Community Services and Indigenous Affairs
[15] PricewaterhouseCoopers draft Final Report: Planning for a sustainable disability workforce, Table 6, page 19, for the Department of Families, and Housing, Community Services and Indigenous Affairs; Percentage lines: derived.
[16] PricewaterhouseCoopers draft Final Report: Planning for a sustainable disability workforce, pages 22-24, for the Department of Families, and Housing, Community Services and Indigenous Affairs. From a National Institute of Labour Studies project to gather information from a representative sample of surveys of community service 'outlets' in four sectors including disability and of workers in each sector, 2009.
[17] PricewaterhouseCoopers draft Final Report: Planning for a sustainable disability workforce, page 33, for the Department of Families, and Housing, Community Services and Indigenous Affairs.
[18] PricewaterhouseCoopers draft Final Report: Planning for a sustainable disability workforce, page 1, for the Department of Families, and Housing, Community Services and Indigenous Affairs

more a week. A further 1,799,084 were non-primary carers. About 60 to 70 per cent of the estimated informal carer workforce were caring for people with a disability aged under 65 years.[19] The number of informal carers is currently estimated at between 400,000 and 500,000 FTE people.[20]

Role of governments

In Australia, disability services for personal care and support are currently the responsibility of State and Territory governments. State/Territory governments are responsible for assessing the needs of people with disability, and funding and coordinating the services provided to them.

The Commonwealth Government provides income support (Disability Support Pension) and disability-specific payments such as the Mobility Allowance, Carer Allowance, Carer Supplement and Child Disability Assistance Payment. It also provides funds for support for employment services and has a role in mental health and other programs such as autism.

National Disability Agreement

The National Disability Agreement (NDA) defines the roles and responsibilities of the Australian, State and Territory governments in the provision of services and supports to people with disability and their carers.[21]

The **Commonwealth Government** is responsible for:

provision of employment services for people with disability (which includes regulation, service quality and assurance, assessment, policy development service planning, and workforce and sector development) in a manner that most effectively meets the needs of people with disability consistent with local needs and priorities;

- provision of income support targeted to the needs of people with disability, their families and carers;
- provision of funds to States and Territories to contribute to the achievement of the NDA objective and outcomes;
- where appropriate, investing in initiatives to support nationally agreed policy priorities, in consultation with State and Territory governments;
- ensuring that Commonwealth legislation and regulations are aligned with the national policy reform directions and the *United Nations Convention on the Rights of Persons with Disabilities*.

[19] PricewaterhouseCoopers draft Final Report: Planning for a sustainable disability workforce, page 1, for the Department of Families, and Housing, Community Services and Indigenous Affairs.
[20] PricewaterhouseCoopers draft Final Report: Planning for a sustainable disability workforce, page 1, for the Department of Families, and Housing, Community Services and Indigenous Affairs.
[21] Unless otherwise identified, taken from the Report of Government Services 2012, Chapter 14 Services for people with disability, pages 14.8-14.11.

State and Territory governments are responsible for:

- the provision of specialist disability services, except disability employment services (which includes regulation, service quality and assurance, assessment, policy development, service planning, and workforce and sector development) in a manner which most effectively meets the needs of people with disability, their families and carers, consistent with local needs and priorities;
- ensuring that State and Territory legislation and regulations are aligned with the national policy and reform directions; and
- where appropriate, investing in initiatives to support nationally agreed policy priorities, in consultation with the Commonwealth Government.

Commonwealth, State and Territory governments are jointly responsible for:

- development of national policy and reform directions to meet the agreed objectives and outcomes of the NDA;
- funding and pursuing research that provides an evidence base for national policy and reform directions;
- developing and implementing reforms to improve outcomes for Indigenous people with disability; and
- the provision of data, including a commitment to providing data for the Disability Services National Minimum Data Set and a commitment to the improvement of data.

Funding

Commonwealth and State and Territory governments funded both government and non-government providers of specialist disability services under the NDA. Total government expenditure on these services was $6.2 billion in 2010-11 — a real increase of 1.5 per cent on the expenditure in 2009-10 ($6.1 billion). State and Territory governments funded the majority of this expenditure in 2010-11 (69.4 per cent, or $4.3 billion). The Commonwealth Government funded the remainder (30.6 per cent, or $1.9 billion), which included $1.1 billion in transfer payments to States and Territories.

Direct government expenditure on specialist disability services (excluding expenditure on administration) under the NDA was $5.7 billion in 2010-11. The distribution of direct government expenditure varied across jurisdictions. The main areas of State and Territory government expenditure were accommodation support services (48.8 per cent of total direct service expenditure) and community support (16.9 per cent of total direct service expenditure). Employment services were the main area of Commonwealth Government expenditure in 2010-11 (11.9 per cent of total direct service expenditure and 86.2 per cent of Commonwealth Government direct service expenditure).

Table 3 below is an estimate of funding provided by State and Territory governments as well as the Commonwealth government in 2010-11. Funding includes payments made under the

National Disability Agreement[22], Home and Community Care Services (HACC), psychiatric disability, residential and community aged care (for people with disability aged under 65 years of age), equipment, etc.

Table 3: Total government expenditure on services under the National Disability Agreement

	Cwlth	NSW $m	Vic $m	Qld $m	WA $m	SA $m	TAS $m	ACT $m	NT $m	Total $m
2010-11	844	1,788	1,454	904	539	388	149	79	57	6,201

Source: Report on Government Services 2012, Table 14A.4.

Funding arrangements by State and Territories

Block funding is government funding to service providers that is used by providers to deliver support services (underpinned by safeguard and quality assurance standards). The alternative form of funding is 'individualised' or 'self directed' funding where government funds are identified for particular people with disability and self-managed funding where funds are given directly to users to then purchase services which means that providers receive funding after they have been chosen by a service user.[23]

Block funding is currently the dominant funding for specialist disability services. Its advantages include that service providers are known to government and they have a greater certainty of funding. However, it also can lead to weaker competition and creates incentives to please governments rather than service users, offers less scope for service users to take their portion of funding to a new provider, and provides less choice and control for service users.

Summary of individualised approaches in Australia

Over the last 20 years, most jurisdictions have sought to enhance opportunities for individual choice and control although each jurisdiction is at a different stage of reform. All jurisdictions endorse person centred philosophy although the translation to practice varies. Many disability service providers have changed their practices to offer more person centred approaches as part of respecting and implementing a rights-based, self-direction agenda.

There are common themes with complementary reforms to planning, decision making and funding.[24]

Western Australia and Victoria

Western Australia and Victoria have the most extensive experience. Both jurisdictions assist people with disability to participate in and drive decision making and planning, and

[22] The National Disability Agreement (NDA) is an intergovernmental agreement on federal financial relations in regard to disability funded through the Specific Purpose Payments for Disability Services (Disability SPP). The NDA funds (a) services that provide skills and supports to people with disability to enable them to live as independently as possible; (b) services that assist people with disability to live in stable and sustainable living arrangements; (c) income support for people with disability and their carers; and (d) services that assist families and carers in their caring role. Funding for Part (c) is not included in this table as it is not funded through the Disability SPP and will not be provided through an NDIS.

[23] Productivity Commission, Disability Care and Support, Productivity Commission Inquiry Report, pages 151-152.

[24] KPMG NSW Ageing Disability and Home care Draft Policy framework for Choice and Control in the National Disability Insurance Scheme, 24 July 2012, pages 14 – 15, and other information provided by States/Territories.

individualised attached funding comprises a substantial proportion of disability funding and there is a provision for direct payment options. An individualised support package includes a plan and a funding allocation. WA local area coordinators provide tailored guidance and assistance to individuals to plan and access disability–related support.

In Victoria, independent facilitators provide decision support to individuals during planning and decision making about support arrangements. Victoria also provides a continuum of support options to assist people to manage their funding packages. Both jurisdictions are testing the feasibility of direct employment, that is where the participant directly employs the service providers rather than through an intermediary. Victoria has trialled direct employment and is now expanding availability of this option across the State from December 2012. Resource documents have been released in December 2012 to support this initiative.

NSW, Tasmania, SA the ACT and Qld

NSW, Tasmania, SA, the ACT and Queensland have some elements of person centred practice in place and have introduced individually attached funding across some programs. NSW is well advanced with its commitment to providing individualised, portable funding for people with a disability across their life span. NSW provides self-directed options across a number of program areas and pilots covering over 6,000 people. The Self Managed Model available across a range of Life Skills and Employment Initiatives in NSW provides increased flexibility and choice for individuals. NSW has arrangements in place for flexible respite and Life Skills and Employment programs. NSW is developing a direct payment framework and contract reflecting the experiences of other jurisdictions and internationally to allow for take up of individualised and direct funding for any client that wishes to take up that option form 1 July 2014. Trials of direct payment in broader contexts than Attendant Care are underway. There is limited availability of direct payment to purchase support from an open market, with most take up in the Attendant care program.

In Tasmania individualised support packages are configured as support hours for respite and personal care that are individually allocated but the funding agreement is between government and a service provider.

Queensland has individualised allocations of funding but the funding agreement is between the government and the provider. Some people have established their own company (as a service provider) to be able to manage their funding (since legislation only provides for the funding of non-government service providers that are established as a company). South Australia has introduced a small scale self-managed funding program that includes direct payments to individuals. This is being expanded later this year to offer self-directed (including direct payments) to all people receiving individualised funding amounts, and by 2014 to all people receiving disability support.

In addition, SA, Tasmania and the ACT are trialling direct payment.

NT

The NT has utilised ISPs for at least 10 years and has a significant proportion of its budget allocated to ISPs. . ISPs are used when all natural support networks have been explored but found inadequate with limited potential to be developed in the immediate short term, and there are no block funded services available to the client. The ISPs identify areas of need and the way that supports will be provided to allow people with disability to achieve the greatest level of self-reliance and independence. Within ISPs, Direct Consumer Funding is provided in circumstances where the funding is minimal, there is a lack of service providers and where natural support networks are maintained and client outcomes enhanced.

Table 4 summarises the funding mechanisms employed in each jurisdiction.

Table 4 – Individualised funding by jurisdiction[25]

	Outline of disability services Individualised funding approaches.
Australian Capital Territory (ACT)	– Mainly block funding remains the primary funding method for service providers. About 15 per cent of disability government funding to NGOs relates to Individual Support Packages (ISPs). – Individualised funding is through ISPs held by service providers. Funds are portable between service providers. – Funds can be spent on a limited range of support services and are not able to be spent on services available from other funded schemes. – In 2010 the ACT introduced a limited Direct Funding Pilot. In 2013 this will be extended to allow up to 30 people (initially) to directly receive and manage their individual support package.
New South Wales (NSW)	– Mainly block funding though NSW has several years of experience with individualised funding. – Individualised funding is portable and delivered through programs that target people with disability (and/or their families and carers) at particular life stages. These include Life Choices, Active Ageing, Attendant Care, Community Participation, Extended Family Support, Individual Accommodation Support Package, Early Start, Older Carers and Younger People in Residential Aged care. Individualised funding provides greater control and choice for people with disability and their families and enables them to select their supports. – As of June 2012 there were over 6,000 participants in these programs of which 1,400 were using self managed arrangements. – The Self Managed Model (SMM), accessible in the NSW suite of Life Skills and Employment initiatives, provides the flexibility for people with disability and their families to design a customised program of activities and support. Through this model, funds are allocated to an individual and paid to an intermediary service provider chosen by the client. The intermediary manages financial, legal and administrative requirements and may also be one of a range of service providers identified by the individual with disability. – NSW is well advanced in its commitment to introducing further

[25] PricewaterhouseCoopers draft Final Report: Planning for a sustainable disability sector, pages 27-29, for the Department of Families, and Housing, Community Services and Indigenous Affairs, June 2012, and information provided by jurisdictions.

	individualised funding options, NSW has begun significant work to transition block funded programs into a more focused life span approach, ensuring programs are flexible and responsive to individual needs. The 0 -8 years programs are being reformed to provide packaged of support on a continuum for children and their families rather than a programmatic framework. This approach is being applied also to the 9-18 year cohorts. – In the adult years Community Engagement, Respite, Case Management and Specialised services are also being revised to promote individualised approaches which will provide the mechanism to attach funding to an individual in the emerging person centred framework.
Northern Territory (NT)	– A wide range of non-government organisations are funded through block funding to provide services to people with disability living in the community. – Funding is also provided through ISPs to purchase services (such as respite, accommodation support) where providers are unavailable. Funding service providers is preferred, however, this is not always possible in some rural and remote areas where there were limited service providers.
Queensland	– Block funding remains a central funding mechanism although a discretionary component of spending has been introduced into disability Family Support Programs. – Self-directed funding is beginning and initially funds will be paid to incorporated NGOs because of legislative requirements. Legislation amendments are being considered to enable direct payment to clients. – Queensland has piloted a hybrid model with block funding for accommodation and individual funding for individual care needs and community access.
South Australia (SA)	– Block funding receding with over a third of total government funding to NGOs has been individualised and more services being funded this way. – Individualised funding is held by a service provider chosen by the person with disability. Self-managed funding, including direct payment, is about to be offered to these individuals. Self-directed funding will be offered to all clients by 2014.
Tasmania	– Mainly block funded. Although about 10 per cent of total disability government funding has been individualised, this is provided directly to service providers. There have been isolated trials of direct payments to service users. – The ISP funding is held by the service providers chosen by the person and is portable. Individuals are encouraged to be involved in day to day management as far as possible. – There have been some trials where the person was funded to hire and manage their own support workers.
Victoria	– Since 1996, Victoria has been progressively transitioning block funding to individual funding. Currently 30 per cent of the total disability budget is individualised funding. As of June 2012, there

	are over 14000 people accessing individualised funding. – In addition, the separate programs have been combined into flexible Individual Support Packages that can be used for a range of supports based on individual needs, rather than service types. An individual planning process in conjunction with the person, their family and carers, where relevant, assists the person to identify their goals, preferred supports and funding administration arrangement. – Individual Support Packages are able to be managed according to the choice of the person, by a registered disability service provider, the financial intermediary, or as a direct payment. Approximately 2000 people have chosen to use the financial intermediary. – There has been small trial of direct employment of support workers by ISP recipients and as of December 2012, direct employment is an option available across the State. –
Western Australia (WA)	– Though a notional allocation of funding rather than an individual package, all funding in WA is individualised (except for some respite and therapy). – Management of support is managed by individuals and the service provider. Individuals can choose varying degrees of shared involvement with support from LACs (Local Area Coordinators). Self-directed funding options are also available through LACs. – The focus is on an individual's ability to make decisions about how funding is directed. However, a person may not know they have individual funding held by a service provider and therefore do not use it more flexibly then that used through block funding. – Direct consumer payments make up a low proportion of LAC funding. The focus is more on the ability of people to direct how the funds are spent.
Commonwealth Government	– The Commonwealth government provides up to $12,000 over two years to Australian families with children less than six years of age diagnosed with Autism Spectrum Disorder. The funds can be used to purchase the services of autism advisors, early intervention services, attend playgroups and family workshops. Funds are accessed through Medicare.

Safeguards and quality assurance frameworks by States and Territories

Safeguards

Each jurisdiction has a range of safeguarding mechanisms within disability support and service provision:[26]

– **System level safeguards** – All jurisdictions have enabling legislation, mandated standards, contract management and quality management arrangements in place,

[26] KPMG South Australian Department for Community and Social Inclusion, Safeguards Mapping Project, August 2012, pages 1-4.

however, implementation of these vary. Legislation establishes the rights of people with disability and these underpin the practice and cultural change.

- **Service level safeguards** – A range are in place in States and Territories. Many follow from system level requirements and include organisational quality frameworks, governance arrangements, complaints mechanisms, and workforce requirements regarding qualifications and screening. These are generally targeted at people receiving specialist disability services.
- **Individual level – practice based safeguards** – All jurisdictions have safeguard mechanisms that relate to and influence their day to day interactions with individuals in the provision of support. These relate to assessment, planning, access and receipt of services and focus on risk assessment, approaches to enable choice and control, health management, serious incident reporting, and provisions for restrictive practices.
- **Community based safeguards** – These include community visitor schemes, administrative review tribunals, public advocate/guardian offices and complaints commissions. The form and functions of these bodies varied between jurisdictions.

Quality Assurance

The National Standards for Disability Services were developed in the context of the first Commonwealth/State Disability Agreement (CSDA). They were originally developed in 1992 by a Working Party comprising consumer and service provider representatives and Commonwealth and State Government representatives.

In September 2011, the Select Council on Disability Reform (Select Council), comprised of Ministers and Treasurers from each of the States and Territories and the Commonwealth Government, agreed to build on the work already underway to revise the National Standards.

The new National Standards will be considered by the Select Council in early 2013 with subsequent decisions regarding implementation, however, jurisdictions will map back to the standards that can be summarised as:

- Rights - decision making and choice, privacy, dignity and confidentiality;
- Participation and integration – valued status;
- Individual Outcomes;
- Feedback, Complaints and Disputes;
- Service Access;
- Service Management.

Each jurisdiction has its own regulatory regime for disability service providers with the level of regulation varying between jurisdictions – summarised in Table 5 below.

Table 5 – Quality Assurance - by jurisdiction

	Outline of disability Quality Assurance
Australian Capital Territory (ACT)	– The ACT's framework sets key activities that aim to improve safety and quality. It sets out actions in three themes that align with the Australian Commission on Safety and Quality in Health Care. The themes are: consumer centred; driven by information; and organised for safety. – There is a mandatory annual baseline self-assessment by all service providers against the National Standards and action plans are required where agencies rate below competent. – A copy of the assessment is provided to the agency administering disability support and compliance is monitored through contract management. – Each service area develops plans and indicators and report against these annually.
New South Wales (NSW)	– A new Disability Quality Framework is being phased in over three years from July 2012. – NSW Standards have been updated to reflect the National Standards framework and the shift to a person centres and individualised support environment that NSW is progressing under *Stronger Together 2*. – The framework uses existing accreditation arrangements prevalent across the sector to inform the quality of organisations. – Providers must establish quality management systems, self- assess against the standards, establish client and community user feedback mechanisms and undertake a third party verification to assess any gaps between existing accreditation and the NSW standards. – A subsidy programs is in place across NSW to support providers in making the transition to the new framework.
Northern Territory (NT)	– The NT is currently developing a Quality Framework with a focus on continuous improvement. All funded service providers must have a complaints mechanism and report on complaints received and resolved. Clients can take complaints to the Health and Community Services Complaints Commission, the Children's Commissioner or the Ombudsman. – While not yet in place, it is planned that funded organisations will undertake an independent review against the Disability Services Standards with the involvement of service users. All services will be required to self-assess and provide feedback about actions taken to meet or improve service delivery in line with the National Disability Services standards.
Queensland	– The Disability Services Act 2006 (Qld) establishes a system for third party auditing of funded disability service providers against disability service standards with the audit process and the standards being approved by the Minister. – The approved quality system under s46 of the Act is known as the Disability Sector Quality System, and the approved standards under s34 of the Act are known as the Queensland Disability Service Standard (QDSS) and the Queensland Disability Advocacy Standards (QDAS). – From January 2013 it is currently proposed the new Human Services Quality Framework will be implemented through a transition process. As funded organisations are due to undergo their next scheduled audit, they will be assessed against the new Framework.

	– The new Framework does not include any new requirements and includes six quality standards:
	  o Governance and management;
	  o Services access (on the basis of relative need within available resources);
	  o Responding to individual;
	  o Safety, well-being and rights;
	  o Feedback, complaints and appeals; and
	  o Human resources (recruitment, selection and development of paid and unpaid staff).
	– Providers must go through a five-step process including undergo an external audit of their quality management systems.
	– Once certified, service providers must engage in post-implementation activities, including a mid-cycle maintenance audits at 18 months.

South Australia (SA)	– Disability services are provided in accordance with the *South Australian Disability Services Act 1993*. – Funded providers are required to meet criteria to become an approved provider and comply with quality assurance conditions as per the terms of the Master Agreement and service agreement. These include engagement with a quality improvement program as well as annual performance reviews by the Department of Communities and Social Inclusion (DCSI) as the funding body. – DCSI does not mandate which quality assurance systems providers must use but recognises a variety of accredited and independently audited quality systems.

Tasmania	– Tasmania utilises the Quality and Safety Standards with the Quality Assurance system comprising three core components:
	  o Continuous quality improvement demonstrated every six months;
	  o Compliance with generic and service specialist standards is required at a set point during a three year period; and
	  o Consumer related incidents and feedback are reported.
	– Generic standards cover: safe environment; consumer focus; workforce; incidents and feedback; consumer information; and governance.
	– Service specialist standards apply by type of service provided.
	– Core monitoring requires organisations to self-report every six months; desk-top reviews are conducted by government including consumer feedback and incident reports; and service reviews.
	– Changes to Tasmania's framework are being implemented following an evaluation of its effectiveness. Under the new Quality and Safety Framework there will be a requirement for departmental staff to conduct one site visit per annum with more frequent visits if required.

