

BOARD OF TREASURERS
Submission to the *NDIS Act Review and*
Participant Service Guarantee (Tune Review)

FINAL VERSION – 22 November 2019

Executive Summary

The National Disability Insurance Scheme (NDIS) is a groundbreaking social reform in Australia that has the potential to transform the lives of people with disability, their families and carers.

States and territories have invested billions of dollars into the NDIS to date, and will fund around half the cost of participant supports in the Scheme—collectively contributing more than ten billion dollars per annum from 2020-21. The Board of Treasurers believes that this investment will be returned in the form of improved outcomes and opportunities for people with disability and their families, a fairer society in which no one is left behind, and an innovative and profitable market for disability supports.

The NDIS Act requires the COAG Disability Reform Council (DRC), which includes state and territory Treasurers, to consider policy matters relating to the NDIS and have regard to ensuring the financial sustainability of the Scheme. Under its Terms of Reference, COAG DRC also has responsibility for strategic oversight of scheme costs and financial sustainability. However, existing reporting mechanisms prescribed by the Act do not provide for the level of detail required by COAG DRC to properly understand the scheme's finances or to consider any identified risks to its financial sustainability.

To fulfil its governance role, COAG DRC must have greater access to timely information on scheme finances, cost projections and financial sustainability. The Board believes this will better support effective decision-making and leadership, which will in turn contribute to the overall efficiency and performance of the Scheme in achieving its objectives.

Further, agreed funding arrangements, where state and territory contributions are fixed and the Commonwealth pays the balance has led to a lack of clarity regarding how the Commonwealth's contributions are calculated and adjusted for actual costs over time. Consequently, this has created uncertainty on whether the funding envelope provided is sufficient to deliver the NDIS in accordance with insurance principles, including a critical focus on early intervention and capacity building.

Finally, while the Act requires the Scheme Actuary to report any concerns regarding risks to financial sustainability of the NDIS to the National Disability Insurance Agency (NDIA) Board, there is no requirement for these concerns to be escalated to COAG DRC, even where the risk may not be within the NDIA Board's control and ability to mitigate.

As such, the Board of Treasurers considers there is an opportunity to strengthen the Act to ensure the Scheme funding envelope is sufficient and continues to support the Act's objectives and principles – the very things that contribute to Australia's NDIS being heralded as a world leading reform in the delivery of disability supports. This includes provisions to ensure:

- **detailed information on scheme finances and scheme financial sustainability is provided to COAG DRC** to ensure policy decisions are made in the context of the Scheme's long run sustainability;
- **Commonwealth payments made to the NDIA are sufficient to support the objectives of the NDIS Act;** and
- there is a **mechanism to escalate risks to scheme financial sustainability** to COAG DRC which relate to external factors and cannot be managed by the NDIA Board alone.

The Board encourages the Tune Review to turn its attention to these issues, as any shortcomings of the NDIS in delivering on its stated objectives will ultimately be felt directly by participants, carers and their families or through the mainstream service systems for which states and territories are responsible.

There is much to gain. However, the returns on the substantial investment in the NDIS can only be guaranteed through appropriate regulation, governance and stewardship of the NDIS and its market. There must be appropriate checks and balances in place—information on scheme finances, scheme cost projections and risks to financial sustainability must be shared equally and transparently between all scheme funding partners. This, in turn, will promote public and stakeholder confidence in the Scheme.

Introduction

The Board of Treasurers appreciates the opportunity to make a submission in response to the Review of the *National Disability Insurance Scheme Act 2013* (NDIS Act) (Tune Review).

The Board of Treasurers consists of all state and territory Treasurers. Its purpose includes collaboration on, and advancement of, national reform priorities from a state and territory perspective. As Treasurers, the Board's members are represented on the COAG Disability Reform Council, along with state and territory Disability Ministers.

COAG DRC oversees the implementation of the NDIS, and under its Terms of Reference is required to provide strategic oversight of the Scheme, including of costs and financial sustainability and implementation risks; and make recommendations to COAG on the policy framework for the arrangements for full scheme NDIS.

