

Chapter 5

Conclusions

5.1 This chapter discusses issues relating to the governance of the Scheme and some of the broader systemic issues confronting Australian governments and the Agency in their stewardship of the Scheme. The systemic issues considered in this chapter are areas where either the committee has not received substantial evidence, or areas where policies, funding and responsibilities are still being developed. The committee foresees these issues will form the substantive part of the committee's work plan for the next 12 months.

Governance and strategic directions

5.2 1 July 2015 marked the second anniversary of the launch of the biggest social reform in Australia in over 30 years. While launched in only eight trial sites, the learnings and outcomes are already significant and will be long lasting.

5.3 The committee has visited all the trial sites since the Scheme commenced and has spoken with participants, family members, carers, providers, state and federal officials and representatives of the National Disability Insurance Agency (NDIA). The committee has heard the stories of how the Scheme has changed lives and how those who interact with the participants in day to day circumstances have witnessed the positive effects of the Scheme.

5.4 While many extraordinary things have been achieved, there are still many challenges ahead. Not least among these is the finalisation of the bilateral agreements for transition.

Finalising bilateral agreements

5.5 As highlighted in the committee's first report, the task confronting not just the Agency, but the Board, the Department of Social Services (DSS), the Independent Advisory Council, the Minister, the Disability Reform Council (DRC) and the Council of Australian Governments (COAG) in developing and implementing the National Disability Insurance Scheme (NDIS) and its sister, the National Injury Insurance Scheme (NIIS), is truly immense.

5.6 The committee notes that since the commencement of the NDIS, COAG has issued five communiqués that make mention of the NDIS. In its second communiqué dated May 2014, COAG agreed to make the NDIS a standing item on all future agendas and that the DRC would report to each COAG meeting on NDIS implementation, including management of costs and the transition to full scheme.

5.7 At the last meeting in May 2015, COAG noted the progress made and that jurisdictions are endeavouring to finalise transition bilateral agreements by the end of August 2015 for national rollout of the Scheme. It also noted that Western Australia's agreement will be made later to take account of the evaluation of its trials.

5.8 The committee's first report to the Parliament provided 17 recommendations listing the committee's concerns and suggestions on the implementation of the NDIS.¹

5.9 Many of these recommendations centred largely on issues related to the initial implementation—in most cases teething issues—trying to ensure that those who need the supports are able to access them appropriately. The committee welcomed the Government response to the report and its recommendations, noting that the Government agreed or agreed-in-principle to all the recommendations and notes that the Commonwealth, the NDIA and jurisdictions are working together to address them.

5.10 The committee notes that NSW and Victoria have now agreed bilateral plans with the Commonwealth. However, with less than 10 months to the implementation of the transition phase of the Scheme on 1 July 2016, a number of the transitional bilateral agreements have yet to be agreed. In the committee's last report, Recommendation 13 proposed that:

...all future bilateral negotiations and amendments to transitional arrangements are finalised and publicised well in advance of commencement dates to ensure and provide confidence and certainty for all stakeholders.

5.11 While it is hugely important these agreements are done properly and done well to ensure risk is mitigated and that they are fit for purpose for all concerned—particularly the Commonwealth—it is also, in such a nascent market, important to promote confidence and certainty for all involved.

5.12 Equally important is that the agreements are finalised and the contents of them made known widely so the sector can prepare itself adequately to adapt and grow. This by far is the most pressing issue the committee has repeatedly heard from all areas of the sector, particularly when the timeframe for commencement of full Scheme in most states is 1 July 2018.

Recommendation 11

5.13 The committee recommends that the Government, through the Disability Reform Council, make all haste with the finalisation all of the bilateral agreements for the transition phase of the National Disability Insurance Scheme.

Reinvigoration of the National Disability Strategy

5.14 Finalisation is also required on the roles and responsibilities for Tier 2 services (Information, Linkages and Capacity building (ILC)) and access to mainstream services. Both were recommendations in the last committee report.