Victoria	– Victoria is implementing a single set of Department of Human Service Standards which replace the Industry Standards and Outcome Standards for Disability Services. The Standards can be summarised as follows:
	  o Empowerment
	  o Access and Engagement
	  o Wellbeing
	  o Participation.

	– The standards:
	  ○ acknowledge people's rights;
	  ○ focus on measurable outcomes, including client outcomes;
	  ○ include standards that are clear in intent and few in number
	  ○ encourage continuous quality improvement;
	  ○ incorporate the strengths of the existing program standards;
	  ○ focus on improving services and creating greater consistency across services for clients; and
	  ○ seek to reduce administrative duplication.
	– State wide application of independent monitoring of disability service providers commenced in March 2010. All disability service providers were required to undertake a certification audit by 30 June 2012, and be certified compliant by 31 December 2012. From July 2012, disability service organisations that provide services directly to clients will be required to be accredited by a department endorsed independent review body once every three years and need to demonstrate compliance with the new DHS standards. This accreditation will review both service provision and the organisation's governance and management.
	– The standards contain a combination of structure, process and client outcome indicators to support the need for quality to be evidenced not only in a service provider's policies, procedures, and training but for quality to also be represented in practice through the outcomes achieved for clients. Specific indicators have been developed for disability services.
	– Full compliance with the standards will be a requirement of registration under the Disability Act 2006 (Vic) as well as a requirement of service agreements with disability service providers.

Western Australia (WA)	– Government funded service providers are expected to progressively implement strategies to help consumers achieve outcomes including 'aspirational' outcomes. – Each service outcome (accommodation support, advocacy, alternatives to employment, disability professional services, family support services, local area coordination, and recreational services) have performance indicators to measure quality. – Nine standards cover: service access; individual needs; decision making and choice; privacy, dignity and confidentiality; participation and integration; valued status; service management; and protection of human rights and freedom from abuse and neglect. – Providers must conduct an annual self-assessment against their outcomes, with consumer input. Baseline assessment surveys occur every five years, including surveys of clients and performance reporting. Independent evaluation and audit services are undertaken every three to four years, and financial audits as required.
Commonwealth Government	– All disability employment services must meet the requirements of the independent quality assurance system to receive funding from the Commonwealth Government. – The legislation containing this requirement is the Disability Services Act (1986). – The Quality Strategy for disability employment and rehabilitation services was introduced in 2002. All Commonwealth Government funded services

	were required to be independently certified against the 12 Disability Services Standards by December 2004. – The objectives of the Quality Strategy are to: ○ give people with disability confidence in the quality of service delivery and employment outcomes achieved by Commonwealth Government funded disability employment and rehabilitation services; ○ ensure all services meet, as a minimum, the Disability Services Standards; ○ make the assessment of service quality more objective and measurable; ○ link certification to funding; ○ reduce government intervention in the day to day operation of services; and ○ assist services to continuously review and improve the services they deliver.

Table 6 below is a snap-shot summary of the quality assurance systems approaches across the State/Territories.

Table 6 – Summary of Quality Assurance approaches taken across jurisdictions. [27]

Frameworks	Underpinned by principles	Connected to standards	Self - Assessment	Independent Assessment	Performance Measures	Mandated for Sector
Cwlth	✓	✓	✓	✓	✓	
ACT	✓	✓	✓	✓		✓
NSW	✓	✓	✓	✓	✓	✓
NT	✓	✓	✓		✓	
QLD	✓	✓	✓	✓	✓	✓
SA	✓	✓	✓	✓	✓	✓
TAS	✓	✓	✓	✓		✓
VIC	✓	✓	✓	✓	✓	✓
WA	✓	✓	✓	✓	✓	✓

Source: KPMG 2012 and additional information provided by States/Territories.

Productivity Commission Report

Following general community concern, the issue of the long-term care and support of people with a severe or profound disability was referred to Productivity Commission (PC) in February 2010. The Terms of Reference (TOR) included an assessment of a National Disability Long-Term Care and Support Scheme, including consideration of:

- the cost and benefits;
- feasibility;
- the range of support options;
- the package of care services for a person's lifetime;

[27] KPMG Victorian Department of Human Services, National Disability Insurance Scheme Quality Assurance Project Revised Draft Report, July 2012, page 25.

- assistance with decisions about support; and
- support for employment where possible.

The PC's final report, Disability Care and Support, was released on 10 August 2011.

The report found that the current disability support system is underfunded, unfair, fragmented and inefficient, and gives people with disability little choice and no certainty of access to appropriate supports.

In 86 recommendations, the PC recommended that there should be a new National Disability Insurance Scheme (NDIS) that provides insurance cover for all Australians in the event of significant disability, including funding for long-term high quality care and support for people with significant disabilities. Recommendations also included the establishment of a National Injury Insurance Scheme (NIIS).

Problems identified in the PC's report

'People with disability and their families face many social and financial challenges and, as a group, are among the most disadvantaged in Australia… there appears to be a strong link between observed disadvantage and a lack of support services.' 'Support levels are generally insufficient and the provision of support is often inequitable – this places greater costs on people with a disability and their families'.[28]

The PC noted a range of problems and systemic inefficiencies with the current arrangements for the care and support of people with disabilities that result in poor outcomes and lack of support, as well as constraining individual's decisions on where and how to live, is unsustainable and increasingly unstable. In summary the PC found that the disability support sector[29]:

- does not have clear coverage for disabled people;
- limits consumer choice - choice is generally not a common aspect of the disability support system as many decisions are made by support workers, service providers or governments;
- is inequitable - coverage is dependent on place of residence;
- is underfunded (by about $6.5 billion a year) and economically unsustainable - with long waiting lists;
- fails to intervene early and consequently adds to long term costs;
- is fragmented, uncoordinated and without portability across borders and support providers;
- lacks person-centred planning and a general lack of consumer choice. It disempowers and provides little choice to the people it purports to support and who are best placed to determine their needs and timing. The sector uses out-dated service models which distort allocation decisions;

[28] Productivity Commission, page 119.
[29] Productivity Commission, pages 11 and 111 -155.

- devalues family and carers and has little engagement with the community. The lack of certainty around waiting times and the availability of supports mean that families cannot plan for the future;
- is inefficient with weak governance. There is a lack of essential frameworks that would allow the system to identify and solve problems. These include a strong governance structure and data systems;
- has little planning of future needs, and provides people with little confidence about the future and whether services will or will not be available; and
- provides poor evidence base with little information and poor data collection for disability services. Currently the availability of data is not sufficient, especially given its importance to efficient management and policy development and does not support transparency and efficient management.

The PC provided greater detail on why real change is needed (Chapter 2):

Social isolation - the PC found that social isolation affected people with disability and their families at a disproportionately high rate – while most people with disability did participate in at least one activity outside of the house, some people did not and people with profound core activity limitation were nine times more likely not to participate than the general population.

Low labour-force participation– the PC found significant differences in the levels of education and training among people with disability. People with disability and their carers are also less likely to participate in the labour force (31 per cent of people with severe or profound core activity limitation, compared to 54 per cent of people with disability and around 83 per cent of people without disability). Informal carers tend to have less capacity for paid work than non-carers, and the labour force participation rate for primary carers is only 54 per cent compared to 77 per cent for non-primary carers and 80 per cent for non-carers.[30]

Reliance on public housing - people with disability are more likely to live in public housing than the wider community, while those in private market housing face constrained accommodation prospects due to lower average incomes.

Health and Relationship issues - Carers are also disadvantaged with significant differences found in their physical and mental health. Many families caring for people with disability experience relationship breakdowns with a higher probability of separation among carers. This often results in carers being the sole provider of informal care.[31]

Unmet needs and reliance on informal care– the PC found that most people who require assistance with core activities had their needs fully met but with informal support alone. Informal support that often fills the gap conceals an underlying unmet need for formal support. Many needs were partly met or not met at all by formal support. Providing

[30] Productivity Commission, page 115.
[31] Productivity Commission, page 119.

intensive informal support can have an impact on primary care givers with most indicating more need for support ranging from emotional and financial support to respite.[32]

Long waiting periods – the PC noted that there is a likely underestimate of overall unmet need as many people do not apply for support due to excessive and uncertain waiting times or as the service is simply not available. Further, some support is provided from other less appropriate services such as the number of younger people with disability in aged care homes and in long stay care in hospitals. People often wait for services indefinitely since there is no certainty about when their support needs will be adequately met. Waiting times for basic support are often several years with longer waiting periods for supported accommodation, (several years) and therapies (12 to 18 months) which then impacts on therapeutic outcomes.

Uncertainty regarding future - lack of certainty over the provision of funding means that continuity of services into the future is often unknown, and as a result, people are unable to plan for the future.

Ageing carers - further, evidence suggests that the reliance on ageing carers is growing due to an ageing population profile as well as the longer life expectancy of people with disability. Consequently, after years of struggle, many carers are forced to relinquish their adult child into State care. [33]

Poor information - information is lacking regarding the system, its quality or appropriateness. People with less common conditions often lack information and support and the level of support accessed dependent on whether or not a person qualified for a particular program.[34]

Poor timeliness of support – the timeliness of support is important as it can reduce or prevent further injury. Long delays result in reduced independence and participation, depression and helplessness, save money from disability service budgets over the longer term. Often these kinds of potential savings are not realised due to separation of service areas or because relevant appliances are unavailable. [35]*Regional disparities within jurisdictions* – participants in rural and remote areas within jurisdictions face poorer provision of supports than would be available to cities and metropolitan areas. Often people in non-metropolitan areas either have to go without supports or pay to travel long distances to receive supports[36].

State and Territory variations

Funding and coverage variations and trade-offs - the PC also observed variation in the amount of funding per service user and service coverage (the number of people using each type of support as a proportion of the potential population). The PC noted the trade-off

[32] Productivity Commission, page 125.
[33] Productivity Commission, page 133.
[34] Productivity Commission, page 150.
[35] Productivity Commission, page 153.
[36] Productivity Commission, page 138.

between coverage and expenditure per service user - more support to fewer people or less support to more people – and noted that no jurisdiction has an absolute advantage in both coverage and funding per service user.

Further, the PC noted that the combined coverage for all support varied significantly between jurisdictions showing 'that a considerable majority of the potential population do not receive any such services'[37] –Table 7 below.

Table 7 – PC[38]: Funding per service user and service coverage, 2007-08 (Commonwealth State/ Territory Disability Agreement/National Disability Agreement services)

	NSW	VIC	Qld	WA	SA	TAS	ACT	NT
Accommodation								
$ per user	114,809	80,340	62,786	65,523	40,425	68,598	105,562	79,546
% coverage[39]	3.1	4.6	3.7	4.6	8.5	6.3	2.9	2.4
Community Support								
$ per user	6,878	5,730	6,844	5,579	3,342	4,329	4,199	6,601
% coverage	9.3	20.9	8.3	15.4	26.2	13.7	27.9	14.0
Community Access								
$ per user	15,899	14,533	14,815	8,606	4,545	11,705	14,769	9,657
% coverage	5.0	8.0	5.2	5.0	10.6	8.6	3.8	2.9
Respite								
$ per user	16,505	5,276	12,140	8,734	6,581	26,539	18,689	11,190
% coverage	2.7	7.5	3.1	3.8	3.1	1.7	2.7	2.0
All Services								
$ per user	34,440	19,404	26,640	21,261	13,244	24,294	16,296	15,384
% coverage	14.6	29.0	13.2	20.4	30.1	22.9	30.6	20.5

Source: SCRGSP (2011) Tables 14A.5, 14A.12, 14A.15.
Note: the mix of services is different within categories across jurisdictions. For example, in Victoria, the Accommodation Support figure includes a wide range of quite different accommodation types – large residential/institution, hostels, group homes, attendant care/personal care, in-home accommodation support, alternative family placement, other accommodation support. Data for Vic, Qld and WA includes Psychiatric Disability Rehabilitation and Support Services activity which is not included in other jurisdictions.

Funding level variations within States and Territories – the level of funding provided for disability support services also varies between regions within jurisdictions. The PC provided as an example HACC services in Victoria where, for historical reasons, funding per potential population varied between regions by as much as 35 per cent. It also noted that people in remote areas were also less likely to use government funded services since less service per potential population were available.[40] Similarly, respite in NSW is heavily influenced by regional location since, because of historical reasons, services are unevenly distributed so that the chances of access depend in part on where a person lives.

Consequently, people in non-metropolitan regions either go without, or travel long distances to receive support. Because of targeting, cost efficiency and population density,

[37] Productivity Commission, pages 137-138.
[38] Productivity Commission, page 138.
[39] Coverage - Users of total CSTDA/NDA State/Territory delivered disability support services (aged 0-64 years) as a proportion of the total estimated potential disability population (revised method).
[40] Productivity Commission, page 138.

often people in non-metropolitan areas are also likely to be lacking other human and support infrastructure meaning that they go without any form of support.

Inefficiencies due to overlaps and gaps – the PC noted that duplication of systems across jurisdictions has its advantages but also results in inefficiencies, are barriers to crossing State and Territory borders[41].

In addition, even within jurisdictions, services are delivered by a multitude of programs that are separately funded and managed. Programs often lack certainty over funding, are uncoordinated in regard to overlaps as well as gaps in services, and add to complexity and navigational issues for users since people need to deal with a number of programs and agencies to receive the full suite of services.

The PC's vision for the provision of disability support in Australia

The PC noted that broad structural change is as important as adequate funding in improving outcomes for people with disability and their families. In its report, the PC made 79 recommendations about the NDIS and its administration, and seven for a National Injury Insurance Scheme (NIIS).

While the NDIS would interface with the NIIS, recommendations concerning the NIIS are being dealt separate to and independent of the NDIS. In essence, the NIIS would provide for the lifetime care and support needs to people who acquired a catastrophic injury from an accident.

The NDIS would apply to all Australians with a disability. It would provide information and referrals, and provide 'funded support packages' for people with significant and permanent disability whose assistance needs could not be met without taxpayer funding.

The NDIS would provide 'reasonable and necessary' support across the full range of long-term disability support currently provided by specialist providers, as well as support the development 'by the market of innovative support measures'. Services such as health, public housing, public transport, mainstream education and employment services would remain outside of the NDIS with the NDIS providing referrals to these services.

Income support would not be provided by the NDIS (continued under the Disability Support Pension by the Commonwealth Government).

Importantly, the PC recommended that the assessment of 'reasonable and necessary care and support needs' be across a 'broad range of life activities, and should take account of an individual's aspirations and the outcomes they want to achieve' (recommendation 7.1).

Funds for the NDIS would be provided into a National Disability Insurance Premium Fund from which around 410,000 existing people with disability as well as newly eligible people would receive direct scheme funding. The PC estimated that the NDIS would cost about

[41] Productivity Commission, pages 145 – 148.

$13.6 billion a year, broadly an additional $6.5 billion per annum (ranging from $5 to $8 billion a year) to the approximately $7 billion being currently provided.

Because of the complexities of implementation, the PC's vision was that the NDIS would be rolled out in a few regions in Australia in mid-2014 and would be progressively extended to be fully operational covering all Australia by 2018-19 (recommendation 19.1).

How the NDIS would operate under the PC's vision

The PC envisaged an insurance based system. The NDIS would comprise three tiers:

> **Tier 1** – All Australians would be eligible to be covered by the NDIS in the event of a disability. All taxpayers would share the cost of disability support services provided by the NDIS through taxation;
>
> **Tier 2** – All Australians with a disability (about 4 million) and their carers/families (about 800,000) would be provided information and referral services including information about the most effective care and support options, linkage and referral to cost-effective services; and
>
> **Tier 3** – All Australian people (currently about 410,000) with a permanent disability or long term limitations (intellectual, physical, sensory, psychiatric who have significantly reduced functioning); who require and would benefit from early intervention; and people with significantly reduced functioning in self-care, communication, mobility or self-management who require significant ongoing support.
>
> Assessment of people with disability would identify the support required to address an individual's 'reasonable and necessary' care and support needs across a broad range of life activities. Insurance principles would be used to estimate the cost of reasonable and necessary support and services, taking into consideration the aspirations of the individual and his/her carers/family.

Based on the assessed level of disability, as well as individual aspirational goals, an 'individual support package' would be determined for the person with disability.

The 'individual support package' could provide a range of supports including aids and appliances, home and vehicle modifications, personal care, community access (including learning and life skills development), respite care, specialist accommodation support, domestic assistance, transport assistance, supported employments services and specialist

transition to work programs, therapies, local area coordination and development, crisis and emergency support, and assistance dogs.

In contrast to the current arrangements, a key change envisaged by the PC is that people with disability would have options for exercising choice – choice of: providers, organisations acting as intermediaries, the ability to purchase directly the detailed items in the 'individual support package' that best meets the preferences of the person with disability, or any combination including the capacity to employ support workers (though not close family members).

In short, a person with disability would use their 'individual support package' to purchase the goods and services he/she requires, including support goods and services from one or more existing disability support providers (such as supported accommodation, respite care, early childhood intervention, learning and life-skills development), as well as other providers more broadly as available to the general community (such as domestic assistance). The assistance for a person with an individualised support package would include referrals to mainstream services (such as health - clinical support, education) but not include funding for these. Providers of existing disability support services and providers more generally would respond by supplying the goods and services that are required to support people with disability. The services of a third party to manage and coordinate these on behalf of the individual could be included in the 'individual support package'.

The PC's vision for disability services therefore involved broadening the market for disability support services to include the full range of existing and possible providers of support and providers available to the general community.

The PC envisaged that the NDIS be administered by a National Disability Insurance Agency (NDIA), an independent Commonwealth statutory body at arm's length from governments overseen by an expert board with members chosen for their commercial and strategic skills by State/Territory and Commonwealth governments. The Board would be advised by an advisory council comprising representatives from people with disabilities, carers, suppliers of equipment and services, and State/Territory service providers.

A council would advise the NDIA on such matters as controlling the compliance burdens on providers, people with disabilities and carers, and ensure plain English forms, letters and emails.

The NDIA would establish service charters that specify the conduct of the NDIA itself, and specialist service providers and disability support organisations.

The NDIA would support the decisions made by people with disability. It would: administer a quality framework that would provide for complete, nationally consistent standards with application to all service providers and support organisations; encourage best practice; provide consumers with information about the quality and performance of providers; and administer an innovation fund that providers would use to develop and trial novel approaches to disability services.

The NDIA would administer robust data reporting by providers and participants, and systems to guide financial management, inform decisions, monitor and evaluate outcomes and enable performance monitoring. It would enable independent research by making the data publically available (subject to confidentiality, privacy and ethical considerations).

The NDIA would identify areas of disability workforce shortages and strategies to address these. It would be independently reviewed with any changes subject to independent assessment of the impacts and implemented through explicit changes to legislation,

The PC made additional recommendations regarding the delivery of disability support to Indigenous people. These included early intervention and prevention (without duplicating relevant programs), block funding to suitable providers where services would not otherwise exist, fostering smaller community-based operations, employing Indigenous staff, encouraging innovation and flexibility including with access to support services, while being mindful of other measures addressing Indigenous disadvantage throughout Australia.

The PC also envisaged a gradual implementation to allow for legislation, and an opportunity to develop the detail and an orderly transition from the current arrangements.

Overall the PC calculated that in addition to the about $7.1 billion currently provided by governments for disability support services, a further $5 to $8 billion a year would be required for a NDIS.

The PC also noted, however, that the proposed NDIS would be 'too large and complex to implement fully at a single start date. It would need to be rolled out in a carefully staged way.'[42] This is because the NDIS and NIIS are 'on a scale much larger than the sum of all current State-based disability and accident arrangements', with different pathways and contingencies possible such that no matter how careful the planning, the introduction of the NDIS 'will inevitably encounter some early difficulties.'[43]

Governments consideration of PC report to date

In response to the PC Report, at its 19 August 2011 meeting, **COAG agreed on the need for major reform of disability services in Australia through an NDIS**. All governments recognised that addressing the challenges in disability services will require shared and coordinated effort.

At its 13 April 2012 meeting, COAG developed high-level principles to guide consideration of the PC's recommendations, including for foundation reforms, funding and governance, and to maximise the benefits through a market-based approach to disability support services.

COAG agreed to progress quickly the measures agreed as part of the National Disability Agreement that have also been identified as foundation reforms for a NDIS, including development of a national assessment framework, nationally consistent service and quality

[42] Productivity Commission, page 929.
[43] Productivity Commission, page 921.

standards for the disability services sector and a comprehensive national disability services workforce strategy.

At its 25 July 2012 meeting, COAG noted progress towards establishing the NDIS from July 2013, and that in-principle agreement had been reached between the Commonwealth, South Australia, Tasmania and the Australian Capital Territory for a launch to commence from July 2013 as the first stage to an NDIS. Since that date, NSW and Victoria have also agreed launch sites.