The Board notes that one of the purposes of the Review is to assess the operation of the NDIS Act, with consideration on how to **increase the efficiency of the Scheme's administration**, giving regard to the **objectives and principles of the Act**.

The Board also notes that the Terms of Reference and the Discussion Paper invites comment on any **other matter relevant to the general operation of the NDIS Act in supporting positive participant and provider experiences**, and that this is reaffirmed through the Discussion paper which seeks **general comments about the operation of the NDIS** and any other relevant issues.

To fulfil its governance role, including safeguarding state and territory investments and having oversight of NDIS policy, the Board considers that COAG DRC must have access to relevant information to support optimal decision-making and effective leadership. The Board encourages the Tune Review to consider improvements to existing governance arrangements, decision-making processes and reporting frameworks that support NDIS policy-making and performance, with the view to increasing the efficiency of the Scheme's administration and ultimately ensuring positive participant outcomes and the enduring financial sustainability of the Scheme.

As noted in the discussion paper to the Review, the NDIA Act was reviewed in 2015 and the ensuing technical recommendations made by COAG are yet to be legislated. Given the next Act review is unlikely to be commissioned until or after 2021, the Board considers that this Review should give consideration to Act amendments that support the longer-term sustainability of the scheme.

1. Opportunities to support COAG DRC decision making

The enduring financial sustainability and effectiveness of the NDIS are central tenets of the NDIS Act. States and territories have committed significant resources to the Scheme and are determined to see it realise its potential in supporting the independence of people with disability and their social and economic participation.

The NDIS Act states its objects are to be achieved by having regard to actuarial advice and financial sustainability of the Scheme (section 3).

(2) The objects of the Act are to be achieved by:

(a) Providing the foundation for governments to work together to develop and implement the NDIS launch; and

(b) Adopting an insurance-based approach, informed by actuarial analysis, to the provision and funding of supports for people with disability.

(3) In giving effect to the objects of the Act, regard is to be had to:

(b) the need to ensure the financial sustainability of the NDIS

States and territories, as major shareholders in the scheme, have a vested interest in monitoring the return on their investments in the scheme including remaining informed on matters relating to scheme finances, scheme cost projections, identified risks to financial sustainability and scheme performance.

The NDIS Act also requires that COAG DRC considers policy matters relating to the NDIS. This responsibility is reflected in DRC's current Terms of Reference which states the Council will '*provide strategic oversight of the NDIS, including scheme performance, participant outcomes and oversight of costs and financial sustainability, and monitor and advise on implementation risks*'.

For COAG DRC, proper consideration of policy matters cannot occur in isolation from an understanding of scheme financial sustainability. As an example, in the *Summary of NDIS Annual Financial Sustainability Report 2018-19*, the Scheme Actuary highlighted scheme coverage scope creep as a financial sustainability pressure. Consequently, in considering refinements to the interface between mainstream services and the Scheme, COAG DRC must have timely access to analysis and information on the financial implications of any decisions.

The afore mentioned *Summary of NDIS Annual Financial Sustainability Report* is a deliverable of Section 180B of the NDIS Act which specifies that the Scheme Actuary must prepare an Annual Financial Sustainability Report and a summary of that report. The summary report must be included in the NDIA's Annual Report (section 172). However, there is currently no requirement for either the full Financial Sustainability Report or relevant information pertinent to decision making to be provided to COAG DRC or government officials.

Under Section 118 of the Act, the NDIA is required to manage, advise and report on the financial sustainability of the NDIS by making and assessing estimates of current and future expenditure; identifying and managing risks and issues relevant to the financial sustainability of the NDIS and considering actuarial advice, including advice from the scheme actuary and the reviewing actuary.

The NDIA is also required to provide the following details regarding this function in its Corporate Plan (section 177):

(4) ... the plan must include details of the following matters:

(d) the financial sustainability of the National Disability Insurance Scheme (including estimates of the current and future expenditure of the National Disability Insurance Scheme);

(e) the risks and issues relevant to the financial sustainability of the National Disability Insurance Scheme and the management of those risks and issues.