5.15 A consistent issue raised by many witnesses is that of 'gaps in service', both for individuals who were found 'ineligible' for the Scheme and required access to Tier

1 Australian Government response to the Joint Standing Committee on the National Disability Insurance Scheme report: Progress Report on the implementation and administration of the National Disability Insurance Scheme, p 2.

http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/Correspondence_received

2/ILC supports and where mainstream services have been withdrawn. This affects access to a range of services such as medical and education services.

5.16 The committee's first report recommended the following in regard to these issues:

Recommendation 2

3.72 The committee heard evidence that 'gaps in service' have been identified in each of the trial sites. The committee recommends that further work be undertaken by the Independent Advisory Council which is well-placed to identify and inform the Agency about where there are gaps in service and possible options for addressing these shortfalls.

Recommendation 15

6.76 The committee recommends that the Ministerial Disability Reform Council expedite roles and responsibilities and any funding arrangements for Tier 2 services.

5.17 Nevertheless, the committee is aware that a number of initiatives are being progressed to assist the sector develop its long term sustainability. For example, the DSS led *Integrated Market, Sector and Workforce Strategy* (the Strategy), and the refocusing of the Sector Development Fund, and the NDIA's Outcome Framework are all seen by the committee as important structural developments.

5.18 Recommendations 2 and 15 on 'gaps in services' and expediting roles and responsibilities and any future funding arrangements for Tier 2 services are proving elusive in reaching an outcome. Obviously these issues are closely tied to the outcomes of the bilaterals. Nevertheless, the longer they persist unresolved, the more detrimental their absence becomes. The committee's recommendation 13² from its 2014 report also focused on the importance of bilateral negotiations coming to a timely conclusion.

5.19 The committee acknowledges the work of the DRC in advancing the Strategy and commends the Independent Advisory Council (the Council) on its work in examining these issues. In its response to the committee's recommendation 3, the Council notes:

...[T]hat the NDIS sits within the broader commitment by governments to advance the interests of people with disability...as outlined in the National Disability Strategy (NDS)...through the commitment to implementation of the NDIS, all governments have agreed that the NDIS should not replace other service systems but should instead reinforce the obligations of mainstream and other service delivery systems...³

2 Joint Standing Committee on the National Disability Insurance Scheme, *Progress report on the implementation and administration of the National Disability Insurance Scheme, July 2014*, p. xix.

3 Independent Advisory Council, Response to the Joint Standing Committee on the National Disability Insurance Scheme on gaps in service, June 2015, p.4.

5.20 The Council also highlights that the NDS is an important part of the disability sector that is intertwined with its development, and that the NDS' overarching ten year strategic policy framework (National Disability Strategy 2010-2020) needs to be reinvigorated to support the NDIS:

The Council recommends that a concerted effort is needed from all governments to reinvigorate the NDS, including implementing a robust outcomes framework which should sync with the NDIS outcomes framework that is now being trialled.⁴

5.21 The committee agrees with the Council that the successful realisation of the NDS remains critical for the implementation of the NDIS and that reinvigorating the NDS will help to ensure it delivers on its stated objectives.

5.22 In addition, it is envisaged that by undertaking this refocusing of the NDS, with the roles and responsibilities clearly delineated before transition and full scheme, will go to ensure that people don't fall through the cracks between the NDIS and state-based systems. This is particularly important when finalising the arrangements for Tier 2 and continued access to state and territory mainstream services that have declined in some states.

Recommendation 12

5.23 The committee recommends that the Government, through the Disability Reform Council, agree effective roles and responsibilities including funding regarding Information, Linkages and Capacity building (Formerly Tier 2 supports) and access to Mainstream services.

Challenges for the NDIS Board

5.24 Over the last two years, the NDIS Board has steered the Agency through challenging and uncharted waters. The Board has been able to deliver the initial stages of the NDIS on time and within budget. This committee has observed, received evidence and commented on aspects of the implementation the Scheme during this period. The Board's Chairman, Mr Bruce Bonyhady, in the Agency's first annual report notes that "evidence given to the Joint Standing Committee on the NDIS...shows there are aspects of the Scheme that need to be improved" and that "the NDIA is deliberately being built as a learning organisation that grows on the basis of evidence."⁵ The committee commends Mr Bonyhady on his and the Board's achievements and welcomes their continued engagement with the committee.