The jurisdictions agreed to engage closely in the implementation of the first stage, noting this will inform the move to a national insurance-based approach to disability care and support. Further, the jurisdictions agreed to work together on the development of Commonwealth legislation to establish both the scheme and a national launch agency to administer the scheme during the launch phase.

The agency would be responsible for managing Commonwealth and State/Territory funds in a single national pool, and undertaking planning, assessment and approval of individual support packages.

The jurisdictions agreed that participants in the launch sites will receive ongoing support until a decision is taken to move to a full NDIS. All governments also agreed that the funding and governance arrangements agreed for launch did not create a precedent for the full scheme.

STATEMENT OF THE PROBLEM

Implementing the PC's vision for an NDIS would involve significant changes to the market for disability support by creating a nationally consistent framework that empowers people with disability with choice and control about their life, their goals and outcomes, and the disability support they receive.

The PC's vision will change the disability support sectors:

- **from** meeting disability needs with **programmatic based services provided**, regulated and generally **funded by governments directly to providers**,
- **to a national framework that empowers individuals to exercise choice and control** over the support he/she receives to achieve his/her goals and is based on an insurance approach. People with disability would have the choice to obtain the support they need from both traditional disability support service providers, as well as more broadly from general services, and be able to apply funding in more creative and personalised ways, with **funding provided to them based on their assessed needs and goals**.

This would necessitate fundamental changes both for consumers and those organisations and businesses that currently provide disability support services, particularly those 'block funded' by governments[44]. Other suppliers more generally may also be affected.

Many facets of the new market for the provision of disability support were canvassed in the PC's lengthy report. However, consideration of the PC's vision will involve considerably more detail, including in the transition arrangements that would take consumers and disability service providers from the current jurisdictional based government arrangements, to one national arrangement that interlinks with other mainstream services (whether State/Territory or other Australian government) and legislative requirements, without failing to provide the current support available.

In considering the PC's recommendations and the design of a NDIS, **COAG agreed** (on 13 April 2012) to a set of guiding principles, including that:

- governance should be **nationally consistent**, transparent and accountable, managing life-time costs of care and support through insurance principles, and to **"maximise the benefits of a market-based approach to disability support services, including consideration of a costing structure that fosters competition and choice, and**

[44] 'Block funding' by governments is funding that is provided by governments (Commonwealth and/or State/Territory governments) either through a grant to the service provider, or payment for the procurement of a service. Providers of disability support services may be funded by both mechanisms – **grants** (money that is intended to assist the recipient organisation to achieve its goals, as well as to promote one or more government policy objectives and which the recipient organisation is required to act in accordance with any terms or conditions specified in an arrangement. A granting activity can be one-off or ad hoc, be made as a result of a competitive assessment, or provided specified criteria are satisfied); **procurement payment** (payment made for the procurement of property or services, including the procurement of the delivery of a service by a third party on behalf of a government agency). Both payments are made under contract between the government agency and recipient that specifies the terms and conditions of the payment/s, and that may be one-off, for a period of less than one year or several years.

supports an individualised and localised approach that takes account of legitimate cost variation for different locations and client groups"; and

- all jurisdictions commit to ensuring continuity of support to people with disability, and the ongoing development of the disability services sector capacity to meet the diverse and individual needs of people with disability.

The **fundamental problem** is determining what kind of a market would be required – that is, the design detail of the NDIS and how this would work on the ground. In turn, this detail will determine the degree of impact on consumers of disability supports – their capacity to make their own choices and exercise control over who provides support and how it is provided - as well as regulatory and other impacts on providers of disability supports.

A **key consideration** in resolving the fundamental problem is finding a 'market-based approach' that **appropriately balances**:

- recognition of individuals with diverse needs;
- control and choice for consumers (the users or consumers of disability supports) – recognising their equal right to self-determination and the right to participate fully in society;
- the nature of government intervention and regulation; and
- competition for the provision of disability supports.

Each degree of intervention has advantages and disadvantages and different regulatory impacts on key stakeholders and the broader market.

In summary, the problem being addressed is the change from the current State/Territory based arrangements to a market based approach to disability supports services that provide the participants with choice and control with necessary safeguards in place.

The case for government intervention in a market for disability support

A related consideration is determining the extent that governments should intervene in the market for disability support, that is, in the transaction between a consumer's demand for disability support services and its supply by providers; and the degree that regulatory safeguards are provided. Without any government intervention, the market is likely to fail to provide the quantity and quality of disability supports required, when and where required and at a price that would be affordable for consumers and governments.

People with disability have an equal right to participate fully in society and to direct their own lives and, unless proved otherwise, have the capacity to act in their own best interests. Internationally and in Australia, research has shown that reforms to disability and human services which embed greater choice and control for service users have been found to result

in better life outcomes for people with disability, as well as more efficient and effective service outcomes.[45]

In addition, in all markets, consumers generally have less than perfect information to undertake their own 'due diligence' when they wish to purchase a good or a service. Nevertheless, this is an easier task for consumers when the market has been in existence for a while and is stable, the rules are known, the arrangements are not complex, and interfaces between the different suppliers and other players are simple or well-understood.

However, the current provision of traditional disability support is a complex patchwork that has been loosely developed by governments in response to needs identified directly by the community or by governments responding to community needs, and that interacts in varying degrees of effectiveness and efficiency with mainstream services.

Also, because the majority of disability support service providers rely on block funding from State/Territory governments as their major source of income to continue their day to day operations, the current arrangements are more responsive to the requirements imposed by State/Territory government funding than the needs of people with disability. The move to the provision of a broader, nationally uniform market for disability support driven by consumer needs and choice in an effective, integrated and efficient manner – the NDIS - will take some time to establish and an even longer period to mature.

Participants of the NDIS will need appropriate information about the choices available to make informed choices, and there would need to be a diverse supply of support options.

In part, this is because the people the disability support market would serve are diverse and have a range of different disability types, degrees of severity and complexities. People with disability have varying capacity to inform themselves of the support available. Where some people may be well placed to determine the best providers for the good or services outlined in their 'individualised support package', some may be ill equipped without support to determine which support providers best meet their needs or best provide continuity of care into the future. Others would rely heavily on the input of carers/family, or rely on other third parties. Furthermore, some people with severe disability, who because of their circumstances have limited outside interaction, may be in the care of a support provider for the entirety of their daily living and are therefore entirely reliant on that one service provider.

In part, this would be because of the complexity in the range of suppliers of disability support, and its interface and interaction with mainstream services. The current complexity is a consequence of the genesis and evolution of disability support services, the different governance arrangements in each State/Territory, governance arrangements between different disability programs within State/Territories, different range and number of disability support and other programs within a region, as well as different access

[45] KPMG for NSW Ageing Disability and Home Care, Draft Policy framework for Choice and Control in the National Disability Insurance Scheme, 24 July 2012, page 9.

arrangements for particular support providers. Add to this the changing mix and circumstances of people with disability in different geographic regions, as well as interface with changing arrangements and products in mainstream services.

In some areas, the market may not provide disability support or fail to provide sufficient competition for the range of support needed because of insufficient demand and/or higher input costs resulting in either no disability support service or a limited number of providers with limited choice in support services (monopoly to oligopoly situations). Examples where this may be a possibility are the Northern Territory (or most likely in remote areas), and parts of Queensland. In addition to geographical factors, demand and costs may limit the range of some highly specialised services and those provided may be limited to metropolitan locations only.

Limited numbers of support services may result in limited choice for participants and may allow providers greater market power. The outcome may likely be less responsiveness by providers for disability support, a higher price and poorer quality for similar support services in non-metropolitan areas compared with metropolitan areas, or for specialised services, meaning that individualised support packages would be more expensive for governments. Some situations may result in the provider having greater choice in who they would provide services to. These issues are problematic since the result is inequity in cost and quality, and inequality of access for disability support for people with similar disabilities.

POLICY OBJECTIVES

Recognising that the needs of people with disability are diverse, and that change from the current system will involve complex transitions for people with disability, providers and the workforce, the reforms' objectives are to:

- maximise the quality of life for people with disability;
- minimise the impacts of disability on social and economic participation by people with disability and their carers/families, and strengthen sustainable natural support networks;
- provide support to eligible people with disability in an equitable, appropriate, efficient and cost-effective manner;
- maximise the responsiveness of providers (including specialist disability and generic mainstream providers) to the choices of people with disability; and
- minimise the regulatory burden in the market for disability support in a nationally consistent framework.

STATEMENT OF THE OPTIONS

There are four broad market-based options by which reforms to maximise the quality of life for people with disability by giving 'choice and control' to people with disability could be achieved.

Regardless of the option pursued, legislation would be required to underpin the structural and governance aspects of the NDIS, including the establishment of an administering agency.

An outline of the proposed legislation is at **Attachment A.**

The proposed legislation would apply to all Options since it concerns (see Table 8 below):

- the rules determining who can access funding under the scheme;
- the development of a plan for a participant;
- the registration and other rules that would apply to support and/or plan management providers;
- interaction of the scheme with other compensation schemes;
- establishment of the agency and its governance arrangements; and
- other administrative matters.

An administering agency would work to actively connect people with disability to local community supports and mainstream services, and where necessary undertake goal based planning of the needs of people with disability. This process would take into account personal factors, functional limitations and an individual's circumstances to identify reasonable and necessary supports. These would be outlined in an 'individualised support package'.

Under all options, people with disability under 65 years of age would be assessed and those meeting the requirements would be provided an ISP tailored to their individual goals and needs that provides for 'reasonable and necessary supports'. Participants of the NDIS would, however, use their ISP to obtain their supports as set out in each the options outlined below.

Under Options 2, 3 and 4, participants would use the funds to purchase the supports outlined in their ISP, which would be based on the reasonable costs of procuring those supports. The dollar value attached to individual support packages would vary depending on participants' individual needs and circumstances, as well as where they live (since costs for identical items may increase away from metropolitan areas) and whether additional costs such as travel are required to obtain the 'reasonable and necessary' supports. Under all options, a participant or the administering agency can request a review of the participant's ISP leading to the development of a new plan. Information about suppliers of disability support and other supports would be provided to people with disability to inform choice. Information regarding access to mainstream services would be available. The NDIS

would not replace or fund mainstream services (such as health, education) nor replace sustainable natural supports.

Under all options, all existing State/Territory regulatory arrangements would continue under the NDIS at the launch sites in the first instance. When these arrangements change in the future, depending on the nature of the changes, additional RISs may be required at that time. The Implementation and Review section of this RIS provides more detail.

Under all options, participants would not be precluded from choosing providers that met or met to a higher level the disability regulatory standards broadly outlined in each option.

Further, under all options, the NDIS Bill will also make provision for subordinate legislative instruments – the NDIS Rules – to be made to provide further detail on how the scheme will operate. These instruments will be developed through consultation with the States and Territories, and other stakeholders and may require further RISs.

In addition, under all options, some services may continue to be 'block funded', as fee-for-service contracts between the administering agency and the providers. This is because of 'thin markets' (where there are insufficient numbers of participants to support a service provider or a particular specialised provider) or where it is more cost effective to do so. Specific rules and regulations still to be determined would provide for complaints concerning providers, participants and the administering agency, dispute resolution mechanisms and decision review mechanisms to supplement consumer protection legislation that is applicable generically.

The following table summarises the NDIS Bill including indicating its regulatory aspects.

Table 8 – Regulatory aspects of the NDIS Bill [46]

Chapter 1 - Introduction	Not regulatory
Chapter 2 – Assistance for people with disability and others	Not regulatory
Chapter 3 – Participants and their plans:	
• Becoming a participant	Not regulatory[47]
• Participants' plans	Regulatory – since it allows participants to self-manage their own funding with implications for both participants and providers.
Chapter 4 - Administration	
• General matters	Not regulatory
• Confidentiality	Not regulatory
• Registered providers of supports	Regulatory – provides for registration of providers depending on the launch rules. The launch rules may require a RIS depending on the regulatory burden imposed by the rules.
• Children	Not regulatory

[46] The definition of 'regulatory' in this context is with respect to the COAG's Best Practice Regulation Guidelines.

[47] Under the COAG best practice regulation guidelines, changes are regulatory if measures 'would encourage or force businesses or individuals to pursue their interests in ways they would not otherwise have done' and the impact is significant. Participation in the NDIS is not mandatory for people with disability, however, providers of disability supports will be impacted to a significant extent by the NDIS.

• Nominees	Regulatory – provides for plan nominees who may be third party participants' plan managers.
• Review of decisions	Not regulatory
Chapter 5 – Compensation payments	
• Requirement to take action to obtain compensation	Not regulatory
• Agency may recover compensation…	Not regulatory
• Recovery from compensation payers and insurers	Not regulatory
• CEO may disregard certain payments	Not regulatory
Chapter 6 – NDIS Launch Transition Agency	
• NDIS Launch Transition Agency	Machinery of government
• Board of the Agency	Machinery of government
• Independent Advisory Council	Machinery of government
• Chief Executive Office and staff etc.	Machinery of government
• Reporting and planning	Machinery of government
• Finance	Machinery of government
• Miscellaneous	Machinery of government
Chapter 7 – Other matters	
• Debt recovery	Not regulatory
• General matters	Not regulatory
• Constitutional matters	Not regulatory
• Review of the Act	Not regulatory
• Legislative Instruments	Potentially regulatory - provides for the making of the NDIS Rules and regulations. May require a RIS depending on the regulatory significance of the rules and regulations.

The types of matters that may be covered by the NDIS Rules and the administrative arrangements of the Launch Transition Agency include:

- other types of safeguards for certain supports;
- the information technology system that may be specified in providing supports and claiming payments; and
- adherence to supplier guidelines.

Further Regulation Impact Statements (either COAG or Commonwealth Government, depending on the circumstances) will be developed where ever proposals are made which significantly change the regulatory environment.

As alluded to earlier, the RIS envisages the following options for the NDIS.

Option 1 – Choice limited to government funded providers

This option would limit participants' choice of providers of disability supports outlined in their ISP to providers directly funded by government in accordance with safeguard and quality standards.

The administering agency for the NDIS would provide information about relevant disability support providers and mainstream services available to the participant.

In the short term, existing safeguards and quality assurance systems and contract management requirements would continue in each State/Territory in accordance with the National Standards for Disability Services and other standards in place. The new National Standards for Disability Services are close to finalisation. In the longer term, the current arrangements could either be continued with responsibility for quality assurance systems and contract management retained by the State/Territory agencies, or replaced with a nationally consistent approach with responsibility for quality assurance systems and contract management taken by the administering agency.

The current reporting requirements of disability service providers to State/Territory agencies would increase to provide service event information by participants and reports would be forwarded to the administering agency. Over time, reporting requirements could be expanded to include information on participants outcomes achieved.

Since providers would continue to be block-funded, there would be no other registration requirements. Government would determine the price paid for the supports provided.

Option 2 – Choice from providers that meet regulatory standards.

Under Option 2, ISPs would be funded by the NDIS, that is, the needs outlined in an ISP would be converted to funds that are under the control of participants of the NDIS. Option 2 would enable participants to use their ISP funds to independently purchase disability support identified in their ISP from any provider that meets the regulatory requirements. That is, participants' choice of providers would be limited to obtaining supports from the range of providers (including existing and new disability service providers, community or generic commercial providers in the market more broadly) that meet defined safeguard and quality assurance standards depending on the sub-options (below).

There would be no block funding of disability support providers or other providers except to:

- ensure access to disability support services in some regional, rural or remote regions, as well as for the purposes of managing the transition to the NDIS; and
- those supports identified as more efficiently provided through a block grant arrangements.

Participants who, because of their individual circumstances, are unable to manage their ISP or who choose not to, would have their individual plan managed by an administering agency or third party (for example, a plan management agency).

The administering agency would provide information to participants about possible relevant providers, as well as general information and coordination to mainstream services.

There would be a set of prescribed reporting requirements from providers and from participants depending on the sub-options (below). As a minimum, the reporting requirements would provide sufficient information to alert the administering agency about any emerging gaps or risks, administer the scheme as well as to make payments where participants have chosen that payments for support provided as per their individualised support package be made by the administering agency.

Under this option, the administering agency may set a benchmark price for the supports it would pay where individual support packages are managed by the agency. If set, the benchmark prices would be determined by existing prices in the market. Providers of disability supports could charge higher prices though the administering agency may choose not to purchase from those providers.

There are three sub-options to Option 2:

i. a **minimum set of regulated** quality assurance, service standards and reporting requirements. This could be augmented by an additional level of industry self-regulation (for example, a code of conduct for personal care providers may include a requirement for minimum qualified staff for certain procedures; or
ii. **a higher set of regulated** quality assurance, service standards and reporting requirements outlined; or
iii. **regulation based on risk** - a **minimum set of regulations for less critical support** (such as lawn mowing, housekeeping) and **higher standards for support more critical** to the well-being and daily living requirements of people with disability (such as tube-feeding, intubation, personal care), as well as support for those people with disability who, because of their individual circumstances, are vulnerable to abuse or neglect – either because of their functional limitations or their social circumstances).

Under this Option (see Table 9), registration would be required for all providers with lesser requirements under sub-option 2(i), a higher requirement under sub-option 2(ii), or a combination depending on whether the provider was providing high risk supports or providing supports to participants at higher risk under sub-option 2(iii).

Table 9: Option2 – Choice of participants limited to providers that met a level of regulatory standards

<table>
<tr><td rowspan="2">High risk supports

Low risk supports</td><td>**Additional regulation** for providers:
○ **Op (i) min**, or
○ **Op (ii) high**, or
○ **Op (iii) high**
– Providers must be registered with the NDIS agency.
– Participants must choose from registered providers.</td><td rowspan="2">**Additional regulation** for providers:
○ **Op (i) min**, or
○ **Op (ii) high**, or
○ **Op (iii) high**
– Providers must be registered with the NDIS agency.
– Participants must choose from registered providers.</td></tr>
<tr><td>**Additional regulation** for providers:
○ **Op (i) min, or**
○ **Op (ii) high, or**
○ **Op (iii) min**
– Providers must be registered with the NDIS agency.
– Participants must choose from registered providers.</td></tr>
<tr><td>Supports risk/ Participant's risk</td><td>Participants at lower risk</td><td>Participants at higher risk</td></tr>
</table>

Option 3 – Choice limited only in higher risk circumstances

Similarly to Option 2 above, under Option 3 ISPs would also be funded by the NDIS, that is, the needs outlined in an ISP would be converted to funds that are under the control of participants of the NDIS. However, Option 3 would enable participants to obtain the support outlined in their ISP from any provider whether or not these meet minimum quality assurance and service standards, as well as from mainstream services**, except** for support more critical to the well-being and daily living requirements of people with disability (such as tube-feeding, intubation, personal care), as well as supports to participants who are at higher risk because of their individual functional limitations such as flowing from cognitive impairment and/or their social circumstances.

No additional regulations would apply to supports that are of low risk, more generic or mainstream support. The current generic regulatory frameworks (for example, Australian Consumer Law, Corporations Law, health accreditation and similar requirements) would provide generic protections to participants and businesses, and thus some assurance and confidence to participants for supports of lower risk.

Similarly to Option 2, under the option the administering agency may set a benchmark price for the supports it would pay where individual support packages are managed by the agency. If set, the benchmark prices would be determined by existing prices in the market. Providers of disability supports could charge higher prices though the administering agency may choose not to purchase from those providers.

There would be minimum reporting requirements from both participants (mainly acquittal of funds provided) and providers for low risk supports, however, registration would include sufficient information to enable payments to be made from the administering agency where participants have chosen to have payments made on their behalf by the agency or a third party. However, this would not preclude participants from choosing providers of low risk supports who meet disability service standards.

The NDIS administering agency would provide generic information about possible support providers (with disclaimers) and organise payment to providers where the participant chose to have their individualised service package managed by the agency.

Over time, reporting and other information could enable the administering agency to develop a 'my disability support' website to provide information on the quality and service standards of all providers. The amount of information available would be dependent on the reporting requirements and the information included on websites, as well as provider willingness to use their quality framework as a marketing feature more generally since it is likely that many providers who meet standards to a level greater than required would use this to their advantage.

There are **three sub-options available for higher risk supports and participants at higher risk**:

i. a **minimum set** of additional regulations (to the generic regulations already available) for providers that could be augmented by an additional level of industry self-regulation.
   - Within a minimum range of regulations, reporting requirements would be of a higher level compared with that for low risk supports from both participants (for example, acquittal of funds provided under ISPs) and providers; or

ii. a **higher set** of additional regulations.
   - There would be higher level of reporting requirements from both participants (for example, in addition to funds acquittal, participants may be requested to provide greater detail of the supports purchased with their ISP), and providers relative to sub-option 3(i).
   - Participants at higher risk, for example with significant cognitive impairment and for participants who are socially isolated, would be restricted to choosing support from a list of registered providers. Providers of low risk or generic support (such as lawn mowing) would be subject to meeting minimum requirements such as registering for payment with the agency and meeting background checks.
   - Where a participant has chosen to have their plan managed by either the administering agency or third party, providers of more critical support would be required to register with the agency and meet additional regulations.

iii. a **combination of (i) and (ii)** depending on the combination of risk of supports and participants at higher risk.
   - Under this sub-option, registration would not be required for providers beyond sufficient information to permit the payment of supports when done by the administration agency, unless for providing high risk supports or supports to participants at higher risk.

