



***Submission to the Inquiry into the National Disability Insurance Scheme
Savings Fund Special Account Bill 2016***

***Young People In Nursing Homes National Alliance
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Introduction

The Alliance is pleased to have the opportunity to provide a submission to the Inquiry into the *National Disability Insurance Scheme Savings Fund Special Account Bill 2016*.

The Alliance has taken a close interest in the development of the NDIS from the early drafting of the legislation and rules, through the scheme's implementation and transition and the recent legislative review process. We have a particular interest in the design elements of the scheme, including its funding and sustainability and in this submission will draw on the Productivity Commission's description of a viable NDIS that was outlined in its 2011 Report.¹

The Commonwealth has committed to support Australians with disability through the NDIS. While funding is certainly important, it will not on its own secure the future success of the scheme. The NDIS is only a one sixth part of the National Disability Strategy (NDS), the achievement of which is a prerequisite for NDIS sustainability. Over time, the failure of 'mainstream' programs in properly supporting people with disability will place massive financial pressure on the NDIS. The scheme's long term sustainability is about more than revenue alone and we would like to see more substantial effort going into the policy reforms required to deliver the scheme's outcomes.

Our concerns with this Bill are that it is not compatible with the shared governance needs of the NDIS; and it ignores one of the critical design elements of the NDIS - its operational independence from government budgets. The Bill lacks any reference to the National Disability Strategy and is not part of a wider strategy to manage the full suite of risks and policy reform required for the introduction of the NDIS.

Finally, the NDIS needs a funding formula that is transparent, predictable, viable and sufficient. This cannot include the kinds of discretion this Bill gives to both the Minister and to the Prime Minister and Cabinet.

The Alliance recommends that the Committee finds the NDIS Savings Fund, as proposed, to be unfit for purpose.

Funding and governance issues

In its model for the NDIS, the Productivity Commission made it clear that support for people with disability needs to be a core function of government:

The costs of supporting people with a significant disability from year to year through the NDIS should be viewed as a core funding responsibility of government and met from claims on general government revenue.²

Creating an account that focuses on a notional 'shortfall' as this Bill does is backing away from this responsibility. Indeed, if the NDIS was a core function of government, there would be no 'shortfalls' as they are conceived in this Bill. Core

¹ Productivity Commission, *Disability Care and Support*, Vols. 1 & 2, Report No. 54, Canberra 2011.

² Productivity Commission, *Disability Care and Support*, Vol 1, Canberra, 2011: 85.

functions of government do not have 'accounts' to ensure their survival and obligations ... nor should the NDIS.

The Commission proposes several options for providing certainty of future funding. Its preferred option is that the Australian Government should finance the entire costs of the NDIS by directing payments from consolidated revenue into a 'National Disability Insurance Premium Fund', using an agreed formula entrenched in legislation.³

Rather than a piecemeal fund run by a single jurisdiction, the Alliance supports creating a national premium fund based on the recommendations of the Productivity Commission to ensure that NDIS funding is not captive to the politics of an annual budget competition.

While the distributed governance and funding arrangements we now have for the NDIS make this approach more complicated, it is still feasible. In recognition of the scheme's costs, the Disability Care Australia fund (DCAF) was established to hold income from the Medicare levy and the transition from existing Commonwealth, States and Territory systems. The Alliance believes that rather than having multiple funds, this fund could be adapted to become a national premium fund jointly governed by the States and the Commonwealth.

Because the demands on the scheme will not be discretionary in the long term, the NDIS cannot have discretionary funding sources. To be a viable social insurance scheme, the NDIS needs to have predictable and secure revenue sources. The fact that the Bill enables the Minister alone to decide 'deposits' to the fund; and the PM and Cabinet to make discretionary payments to the fund, make this a poorly designed long term funding mechanism for the scheme.

A related problem with the fund as described in the Bill is that it casts the NDIS as a program of the Minister rather than a truly independent scheme. The Bill thus makes the scheme vulnerable to the political ebb and flow future governments may confront. This is one of the key reasons the Productivity Commission recommended an insurance model that would be free of the budget related political tussles that plagued the old disability system:

...the Commission has recommended that the NDIS would effectively lock in tax revenue to meet its annual liabilities, without a yearly battle through the budget process to secure sufficient funding in competition with other government spending initiatives⁴

The Alliance believes this recommendation also refers to the kind of budgetary practices the Bill proposes of 'trading in' funding for existing programs on a periodic basis (including welfare payments for people with disability) to access money to fund disability

³ Op. Cit.: 3.