As both the NDIA Annual Report and Corporate Plan must cater to a broad range of stakeholders, these reporting mechanisms are too infrequent and cannot provide the level of detail required by COAG DRC to properly consider scheme finances and any identified risks to the financial sustainability of the NDIS.

Work is currently progressing through the NDIS Senior Officials Working Group to develop a regular report for COAG DRC on scheme finances and financial sustainability. Such a report could be made a requirement under the Act, to reinforce its importance in Scheme financial oversight. Strengthening the existing provisions in the Act that relate to reporting could be one way of ensuring this critical information flows to COAG DRC. For example, through additional mandatory requirements under *Section 173 Giving certain information to the Ministerial Council*, or through greater specificity regarding NDIA reporting requirements to state and territory Ministers on *'expenditure, relating to that jurisdiction, of money received by the Agency from the Commonwealth'* (section 175, 2b).

2. Ensuring the scheme funding envelope supports the objectives of the Act

Certainty and transparency of financial contributions to the NDIS are critical to maintaining confidence in the Scheme's financial sustainability and the effective functioning of its co-governance and co-funding arrangements. This is also important for the design, establishment and operation of a Reserve Fund for the Scheme.

One definition of scheme financial sustainability states that '*contributors think that the cost is and will continue to be affordable, under control, represents value for money and, therefore, remain willing to contribute*'.¹ Some of the tools for co-funders to assess the value for money received from their investments are in development—the *NDIS Outcomes Reporting Framework* will enable jurisdictions and the NDIA to assess the degree to which the NDIS is delivering on its intent and the objects of the NDIS Act—yet important questions regarding Commonwealth NDIS contributions remain unanswered.

Principally these questions relate to: 1) uncertainty around the quantum of Commonwealth payments to the NDIA on a jurisdictional basis; and 2) whether the Commonwealth contribution methodology generates a sufficient funding envelope to allocate participant supports using an insurance-based approach.

Contributions in each jurisdiction

State contributions are set out in respective full scheme NDIS bilateral agreements, with Commonwealth contributions based on the 'balance of NDIS costs', and as such, are variable. From full scheme, states and territories do not have a clear line of sight regarding: Commonwealth payments to the NDIA in each jurisdiction; and how major revisions to budgeted Commonwealth NDIS payments impacts funding flows into each jurisdiction.

There should be greater transparency and information sharing on the amount of Commonwealth NDIS funding being paid to the NDIA in each jurisdiction.

As major shareholders of the NDIS, states and territories want assurance that the equitable shared funding arrangements originally envisaged in the NDIS Heads of Agreements are on track.

Commonwealth contribution methodology

To give effect to *Section 3 Objects of the Act*, the NDIS must be able to facilitate early intervention, capacity building and innovative practices to assist in improving lifetime participant outcomes. The Board of Treasurers considers that the objects and principles outlined in the NDIS Act are critical foundations for supporting the independence and social and economic participation of people with disability. As major shareholders we seek greater assurance that the Commonwealth's funding methodology will breathe life into these important foundations.

Under Victoria and Queensland's bilateral agreements, the Commonwealth has committed to using an average annual package cost as the basis of its contribution. It is understood that the average annual package cost is based on the Productivity Commission's initial estimate of Scheme costs in 2011, which was refined by the Australian Government Actuary in 2012, and that aside from indexation has not been subsequently updated. States and territories are currently unable to assess whether this package cost amount will continue to generate a sufficient funding envelope to allocate participant supports using an insurance-based approach, particularly as the Scheme matures and participation and utilisation increase.

With the current lack of shared understanding on critical funding matters such as scheme finances and actuarial analyses, states and territories are unable to assess the value for money received from their investments in the Scheme. It also makes it difficult to assess the extent to which funding considerations may be driving NDIA operational decisions—it is not clear in which situations the

¹NDIA, Insurance Principles and Financial Sustainability Manual paper dated November 2016

Commonwealth would agree that a cost overrun has occurred and provide additional funding, and in which situations the NDIA would be required to reduce expenditures to stay within the 'agreed funding envelope'. States and territories appreciate the commitment made by the Commonwealth in the full scheme agreements to fund cost overruns, but seek to understand the process by which additional funding would be provided to the NDIA to meet its liabilities.