In summary, under Option 3, providers of high risk supports or supports to participants at higher risk would be required to register and: under Option (i) meet a minimal regulatory requirement, under Option (ii) a higher requirement, or under Option (iii) minimal to higher regulatory requirements depending on the level of risk.

Option 3 is summarised as follows:

Table 10: Option 3 - participants choose from all providers but limit choice to regulated providers for higher risk support and for higher risk participants

<table>
<tr><td rowspan="2">High risk supports

Low risk supports</td><td colspan="2">– Additional regulation for providers:
○ Op (i) min, or
○ Op (ii) high, or
○ Op (iii) min with high for the supports with highest risk.
Providers meeting regulations must be registered with the NDIS agency.
– Participants must choose from registered providers.</td></tr>
<tr><td>– No regulations other than generic required. However, participants could choose providers that meet disability quality standards.
– No provider registration except when participants choose administering agency or third party to manage/make payments their individualised support package.</td><td>– Additional regulation for providers:
○ Op (i) min, or
○ Op (ii) high, or
○ Op (iii) min with high for participants with highest risk.
– Providers meeting regulations must be registered with the NDIS agency.
– Participants must choose from registered providers.</td></tr>
<tr><td>Supports risk/ Participant’s risk</td><td>Participants at lower risk</td><td>Participants at higher risk</td></tr>
</table>

Option 4 – No limit to choice

Under Option 4 there would be no regulation in addition to the generic regulatory frameworks (for example, Australian Consumer Law; Corporations Law, health accreditation and requirements) that would provide participant and business protections, and thus some assurance and confidence to participants.

Support would be sourced by people with disability, their carers/family or third party acting on their behalf from a wide range of generic, mainstream services, community based

organisations and commercial enterprises as well as the existing disability support service providers.

Where a participant has chosen for their support to be managed by either the administering agency or other third party, providers would be required to register with the agency.

However, under this Option and unlike Options 2 and 3, there would be no intervention by the administering agency in the determination of prices that maybe charged by providers.

The administering agency would provide generic information about possible support providers (with disclaimers) and organise payment to providers where the participant chooses to have their individualised service package managed by the administering agency.

There would be minimal reporting requirements from both participants and some providers.

No additional requirements would apply to high risk supports and for vulnerable individuals.

Over time, reporting and other information could enable the administering agency to develop a 'my disability support' website to provide basic information (since the reporting requirements would not permit the development of more advanced information) on the quality and service standards of those providers whose service are more critical to the quality of living for some people with disability. It is likely that many providers would also use their quality framework as a marketing feature more generally since it is likely that many providers who meet standards to a level greater than required would use this as a competitive advantage.

Under this option, registration would not be required for providers beyond sufficient information to permit the payment of supports when done by the administration agency.

Comments are invited on the costs and benefits, advantages and disadvantages, and any other impacts both in the transition to an NDIS in the launch sites and, if introduced nationally, the longer term – please see Impact Analysis below and Attachment B.

IMPACT ANALYSIS (COSTS AND BENEFITS)

Having described the options previously, this section outlines the impacts of the four options on key stakeholders groups namely participants, service providers, State and Territory governments, the Commonwealth Government, and the wider community.

Option 1 - Impacts

The Market

- Participants would obtain their supports from providers who would be block funded according to the number of participants they provide services to.
- Government would determine how much to pay providers for the supports they provide through fee-for-service arrangements following a tender process.
- The price paid would vary depending on the location of the provider (metropolitan, regional, rural and remote), the number of participants likely to use that service, as well as the cost of the specialist service.
- Access to mainstream services (such as health, education) would continue with better information and coordination provided by a centralised information point through the administering agency so that it should improve access to these services for participants.

Option 1 would largely reflect the current market structures and incentives and would significantly mirror the status quo. That said, there is potential for the status quo to change if jurisdictions move away from block funding to other funding models ahead of any NDIS roll-out.

Participants - people with disability

Key benefits:

- Greater continuity of care as block funding would continue;
- The movement of participants to other locations could be facilitated, if the NDIS is rolled out nationally;
- Participants would be at less risk of exposure to less reputable providers since service providers would continue to be subject to existing safeguards and QA requirements in the medium to longer term.

Key costs:

- This option would not further the fundamental policy reform outcomes of individual choice and control.
- Inequity in access may continue since there may not be a provider of services in a particular region, or that provider may not meet the specific needs of the participant.

- The capacity of people with disability to make informed purchasing decisions about their supports would be restricted as there would be little additional incentive for providers to improve the range and quality of services on offer.
- The ability of participants to move to other locations would depend on whether providers at the new location have been block funded and have the capacity for the supports required.
- The ability to meet participants' goals would be limited by the programmatic range and types of supports funded by governments.

Participants would continue to be limited to obtaining support from those disability service providers that are funded by governments (State/Territory and/or the administering agency). As such, they would have more limited capacity to exercise control and choice over their supports whether or not these meet their specific needs, or to obtain a more diverse range of supports from the broader market. For example, assistance with garden maintenance would continue to be provided by a funded provider rather than through the services available in the market more generally.

Carers and families of people with disability

Key benefits:

- Unmet demand for disability support may improve to the extent that individual jurisdictions implement effective individualised funding for disability support and/or funding for disability support is increased.
- Potentially provides more uniform disability supports across jurisdictions, enabling carers and families with disability to relocate to other regions for work-related or lifestyle reasons.

Key costs:

- The ability to access individualised services would not alter materially relative to the status quo.
- Inequality of access and services not meeting aspirations would continue since services would be limited to those that are block funded and to the extent that individual jurisdictions enable individualised funding.

The extent that the situation for carers/families would improve would depend on the nature and range of support services available as funded by governments or as jurisdictions individually implement individualised funding. As such, it may be that informal carers would continue to shoulder a greater proportion of unmet needs under this option relative to Options 2, 3 or 4.

Providers

Key benefits:

- As block funding would continue, it would minimise the changes required and degree of disruption in all locations, including metropolitan, regional, rural and remote areas.
- Greater certainty in the provision of funding may enable specialist disability support providers to better plan their services.

Key costs:

- Barriers to entry to the market would continue to limit the number of new providers. Therefore there would be minimal impact on competition for disability support providers. Any changes to competition for the market for disability services would stem from changes to arrangements within States and Territories.
- The capacity of disability support service providers to make efficiencies and/or to innovate in their provision of support services would be limited.

State and territory governments

Key benefits:

- In the short term, there would be minimal disruption to existing disability support systems. State/Territory administering agencies would require a minimum amount of change. Therefore costs with regard to changing administrative arrangements would be minimised.
- Providers of disability support would already be known to government regulators.

Key costs:

- In the longer term, all block funding contracts would be transferred to the administering agency. The role of State/Territory governments would change. State/Territory governments would no longer be the funders of disability support services.
- Since government would continue to provide block funding, government would continue to generically set the price, quantity and quality of services provided.
- Government would continue to be a primary stakeholder for disability support service providers.
- Since this option would limit market based incentives, there would be greater emphasis on government regulation and compliance to ensure quality support services.
- In the short term, as State/Territories are at differing points and have different interpretations to individualised funding approaches, there would not be a nationally uniform disability support system so that jurisdictional variations would continue.

Commonwealth Government

Key benefits:

- In the short term, there would be minimal disruption to existing disability support systems since current administrative arrangements would continue.

Key costs:

- In the longer term, all block funding contracts would be transferred to the administering agency. .
- The administering agency would be funded through the Commonwealth Government.

Community

Key costs:

- The current outcomes for people with disability would continue thus allowing the continuation of the current issues and inequities.

Distributional impacts

- It would not be expected that there would be significant impact on the number and geographic distribution of providers or participants.
- Similarly, it would not be expected that there would be any pressure on the cost of providing support services (for example, due to wages paid to disability support workforce staff).

Irrespective of this option, any significant additional funding provided by government may place cost pressures on the provision of disability support services. This would depend on the timing of the funding increase, the existence of resource constraints in a region, and the flexibility with which resources may be utilised in this sector.

Summary

Table 11 summarises the qualitative costs and benefits relative to the status quo.

Table 11 - Summary of costs and benefits under Option 1 (relative to status quo)

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Cwth
Participants	Neg	Neg	Neg	Neg	Neg	Neg	Neg	Neg	Neg
Carers	Neg	Neg	Neg	Neg	Neg	Neg	Neg	Neg	Neg
Providers	x/Neg	x/Neg	x/Neg	x/Neg	x/Neg	x/Neg	x/Neg	x/Neg	x/Neg
State/Territory governments	x/Neg	x/Neg	x/Neg	x/Neg	x/Neg	x/Neg	x/Neg	x/Neg	x/Neg
Cwth Govt	x/Neg	x/Neg	x/Neg	x/Neg	x/Neg	x/Neg	x/Neg	x/Neg	x/Neg
Community	Neg	Neg	Neg	Neg	Neg	Neg	Neg	Neg	Neg

Neg = negligible.
x/Neg = If transferred to the administering agency, cost in short term, negligible in the longer term.

The expected impacts of this option are largely the status quo. While many States and Territories are at various stages of reform, and to the extent that any additional funding is provided that addresses unmet demand, this Option may not progress the circumstances of people with disability or their carers/family significantly.

We are interested in your views regarding whether you agree or disagree with the views, assumptions and conclusions drawn above.

Please also provide any further data/information available on the impacts outlined.

Please see Attachment B for further guidance on comments sought.

Option 2 - Impacts

The market

- Participants would be provided an ISP that would be determined by their individual reasonable and necessary needs and funded to enable the participant to obtain those supports in the area they live.
- Providers would have to meet regulatory standards.
- Participants would use their funded ISP to obtain the supports outlined in their ISP from any provider that met regulatory standards:
  - a minimum set of regulatory standards would apply under Option 2(i);
  - a higher set would apply under Option 2(ii); and
  - regulatory standards would vary depending on whether the supports were more critical to the well-being of participants under Option (iii) with higher standards applying to high risk supports or supports provided to high risk participants.
- The revenue generated by providers would be determined by the patronage of participants. This would be expected to change the incentives in the market and for providers to compete on quality and price of service provision.
- Providers in non-metropolitan areas, however, where there is insufficient demand for supports or where it is more efficient to do so (for example, where the administering agency is managing a sufficient number of ISPs) may continue to be block funded.
- The administrative agency may set a benchmark price for the supports that it will pay for, however this design decision has not been finalised. If the administrative agency does decide to set a benchmark price it would draw off existing prices in the market, and allow flexibility for providers to charge above that price if that was considered reasonable.
  - It would not prohibit providers charging higher prices, though the administrative agency may decide not to purchase from those providers where it manages the plan. If adopted, the price benchmarks would apply under this option (as well as option and 3).

- Under this Option (as well as Options 3 and 4) the use of ISPs to employ family members would be precluded except under limited circumstances.

Participants - people with disability

Key benefits:

- Participants would have a greater degree of choice and control relative to Option 1 since they could obtain their supports from any provider including non-specialist disability support providers that met the regulatory standards. Greater choice and control for participants would move some way from one-size-fits-all situation where participants obtain the support that is closest to their needs from services that are block funded, to services that may better meet their needs from support providers that are regulated.
- This option would also better facilitate movement of participants to other jurisdictions since their individualised support package would move with them and they could choose from any provider at a new location that meets the regulatory standards.
- There may be greater efficiencies and innovation (including continuous improvement) in the provision of supports relative to Option 1.
- This option would be expected to improve the wellbeing outcomes for many participants associated with self-directed funding, including higher satisfaction with life, as found by the PC[48], relative to Option 1.
- Participants would have confidence when choosing support that providers had been assessed against relevant standards. This option therefore minimises the risk to participants relative to Option 3 and 4.

Key costs:

- Participants would be limited in choice to those providers that met the regulatory standards. Under Option 2(iii) participants requiring higher risk supports or participants at higher risk would have least choice.
- This option would involve a greater degree of disruption to the current funding arrangements relative to Option 1 and therefore require some adjustment on the

[48] The Productivity Commission notes that 'evidence strongly suggests a wide range of positive wellbeing outcomes from self-directed funding for people with disabilities and their carers, including higher satisfaction with life, more independent living, better continuity of care and lower levels of abuse and neglect. Self-directed funding appears to cost no more than traditional models of care, and may well cost less.' (page 343).

The KPMG report 'NSW Ageing Disability and Home Care Draft Policy Framework for Choice and Control in the National Disability Insurance Scheme' noted that 'Internationally and across Australia, reforms to disability and human services systems which embed greater choice and control for service users have been found to result in better life outcomes for people with disability, as well as more efficient and effective services outcomes.' The report notes a number of research findings including: Lundsgaard, J (2005), Consumer direction and choice in long-term care for older persons, including payments for informal care: How can it help improve care outcomes, employment and fiscal sustainability, OECD, Paris; Ottmann G, Allan J and Feldman P (2009), Self-directed community agred care for people with complex needs: A literature review, Deakin University, Melbourne; Foster L, Dale S, Brown R, Phillips B, Schore J, and Carlson B (2005), Effect of consumer direction on adults' personal care and well-being in Arkasas, New Jersey and Florida, University of Maryland.

part of participants. This is because funding would be provided to participants rather than to the supports provider.

- Since choice is limited to providers that meet regulatory standards, individual support packages that include items that could be provided by generic services may be relatively more expensive because participants could only choose from regulated providers (for example, local lawn-mowing services would only be available if the provider met the required regulatory standards.
  - However, the extent of this would depend on the broader competition and market barriers under this option as well as any pricing benchmarks contemplated by the administrative agency.

In the ACT (a relatively small jurisdiction), about two to three people leave and about four to five people enter the ACT annually. However, data on the number of people with disability who would like to move to other jurisdictions is not available. Participants may wish to move either because of their carer/family circumstances (example, carer may like to take advantage of employment opportunities in another jurisdiction, or the climate or other environmental factors may alleviate the symptoms of disability).

SA's Evaluation of Phase One: Self-Managed Funding Initiative (70 existing clients) found that consumers reported a range of benefits from self-funding including increased control, flexibility, choice, enhanced dignity, empowerment and well-being; and many consumers reported an increased number of hours or sessions of supports received, and an increase in the range of types of services and supports obtained.[49] Among other finding, the report found that many consumers shopped around and engaged different service providers to obtain better value for their funding allocations, and felt that they were making more effective and efficient use of the funds available and, in some cases, receiving better quality services.[50]

Further information is sought from participants, providers and regulators on the potential impacts of this option under the NDIS.

Carers and families of people with disability

Key benefits:

- Since this option provides access to individualised services, the well-being of participants would be improved. As such, the capacity of carers and families to engage in economic and social participation should also increase relative to Option 1.
- The KPMG report[51] quotes the following as evidence of improved outcomes:

[49] Jenny Pearson and Associates Pty Ltd, Evaluation of Phase One: Self-Managed Funding Initiative Final Report, submitted to the SA Department for Communities and Social Inclusion, 29 March 2012, page ii.
[50] Jenny Pearson and Associates Pty Ltd, Evaluation of Phase One: Self-Managed Funding Initiative Final Report, submitted to the SA Department for Communities and Social Inclusion, 29 March 2012, page 45.
[51] KPMG report 'NSW Ageing Disability and Home Care Draft Policy Framework for Choice and Control in the National Disability Insurance Scheme, 24 July 2012, page 9.

- In Australia, a trial of consumer directed approaches for community aged care and respite reported positive outcomes for carers, particularly in relation to the enhanced ability to use funds in more innovative ways.[52]
- Families involved in the planning and coordination of supports report that their needs were considered.[53]
- European models utilising direct payment to support information carers, or the employment of personal care workers, demonstrated a reduction in agency administration and labour costs.[54]
- Evaluation of individual budgets in the UK, on a model that is more comparable to the proposed NDIS, found that individual budget had a small cost effectiveness advantage over agency based management approaches to disability support provision.[55]

Providers

Key benefits:

- This option would open opportunities for new providers to enter the market relative to Option 1.
- Providers of individual services in the generic market would benefit from greater demand for their services.
- A greater number of providers would facilitate greater competition among providers. A higher level of competition would encourage greater innovation and efficiencies relative to Option 1.
- Reforms in other sectors such as the aged care may result in greater synergies between the provision of services to the aged and to people with disability. As a consequence, this may result in the establishment of providers that service both sectors. These are likely to be larger organisations with more robust business processes, generate greater economies of scale, and meet greater demand for services including with a greater range of services.
- Smaller providers unable to compete with larger organisations may be competitive in the provision of smaller niche supports markets.
- Providers in regions near the boundaries of jurisdictions (example, Albury Wodonga) would benefit from a common national approach (if the NDIS is fully rolled out) with

[52] KPMG (2012), Evaluation of the consumer-directed care initiative – Final report, for the Department of Health and Ageing, May 2012, in the KPMG report 'NSW Ageing Disability and Home Care Draft Policy Framework for Choice and Control in the National Disability Insurance Scheme, 24 July 2012, page 9.

[53] Arksey H, Glendinning C, Moran N, Rabiee P and Nettan A, (2009) The individual budgets pilot projects: Impacts and outcomes for carers, Social Policy Unit, University of York, Heslington, in the KMPG report 'NSW Ageing Disability and Home Care Draft Policy Framework for Choice and Control in the National Disability Insurance Scheme, 24 July 2012, page 9.

[54] Dale S, and Brown R (2007), How does cash and counselling affet costs?, Health Services Review; and Lundsgaard, J (2005), Consumer direction and choice in long-term care for older persons, including payments for informal care: How can it help improve care outcomes, employment and fiscal sustainability, OECD, Paris; in the KPMG report 'NSW Ageing Disability and Home Care Draft Policy Framework for Choice and Control in the National Disability Insurance Scheme, 24 July 2012, page 9.

[55] Glendinning et al (2008), Evaluation of the individual budgets pilot programme: Final report, University of York, in the KPMG report 'NSW Ageing Disability and Home Care Draft Policy Framework for Choice and Control in the National Disability Insurance Scheme, 24 July 2012, page 9-10.

one set of regulations rather than compliance with regulations in different jurisdictions (example, both Victoria and NSW). Similarly, providers that are operating in more than one jurisdiction would benefit from a uniform national regulatory environment if the scheme is fully rolled out.

- There would be greater competition among providers encouraging providers to be more responsive to the needs of participants, to broaden the supports range, and to become more efficient.
- The response to market opportunities may increase the range of providers thus allowing participants greater choice. This may be quicker and/or more pronounced in some State/Territories compared with others. For example, it may be that the market in Victoria and WA would respond more quickly since these are advanced in permitting individualised funding and individual control.

Key costs:

- Funding would change from block funding providers to funding participants. Therefore, this option would involve a greater degree of disruption to the current funding arrangements relative to Option 1 and require some adjustment.
- Providers would have to compete and market themselves to gain their revenue. Providers would be dependent on the patronage of sufficient participants choosing their services. In the short term, there would be less certainty in funding.
- Some providers, particularly in those jurisdictions that have a greater focus on block funding and are less advanced toward introducing and implementing individual funding, may have difficulty making the transition to a more competitive and business environment. However, transition arrangements may mitigate the immediate impact of the change from one to the other.
- It may be that some providers in the community sector, particularly small providers, require assistance to manage their transition to the revised arrangements. In the short term, some providers may not have the financial reserves to successfully manage the transition to the revised arrangements, and they may require assistance to develop their business models and/or find a market niche where they can successfully compete with larger providers able to benefit from economies of scale.
- Under Option 2(i) and 2(ii), all providers of disability supports would be required to meet regulatory standards regardless of the risk of either the support being provided or the circumstances of an individual participant.
- Higher regulatory standards may make it more difficult for smaller providers to compete with larger organisations because of economics of scale. Also, larger organisations may target their market to more generic high volume niches and thus benefit from greater economies of scale. This may result in less diversity in some areas.
- Providers that are government organisations would similarly be affected. In addition they would need to conform to competitive neutrality policies. Over time, it may be

that government disability support providers limit services to services that would otherwise not be provided because of thin markets.