5.25 As the Scheme develops from initial implementation towards full operation, the requirements of the Agency and the Board evolve and change. Under Section 107 of the *National Disability Insurance Scheme Act 2013* ('the Act'), the Commonwealth Minister has responsibility for ensuring the Board has the skills, capabilities and

4 NDIS, Independent Advisory Council, *Response to the Joint Standing Committee on the National Disability Insurance Scheme on gaps in service*.

5 National Disability Insurance Agency, *2013-2014 Annual Report*, p. xi.

experience to oversee the Scheme, particularly in respect of commercial and insurance expertise and oversight of large-scale operations together with a 'lived experience'.

5.26 In July this year the Assistant Minister for Social Services, Senator the Hon Mitch Fifield, informed the committee that he had written to his state and territory counterparts in the DRC with a proposal for the upcoming NDIA Board appointment process as the current terms of the Board members expire on 30 June 2016.

5.27 The Minister's letter notes that 'the Board would require skills suited to specific challenges of the transition phase, including strategy, insurance, risk, corporate governance, and implementation as well as experience in large enterprises of an equivalent national scale and complexity'—skills that can manage a \$22 billion budget.⁶

5.28 As such, the Minister's letter notes and provides a copy of a consultancy report by KordaMentha that were engaged to conduct a review and provide advice on the skills and experience requirements for the Board for the transition phase.

5.29 The committee recognises that it is important that the Board maintains, develops and acquires the necessary skillset to run and manage the strategic priorities of the NDIS into the next phase and beyond.

Challenges for the Agency

5.30 Much of the first report dealt with how well the Agency was progressing with implementing the initial phase of the NDIS. Additionally, the report focused on how the NDIA interfaced with participants, family members, carers, service providers and the community at large, including all aspects of the NDIS governance framework, ministerial and departmental demands.

5.31 The task was daunting, not to mention astoundingly demanding. The committee recognises the significant effort that the Agency has expended to overcome challenges and achieve the results it has over the last two years. With the majority of the committee's first report recommendations falling to the Agency, it has managed a significant process of reform and incremental improvement based on the evidence and recommendations put forward.

5.32 It is evident from the Agency's response to the committee's report and the work it has undertaken over the last year that it has taken on board many of the suggested changes that the committee recommended. For example, improved planning, clearer communications, website upgrade and better support for providers.

5.33 Nevertheless, it is important that the final outcome that the Agency is striving to deliver is that those who need and require disability services are supported, and that those services they need are provided in a clear and timely fashion. The primary issue facing the Agency over the coming 18 months will be its ability to expand quickly to provide the necessary services across Australia. A high standard of recruitment and

6 Assistant Minister for Social Services, Senator the Hon Mitch Fifield, *Committee correspondence*, 27 June 2015, pp. 1-2.

development of a workforce that is able to provide quality services will certainly assess the Agency's resilience and agility.

5.34 It is equally important that the Agency ensures that there is confidence and transparency in its processes, particularly as it manages all the administrative functions of the Board, the Independent Advisory Council and the Independent Scheme Actuary. Clarity of roles and responsibilities will be paramount as the Scheme expands, ensuring the Scheme is delivered on time and within budget. Likewise, security of federal, state and territory support and funding must remain clear, confidence for participants, providers and the nascent market.

National Injury Insurance Scheme

5.35 The Productivity Commission's ('the Commission') original report into *Disability Care and Support* detailed proposals for the establishment of two nationwide insurance schemes: a National Disability Insurance Scheme (NDIS) and a National Injury Insurance Scheme (NIIS).

5.36 The Commission proposed that the NIIS would be a 'federation' of accident insurance schemes for new catastrophic injuries, drawing on arrangements already in place around Australia and extending these arrangements to meet a national minimum benchmark.⁷

5.37 The Commission 'deliberately' recommended two separate schemes, identifying distinctive characteristics of catastrophic injury schemes. The NIIS would:

- be a fully funded insurance accident scheme which would reduce the cost of the NDIS;
- utilise existing expertise and institutions of accident compensation schemes;
- set the rate of premiums with the aim of reducing risky behaviour and local risks; and
- cover a broader range of health costs associated with catastrophic injuries, such as acute care, medical services and rehabilitation services.