⁴ Op. Cit.: 573.

services. Using trade offs between programs (particularly those from the Social Services programs area) to fund the scheme on a yearly basis is inappropriate.

Equally, looking for program underspends as a funding source is not viable because such underspends can happen only once. Treasuries usually respond to program underspends by removing the underspent amount from the following year's budget. It would be more straightforward for the Treasury to simply allocate required funds to the NDIS via a transparent agreed formula.

The Productivity Commission highlighted the risk of a federated model with different jurisdictions driven by budget or other considerations. They said that a federated model would risk a diminution of the scheme's capacity by:

...undermining the core requirement that funding be sufficient to meet people's entitlements for their assessed needs This would occur, for example, if state and territory governments' funding contributions started to again reflect the vagaries of their budget cycles or were based on arbitrary criteria (such as maintaining real per capita spending levels, despite growing needs).⁵

As it currently stands, the NDIS is a federated scheme. Its risk remains in the Commonwealth's - not the States and Territories - proposal of a discretionary funding mechanism. The risk is that future governments may use a contrived funding 'gap' arising from political difficulties in making deposits to the Savings Fund, as evidence of a permanent inability to fully fund the scheme. This in turn could result in pressure to reduce the scope and benefits of the NDIS and limit the call on government revenue for the scheme.

In giving a Minister in a single jurisdiction too much individual influence in a federated scheme, the proposed Savings Fund potentially undermines the imperative for robust shared governance of the NDIS. The creation of such a fund at the Commonwealth level with exclusive ministerial control, also begs the question of whether some or all of the jurisdictions would be encouraged to follow this example and, if they do, how different ministerial and jurisdictional budgetary priorities may impact the scheme's funding.

The federated scheme means that all decisions about funding need to be made within the context of a shared governance model. The design of the fund with the degree of ministerial control and discretion it presumes raises questions about the structural role of the NDIS board in managing the scheme's risks and strategy, a role that should be independent of government(s).

...a corporate model of governance is needed, with an independent commercial board and independence from day-to-day government control – the administrative arrangements for dealings with the relevant minister should be specified in legislation, be on an arm's length basis and clearly

⁵ Op. Cit.: 446.

*defined.*⁶

The NDIS has been designed as an independent insurance scheme and governments need to resist the urge to have it operate as a government department under direct ministerial control. Its insurance principles and individualised lifetime funding strategy are defining features of the NDIS that must not be diluted by making the scheme subject to the normal processes of government budgets as this Bill seeks to do.

Managing NDIS interfaces

The interfaces with other State and Commonwealth programs are an important but neglected part of the NDIS rollout. The ability of the NDIS to complement service programs in other portfolios is not only an important part of the NDIS achieving its objectives of greater social and economic participation of scheme participants, but is also a key risk management strategy for the sustainability of the insurance scheme.

The failure of these 'mainstream programs' to deliver on their obligations to people with disability will ultimately be underwritten by the NDIS, as people seek substitute supports for the ones they cannot access in the community. The NDIS requires these other programs to be active contributors to not only the support of people with disability, but to their citizenship.

The Alliance has seen a number of policy grey zones emerge with the rollout of the scheme. These are at the borders of the scheme and involve service areas such as rehabilitation and other health services. While the NDIS does not fund rehabilitation services, a failure to provide timely and effective rehabilitation to people with brain injury and similar conditions will ultimately lead to poorer outcomes and higher levels of dependence for individuals, as well as higher long term care costs for the NDIS. Because some of the rehabilitation services required by these groups are not currently available in the health system, the question of how they are developed in the NDIS environment is an urgent but, as yet, unclear requirement.

This dilemma is present in a number of other interface areas (including education, aged care, justice and mental health). There is no clear policy pathway to resolve the question of how these services are to be provided and who should take primary responsibility for them. The COAG Principles concerning the responsibility of the NDIS and other service systems⁷ do not, in fact, provide the guidance required to resolve these issues.