- The cost of compliance with the regulatory requirements would vary depending on whether Option 2(i), 2(ii) or 2(iii) is adopted. A higher level of regulation would involve greater compliance costs so that it could be expected that Option 2(ii) (higher standards of regulation) would cost more than Option 2(i) (lower standards); the relative cost of Option 2(iii) would depend on the number of participants at higher risk and higher risk supports.
  - Any price regulations would also impact on compliance costs.
- Higher regulatory standards would create higher compliance costs and greater barriers to entry relative to lower regulatory standards. This would preclude a larger proportion of providers from entering the sector compared with lower regulatory requirements thus limit the number and diversity of providers. Therefore, under this option, it is anticipated that the number of support providers would be more diverse compared with Option 1 but less compared with Option 3 and 4.
  - For example, new supports providers may include: for-profit providers of specialist support services; health insurance companies offering systems or infrastructure support; disability support organisations including brokerage firms, individual planners, and similar organisations facilitating linkages between service providers including from the mainstream market; as well as organisations that currently operate in other sectors such as aged care.
  - There is insufficient data to estimate the proportion of the number of providers of higher risk supports or participants at higher risk. However, as an indication, in the ACT the primary areas for greater regulatory standards are services to children and those with high levels of intellectual disability. The ACT Government is primarily the provider of people with highest needs. Higher need also impacts on accommodation support services in the community sector. Services to these groups represent more than 50 per cent of ACT funding in specialist disability services.
- Providers that also service sectors other than the disability sector may, however, need to comply with the requirements of other sectors. For example, Queensland's Human Services Quality Framework requires that non-government organisations conform to only one set of standards across several service sectors. A nationally consistent quality system for disability services may impose additional red tape unless mutual recognition of existing systems is incorporated.
- Providers would need to have a good understanding of the cost structures that drive the prices for their support services. They would need to develop business systems that would enable them to cost and monitor services to ensure the price currency. Some smaller providers that have poor costing structures may also have limited financial capacity to attract people with business or similar professional skills.

- It is likely that any pricing benchmarks used by the administering agency may influence providers' behaviour in setting costs, depending on the proportion of ISPs managed by the administering agency.
- If introduced nationally, the introduction of the NDIS could affect the type and level of workforce requirements and lead to workforce shortages. Modelling by the PC suggest a paid workforce of around 160,000 would be required to support a fully operational NDIS in 2016, however, this would be much less in the launch sites. The highest proportionate growth is predicted to be in the allied health workforce, followed by growth in coordination, case management and administration roles. This rate of increase will far outstrip growth in general workforce numbers.
- Depending on the rate of nay national roll-out relative to the disability sector's capacity to adjust and other resource constraints, there may be pressures on costs such as wages. Addressing the gap needed for a full scheme would be more challenging by competition for qualified workers from other sectors (including, for example, the increased demand for aged care workers arising from the recent reforms); an ageing workforce (around 65 per cent of the workforce are over age 40 years and 33 per cent are over 50 years); high turnover rates; and labour shortages and service viability in rural and remote areas.
- Parallel to changes for providers, advocacy groups, peak bodies and similar bodies would also need to update their understanding of the situation for providers to continue to be effective in their representation of their key stakeholder groups.

The impact on providers is expected to vary from jurisdiction to jurisdiction. The majority of disability support providers currently meet existing disability standards as applied differentially by the relevant State/Territory government. The impact on providers would therefore depend on the detail of the standards applied relative to the current arrangement in each jurisdiction.

There are no estimate of the number and diversity of additional providers that would be likely to enter the disability market. This is because of insufficient data at this stage to determine compliance costs under this option, and the difficulty of forecasting the interaction of this reform coupled with reforms in other sectors.

Information is sought in this Consultation RIS on the potential impacts and compliance costs on existing and new providers in operating in a market environment as described under this option.

Depending on the jurisdiction and the extent of block funding compared with the extent and type of individualised funding in a jurisdiction (see Table 4: Individualised funding by jurisdiction), this Option would involve a change in the way disability support is provided:

- ***ACT*** – most providers (about 85 per cent) could be expected to change to a culture with greater focus on participants since participants would be their customers. About 15 per cent of providers would be affected to a lesser extent (since they are

funded according to the ISPs of people with disability and the funding follows the individual) however, the funds are still provided directly by government. There would be other flow-on changes. Operational issues such as business processes, marketing, organisational structures, skills of their management teams, IT systems etc. would require change to processes that are more business oriented.

- ***NSW*** – block funding is also the dominant form of funding in NSW so many providers would similarly be affected as in the ACT. NSW is piloting direct payment to individuals with disability so these could be used as demonstration models for the other traditionally funded providers. Since NSW has significant numbers outside of metropolitan areas, ISPs would need to be loaded so that these purchase the same level of services as those for people in metropolitan areas with similar needs.
- ***NT*** – as per the ACT. However, because a significant proportion of the NT are regional and remote and since 'thin markets' are unlikely to result in the establishment of commercial providers, it is anticipated that in addition to loadings to ISPs or some part of ISPs, a significant number of specialist disability support providers would continue to be block funded. The retention of block funding would negate some of the benefits that would stem from the proposed reforms for the NT. Further, the extent that block funding is retained in itself would negate the benefits that would stem from market based reforms. However, the NDIS is likely to come with additional funding. As such, it is likely that overall NT providers and participants would benefit albeit to a lesser extent than other jurisdictions that would be less reliant on block funding.
- ***QLD*** – the complex funding model in Qld would result in a mix of impacts. Similar to the ACT, those providers that are block funded (for example, accommodation providers) would face the greatest change; other providers less so. Similar to NSW, since Qld has significant numbers of people with disability outside of metropolitan areas, ISPs would need to be loaded. Similar to the NT, Qld has many people in remote regions or in need of specialise services so that block funding would continue to feature in these situations.
- ***SA*** – Self –directed funding will be offered to all disability clients by 2014. As such, some providers have already started to make the adjustments required ahead of 2014 and would therefore face minimal additional change. However, at the point of NDIS launch in July 2013, there will still be a majority of providers yet to adapt to the new conditions. Additional changes would include working to an administering agency – albeit with regional presence - rather than State/Territory agencies and, once determined, compliance with national regulatory requirements where these differ from those already in place.
- ***TAS*** – changes would be similar to those for the ACT plus to factor in regional differences.
- ***VIC*** –Victoria is already well-advanced with the implementation of individual funding in some areas of disability support provision, so the changes required for these

providers would be minimal and similar to those for SA. In other areas of disability support provision, such as residential services, there would be greater impact.

- ***WA*** – similar to the ACT except that a greater proportion of providers would be affected to a lesser extent since funding follows the individual. Local Area Coordinators in WA would lessen the impact both for providers and participants. A number of jurisdictions already have work underway to assist the disability support sector to transition to a market based approach, including partnerships with the sector and workforce development strategies, however, further measures would build on these activities. In jurisdictions where governments themselves are substantial providers of disability services, some providers may be well placed to shift to the NDIS but may still require support.

State and Territory governments

Key benefits:

- State/Territory governments would no longer be the funders of disability support services.
- State/Territory government budgets would benefit since jurisdictions could scale down, but not remove, their agencies and associated bureaucracies at the launch sites.

Key costs:

- State/Territory governments may continue as providers of services.

Commonwealth Government

Key costs:

- The administering agency would be fully funded by governments. It would be a one-port-of-call for all disability supports. It is estimated the administering agency would cost about $150 million in a full year to administer the NDIS at the launch sites, with greater costs expected with any fully rolled out NDIS. This includes operational and systems support costs (costs including agency running, ICT, regional offices, assessments, local area coordinators, service sector development and referrals for Tier 2 individuals, and dispute resolution), however, estimates exclude enforcing compliance with the regulatory standards.
- There would be higher administration costs relative to Option 1. A higher level of regulation would involve greater monitoring and compliance checking so that it could be expected that Option 2(ii) (higher standards of regulation) would cost more than Option 2(i) (lower standards); the relative cost of Option 2(iii) would depend on the number of participants requiring high risk supports and participants at higher risk relative to the total number of participants.
    - However, at this stage, these cost differences are not known.

- The administering agency would need to closely monitor the provider market and encourage competition and innovation. The agency may also be required to implement strategies to encourage the development of provider capacity.
- In addition, it may need to ensure that there are providers of last resort in certain regions, for certain support activities and for participants with certain characteristics.

Community

Key benefits:

- Relative to Option 1, if fully rolled-out, this option would be expected to improve the outcomes of people with disability, improve equity between jurisdictions and regions through consistent treatment of participants with equal needs, and improve access to social and economic participation by carers/family.
- There would be expected to be greater efficiencies generated by this option relative to Option 1 flowing from greater choice and control to participants and consequences of a market for support providers albeit regulated.
- If the NDIS is fully rolled out nationally, the community as a whole would benefit since a nationally consistent disability support service should be cheaper to administer than eight separate systems - all else remaining the same- since it would avoid some duplications.
- Efficiencies would also be gained by better coordination and access facilitated by a single port-of-call agency.

Distributional impacts

- It may be that there is limited choice and control for some participants in non-metropolitan areas relative to their counterparts in metropolitan areas. This is because, notwithstanding their individual support package may reflect the cost of items in that region, there may be insufficient participants to generate sufficient revenue to enable one or more providers.
- In these instances, the administering agency would continue to provide block funding to enable the provision of services. These scenarios are likely to be the case in most non-metropolitan remote and some regional areas of all States/NT.
- Providers in non-metropolitan areas would likely operate in less competitive environments than their metropolitan counterparts, particularly in areas where there are sufficient participants to maintain only a limited number of providers. Nonetheless, these providers would be dependent on the patronage of participants for their revenue.

Summary

Table 12 provides a summary of the qualitative costs and benefits expected under Option 2.

Table 12 -Summary of costs and benefits under Option 2 (relative to Option 1)

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Cwth
Participants	✓	✓	✓	✓	✓	✓	✓	✓	✓
Carers	✓	✓	✓	✓	✓	✓	✓	✓	✓
Providers	×✓	×✓		×✓	NS	×✓	NS	NS	×✓
State/Territory governments	✓	✓	✓	✓	✓	✓	✓	✓	✓
Cwth Govt	×	×	×	×	×	×	×	×	×
Community	✓	✓	✓	✓	✓	✓	✓	✓	✓

Neg = negligible.
✓ = likely to be net benefit
× = likely to be net cost
NS = not significant, however, greater than negligible
×✓ = cost during transition and implementation; benefit in the longer term.

All else being equal, this Option is expected to increase the benefits to the majority of stakeholders particularly participants and their carers/family. Further, this option is likely to be a net benefit overall relative to Option 1. However, the gains by jurisdiction may vary since some states are already advanced in individualised funding.

Existing disability support providers would need to adjust to a market for disability support where they are competing for the patronage of participants. They would face on-going costs in complying with regulations, however, in the longer term, the market for disability supports would provide opportunities which would also benefit providers.

We are interested in your views regarding whether you agree or disagree with the assumptions and conclusions drawn above.

Please also provide any further data/information available on the impacts outlined.

Please see Attachment B for further guidance on comments sought.

Option 3 – Impacts

The market

- The characteristics of the expected market under this option in terms of the likely impacts on participants, providers, carers and governments are broadly similar to option 2, including in reference to the distribution and jurisdictional impacts.
- However, there are some differences.
  - It is expected that there would be greater choice for participants and greater competition between providers.
  - Providers would not have to meet explicit regulatory standards except when providing high risk supports or support for participants at higher risk.
- While not identical, this Option best broadly resembles the PC's vision for a NDIS, the key difference being in the treatment of risk (high risk supports and support to participants at higher risk).

- The possible development of a 'my disability support' website would provide a more comprehensive and effective approach for providing information about support providers.

Participants - people with disability

Key benefits:

- The PC noted in its Overview that the 'benefits of the scheme would significantly outweigh the costs. If rolled-out nationally, 'the NDIS would only have to produce an annual gain of $3,800 per participant to meet a cost-benefit test. Given the scope of the benefits, that test would be passed easily.'[56] Participants would have a higher degree of choice and control relative to Option 1 or Option 2. This is because participants would move some way from one-size-fits-all situation where participants obtain the support that is closest to their needs from services that are block funded (Option 1), to services that may better meet their needs from support providers that are regulated (Option 2) to, for those supports that are low risk provided to low risk, be able to obtain supports from the generic market.
- Where the risks warrant additional regulation because of risk, participants would have relevant safeguards in place. If the NDIS is fully rolled out, this option would better facilitate movement of participants to other jurisdictions since their individualised support package would move with them.
- Consistent with the findings of the PC, this option would improve a wide range of positive wellbeing outcomes for individuals from self-directed funding, including higher satisfaction with life. It would provide greater confidence and certainty of access to necessary supports, and a better quality of life relative to Option 1 or 2 since it provides greater control as many participants will be able to access their support from the broader market.

Key costs:

- In the short term, this option involves greater change relative to Options 1 and 2 and would therefore be more disruptive for existing support systems than either these options but less than Option 4.
  - Such disruptions may relate to transitional and compliance cost and reporting to the Agency.
- For supports of low risk or to participants at low risk, participants would be expected to undertake their own 'due diligence' for their providers, including to inform themselves as to whether or not the providers they choose have met any minimum QA or service standards.
- There may be consequences for some participants who do not undertake due diligence and are not fully informed about the quality of service provided by some.

[56] Productivity Commission, page 2.

Key costs:

- Participants at higher risk may be disadvantaged relative to Option 4 by access being limited to the regulated providers since they may be denied access to personalised, flexible and potentially less expensive support options.

Carers and families of people with disability

Key benefits:

- Carers and families would benefit by the person having greater flexibility to purchase supports, including individualised support services, from generic mainstream services thereby ensuring that this support does not have to be provided by informal networks including by informal support currently provided by carers/family.

Key costs:

- As this Option would limit access for participants at higher risk and higher risk supports to providers that met the regulatory standards, this would limit choice to providers that met the regulatory standards. Since this is a smaller group relative to Option 2, overall this Option would nonetheless be expected to provide better outcomes for carers/families.

Providers

Key benefits:

- Depending on the level of regulation, over the longer term there would be fewer barriers to entry enabling a greater number of providers, resulting in greater competition, greater innovation and efficiencies and providing participants with greater choice and control relative to Option 2.
- It may be that some disability regulatory requirements currently in place for some low risk supports providers or supports provided to participants at lower risk would be removed in the longer term.
- Providers would not be restricted to marketing their services to disability support participants. Providers with services that have applicability to other sectors such as aged care or working families could also target these markets. Over time, synergies between different market sectors may result in increased efficiencies of scale
- Because of higher competition among service providers relative to Options 1 and 2, this option would encourage providers to be more responsive to the needs of participants, improve quality and be more innovative. Efficiency should also improve since participants would be able to source supports that better meet their needs thus reducing wastage.

Key costs:

- Providers would have compliance costs associated with the collection of information about their services, including availability and quality, to populate a 'my disability

support' website if implemented. Much of this information could be provided electronically. The website would also facilitate the marketing of provider services to their target market thus reducing the requirement to market more broadly.

- In the short term, the provision of funding to participants at lower risk for low risk supports may pressure the capacity of providers to respond, and therefore there may be some upward pressure on costs, including for wages.

Distributional impacts

Under this option, as the market would be expected to be less regulated than under options 1 and 2, there may be greater variability in the availability, quality and provision of disability services across jurisdictions and in particular remote and isolated areas.

This may result in partially segmented markets with uneven competitive outcomes, which may impact on the welfare outcomes of people with disability.

Further information is sought on the distributional impacts and potential market outcomes under this option.

Summary

Table 13 below summarises the expected qualitative costs and benefits relative to Option 2.

Table 13 -Summary of costs and benefits under Option 3 (relative to Option 2)

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Cwth
Participants	✓	✓	✓	✓	✓	✓	✓	✓	✓
Carers	✓	✓	✓	✓	✓	✓	✓	✓	✓
Providers	✓	✓	✓	✓	✓	✓	✓	✓	✓
State/Territory governments	Neg	Neg	Neg	Neg	Neg	Neg	Neg	Neg	Neg
Cwth Govt	✓	✓	✓	✓	✓	✓	✓	✓	✓
Community	✓	✓	✓	✓	✓	✓	✓	✓	✓

Neg = negligible.
✓ = likely to be net benefit
× = likely to be net cost
NS = not significant, however, greater than negligible

The impacts of Option 3 are similar but not identical to those of Option 2. This Option would be expected to be of greater net benefit overall relative to Option 1 or 2. This is because participants would have a high level of choice and control through more untrammelled access to a market for disability supports tempered only in those situations where the supports are of high risk or supports are for participants at high risk. As such, participants would enjoy a high level of well-being.

We are interested in your views regarding whether you agree or disagree with the assumptions and conclusions drawn above.

Please also provide any further data/information available on the impacts outlined.

Please see Attachment B for further guidance on comments sought.

Option 4 – Impacts

The market

- The key market characteristics under this option would be:
  - Participants would have the greatest choice relative to all other alternative options.
  - Providers would not have to meet regulatory standards beyond generic consumer and business protections already in place under existing frameworks.
  - Participants would have the choice to employ their own staff.
- While not identical, this Option best broadly resembles the PC's longer term vision for a NDIS.

Participants - people with disability

Key benefits:

- This option would provide the greatest choice relative to Options 1, 2 or 3. This option provides people with disability the same rights as others in the community since it enables them to choose and control their lives in the best way they see fit. Consequently, it may improve a wide range of positive wellbeing outcomes from self-directed funding, including higher satisfaction with life as supported by the PC.
- In the longer term, any establishment of a 'my disability' website would enable participants to make informed choices with greater ease.

Key costs:

- This option may expose participants with less autonomy (either because of the nature of the support needs provided or because of individual's circumstances) to higher levels of risk since all regulatory protections specific to disability are removed. For example, participants could not expect providers to meet national Disability Services Standards, including key protections such as police checks, the use of trained staff beyond licencing requirements, critical incident reporting, complaints processes and participation in external auditing.
- Participants would be required to undertake their own 'due diligence' for each of their support providers. While participants with high levels of autonomy could manage this successfully (albeit some with the assistance of carers/family), this may not be the case for all participants.
- The higher risks involved for some participants may result in poorer outcomes.
- There would be a certain degree of investment in time and effort by participants both to find and then monitor their providers of choice. It is likely, however, that many providers who met any disability regulatory standards would use their quality framework as a marketing feature.

Carers and families of people with disability

Key benefits:

- Carers and families would benefit from more supports, including individualised services, being provided freeing them to participate more fully in social and economic activities relative to Options 1, 2 or 3.

Key costs:

- The need for a higher level of due diligence by participants for their supports may result in many carers/families undertaking some of the activities involved. This would be compounded for those carers/families who have responsibility for participants at higher risk.

Providers

Key benefits:

- This option presents fewer barriers to entry relative to Options 1, 2 or 3. In the longer term this would enable a greater number of providers enabling greater competition, greater innovation, and greater efficiencies. This impact would not, however, be uniform across all jurisdictions. This is because some jurisdictions (such as SA, WA and Victoria) have begun progress towards a market type for the provision of disability services, although generally this does not include the provision of funds to participants and so limits the range of individualised supports they may obtain, as well as the responsiveness of providers.
- In the longer term there would be greater certainty of revenue for providers since they would be less reliant on government funding. In the short term, the provision of funding to participants for their supports may outstrip the capacity of providers to respond and may put upward pressure on costs, including for wages.

State and Territory governments

Key benefits:

- This option would provide greater savings to State/Territory government administration since it least requires government intervention.

Commowealth Government

Key benefits:

- This option is likely to cost the least to government budgets (about $150 million a year for the launch sites once fully operational) since it involves the least amount of government administration and compliance enforcement of regulations and standards.

Key costs:

- There would be increased risks of poor outcomes for some participants.
- There may be negative spill-overs since higher risks involved for some participants may result in poorer outcomes, with consequences for additional resources required for other agencies.

Community

Key benefits:

- Greater freedoms and competition, innovation and efficiencies with less regulation and potential flow-on benefits to economy more broadly.

Key costs:

- A lasting positive impact on the broader community, including participants and providers, may take some time to eventuate and may be a challenging task for some, given the changing market structure and provision of service and choice for participants under this option relative to the status quo.

Summary

Table 14 summarises the qualitative impacts relative to Option 3.

Table 14 -Summary of costs and benefits under Option 4 (relative to Option 3)

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Cwth
Particts	×/Neg	×/Neg	×/Neg	×/Neg	×/Neg	×/Neg	×/Neg	×/Neg	×/Neg
Carers	×/Neg	×/Neg	×/Neg	×/Neg	×/Neg	×/Neg	×/Neg	×/Neg	×/Neg
Providers	✓	✓	✓	✓	✓	✓	✓	✓	✓
State/Territory Governments	Neg	Neg	Neg	Neg	Neg	Neg	Neg	Neg	Neg
Cwth Govt	✓	✓	✓	✓	✓	✓	✓	✓	✓
Community	×/Neg	×/Neg	×/Neg	×/Neg	×/Neg	×/Neg	×/Neg	×/Neg	×/Neg

Neg = negligible.
✓ = likely to be net benefit
× = likely to be net cost
NS = more than negligible but not significant
×/Neg = overall impact: short term disruption, longer term benefit or risk for many.

This Option may not provide a higher net benefit relative to Option 3 and may in fact be a net cost. However, this is difficult to assess. While participants would have a high level of choice and control through greater access to a more competitive market for disability supports (relative to the other options), for many the generic regulations and licencing arrangements that currently exist may not be sufficiently specific to protect participants at high risk. As such, it may be that many participants may have poorer outcomes relative to all the other options.