5.38 Furthermore, the Commission noted there are many existing functional schemes that could be nationally standardised, resulting in the aforementioned federated approach to the NIIS. This differs from the national approach to the NDIS. The potential 'neatness' of rolling these schemes into the NDIS would require significant legislated change. The Commission flagged this as an issue to possibly revisit during the proposed review of the NIIS in 2020. However, the Commission also recommended that the NIIS and the NDIA should work closely together.

5.39 As part of the committee's establishing resolution into examining the NDIS it was also tasked with monitoring the development and progression of the NIIS. The committee has held a private briefing and sought information from time to time with

7 Productivity Commission 2011, *Disability Care and Support*, Report no. 54, Canberra, p. 43.

the relevant areas of the Treasury to remain informed of progress on the NIIS. The committee will continue to do this so the NIIS begins to roll out.

Systemic issues

5.40 Beyond the major governance issues, there are a number of ongoing systemic matters that the committee will be continuing to examine over the next year. These systemic issues are:

- Housing;
- Information, Linkages and Capacity Building (ILC);
- Advocacy;
- Mental Illness/Psychosocial disability; and
- Workforce.

Housing

5.41 As noted in Chapter 1, accommodation continues to be a key concern for all Australians, and was raised repeatedly with the committee by participants, families, carers, advocacy groups, providers and other stakeholders. Given this is a major issue, which remains unresolved, the committee intends to conduct a roundtable on accommodation in the second half of 2015. It is intended that the committee will report specifically on the issue shortly thereafter.

Information, linkages and capacity building

5.42 The development of the Information, Linkages and Capacity Building (ILC) framework, formerly known as Tier 2, has the potential to address a number of outstanding areas of the Scheme. It is anticipated the interface with mainstream services, mental health and local area coordination among other things will be funded under this framework.

5.43 According to the Government, the ILC is the 'component of the NDIS that provides information, linkages and referrals to efficiently and effectively connect those people with disability, their families and carers with appropriate disability, community and mainstream supports.' It is not tied to an individual's NDIS funded package.⁸

5.44 The Department of Social Services (DSS) has undertaken substantial pieces of work of the framework, including a major consultation exercise early in 2015 that found that the ILC should cover the following areas:

- Make the interface between ILC and mainstream service responsibility clearer
- Use language and approaches, and provide services, that meet the diverse needs and circumstances of people with disability

8 National Disability Insurance Scheme, *Information, Linkages and Capacity Building*, available at: <http://www.ndis.gov.au/ilc-policy> (accessed 10 September 2015).

- Better explain how ILC will support people with mental illness
- Better explain what kinds of decision supports, safeguard supports and capacity building would be provided under ILC
- Better explain what local area coordinators will do and how they will work one on one with people with disabilities and carers (even if they are not scheme participants); and
- Talk more about what ILC will do to support carers.⁹

5.45 The consultation also noted suggestions on things that were essential to making the ILC work effectively

- Keep the things that work well and build on existing good practice
- Support services that are local
- Help mainstream services support people with disability
- Make sure that ILC is responsive to need and demand; and
- Keep talking to people with disability and their families and carers about how the scheme should work.¹⁰

5.46 Until the conclusion of the Government's development of the ILC, which includes the negotiation of the bilateral agreements with the states and territories, the committee is not in a position to comment on the framework, but will do so when it is complete. However, the committee repeats recommendation 11 in this report, as well as recommendation 13 in the committee's first progress report to the Parliament. That is, the committee calls for the expedient resolution of the bilateral process negotiations to inform the roles, responsibilities and funding arrangements of all stakeholders.

The role of advocacy

5.47 No one is in any doubt about the need for people with disability to have access to support and assistance to empower them in their journey in the NDIS. How this is achieved is still yet to be fully established.

