

Chapter 1

Introduction

Referral of inquiry and terms of reference

1.1 The Joint Standing Committee on the National Disability Insurance Scheme (NDIS) was established on 1 September 2016. The committee is composed of five Members and five Senators.

1.2 The committee is tasked with inquiring into:

- (a) the implementation, performance and governance of the NDIS;
- (b) the administration and expenditure of the NDIS; and
- (c) such other matters in relation to the NDIS as may be referred to it by either House of the Parliament.

1.3 After 30 June each year, the committee is required to present an annual report to the Parliament on the activities of the committee during the year, in addition to other reports on any other matters it considers relevant.

1.4 The committee is also able to inquire into specific aspects of the Scheme. On 6 December 2017, the committee decide to undertake an inquiry into market readiness.

1.5 The terms of reference for the inquiry are as follows:

As part of the committee's role to inquire into the implementation, performance and governance of the NDIS, the committee will inquire into and report on market readiness for provision of services under the NDIS, with particular reference to:

- a. the transition to a market based system for service providers;
- b. participant readiness to navigate new markets;
- c. the development of the disability workforce to support the emerging market;
- d. the impact of pricing on the development of the market;
- e. the role of the NDIA as a market steward;
- f. market intervention options to address thin markets, including in remote Indigenous communities;
- g. the provision of housing options for people with disability, with particular reference to the impact of Specialist Disability Accommodation (SDA) supports on the disability housing market;
- h. the impact of the Quality and Safeguarding Framework on the development of the market;
- i. provider of last resort arrangements, including for crisis accommodation; and
- j. any other related matters.

1.6 This report is comprised of six chapters, as follows:

- This chapter (chapter 1) outlines the context and administration of the inquiry and discusses market stewardship functions, and roles and responsibilities of agencies and governments.
- Chapter 2 examines participants' readiness;
- Chapter 3 focuses on workforce readiness;
- Chapter 4 discusses provider readiness;
- Chapter 5 discusses market intervention mechanisms and thin markets; and
- Chapter 6 examines the introduction of Specialist Disability Accommodation (SDA) as a funded support and its impact on the market.

Conduct of the inquiry

1.7 The committee received 101 submissions to the inquiry from individuals and organisations. These submissions are listed in Appendix 1.

1.8 The committee also conducted six public hearings:

- 14 March 2018 in Cairns;
- 15 March 2018 in Townsville;
- 17 April 2018 in Perth;
- 18 April 2018 in Kalgoorlie;
- 14 June 2018 in Melbourne; and
- 4 July 2018 in Sydney.

1.9 Transcripts from these hearings, together with submissions and answers to questions on notice are available on the committee's website. Witnesses who appeared at the hearings are listed in Appendix 2.

Acknowledgments

1.10 The committee would like to thank the individuals and organisations that made written submissions to the inquiry, as well as those who gave evidence at the six public hearings. We are grateful for their time and expertise.

Note on terminology and references

1.11 References to submissions in this report are to individual submissions received by the committee and published on the committee's website. References to Committee Hansard are to official transcripts.

Market stewardship

Rapid transition to a market-based system

1.12 Considered to be the largest social reform since Medicare, the NDIS is being implemented at a rapid rate and creating a radically new disability marketplace.¹

1.13 Notwithstanding that individualised budgets have existed in other countries for some time, the NDIS is internationally unprecedented in the speed and scale of personalisation and marketisation of public services.²

1.14 The Scheme is phasing in rapidly around Australia. At 30 June 2018, the NDIS was supporting 183 965 participants and is now fully operational in all regions of NSW, SA and ACT.³ It is estimated that 460 000 participants will have entered the NDIS by 2020.⁴

1.15 The NDIS replaces a system of disability support which was inequitable, underfunded, fragmented, inefficient, and gave people with disability little choice and no certainty of access of appropriate supports.⁵ It consisted of a patchwork of block-funded and procured services spread across state, territory and Commonwealth governments.⁶

1.16 The NDIS is underpinned by a new national consumer-controlled marketplace with enormous growth potential.⁷

1.17 As described by the Productivity Commission, the NDIS model of provision enables funding to 'follow the user', which means that users, rather than providers or governments, allocate their budgets to the providers, supports and services that best meet their needs.⁸

1.18 For both participants and service providers, this is a radically new system. It will take time to develop a strong contestable marketplace for disability supports. It

1 NDIA, *NDIS Market Approach – Statement of Opportunity and Intent*, November 2016, p. 3.

2 *The vexed question of market stewardship in the Public Sector: Examining Equity and the Social Contract through the Australian National Disability Insurance Scheme*, Social Policy & Administration, Vol. 52, No. 1, January 2018, p. 388.

3 NDIS, *COAG Disability Reform Council Quarterly Report 30 June 2018*, p. 4.

4 NDIA, *Annual Report 2016-17*, p. 16.

5 Productivity Commission, *National Disability Insurance Scheme (NDIS) Costs Study Report*, 19 October 2017, p. 5.

6 *The vexed question of market stewardship in the Public Sector: Examining Equity and the Social Contract through the Australian National Disability Insurance Scheme*, Social Policy & Administration, Vol. 52, No. 1, January 2018, p. 388.