We are interested in your views regarding whether you agree or disagree with the assumptions and conclusions drawn above.

Please also provide any further data/information available on the impacts outlined.

Please see Attachment B for further guidance on comments sought.

Summary of costs and benefits relative to the status quo

The tables below (Table 15 to 19) summarise the expected impacts by key stakeholder in each jurisdiction for each of the four options considered in this Decision RIS. The impacts are considered relative to the status quo. Note that these are not summaries of Tables 11 to 14 above.

Table 15 -Summary of costs and benefits for participants and their carers/families

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
Option 1	Neg	Neg	Neg	Neg	Neg	Neg	Neg	Neg	Neg
Option 2	✓	✓	✓	✓	✓	✓	✓	✓	✓
Option 3	✓	✓	✓	✓	✓	✓	✓	✓	✓
Option 4	?	?	?	?	?	?	?	?	?

Neg = negligible.
✓ = likely to be net benefit
? = of question

Table 16 -Summary of costs and benefits for providers (existing, specialist, individual, generic)

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
Option 1	Neg	Neg	Neg	Neg	Neg	Neg	Neg	Neg	Neg
Option 2	×✓	×✓	×✓	×✓	NS	×✓	NS	NS	×✓
Option 3	×/Neg	×/Neg	×/Neg	×/Neg	NS/Neg	×/Neg	NS/Neg	NS/Neg	×/Neg
Option 4	×/Neg	×/Neg	×/Neg	×/Neg	NS/Neg	×/Neg	NS/Neg	NS/Neg	×/Neg

Neg = negligible.
✓ = likely to be net benefit
× = likely to be net cost
NS = not significant

Table 17 -Summary of costs and benefits for State/Territory governments

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
Option 1	Neg	Neg	Neg	Neg	Neg	Neg	Neg	Neg	Neg
Option 2	✓	✓	✓	✓	✓	✓	✓	✓	✓
Option 3	✓	✓	✓	✓	✓	✓	✓	✓	✓
Option 4	✓	✓	✓	✓	✓	✓	✓	✓	✓

Neg = negligible.
✓ = likely to be net benefit

Table 18 -Summary of costs and benefits for Australian Government

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
Option 1	Neg	Neg	Neg	Neg	Neg	Neg	Neg	Neg	Neg
Option 2	×	×	×	×	×	×	×	×	×
Option 3	×	×	×	×	×	×	×	×	×
Option 4	×	×	×	×	×	×	×	×	×

Neg = negligible.
× = likely to be net cost

Table 19 -Summary of costs and benefits for the Australian Community as a whole

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
Option 1	Neg	Neg	Neg	Neg	Neg	Neg	Neg	Neg	Neg
Option 2	✓	✓	✓	✓	✓	✓	✓	✓	✓
Option 3	✓	✓	✓	✓	✓	✓	✓	✓	✓
Option 4	?	?	?	?	?	?	?	?	?

Neg = negligible.
✓ = likely to be net benefit
? = of question

Comments are invited on the costs and benefits, advantages and disadvantages, and any other impacts both in the transition to an NDIS in the launch sites and, if introduced nationally, the longer term – please see Attachment B.

CONSULTATION

Consultations to date

NDIS Engagement

Significant consultation on the NDIS has taken place to date, starting with extensive consultations by the Productivity Commission in the development of the Productivity Commission Inquiry Report into Disability Care and Support. The Productivity Commission inquiry received 610 and 452 post draft report.

In 2012 an engagement strategy was developed, which outlines the purpose and principles for engagement with stakeholders, including people with disability, families, carers, disability services, and the community.

The strategy has been designed to provide a consistent approach for all jurisdictions when undertaking engagement activities for the NDIS.

The engagement strategy incorporates a number of engagement mechanisms, including:

- The NDIS Advisory Group;
- Expert Groups;
- Online engagement; and
- The National Disability and Carer Alliance Engagement Project.

NDIS Advisory Group

The Advisory Group was announced on 11 October 2011. Since this date the group has met on **12 occasions**. The Advisory Group brings together diverse experiences of the disability sector, to ensure that governments will receive well balanced and informed advice. The group is comprised of seven members with extensive knowledge and experience in the disability sector.

As part of its engagement strategy, the Advisory Group meets with State based advisory/working groups to discuss State based issues and has so far consulted with groups in New South Wales, South Australia, Western Australia, Tasmania and Queensland. The group has also met with National Peak bodies based in the ACT. While at this stage the NT NDIS Advisory Group has not been formed, the NT does have a representative on the expert group that feeds that National NDIS Advisory group.

The Advisory Group is supported by expert working groups to provide technical expertise and advice on specific elements of reform.

Expert Groups

The NDIS Expert Groups were established in May 2012. Since this date the expert groups have met face-to-face a total of 14 times.

The Expert Groups have been appointed to work under the Advisory Group to guide the more technical requirements of scheme design.

Expert groups are comprised of experts from the community and sector, people with disability, carers and service providers. They have been set up to guide:

- National Approach to Choice and Control;
- Eligibility and Assessment;
- Quality and Safeguards; and
- Workforce and Sector Capacity.

Each group is co-chaired by Advisory Group members and reports back to the Advisory Group on a monthly basis.

The Expert Groups have considered reports commissioned through the building block development process. The Expert Groups have provided advice to the Design Working Group, the Advisory Group and consultants and officials in the Commonwealth and States that are leading the design work.

Online engagement

Under the auspices of the NDIS Advisory Group, the "NDIS Your Say" online forum commenced on 13 August 2012.

"NDIS Your Say" allows people to share their thoughts, ideas and opinions with the NDIS Advisory Group, on a set of key questions.

"NDIS Your Say" is moderated 24 hours a day, seven days a week for the duration of the forum. This will help ensure that discussions are appropriate while still giving stakeholders a genuine opportunity to freely provide comment.

As at 14 November 2012 NDIS 'Your Say' has had **20,572** site visits, **460** registrations, and **370** responses to forum questions.

National Disability and Carer Alliance

The Commonwealth has provided funding support to the National Disability and Carer Alliance to support peak disability organisations to engage with their members on the NDIS.

The Australian Federation of Disability Organisations (AFDO) in collaboration with the National Disability and Carers Alliance (NDCA) is holding public forums in each capital city and a number of regional centres to capture the views of people with disability their families and carers and service providers on a series of NDIS issues.

Over 2,016 people have registered to attend these Alliance engagement activities in August, September, October and November 2012. As at 9 November 2012 the Alliance has reported on 28 Alliance engagement forums/workshops. The Alliance is also in the process of convening roundtable and face to face meetings within their networks and membership of

each founding organisation, and with organisations outside of NDCA and AFDO, to discuss key NDIS issues in more detail.

Engagement on the key design aspects of eligibility and reasonable and necessary support

At its meeting on 25 July 2012 the Council of Australian Governments (COAG) discussed the NDIS and proposals from the Select Council on Disability Reform for how eligibility and reasonable and necessary support under an NDIS might be defined.

COAG wanted people with disability, their families and carers, the workforce and disability sector and peak bodies to have a chance to see the Select Council's approach to defining eligibility and reasonable and necessary support under an NDIS before they are finalised.

The Select Council's description of eligibility and reasonable and necessary supports was released for public comment from 31 August 2012 to 28 September 2012. The description was released through the NDIS Advisory Group; State/Territory based NDIS/Disability Advisory Groups, the National Disability and Carers Alliance and on the NDIS Your Say website.

Feedback from the various channels has been consolidated into a report, and has been provided to officials and the Select Council.

Opportunity for further comment

COAG would appreciate your comment on any aspect of this RIS. COAG would also welcome comment on some of the specific issues raised at **Attachment B**.

Submissions, **marked 'Attention COAG RIS'**, are invited to:

The National Disability Insurance Scheme Joint Taskforce
c/- The Department of Families and Housing, Community Services and Indigenous Affairs
PO Box 7576
CANBERRA BUSINESS CENTRE
ACT 2610

Or via email to:

NDISTaskforce@fahcsia.gov.au

Due to tight deadlines, all submissions must be received by 1 February 2013 to be taken into consideration. No late submissions will be accepted.

EVALUATION AND CONCLUSION

Option 1 - would be the closest to the status quo. It would address the problem to the least extent relative to the other options outlined in this RIS. Further, it would **least address** the policy objectives of the proposed reforms including:

- It would do little to improve the lives of people with disability.
- Carers/families would continue to meet unmet needs with informal care. As such, it would least facilitate economic and social participation by carers/families of people with disability. This would have flow-on implications for GDP since many carers would be unable to take advantage because of their continuing caring obligations, and many people with disability would be unable to reach their full potential to contribute to society.
- The current inefficiencies because of inflexible funding, including barriers to movement between and within jurisdictions, would continue although mitigated to the extent that State/Territory government facilitated individualised funding.
- To the extent of the continuation of block funding, providers of disability support would continue to be largely responsive to the requirements of governments rather than the needs of people with disability and their carers/families. This would be mitigated to the extent and effectiveness of individualised funding by jurisdictions.

Option 1 would have the least impact on competition on disability support services since it largely retains existing providers. Consequently, it would least drive efficiencies and innovation, with continuing strain on the price, quantity and quality of support provided and continuing strain on the budgets of jurisdictions.

Option 2 - would better address the problem and meet the policy objectives. However, while Option 2 would provide greater confidence, the degree of additional government regulation on providers of disability supports would continue to mitigate choice and control for participants as well as stem some proportion of the benefits that would accrue from a competitive market for disability support.

Option 2 would also likely cost more than Option 1 since: the administering agency would be required to be highly involved in the regulation of the provision of supports plus ensure compliance with the regulatory arrangements; and since all support providers would be required to comply.

Option 3 - would better balance some of the issues posed by Option 2. It is likely to provide greater choice relative to Options 1 and 2 and therefore result in better well-being outcomes to participants. Further, because additional government regulations are limited to high risk situations, it is less likely to stem the benefits from a more competitive market, as well as cost less than Option 2 since government regulations specific to disability would only be imposed in high risk situations.

Option 4 - would maximise control and choice to participant, is likely to be the cheapest cost option to government, however, in the long term it may not maximise participant well-being although this would depend on the extent participants at higher risk were supported. This latter is because participants at high risk would be exposed to the best as well as the worst of a market untrammelled by regulations specific to the risks in the provision of disability supports. While on the whole this should increase participant well-being, it may be that for some high risk situations, the outcomes may negate to a significant extent the benefits gained for the majority of participants. It may be that this option is more expensive both to participants and their carers/family, government and the community as a whole in the long term. Option 4 assumes a well-functioning market with healthy competition and this may not be possible in all regions.

Table 20 below provides a qualitative assessment of which option best addresses the policy objectives that reflect the issues identified by the PC. For the reasons outlined above, subject to the outcome of consultations through this RIS process and a more detailed impact analysis of the options, it is probable that Option 3 would be the preferred option that would be recommended to COAG. Such recommendation would be made if Option 3 delivers the greatest net benefits for the community.

Table 20: Assessment of which option best addresses the policy objectives in the longer term if the NDIS is introduced nationally.

Policy objectives	Option 1	Option 2	Option 3	Option 4
– Maximise quality of life			✓	
– Minimise social and economic impacts			✓	
– Equitable, appropriate, efficient and cost-effective support			✓	
– Maximise responsiveness				✓
– Minimise regulatory burden				✓

IMPLEMENTATION AND REVIEW

NDIS Implementation

As noted above, five launch sites have been agreed as the first stage of a NDIS with launch to commence at these sites from July 2013 (in SA, Tasmania, the ACT, NSW and Victoria). COAG agreed to engage closely in the implementation of the first stage, noting this will inform the move to a national insurance-based approach to disability care and support. Further, the jurisdictions agreed to work together on the development of Commonwealth legislation to establish both the scheme and a national launch agency to administer the scheme during the launch phase. COAG also agreed that the funding and governance arrangements agreed for launch **did not create a precedent for the full scheme.**[57]

The NDIS Bill as drafted has potentially regulatory aspects but these will hinge on detail yet to be determined such as:

- the exact registration requirements and whether these will vary with the nature of the supports provided;
- the extent of any price controls – example, how the individual support package will be costed, whether an indicative price range for supports will apply, etc.;
- the short term arrangements to support providers as they make the transition from the current arrangements to the revised arrangements;
- capacity building strategies for existing providers to better enable them to successfully transition to the revised arrangements, initially in the launch sites;
- information and education strategies for participants to better understand and manage their participation with the NDIS, including managing their individual support package; and
- the identification of other areas of possible 'market failures' and the details of interventions to ensure continuity of supports.

These details will be determined by COAG decisions. In turn, COAG's decisions will be informed by the current RIS process.

A Decision RIS will follow this Consultation RIS. The Decision RIS will factor in your comments and other information provided and identify the best conceptual approach to the NDIS that will be initially implemented at the five launch sites which will inform COAG's further consideration of the NDIS.

Implementation plans for each launch site

Preparedness for each launch site has commenced. Planning includes activities for governments and the administering agency. Implementation arrangements will need to

[57] COAG Communiqué, 25 July 2012.

recognise the variations that exist and integrate with the unique situation in each launch site. The three key organising principles underpinning the scheme are:

- Insurance based – sharing the costs of disability services and supports across the community, adopt insurance principles that estimate the cost of reasonable and necessary supports, promote efficient allocation of resources based on managing long-term costs of supporting people with disabilities and their cares while maximising the economic and social benefits;
- Choice and control for participants – recognising the rights of people with disability to control their supports and how resources are able to be used and managed;
- Foster and draws on wider informal supports – including mainstream services and maintaining the range of support provided by the community.

The NDIS will not replace or fund other services available to the general population, including specialist services, or be expected to meet all the needs of people with disability.

The NDIS at the five launch sites

At this stage, it is envisaged that a NDIS implemented at the five launch sites could be as follows.

Participants and the NDIS

Launch site eligibility – would only be able to access funding through the NDIS and, unless and until there is national coverage, continue to live in the launch areas. There would be some discretion to consider what support the NDIS may continue to fund for people moving out of launch areas. NDIS funding would be fully portable across Australia if an NDIS is rolled out nationally.

Access to the NDIS – *would* be through multiple points in the broader social service system. Individuals who are not eligible for the NDIS will be provided with information on, and/or referred to, the broader range of supports in their local community.

Assessment, planning and the development of an individual support package - People who are potentially eligible would need to provide evidence that confirms their identity, age and residence to the NDIS, or consent to the NDIS obtaining information from Centrelink, existing State disability agencies, or other agreed sources.

A support needs assessment may be undertaken, where required, to confirm and identify detailed support needs. People who have existing or previous support needs assessments, such as people currently in the disability service system, may wish to provide those assessments to the NDIS or consent to the NDIS obtaining and using that information to determine their support needs. The NDIS would undertake a support needs assessment for people who do not have relevant existing or previous assessments or when a person wishes to test whether they should receive additional support.

The planning process would be tailored to the diversity of people with disability. Planning will support the person to identify their goals and aspirations within their individual circumstances, and input into the identification of their needs. In deciding the reasonable and necessary support needs of people with disability, consideration would include informal care being provided and its sustainability The plan would distinguish the parts of a person's plan that are primarily their responsibility and the parts that are a joint responsibility of the NDIS and the person. The latter would outline the reasonable and necessary supports that would be provided by the NDIS, and the mainstream and community services that the NDIS would assist to access.

The dollar value of the Individualised Support Package – the plan – may vary between participants with similar needs in different launch sites and/or regions depending on the costs of obtaining those supports in that region. This may include additional needs such as the need to travel to obtain such supports. This would be to ensure that participants with similar needs are able to access similar supports and are not disadvantaged because of where they live.

While the plan belongs to the participant, the part setting out the NDIS funding component would need to be approved and signed by a delegate in the NDIS. The plan would be reviewed periodically, or as requested by the participant or the NDIS administering agency.

Where a participant is dissatisfied with their plan, they would have access to merits review processes.

The outcomes of the participant's plan would be measured against the objectives the participant has nominated as being important to them; and the cost effectiveness of supports provided. The process would recognise that people's objectives may change over time.

Choice and Control – **Once the planning process has been finalised, the participant would implement it in line with their chosen arrangements**, including the support of a Local Area Coordinator and/or third party plan management assistance.

Participants would be presumed to have the capacity to exercise choice and control including, depending on their circumstances, with the right kinds of decision support. Any restrictions on choice and control would be minimal and information provided to the participant, their carers/family, to ensure transparency and understanding.

However, during launch and transition, the extent of choice and control may be initially constrained in the transition from block funding providers to individual funding arrangements.

Constraints to choice and control over the reasonable and necessary supports that a person receives would be limited to:

- activities or items that are illegal, significantly detrimental to health or are demonstrated to harm the well-being of the individual; or

- where the individual is at risk of harm to themselves or others without specific measures to support them in the decision making process.

If a participant wishes to purchase support above what they and the NDIS has agreed is reasonable and necessary, then they would be required to fund this through their own resources.

Supporting people to interact with the NDIS – Local Area Coordinators (LACs) with local area knowledge would be contracted or employed by the NDIS to connect people with disability to community networks and mainstream service providers, and would, if participants choose, also be able to assist participants to develop, implement and manage their plans. LACs would not have a role in determining eligibility or in resolving planning or assessments within the NDIS, and will not become case managers for participants. They would have an on-going role in community education and community capacity building.

Participants who are managing their own plan but need assistance to do so would be able to purchase assistance outside of the NDIS to do so. Assistance with plan management may be provided by generic community based organisations, specialist disability organisations and other business enterprises. Costs for these activities would be included and funded as part of the participant's individual plan.

Families and carers – Plans would include consideration of the context of the participants' living arrangements, informal supports and mainstream and community services, which would reflect discussions with both the participants and with their carers, and which would take account of the carers' circumstances, capacity and plans relevant to their caring roles, and the sustainability of informal caring arrangements. There would be a continuing focus on the long-term sustainability of natural supports, including building the capacity of carers.

Considering the sustainability of care would be particularly important where there are ageing parents of adult children with disability and where carers themselves have a disability or where the current arrangements are not the participant's desired goal.

Carers/families are active partners in the support of participants rather than consumers of NDIS services in their own right. While there would be no requirement for a formal support needs assessment for carers, the needs of carers would be considered as part of the plan for a participant. This extends to areas such as training to improve capacity to carry out informal supports, particularly in the context of early intervention.

Carers and families would have a role in the participant's goal setting, assessment, and planning process (to the extent the person with disability considers it appropriate) and having the opportunity to have a comprehensive discussion about the sustainability of care, and their willingness and capacity to provide informal support as part of the Participant's assessment process.

Early intervention and investment - The NDIS would fund early interventions for individuals whose disability has not yet affected their functional capacity or had an impact on their

social and economic participation where there is evidence that early intervention supports for the person are likely to mitigate, alleviate or reduce the functional impact of disability to the extent that functioning in activities of daily living would be increased.

The timing and duration of early intervention and the nature of interventions would be informed by the available evidence of their impacts and likely outcomes and depend on a range of factors including the individual's goals, the particular disability, the type of intervention and the individual's particular circumstances. However, there would also be capacity to support innovative approaches which do not yet have a clear evidence base, and which could be tested within an NDIS.

Children with disability would be a particular focus of early intervention, with priority given to those investments with the greatest potential to make a difference over the life-course.

Self-managed funding - Participants would have the option to self-manage the funding of the whole or part of their plan. Self-managed funding would not be considered income for social security or personal income taxation purposes.

If the participant elects to self-manage their funding package they would have the responsibility for: identifying, selecting and paying suppliers of support needs; purchasing the supports identified in the plan (including responsibility for the payment of appropriate taxes and levies); acquitting purchases; and notifying the NDIS of changes in circumstances or needs. There would also be some processes in place to provide assurance that the funding is being used for purposes consistent with the plan.

NDIS would have the authority not to offer self-managed funding to either the participant or their nominee in certain circumstances.

The NDIS would support people who wish to self-manage but require on-going assistance. The NDIS would also need to develop supports to build the capacity of people who wish to self-manage in the future but are currently unable to do so.

In general, the NDIS would only pay family members or enable participants to pay family members in exceptional circumstances.

Compensation - People who receive compensation payments relating to the provision of care and support would not also receive funding under the NDIS for the same care and support. People approaching the NDIS for assistance should be required to take reasonable action to claim or obtain compensation. This should not, however, limit a person's ability to be assessed for NDIS support prior to taking action and or the determination of the outcome of the action. People receiving supports from the NDIS who are also pursuing compensation would reimburse the NDIS the amount of funding provided by the NDIS (for care and support for that injury) if they later receive periodic or lump sum compensation payments. Where compensation payments specifically include an amount for the future cost of care and support, this amount would be taken into account in the assessment of reasonable and necessary supports for the person. These approaches would apply to claims approved by a

National Injury Insurance Scheme as it is implemented as well as to existing common law and statutory scheme.