5.48 There have been a number of developments concerning the role of advocacy and the NDIS since the committee's last report. In that report, the committee considered the role of advocacy after hearing from a number of witnesses at trial site public hearings. The committee subsequently recommended that the Disability Reform Council (DRC) should urgently resolve the issue:

Recommendation 6

5.97 The committee notes the importance of the role of advocacy services in ensuring quality plans and supporting participants in the planning

9 National Disability Insurance Scheme, *Consultation on Information, Linkages and Capacity Building*, available at: <http://www.ndis.gov.au/consult-info-link-capacity-building> (accessed 10 September 2015).

10 National Disability Insurance Scheme, *Consultation on Information, Linkages and Capacity Building*, available at: <http://www.ndis.gov.au/consult-info-link-capacity-building> (accessed 10 September 2015).

process. The committee recommends that certainty regarding the role and support for advocacy services in the NDIS be urgently resolved through the Ministerial Disability Reform Council.¹¹

5.49 The government agreed with the committee's recommendation, and flagged the review of the National Disability Advocacy Framework and the ongoing work being undertaken in the Disability Reform Council (DRC) on the issue:

Agree in consultation with jurisdictions

[T]he government notes this recommendation of the committee and can advise that the ministerial disability reform council has considered these issues and that further work will be undertaken on the relationship between the NDIS and advocacy in early 2015, including a review of the national disability advocacy framework.¹²

5.50 A review of the Framework was recently undertaken with submissions closing on 24 July 2015. On the basis of the April 2015 COAG DRC decision to fund decision supports and safeguard supports and capacity-building for participants, including support to approach and interact with disability supports and access mainstream services,¹³ the Review's discussion paper asked a number of questions on how advocacy and the NDIS should interact going forward.

5.51 In line with the Productivity Commission's 2011 report, the DRC also agreed that systemic advocacy and legal review would be funded outside of the NDIS.¹⁴

5.52 The committee welcomed the decision to extend the funding to providers of the National Disability Advocacy Program which was due to finish on June 30 2015. This has been extended to 30 June 2016. Minister Fifield's announcement in March 2015 also gave assurance to the sector that their role in relation to the NDIS would continue:

The extension allows advocacy groups to continue supporting people with disability while planning takes place for the future of the NDAP," he said.

As the NDIS rolls out across Australia, NDAP providers will continue to assist people with disability to participate in decisions that impact their

11 Joint Select Committee on the National Disability Insurance Scheme, *Progress report on the implementation and administration of the National Disability Insurance Scheme*, July 2014, p. xviii.

12 Australian Government response to the Joint Standing Committee on the National Disability Insurance Scheme report: Progress Report on the implementation and administration of the National Disability Insurance Scheme.

13 Department of Social Services, *Review of the National Disability Advocacy Framework*, June 2015, p. 3.

14 Department of Social Services, *Review of the National Disability Advocacy Framework*, June 2015, p. 3.

lives, including helping them access both the NDIS and mainstream services.¹⁵

5.53 The committee held a roundtable session on Advocacy in March 2015 to discuss the types of advocacy required for the effective operation of the Scheme, as well as the role of advocates in assisting participants to navigate the Scheme. The central theme again was uncertainty. Witnesses acknowledged the review of the National Disability Advocacy Framework, but at that stage had not been invited to participate in the process.

5.54 All of those who contributed discussed the importance of providing assistance to people at each stage in the process: from eligibility, to pre-planning to support and assistance around the design of the plan. Advocates also pressed the importance of advocacy being funded on a national basis and its role and place in the system defined.

5.55 Witnesses explained that the referral process, whereby people with disability are put in touch with advocates, is inconsistent. Witnesses with experience in the Tasmanian trial site said that they received referrals from LACs employed outside the NDIA quite frequently, but not a lot from LACs directly employed by the NDIA.¹⁶

5.56 The role of LACs, planners and advocates has yet to be decided across the country. The particular model of local area coordination that is adopted by the Agency will have a direct impact on the role of advocates in the Scheme. In WA, coordination and support is often provided by a service provider. The crossover between this model and independent advocacy in supporting decision making and ensuring safeguards is as yet unknown.

5.57 The committee continues to support the formal inclusion of advocacy in the Scheme and awaits with interest the outcome of the Framework review, as well as the decision on which model of local area coordination will be adopted.