States and territories seek assurance that the Scheme is being funded in a way which sufficiently supports an insurance-based approach, as envisaged in the Act. There is an opportunity through this Review to identify relevant sections in the Act where the link between the stated Objects of the Act and payments to the NDIA can be strengthened. This is particularly important for Commonwealth payments to the NDIA which are variable, and thus determine the overall funding envelope for the Scheme, including the quantum of funding that would be available for the proposed Reserve Fund.

3. Ensuring risks to the financial sustainability of the Scheme are escalated and resolved

The NDIS Act sets out the responsibilities of the Scheme Actuary to report concerns relating to financial sustainability to the NDIA Board (Section 180B):

4) If the scheme actuary has significant concerns about the financial sustainability of the National Disability Insurance Scheme, or the risk management processes of the Agency, he or she must report those concerns to the Board as soon as reasonably practicable.

While there is also a requirement in the NDIS Act (section 177) for the NDIA to provide details on the risks relevant to the financial sustainability of the NDIS, and the management of those risks, within their Corporate Plan (albeit limited in scope as previously mentioned), there is no formal requirement for the risks and concerns raised by the Scheme Actuary under Section 180B to be directly escalated to the COAG DRC, if and when required.

An example of a potential emerging risk to longer-term scheme financial sustainability and effectiveness is participant plan underutilisation. To date, generally, participants have not been using all the funding in their plans, although the rate of utilisation has been increasing over time. Underutilisation of disability supports by participants, particularly those which may help individuals achieve greater independence, may undermine the potential for reducing future demand and costs over the longer term.

While acknowledging that the NDIA has commenced analysis on causes of underutilisation, the Board of Treasurers is concerned to ensure the COAG DRC will be provided sufficient information on the risk to longer term scheme financial sustainability.

Moreover, if financial sustainability risks persist despite NDIA intervention or stewardship and cannot be effectively managed by the actions of the NDIA Board, the Act should require such matters, at a minimum, to be escalated to COAG DRC for consideration and/or resolution.

This acknowledges that there may be risks and pressures that relate to the external environment and are outside the NDIA Board's control and ability to mitigate. In these instances, COAG DRC could also be required to issue a formal response to any escalated risks.

Recommendations

The Board of Treasurers recommends the Review consider the following proposals to improve the operation of the Act and increase the efficiency of the Scheme's administration:

1. Specifying within the NDIS Act a **requirement for COAG DRC to receive timely access to detailed information on scheme finances and scheme financial sustainability**. At a minimum, reporting to COAG DRC should include information on:
 - Scheme finances (including payments made to the NDIA in each jurisdiction by each co-funder)
 - Financial sustainability (including actuarial analysis and cost projections)
2. Including provisions in the NDIS Act for the **Scheme Actuary's full Annual Financial Sustainability Report to be provided to COAG DRC as a matter of course**. The tabling of the report could form a part of the reporting process proposed in Recommendation 1.
3. For **additional checks and balances to be embedded in legislation to mitigate any emerging risks to Scheme financial sustainability**, including a process by which the NDIA Board is required to escalate concerns raised by the Scheme Actuary to COAG DRC, when those risks are beyond the NDIA Board's control.
4. **Strengthening the legislated link between the stated Objects of the Act and payments to the NDIA**, specifically for Commonwealth payments which are variable and therefore determine the funding envelope for participant supports, to provide greater assurance that the Scheme is being funded in a way which sufficiently supports an insurance-based approach.

The Board of Treasurers believes these improvements would provide greater certainty and transparency for all scheme co-funders, allow COAG DRC to fulfill its strategic oversight role and ultimately support effective policy making that will lead to a more efficient, effective and beneficial NDIS.