Access to supports overseas - NDIS funded supports would be available to a person without the need to make a request for up to 6 weeks of temporary absence from Australia. This would recognise that NDIS participants like other Australians travel overseas for a limited period as a normal part of their lives. There would be discretion to extend portability beyond 6 weeks after a request by the person, and NDIS consideration of whether the level of support remains appropriate. If a person has been absent from Australia for longer than 6 weeks (or their extended portability period) without an exemption being granted their funding will be suspended until they return to Australia.

Continuity of support - A person resident in a launch site would not be disadvantaged by transitioning to an NDIS where they do not meet the eligibility criteria or because they are receiving a higher level of support than would be provided after an assessment of their reasonable and necessary support needs under the NDIS.

Indigenous participants - The NDIS would actively consult with Indigenous people, including prior to national implementation (if agreed by COAG), about innovative strategies to support service delivery in Indigenous communities.

The NDIS would aim to build a systemic awareness of how people with disability can be supported in Indigenous communities, an awareness of Indigenous issues in disability supports, and the role of the NDIS in working with Indigenous people with disability, their families and communities to improve outcomes.

The NDIS would work to address access issues for Indigenous Australians through the development of the wide gateway, tailoring communication and language for different communities, and using existing service entry points and known providers. The NDIS would actively promote opportunities for the employment of Indigenous people in the NDIS and its associated services.

The Advisory Council to the NDIS Board would include Indigenous people with disability.

Providers of disability supports and the NDIS

Safeguards to manage risk within an NDIS – The design of the NDIS means that individual participants would make their own choices. Individual-level, risk-based safeguards would be built into the participant pathway for implementation.

The availability of portable and self-managed funding packages, with material and processes to support informed choice, including transparent information about quality of service, means that highly prescriptive safeguards will no longer be needed. **This means that both participants and providers would need to develop the capacities and tools to operate effectively in this new environment.**

However, there would need to be in place specific measures in a disability support system to minimise the risk of harm to a person with disability. A range of safeguards exist in one form or another in all States and Territories and jurisdictions have been undertaking a range of reforms in recent years to improve protections.

The NDIS would initially draw on existing jurisdictional safeguards, including system, individual, community and service level safeguards and quality assurance at the launch sites.

During launch, governments would need to work together to develop a consistent national approach. Officials would undertake additional work on a nationally consistent risk based quality assurance approach, noting that the National Disability Standards that would underpin such a system have recently been revised.

Sector and workforce issues - The shift to an insurance-based approach and the increased focus on choice and control would have **major implications for the disability sector** as a whole. Participants with an individual funding package require access to a diverse and sustainable disability services to exercise genuine choice and control over the supports they use.

The sector - The disability sector would require support to adjust to an environment where participants with disability may choose forms of support instead of the current programmatic response. Some providers may move from directly providing support to a broker or coordinator role. The primary focus in the short to medium term would be on working with the sector to prepare it for change:

- building consumer and community capacity and awareness by:
  - providing information about the types of providers in the market and the services they offer;
  - increasing knowledge and awareness in the general community about what the NDIS would involve and increasing expectations of "what is possible"; and
  - providing practical information and advice about how to exercise real choice and how to influence the services provided.
- working with providers to enhance organisational capacity including assisting providers to:
  - improve their strategic capacity (including strategic business planning, marketing, stakeholder management; performance measurement and tracking participant satisfaction);
  - improve IT and systems capacity and in particular their capacity to work with the NDIS given that many providers have built their IT capacity around programmatic service offers;
  - improve their business processes(including changes to business models); and
  - improve business structure (including updating pricing models, moving away from a reliance on block funding, revamping organisational structures, and redefining product offerings).

In the short to medium term, steps would be taken to:

- engage and train, in conjunction with peak bodies, providers and the sector more broadly in launch sites;
- work with the sector to design strategies to attract to new workers, initially with a focus on launch sites;
- establish or build on strategic partnerships in launch sites to identify and implement solutions at the local level to address gaps in the supply of supports; and
- monitor launch experiences to assess service patterns, how services are provided and by whom, and identify potential new sources of labour. This would involve working closely with providers to understand workforce and provider needs.

This would involve a careful analysis of the work roles and tasks in the disability workforce to enable the development of a full approach to labour force planning for full scheme development. On the basis of this work, a priority would be the development of a national workforce strategy aimed at supporting and growing the disability workforce.

Further work

Work will be progressing on the NDIS design at the launch sites, including in relation to:

- the roles and functions in the NDIS pathway and supporting people to interact with the NDIS;
- Sector and workforce issues;
- Service level safeguards;
- Early Intervention – to ensure that early intervention is reflected in all elements of design;
- Supports provided through Tier 2 – further consideration will need to be given to how Tier 2 supports which are not included in individual support packages would be linked with other elements of NDIS;
- Operation of reference packages;
- Requirement to take reasonable action to claim or obtain compensation;
- Payments to family members; and
- Programmatic responses – any required.

Implementation planning for launch sites

Implementation planning is progressing and will continue ahead of a July 2013 start date including with regard to:

- Legislation requirements - State/Territory government legislative requirements will be identified, developed and passed;
- Population coverage– the total number of existing and potential new participants identified by location and service provider;

- Establish NDIS administering agency office – the launch site's office for the administering agency will be established, number of staff and team structure based on participants put in place and trained, including planners and Local Area Coordinators (LACs);
- Support needs assessment – arrangements for each launch site in place;
- Data and system requirements regarding participant outcomes defined and communicated to those required to report;
- Communication materials and activities agreed and implemented for service provider, mainstream providers, participants and the community;
- Arrangements for support needs assessments;
- LACs that will link service providers and participants;
- Current programs for people with disability mapped;
- Processes for participants with links to other mainstream services identified, access and referral arrangements to the NDIS designed, and service delivery arrangements agreed;
- Supported accommodation approach agreed with large institutions, including State government institutions, currently providing services to people with disability;
- Service providers will be mapped and arrangements required for 'grandfathering' agreed, service arrangements mapped, current contractual arrangements and sources of current funding and value understood;
- NDIS objectives and arrangements for providers to submit data clarified, and requirements for providers to collect client outcomes defined and agreed;
- Service provider transition strategy documented and communicated to providers and participants:
  - de-personalised data to be published regarding participant needs to enable providers to scope the market potential;
  - providers will be advised of agreed client prioritisation criteria;
  - variations in contracts will be negotiated in view of services provided to participants to be reduced over an agreed period as participants are processed and receive ISPs; and
  - arrangements with generic (non-disability support providers) confirmed;
- ICT systems – current systems mapped, specifications finalised, information made available to providers and training on its use provided.

Review of the NDIS launch sites

The NDIS launch sites will be subjected to scrutiny and evaluation.

Information of the outcomes achieved, what works well and what required modification will be provided to COAG for its consideration of any further roll out of the NDIS. The NDIS Bill provides a review in three years from the commencement of the NDIS at the launch sites.

ooooOOOOoooo

Attachment A - Legislation Outline - National Disability Insurance Scheme.

All Governments have agreed on the need for major reform of disability services in Australia through a National Disability Insurance Scheme (NDIS). This reform is intended to address the findings of the Productivity Commission Inquiry Report *Disability Care and Support* (2011) that "current disability support arrangements are inequitable, underfunded, fragmented and inefficient, and give people with a disability little choice". Based on these findings, all Governments have agreed that the NDIS:

- should take an insurance approach that would share the costs of disability services and supports across the community;
- will fund reasonable and necessary individualised services and supports directly related to an eligible person's ongoing disability support needs; and
- should enable people with disability to exercise more choice and control in their lives, through a person-centred, self-directed approach to service delivery with individualised funding.

In July 2012, the Commonwealth, South Australia, Tasmania, the Australian Capital Territory, New South Wales and Victoria agreed to establish launch sites so that, from July 2013, Governments will start the first stage of an NDIS and improve the quality of support for people with a disability.

This legislation establishes both the NDIS and a National Disability Scheme Launch Transition Agency (the Agency) to administer the scheme, to operate in those States and Territories of Australia that have agreed to host a launch site.

The legislation sets out the statutory framework for the NDIS. Following further consultation with stakeholders after introduction of the Bill the more detailed operational aspects of the scheme will be contained in legislative instruments known as the NDIS Rules.

The legislation is intended to address the short-comings in current arrangements identified by the Productivity Commission by legislating for a scheme and delivery agency which is designed to:

- enable people with disability to exercise choice and control over the planning and delivery of their supports, and to support their independence and social and economic participation;
- ensure that people with disability get reasonable and necessary support, that there is certainty of support and that the scheme remains sustainable over the long term;
- facilitate the development of a nationally consistent approach to the provision and funding of supports to people with disability and promote innovation in the provision of supports.

In addition to responding to the Productivity Commission's findings, the legislation builds on advice to Government from experts provided through the National Disability Insurance Scheme Advisory Group, and from community consultations on the key issues of eligibility for the NDIS and reasonable and necessary supports.

The National Disability Insurance Scheme Bill

The NDIS will work in conjunction with existing mainstream and specialist disability services to provide support for people with disability throughout their life. Consequently, it is not designed to meet all the needs of all people with disabilities. Moreover, support will be provided at different levels, depending on assessed need.

The NDIS represents a departure from standard arrangements for providing government-funded services in Australia. It will be a cooperative venture, with the Commonwealth, States and Territories operating as partners under the umbrella of COAG, contributing jointly to policy deliberations, and, in the case of host jurisdictions, contributing jointly to funding. Although it will be established under Commonwealth legislation, the Bill makes clear the underlying collaborative intent by providing a formal avenue (the Ministerial Council) for States and Territories to advise the responsible Commonwealth Minister on key matters, and by requiring the responsible Commonwealth Minister to consult or seek agreement from the Ministerial Council or host jurisdictions before taking decisions.

The legislation provides for both the creation of a National Disability Insurance Scheme, and for the establishment of an agency to administer the launch of the Scheme (the NDIS Launch Transition Agency).

Chapter 1 – Introduction

Chapter 1 of the legislation contains provisions relating to commencement (section 2) and definitions (Sections 9-11). It also sets out the objects of the Act (section 3), and general principles guiding actions taken under the legislation (sections 4 and 5). The objects and the guiding principles reinforce the rights of people with disabilities to independence, to economic and social participation, to exercise choice and control in decisions affecting their lives, to be provided with reasonable and necessary supports to engage in the life of the community; and to have certainty that they will receive the lifelong care and support they need. The role of carers, families and other significant persons is also to be acknowledged and respected.

Further, the objects and principles support a nationally consistent approach to the access, provision and funding of care and supports for people with disabilities; and promote the importance of innovation, quality, continuous improvement and effectiveness in the provision of supports.

Under these provisions, the NDIS is to:

- Adopt an insurance based approach to the funding and provision of supports;

- Be financially sustainable; and
- Be implemented progressively.

This chapter also establishes the Ministerial Council to consider and advise the Minister or make recommendations to COAG on policy matters relating to the NDIS. It requires the Minister to consult the Council similarly. However, advice and recommendations on particular individuals is specifically precluded from the Council's remit.

Chapter 2 – Assistance for people with disability and others

This chapter provides the legislative base for the Launch Transition Agency (the Agency) to provide support, funding and services, including information and advice, on matters relating to the NDIS.

Chapter 3 – Participants and their plans

Participation in the NDIS is not mandatory. Potential participants, or someone acting on their behalf, may request access to the Scheme by providing information and documentation to the CEO of the Agency, in a specified form. Eligibility and assessment of need will be based on the World Health Organisation's International Classification of Functioning, Disability and Health (ICF). The CEO, or a delegate, will make consider whether or not the person meets the access criteria. These access criteria include:

- Age requirements;
- Residence requirements;
- Disability requirements; and
- Early intervention requirements.

Age Requirements (Section 22)

At this stage, the intent is that NDIS applicants should be under age 65, on the basis that persons aged over 65 are eligible for long term assistance and support under the Aged Care provisions. In some launch sites, access will be restricted to age specific target groups, e.g. in South Australia.

However, these restrictions will apply only until full rollout.

Residence Requirements (Section 23)

To be eligible to access the NDIS, a person must reside in Australia, and be either an Australian citizen, or the holder of a permanent visa, or be a special category visa holder who is a protected SCV holder. During the initial implementation phase, a person seeking access to the Scheme will generally be required to reside within the catchment area specified for each launch site.

Again, however, these restrictions will be lifted following rollout of the full NDIS.

Disability Requirements (Section 24)

The legislation specifies the following disability requirements:

- the person has a disability that is attributable to one or more intellectual, cognitive, neurological, sensory or physical impairments or to one or more impairments relating to a psychiatric condition; and
- the impairment or impairments are permanent; and
- the impairment or impairments result in substantially reduced functional capacity of the person to undertake one or more of the following activities of daily living: communication; social interaction; learning; mobility; self-care; self-management; and
- the impairment or impairments affect the person's capacity for social and economic participation; and
- the person's support needs in relation to his or her impairment or impairments are likely to continue for the person's lifetime.

Early Intervention Requirements (Section 25)

The early intervention requirements will be met if:

- the person has a disability that is attributable to one or more intellectual, cognitive, neurological, sensory or physical impairments or to one or more impairments relating to a psychiatric condition; or
- is a child who has developmental delay; and
- the CEO of the Agency is satisfied that provision of early intervention supports for the person is likely to reduce the person's future needs for supports in relation to disability; and that provision of early intervention supports is likely to:
  - mitigate, alleviate or prevent the deterioration of the functional capacity of the person to undertake one or more of the activities of daily living referred to above; or
  - strengthen the sustainability of the informal supports available to the person, including through building the capacity of the person's carer.

Assessment

To avoid lengthy and potentially stressful delays, the legislation requires that if additional information is requested to assist in making an assessment about access to the Scheme, the Agency must make a decision within 14 days of receiving the complete information. This information may need to be obtained through assessments or additional medical, psychiatric or psychosocial examinations (Section 26). The processes governing assessment of the disability and early intervention, including for assessors and permissible types of assessment, will be prescribed in NDIS Rules (Section 27).

Once a person becomes a participant in the NDIS, they continue to be so until the person dies; or the person turns 65 and enters permanent residential care; their status as a participant is revoked, or they withdraw voluntarily (Section 29).

Participant status can be revoked on the basis that the person does not meet the residence requirements; or does not meet one of the disability or early intervention requirements. (Section 30)

Participant Plans (Sections 31 - 41)

Individualised packages of support will be articulated through participant plans. The legislation requires that preparation, review and replacement of plans, and management of funding and supports provided under them should:

a) be individualised; and
b) be directed by the participant; and
c) where relevant, consider and respect the role of family, carers and other persons who are significant in the life of the participant; and
d) where possible, strengthen and build capacity of families and carers to support participants who are children; and
e) consider the availability to the participant of informal support and other support services generally available to any person in the community; and
f) support communities to respond to the individual goals and needs of participants; and
g) be underpinned by the right of the participant to exercise control over his or her own life;
h) advance the inclusion and participation in the community of the participant with the aim of achieving his or her individual aspirations;
i) maximise the choice and independence of the participant;
j) facilitate tailored and flexible responses to the individual goals and needs of the participant;
k) provide the context for the provision of disability services to the participant and where appropriate coordinate the delivery of disability services where there is more than one disability service provider.

These plans will consist of two parts:

- A participant's statement of goals and aspirations – prepared by the participant and containing details of the person's goals, objectives and aspirations, and their environment and personal context, including living arrangements, informal and other community supports and social and economic participation; and
- A statement of participant supports – prepared in consultation with the participant, and approved by the CEO, and containing details of the general supports (if any) that will be provided to or in relation to the participant; the reasonable and necessary supports (if any) that will be funded under the NDIS; the review date for the Plan, the management of the funding for supports under the plan; and the management of other aspects of the Plan.

"Reasonable and necessary supports" must pass all of the following tests:

a) the support will assist the participant to pursue the goals, objectives and aspirations included in the participant's statement of goals and aspirations;
b) the support will assist the participant to undertake activities, so as to facilitate the participant's social and economic participation;
c) the support represents value for money in that the costs of supports are reasonable, relative to both the benefits being achieved and the cost of alternative supports;
d) the support will be, or is likely to be, effective and beneficial for the participant, having regard to current good practice;
e) the funding or provision of the support takes account of what it is reasonable to expect families, carers, informal networks and the community to provide;
f) the support is most appropriately provided through the National Disability Insurance Scheme, and is not more appropriately provided through other general systems of service delivery or support services offered by a person, agency or body, or systems of service delivery or support services offered:
    i. as part of a universal service obligation; or
    ii. in accordance with reasonable adjustments required under a law dealing with discrimination on the basis of disability;
g) the support is not specified in the National Disability Insurance Scheme rules as a support that will not be funded or provided under the National Disability Insurance Scheme;
h) the funding or provision of the support complies with the methods or criteria (if any) specified in the National Disability Insurance Scheme rules for deciding the reasonable and necessary supports that will be funded or provided under the National Disability Insurance Scheme.

NDIS rules may be used to prescribe methods of assessment or criteria for deciding the reasonable and necessary supports that will be funded or provided under the Scheme; or supports that will not be funded or provided; or not funded or provided for specified participants.

Plans are to be approved by the CEO in accordance with prescribed rules, and remain in effect until replaced by another plan, or they are revoked. Participants must be provided with a copy of the plan.

If the participant is temporarily absent from Australia for less than 6 weeks (or longer if the CEO deems it appropriate), the plan is not affected. However, if the period of absence is longer (without approval), the plan is suspended until the participant returns to Australia. Plans can also be suspended if the participant fails to take action to obtain compensation when required to do so by the CEO.

While a plan is suspended:

- the person is not entitled to be paid NDIS amounts, so far as the amounts relate to supports that would otherwise have been funded in respect of that period; and

- the Agency is not required to provide or fund other supports under the plan, but is not prevented from doing so if the CEO considers it appropriate; and
- the participant is not entitled to request a review of the plan.

Participant plans must be managed. This means

- purchasing the supports identified in the plan;
- receiving and managing any funding provided by the Agency; and
- acquitting any funding provided by the Agency.

The funding for supports provided under plans must be managed. This means:

- purchasing the supports identified in the plan (including paying any applicable indirect costs, such as taxes, associated with the supports); and
- receiving and managing any funding provided by the Agency; and
- acquitting any funding provided by the Agency.

Plans may be managed by the participant, by a registered plan management service provider, by the Agency, or by a plan nominee. In most cases, the plan management arrangements put in place will be those requested by the participant. However, a participant may be prevented from managing their own plan in certain circumstances:

- if the participant is an insolvent under administration; or
- if the CEO is satisfied that management of the plan would present an unreasonable risk to the participant or the financial sustainability of the NDIS; or permit the participant to manage matters that are prescribed by the NDIS rules as being matters that must not be managed by a participant.

Payments (known as NDIS amounts) will be paid either to a participant or to the person managing the participant's plan. NDIS rules will govern the timing and manner of payments. NDIS amounts must be spent in accordance with the participant's plan, and records of payments and receipts retained for a period to be specified under the NDIS rules.

Although the intent is that plans remain in place for a specified period, the participant can request, or the CEO can initiate, a review of the plan at any time. Participants can also revise their statement of goals and aspirations at any time. Following review, a new plan is to be prepared.

Chapter 4 - Administration

Participants and prospective participants must notify the CEO of changes, or likely changes, in their circumstances that may impact upon their status in relation to the NDIS.

If the CEO has reasonable grounds to believe that a participant or prospective participant has relevant information that they have not disclosed, the legislation provides a power requiring them to give that information to the Agency if requested to do so. The legislation specified the types of matters that fall within the ambit of this provision:

- the monitoring of supports funded for, or provided to, a participant;
- whether NDIS amounts paid to the participant or to another person have been spent in accordance with the participant's plan;
- determining whether the participant was not entitled to be paid NDIS amounts because of misleading statements or fraud of any person;
- whether the participant or other person has complied with acquittal requirements;
- whether the participant or prospective participant receives:
  - supports or funding through a statutory compensation scheme or a statutory care or support scheme; or
  - any other disability or early intervention supports.

Similar powers apply to the provision of information by others in relation to a participant or prospective participant. Again, the matters that may be subject to this power are tightly specified:

- whether a prospective participant meets the access criteria;
- whether a participant continues to meet the access criteria;
- whether a person purporting to act on a person's behalf for the purposes of this Act has the authority to do so;
- the preparation or review of a participant's plan;
- the monitoring of supports funded for, or provided to, a participant;
- whether NDIS amounts paid to the participant or to another person have been spent in accordance with the participant's plan;
- whether a participant or other person has complied with section ^46;
- whether a participant receives:
  - supports or funding through a statutory compensation scheme or a statutory care or support scheme; or
  - any other disability support;
- whether an applicant for approval as a registered provider of supports meets the criteria for approval;
- whether a registered provider of supports continues to meet the criteria for approval;
- the functions of the Agency.