Mental health

5.58 Mental health or psychosocial illness is another area where funding and policy development is contingent on bilateral negotiations with the states and territories and is yet to be fully established. However, that is not to say that DSS or the Agency have not been very active while some of the responsibility for delivery of services is agreed. The committee also spoke to representatives from peak bodies in 2014 as part of the ongoing discussion and debate.

5.59 The lack of a final approach has not prevented people with psychosocial disabilities from entering the Scheme or receiving services. Indeed, the committee heard from a number of witnesses whose lives had been transformed as a result of services received under the Scheme, sometimes for the first time. However, similar to ILC and housing, the committee is not in a position to assess the approach taken with regard to how mental illness as an issue is treated within the Scheme until there are

15 Senator the Hon Mitch Fifield, Assistant Minister for Social Services, Funding extensions for disability and carer programmes, Media Release, 13 March 2015.

16 Mr Kenneth Hardaker, Advocacy Tasmania, *Committee Hansard*, 27 March 2015, p. 65.

some concrete decisions made. The committee intends to consider the issue in significant depth throughout the next 12 months.

Workforce

5.60 The committee understands how critical an adequate supply of skilled workers will be as the Scheme rolls out around the country. The estimates of the actual numbers required vary, but what is not in doubt is the transformative effort required to satisfy the needs of the Scheme. There is already significant policy development being undertaken by DSS and the Agency, which is set out in the *National Disability Insurance Scheme Integrated Market, Sector and Workforce Strategy* released in June 2015. The Strategy sets out a number of areas where the NDIA and the Commonwealth Government will support the sector in developing the skills and capacity of the workforce. Similar to the other systemic issues, the committee intends to monitor the developments throughout the coming 12 months.

Committee conclusion

5.61 This report, like its predecessor has identified the many achievements of the NDIS to date. The eight trials are progressing well and over 20 322 people have been found eligible for support by the NDIS. Of these, 17 991 have had plans approved. The committee heard many stories from all over the country, from Canberra to Tennant Creek, to Busselton, that participants' lives are changing for the better.

5.62 The committee heard from participants like Dion Beasley, in Tennant Creek. Mr Beasley, who established his own T-shirt brand 'Cheeky Dogs', and who is now a participant in the NDIS, noted that he now has more independence while his carer Joie Boulter has more time for herself. Mr Beasley is now mobile and able to independently visit friends and family having greater choice and control of his life.

5.63 This report makes a number of recommendations designed to improve elements of the Scheme. The recommendations are based on the evidence—documented in chapters 2, 3, 4 and 5 of this report—that the committee has collected in the ACT, West Australian and Northern Territory trial sites. They are designed to assist the Scheme in its next steps towards transition and finally full scheme.

The committee's forward work plan

5.64 This report, like its predecessor, has identified a number of ongoing challenges that face the NDIS. These relate to a wide and complex range of issues that continue to require a conciliatory and coordinated effort from the federal and state governments, the Board, the NDIA, service providers, advocates and key peak organisations.

5.65 Many of the issues raised in the first report continue to need addressing. Some are a matter of course, whereas others, such as the linkages to mainstream services and Tier 2 (ILC) supports, are more pressing, such as the finalisation of the transition bilateral agreements. The following list of issues that was compiled last year will continue to require the committee's attention:

- the transition of people from state supports to the NDIS;

- the development and readiness of the service providers to support the pace of Scheme rollout;
- the capacity of the disability sector workforce to support the pace of Scheme rollout;
- the interface of the NDIS with mainstream services;
- the definition, development and funding of Tier 2 (ILC) services;
- resolving transport issues for both participants and service providers;
- supporting people with disability to achieve greater economic and social participation through developing community supports;
- supporting NDIS participants to find suitable accommodation;
- assisting Indigenous people living with disabilities; and
- providing ongoing advocacy.

5.66 The committee will continue to monitor these and other issues as part of its forward work plan. Over the coming year, the committee anticipates that it will examine more discrete issues such as accommodation, mental health and Indigenous engagement. The committee will also be looking to revisit trial sites to check on progress and to hear from participants and providers on how the Scheme is developing.

The Hon. Bruce Billson MP
Chair