The separation of a policy development function from the implementation of the scheme has also meant that the NDIS has little or no capacity to influence these relationships. In its submission to the Independent Review of the NDIS Legislation, the Alliance recommended the NDIS be given national policy responsibility so that it can negotiate interface arrangements directly. The pace of the scheme's implementation means that continuing to rely on Commonwealth and State Governments to lead this work is not delivering as quickly and as comprehensively as needed.

⁶ Op. Cit.: 401.

⁷ See <https://www.coag.gov.au/node/497>

In addition to resolving the Commonwealth's funding methodology, we believe that, as part of a commitment to overall scheme viability and risk management, the Minister for Social Services needs to lead a more intensive program of cross-portfolio engagement around the NDIS.

National Injury Insurance Scheme (NIIS)

The National Injury Insurance Scheme (NIIS) is an important part of the disability care and support reform program in Australia. If the Commonwealth is concerned about the long term funding of the NDIS, the NIIS must be central to its deliberations.

In August 2011, the Productivity Commission (PC) recommended the establishment of two schemes: the National Disability Insurance Scheme (NDIS) and the National Injury Insurance Scheme (NIIS). The PC recommended that the NIIS be separate for a number of reasons, such as:

- ***reducing the cost of the NDIS through a fully funded insurance accident scheme;***
- *making use of existing expertise and institutions of accident compensation schemes;*
- *using incentives to deter risky behaviour and reduce local risks that can contribute to accidents; and*
- *covering a broader range of health costs associated with catastrophic injuries, such as acute care and rehabilitation services.*⁸

More specifically, Treasury has summarised that

Over time a fully implemented NIIS will increasingly relieve a significant part of the cost of a full NDIS. The Productivity Commission (PC) estimated that when the NIIS is fully mature, the direct offset to the NDIS would be in the order of \$720 million per annum (in 2011 dollars).

*An alternative way to think about the saving to the NDIS is that the NIIS eventually will provide care and support to around 30,000 people at an annual cost of care and support of around \$70,000 to \$100,000 per person.*⁹

As the delivery of the NDIS has been brought forward, the implementation of the NIIS has lagged and the Alliance is concerned that this is being given a lower priority than it deserves. Although not covering as many people, the NIIS is important in that it can raise premiums to cover lifetime support costs for people sustaining lifelong disability from accident events; and it does not rely on Commonwealth or State budgets.

⁸ See <http://www.treasury.gov.au/Policy-Topics/PeopleAndSociety/National-Injury-Insurance-Scheme>

⁹ Council of Australian Governments Senior Officials' Working Group: Interactions between the National Injury Insurance Scheme (NIIS) and the National Disability Insurance Scheme (NDIS) Canberra 2013. See <http://www.treasury.gov.au/~media/Treasury/Access%20to%20Information/Disclosure%20Log/2013/1318/Downloads/PDF/Document%207.ashx>

Some progress has been made in 2016 with no fault motor vehicle schemes now in place in all states and necessary reforms being made to some workers compensation schemes. However, more needs to be done in the areas of medical and general injury.

The Commonwealth does lead a National Injury Insurance Scheme working group through the Department of Treasury. However this is a small initiative within Treasury without much profile. It is administratively discrete from the NDIS and the Department of Social Services. As an important element of the NDIS' sustainability strategy, the Alliance would like to see substantially more speed and commitment made to delivering the NIIS.

If the Minister for Social Services is keen to take a key leadership role in the funding of disability reform, the Alliance strongly recommends that the Commonwealth relocate the NIIS in the machinery of government and move it to Social Services to enable this important injury insurance scheme to be reinvigorated. We see a real risk that without a strong link to the NDIS, the NIIS may stall indefinitely.

Conclusion

The Alliance does not believe that the NDIS Special Savings Fund has been well conceived in the overall context of the NDIS reform.

We also believe that the Council of Australian Governments Disability Reform Council needs to recast the Disability Care Australia Fund as the national premium fund for the NDIS.

In addition, a whole of government and cross government strategy for sustaining the NDIS is needed that includes funding, governance and developing cross portfolio interface arrangements with non disability programs, as well as a renewed focus on linking the NDIS and NIIS with the National Disability Strategy.

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