An offence is created for failure to comply.

Confidentiality

Information provided under this legislation and stored in Agency records is considered to be protected information. It may be disclosed or used for the purposes of the legislation, or under certain other conditions decided upon by the CEO. Obtaining, recording, disclosure or use of the information under the legislation includes for the purposes of research into matters relevant to the NDIS, actuarial analysis of matters relevant to the NDIS, and policy development.

The legislation creates offences for unauthorised access or use, for soliciting disclosure, and for offering to supply protected information. Each offence attracts a penalty of 2 years imprisonment or 120 penalty units, or both.

Production of information to courts, tribunals etc., except for the purposes of this legislation, is also prohibited.

Registered Providers of Supports

Support providers must be registered by the CEO, in accordance with criteria to be specified under NDIS rules. Registration may relate to plan management and/or the provision of supports, and may be revoked if the person or entity no longer meets the prescribed criteria, or registration is found to have been based on false or misleading information.

NDIS rules may prescribe criteria for registered providers of supports relating to:

- compliance with specified safeguards, quality assurance standards and procedures;
- the qualifications of the person or employees of the person;
- the consequences of approved providers of supports failing to comply with the provisions of this Act;
- requirements with which registered providers of supports must comply, including in relation to governance, business practice and accounting practice;
- obligations in relation to monitoring of their compliance;
- the process for handling complaints involving registered providers of supports; and
- auditing requirements in relation to registered providers of supports.

Children

The legislation contains special provisions relating to the treatment of children:

- if the legislation requires or permits a thing to be done by or in relation to a child, it is to be done by or in relation to
  - the person who has, or people who jointly have, parental responsibility for the child; or
  - if the CEO is satisfied this is not appropriate, by a person determined by the CEO, having regard to any relevant NDIS rules;
- in relation to plan management for a child participant, the person may request:
  - that the person manage the plan wholly or to the extent specified in the request; or
  - that the plan be managed wholly, or to the extent specified in the request, by an approved plan management service provider nominated by the person to manage the plan; or
  - that the plan be managed wholly, or to the extent specified in the request, by the Agency or a person specified by the Agency.

These provisions do not apply if:

- the CEO is satisfied that the child is capable of making decisions for himself or herself; and
- the CEO is satisfied that it is appropriate for this section not to apply to the participant and makes a determination accordingly.

Parental responsibility is defined under the legislation as:

- the person is the child's parent and has not ceased to have parental responsibility for the child because of an order made under the *Family Law Act 1975* or a law of a State or Territory; or
- under a parenting order (within the meaning of the *Family Law Act 1975*):
  - the child is to live with the person; or
  - the child is to spend time with the person; or
  - the person is responsible for the child's long-term or day-to-day care, welfare and development.
- if, under law of the Commonwealth, a State or a Territory, a person has guardianship of a child, that person has ***parental responsibility*** for the child, unless the CEO determines that one or more of the persons referred to above instead have parental responsibility for the child.
- if the criteria specified above would result in more than one person having parental responsibility for a child, the CEO may determine that one or more of those persons have parental responsibility for the child for the purposes of this Act.

The legislation imposes a duty on those acting on behalf of children to ascertain the wishes of the child concerned and to act in a manner that promotes the personal and social wellbeing of that child.

Nominees

Although the principle of choice and control underpins the NDIS, the legislation recognises that, in certain circumstances, people with disability may not be able to manage their own affairs. In these cases, the legislation allows for the appointment of nominees, to manage either a person's plan (the plan nominee) or their correspondence (correspondence nominee). In both cases, appointment may be at the request of the person, or at the instigation of the CEO.

The plan nominee may act only in relation to:

- the preparation, review and replacement of the participant's plan; or
- the management of the funding for supports under the participant's plan.

A correspondence nominee may not act in relation to matters that fall within the remit of the plan nominee, but acts in relation all other correspondence. It is the responsibility of a correspondence nominee to ensure compliance with all requirements made of the participant, in writing, by the Agency.

The legislation imposes a duty upon a nominee to ascertain the wishes of the participant, and to act in a way that promotes the participant's social and personal wellbeing. However, a nominee is not required to act on the wishes of the participant if he or she believes that it would not promote the participant's personal and social wellbeing.

A nominee is obliged to inform the Agency of changes in circumstances that affect, or are likely to affect, his or her ability to act as nominee.

A plan nominee is required to ensure expenditure of NDIS amounts in accordance with the participant's plan, and to provide the Agency with details of how those amounts were spent.

Nominees have the right to accompany the participant to attend an assessment or a medical, psychiatric or psychological examination if the participant wishes, and to the extent that the examiner consents.

Nominees may be appointed either at the request of the participant, or on the CEO's initiative. They may only be appointed with their written consent, and after the CEO has taken into consideration the wishes of the proposed participant. NDIS rules may prescribe some limitations about who can be appointed as nominees.

A participant who has requested the appointment of a nominee can also request that the appointment be cancelled, and the CEO is required to accede to that request. A nominee may also request cancellation of the appointment.

Where the CEO acts to appoint a nominee, that appointment may be cancelled or suspended at the participant's request. The CEO may also cancel or suspend an appointment if the nominee advises of changes in circumstance that might or are likely to, impact on their ability to act as a nominee; or for failure to fulfil their obligations as nominees.

The CEO may also suspend a nominee's appointment if there are reasonable grounds to believe that the person has caused, or is likely to cause, severe physical, mental or financial harm to the participant.

The legislation provides for protection of the principal against liability for actions of nominees, and also protection of the nominee against criminal liability if the nominee has acted in good faith.

Review of Decisions

The legislation provides standard rights and processes for review for review of decisions. Reviewable decisions under the legislation are:

- a person does not meet the access criteria;
- to revoke a person's status as a participant;
- to approve the statement of participant supports in a participant's plan;
- not to extend a grace period;
- not to review a participant's plan;

- to refuse to approve a person or entity as a registered provider of supports;
- to revoke an approval as a registered provider of supports;
- not to make a determination in relation to a person or to a child; or in relation to parental responsibility;
- to appoint a plan or a correspondence nominee;
- to cancel or suspend, or not to cancel or suspend, a nominee's appointment;
- to require a person to take reasonable action to claim or obtain compensation;
- to recover an amount;
- not to treat the whole or part of a compensation payment as not having been fixed by a judgement or settlement.

Written notice of their review rights must be given to participants when a reviewable decision is made, as well as details of how to request a review. The reviewer must not have been in involved in the original decision, and must confirm the original decision, vary it, or set it aside and substitute a new decision. The legislation provides a further avenue of review to the Administrative Appeals Tribunal.

Chapter 5 - Compensation

The legislation provides that:

- if a participant or prospective participant is, or may be, entitled to compensate for person injury, the CEO may require them to take action to claim or obtain the compensation;
- failing to comply with this requirement will result in a plan being suspended, or action to put in place a plan being deferred;
- if compensation has been fixed under a judgement about a personal injury that has caused a participant's impairment, and NDIS amounts have been paid to provide supports in relation to that impairment, and the judgement specifies that a portion of the compensation amount (the past NDIS support component) be for supports of a kind funded under the NDIS, then the Agency is entitle to recover the NDIS amounts, or a portion thereof.

Similar provisions apply to consent judgements.

In considering whether or not it is reasonable to require a participant or prospective participant to take action, the legislation stipulates that the CEO must take into account:

- the disability of the participant or prospective participant;
- the circumstances which give rise to the entitlement or possible entitlement to compensation;
- any impediments the participant or prospective participant may face in recovering compensation;
- any reasons given by the participant or prospective participant as to why he or she has not claimed or obtained compensation;

- the financial circumstances of the participant or prospective participant;
- the impact of the requirement to take the action on the disability of the participant or prospective participant and upon his or her family.

The recoverable amounts are deemed to be debts due by the person to the Agency.

The legislation also provides for recovery of monies from compensation payers and insurers, and prescribes the circumstances under which this can occur. It also creates offences and prescribes penalties for failure by compensation payers and insurers to comply with specified requirements. Each offence carries a penalty of 12 months imprisonment.

Chapter 6 - NDIS Launch Transition Agency

The Agency

The legislation establishes the NDIS Launch Transition Agency, which will come under the *Commonwealth Authorities and Companies Act 1997* (the CAC Act). The Agency will have the following functions:

- to deliver the National Disability Insurance Scheme;
- to manage, and to advise and report on, the financial sustainability of the National Disability Insurance Scheme including by:
  - regularly making and assessing estimates of the current and future liabilities of the Scheme; and
  - identifying and managing risks and issues relevant to the financial sustainability of the Scheme;
- facilitating innovation, research and best practice in the sector;
- to build community awareness of disabilities and the social contributors to disabilities;
- to collect, analyse and exchange data about disabilities and the supports (including early intervention supports) needed by people with disability;
- to undertake research relating to disabilities, the supports (including early intervention supports) needed by people with disability and the social contributors to disabilities;
- any other functions conferred on the Agency by or under:
  - this Act, the regulations or an instrument made under this Act; or
  - any other law of the Commonwealth;
- to do anything incidental or conducive to the performance of the above functions.

The Agency is to act, as far as practicable, in accordance with any relevant intergovernmental agreements, and in a proper, efficient and effective manner.

The Minister may, by legislative instrument, give directions to the Agency about the performance of its functions, as long as

- directions do not relate to individuals; and

- are not inconsistent with this legislation or the CAC Act, or regulations and instruments made under either; and
- each host jurisdiction agrees.

Such directions are binding on the Agency.

The Agency may charge fees in accordance with the provisions of legislative instruments, as long they do not relate to access requests or involve a charge to a participant.

The Agency does not have the privileges and immunities of the Crown.

The Board

The legislation also establishes a governing board for the Agency, with the following functions:

- to ensure the proper, efficient and effective performance of the Agency's functions;
- to determine objectives, strategies and policies to be followed by the Agency;
- any other functions conferred on the Board by or under:
  - this Act, the regulations or an instrument made under this Act; or
  - any other law of the Commonwealth.

The Minister may give the Board a written statement setting out strategic guidance, including policy principles, for the Agency, provided that the statement:

- is of a general nature only;
- does not relate to a particular individual;
- is not inconsistent with:
  - this Act, the regulations or an instrument made under this Act; or
  - the CAC Act, or the regulations or an instrument made under that Act; and
- each host jurisdiction agrees.

The Board must have regard to such statements, although they are not legislative instruments.

The legislation provides for a Board, consisting of a Chair and eight other members, and prescribes eligibility requirements for appointment. Members of the Board should be chosen for their skills, experience or knowledge in at least one of the following fields comprising the provisions or use of disability services, operation of insurance, compensation or long term liability schemes, financial management or corporate governance. The Chair is to appointed by the Minister, after consulting host jurisdictions. The Minister must also seek the support of all host jurisdictions to the appointment of Board members other than the Chair, and be satisfied that the Commonwealth and a majority of the group consisting of the Commonwealth and host jurisdictions support the appointment.

Members of the Commonwealth and State Parliaments, Territory Legislatures, or local government authorities are not eligible for appointment to the Board. Neither are

employees of the Commonwealth, States and Territories or local government authorities, or full-time office holders under Commonwealth, State or Territory law.

The legislation also prescribes the convening and the conduct of Board meetings; and for resignation and termination of Board members.

Independent Advisory Council

Recognising the complexity and diversity of situations for people with disabilities, and the importance of ensuring these views are considered in the operation of the NDIS, the legislation provides for the establishment of an Independent Advisory Council to advise the Board about how the Agency:

- performs its functions relating to the National Disability Insurance Scheme launch; and
- supports the independence and social and economic participation of people with disability; and
- provides reasonable and necessary supports for participants in the National Disability Insurance Scheme launch; and
- enables people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports; and
- facilitates the development of a nationally consistent approach to the access to, and the planning and funding of, supports for people with disability; and
- promotes the provision of high quality and innovative supports to people with disability; and
- raises community awareness of the issues that affect the social and economic participation of people with disability, and facilitate greater community inclusion of people with disability.

However, the Advisory Council is precluded from providing advice on:

- a particular individual;
- the approval of a person or entity as a registered provider of supports or revocation of that approval;
- the corporate governance of the Agency; or
- the money paid to, or received by, the Agency.

The Board must have regard to such advice in performing its functions, and must also provide the Ministerial Council with a copy of the advice and a statement on proposed action in relation to it.

The Advisory Council will consist of a Principal Member and no more than 12 other members. The Minister will appoint the Principal Member and is required to consult host jurisdictions about the appointment. The Minister must seek the support of all host jurisdictions to the appointment of Advisory Council members other than the Principal Member and be satisfied that the Commonwealth and a majority of the group consisting of

the Commonwealth and host jurisdictions support the appointment. Remuneration and allowances will be determined under the *Remuneration Tribunal Act 1973*.

Members of the Commonwealth and State Parliaments, Territory Legislatures, or local government authorities are not eligible for appointment to the Advisory Council.

The Minister must:

- have regard to the desirability of the membership of the Council reflecting the diversity of people with disability; and
- ensure that:
  - at least four of the members are people with disability and have skills, experience or knowledge relating to disability services; and
  - at least two of the members are carers of people with disability and have skills, experience or knowledge relating to disability services; and
  - at least one of the members is a person who has skills, knowledge or experience in the supply of equipment, or the provision of services, to people with disability; and
  - any other members are persons with skills, experience or knowledge that will help the Advisory Council perform its function.

The appointment of the Principal Member must be supported by the Commonwealth and all, or all but one, of the host jurisdictions. The appointment of Council members must be supported by the Commonwealth and a majority of host jurisdictions.

The legislation also provides for the resignation or termination of Council Members.

The Council may determine its own procedures.

Chief Executive Officer, staff and consultants

The CEO will be a full time position, with appointments to be made by the Board, and for a maximum of three years. Remuneration and allowances will be determined by the Remunerations Tribunal. The CEO is responsible for the day-to-day administration of the Agency, and has power to do all things necessary or convenient to be done for or in connection with the performance of his or her duties. However, the CEO is required to act in accordance with the objectives, strategies and policies determined by the Board, and to comply with written directions from the Board about the performance of the CEO's duties.

Agency staff will be engaged under the *Public Service Act 1999*. Secondments may be arranged from other Commonwealth agencies or bodies, or from State and Territory Governments. The Agency may also engage consultants to assist in performing its functions.

Reporting and Planning

The legislation sets out the requirements for annual reporting by the Board, which, in addition to requirements under the CAC Act, and specified through legislative instrument by the Minister, include a report on future liabilities of the NDIS prepared by an actuary, together with a review of that report conducted by an independent actuary.

Copies of certain reports must be given to the Ministerial Council designated by COAG as having responsibility for the NDIS. These reports include: an annual report or interim report given to the Minister under the CAC Act; budget estimates given to the Finance Minister under section 14 of the CAC Act; particulars of a proposal given to the Minister under section 15 of the CAC Act; information, a report or a document given to the Minister or the Finance Minister under section 16 of the CAC Act. The Board is also required to advice the Ministerial Council, as soon as practical, of the appointment, resignation or termination of the CEO.

Additionally, quarterly reports on the operations of the Agency must be provided by the Board to the Ministerial Council, including statistics on participants in each host jurisdiction; and funding or provision of supports by the Agency in relation to each host jurisdiction.

The Commonwealth Minister may request information, which the Agency must provide, on:

- expenditure, relating to a particular host jurisdiction, of money received by the Agency from the Commonwealth or that host jurisdiction; or
- activities of the Agency relating to a particular host jurisdiction.

Similarly, the Agency must provide information requested by Ministers of host jurisdictions who are members of the Ministerial Council about:

- expenditure of money received by the Agency from that jurisdiction; or
- expenditure, relating to that jurisdiction, of money received by the Agency from the Commonwealth; or
- activities of the Agency relating to that jurisdiction.

The Minister must report to the Ministerial Council as soon as practical, on appointment of the Chair or Board members, the Principal and other members of the Advisory Council, and the first CEO; acting appointments to the Board or Advisory Council; granting of leave of absence, resignation or termination of Board or Advisory Council members.

The legislation requires the Board to prepare a corporate plan, which must contain:

- the objectives, strategies and policies to be followed by the 13 Agency;
- the performance indicators for the assessment of the Agency's performance of its functions;
- the performance of the Agency in the year before the year in which the plan is prepared as assessed against those performance indicators;
- the financial sustainability of the National Disability Insurance Scheme (including estimates of the current and future liabilities of the Scheme);
- the risks and issues relevant to the financial sustainability of the Scheme and the management of those risks and issues.

The Board must give copies of this plan to the Ministerial Council before the start of the period covered by the plan, and notify the Council of any variations.

Finance

The NDIS will be funded through a combination of:

- appropriations by the Commonwealth Parliament; and
- payments from host jurisdictions.

The Agency may also receive funds from other sources, e.g. compensation payments.

Agency funds are to be spent only for the purposes of the NDIS and remuneration and allowances payable under this legislation (to the Board, Advisory Council, Agency staff and consultants). However, the legislation also permits the investment by the Agency of surplus funds.

Chapter 7 – Other Matters

Debts

The legislation provides powers for debt recovery, and provisions for recovery arrangements. These provisions apply to individuals who received a payment to which he or she was not entitled, and to financial institutions. The legislation provides the CEO with a discretionary power to write off debts if:

- the debt is irrecoverable at law; or
- the debtor has no capacity to repay the debt; or
- the debtor's whereabouts are unknown after all reasonable efforts have been made to locate the debtor; or
- it is not cost effective for the Agency to take action to recover the debt.

The CEO is also provided with a discretionary power to waive the whole or part of a debt arising from administrative error, where the debt is not raised with six weeks from first payment or from the end of a notification period.

The CEO must waive the right to recover a debt if:

- the debt is, or is likely to be, less than $200, and it is not cost effective for the Agency to take recovery action; or
- as a consequence of agreed settlements.

General Matters

The legislation contains a number of general provisions relating to:

- methods of notification;
- protection of participants against liability for the actions of other persons;
- protections against criminal liability;
- delegations by the Minister and the CEO;
- application of the legislation to registered providers of supports who are unincorporated; and
- time frames for decision making.

Review of the Act

The legislation requires the Minister to initiate an independent review of the operation of the Act, commencing two years after Chapter 3 of the Act commences.

The review will be undertaken by a person/s chosen by the Minister with the agreement of the Ministerial Council. The terms of reference for the review must be agreed by the Ministerial Council.

The reviewer/s must give the Minister a written report within 12 months of commencing the review. Upon receipt of the report, a copy will be provided to the Ministerial Council. The Ministerial Council will make recommendations in response to the report and obtain COAG's response within six months of the Ministerial Council being given the report.

The Minister must table the report in Parliament within 15 sitting days after receiving the report. The Minister must also table COAG's response to the report in Parliament within six months of giving the report to the Ministerial Council. If, however, the Minister fails to table copies of the response within the legislated time limit, the Minister must provide an explanation within 15 sitting days.

Legislative Instruments (Section 182-183)

The Minister may make NDIS Rules by legislative instrument, prescribing matters:

- required or permitted by this Act to be prescribed by the National Disability Insurance Scheme rules; or
- necessary or convenient to be prescribed in order to carry out or give effect to this Act.

The Governor-General may make regulations prescribing matters:

- required or permitted by this Act to be prescribed; or
- necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Each host jurisdiction must agree to the rules and regulations before they are formally made.

Attachment B – your comments are sought by 1 February 2013

With regard to each the Options outlined in the Options section, please outline the costs and benefit to you, your carer/family or organisation, where possible in dollars (a range based on your best guess given the information available in this document, other information available to you on the NDIS, and your present situation), as well as other comments on impacts. That is:

- What will be the **on-going benefits** to you after a change is implemented and how would these compare to your current situation?
- What will be the **on-going costs** to you after a change is implemented and how would these compare to your current situation?
- What will be the impact (in dollars and other ways) in the transition to a scheme as outlined in each the options (that is, in getting from the disability services currently in place to that outlined in each the options)?
  - For participants, these would be making the changes from your present circumstances to those outlined in the options, including the ability to choose your providers.
  - For providers, these would be one-off costs (for example, to purchase equipment or ICT systems, to recruit new staff, to re-train existing staff), or benefits and/or costs that are different to those once the arrangements are fully operational (for example, staff may not be as productive in the short term).
- **Any other impact** that governments and government agencies should be aware of in the design of a new disability service.

In responding, **please provide an outline of the sorts of things that would need to change** for you in getting from the disability services arrangements now to that envisaged by the options, as well as the **impact on you or your organisation of changes that would flow on to you**.

So that we can better interpret your comments, **please provide an outline of your current situation.**

Please identify your preferred option – an outline of your reasons would also be useful.

Do you agree with the assessment of the impacts outlined for each the option, particularly in view of the cost of the NDIS?

Please include a statement regarding whether or not you would be happy to have any comments reflected in the Regulation Impact Statement made public after COAG's consideration.

Please identify any personal or commercial-in-confidence information in your comments so that these are not included in any publically available documents.