7 NDIA, *NDIS Market Approach – Statement of Opportunity and Intent*, November 2016, p. 6.

8 Production Commission, *Introducing Competition and Informed User Choice into Human Services: Reforms to Human Services*, No 85, 27 October 2017, p. 62.

will also take time for participants to learn to make choices and explore different service options.⁹

Need for government stewardship

1.19 Broadly, for public sector markets to work effectively in the case of an individualised care model such as the NDIS:

- new providers must be able to enter the market and grow;
- providers must compete actively, and in desirable ways;
- providers must be able to exit the market;
- service users must be able and motivated to make informed choices;
- levels of funding must be appropriate to achieve government objectives.¹⁰

1.20 As described in various literature, a degree of stewardship from government is therefore required and involves the following activities:

- engaging closely with users, provider organisations and others to understand needs, objectives and enablers of successful delivery;
- setting the 'rules of the game' and allowing providers and users to respond to the incentives this creates;
- constantly monitoring the ways in which the market is developing and how providers are responding to these rules and the actions of other providers;
- adjusting the rules of the game in an attempt to steer the system (much of which is, by design, beyond their immediate control) to achieve their government's high-level aims.¹¹

1.21 The Productivity Commission found that governments have not always given sufficient focus to stewardship, and this has contributed to poor outcomes for users.¹²

1.22 In the case of the NDIS, an additional challenge is the need for market stewardship – a specific form of government stewardship aimed at facilitating the creation and development of a market.¹³

1.23 The NDIA described market stewardship in the following terms:

9 NDIA, *NDIS Market Approach – Statement of Opportunity and Intent*, November 2016, p. 11.

10 Gash, T et al., *Making public service markets work*, Institute for Government, London 2014, p.15.

11 See for example: Gash, T et al., *Making public service markets work*, Institute for Government, London 2014; Carey, G et al., *The vexed question of market stewardship in the Public Sector: Examining Equity and the Social Contract through the Australian National Disability Insurance Scheme*, *Social Policy & Administration*, Vol. 52, No. 1, January 2018, pp. 387–407.

12 Production Commission, *Introducing Competition and Informed User Choice into Human Services: Reforms to Human Services*, No 85, 27 October 2017, p. 79.

13 Productivity Commission, *National Disability Insurance Scheme (NDIS) Costs Study report*, October 2017, p. 391.

Market stewardship recognises that when governments implement policies to increase consumer choice and adopt market based delivery, they must also oversee how the marketplace develops. [...] If the marketplace is not working as intended a responsible market steward identifies what action, if any, it should take to improve the marketplace so policy objectives can be realised.¹⁴

Market stewardship roles, functions and activities

NDIA Market Approach Statement

1.24 The NDIA Market Approach Statement was published in November 2016 and sets out the role of the NDIA as a market steward during the three years transition phase to full Scheme in 2019–20. The stated intent of the document is to:

- ensure that the NDIS community understands the roles and responsibilities the Agency has in this new disability marketplace;
- build confidence in the marketplace;
- ensure accountability for the Agency; and,
- create predictability about how this newly developing marketplace will operate.¹⁵

1.25 The vision and aim is to 'create an efficient and sustainable marketplace through a diverse and competitive range of suppliers who are able to meet the structural changes created by a consumer driven market'.¹⁶

1.26 The NDIA identified a number of functions that a market steward can use to improve the marketplace:

- **Monitoring:** observing the NDIS marketplace and assessing whether it is achieving its outcomes. This will be greatly informed by the data being collected through day-to-day operation of the Scheme, which will increasingly use longitudinal data to understand market gaps, market/provider efficacy and to develop responses.
- **Facilitating:** actions that directly influence demand in the NDIS marketplace and indirect actions to improve the functioning of the NDIS marketplace. This includes providing information, setting prices, and developing systems/infrastructure to support market transactions. In addition, facilitating supports diversity of supplier business models.
- **Commissioning:** direct sourcing of supports or establishment of preferred provider arrangements supported by controls and "rules" that must be complied with to participate in the NDIS marketplace.¹⁷

14 NDIA, *NDIS Market Approach – Statement of Opportunity and Intent*, November 2016, p. 6.

15 NDIA, *NDIS Market Approach – Statement of Opportunity and Intent*, November 2016, p. 2.

16 NDIA, *NDIS Market Approach – Statement of Opportunity and Intent*, November 2016, p. 2.

17 NDIA, *NDIS Market Approach – Statement of Opportunity and Intent*, November 2016, p. 6.

1.27 The NDIA recognised it will be necessary to play a more active role during the transition period (2016–19) but sees the market stewardship role lessening over time as the market matures and consumers are better equipped to exercise choice and control.¹⁸

1.28 For example, the NDIA foresees its role as price setter becoming redundant as the market matures:

While the NDIA is responsible for setting the price of supports during the rapid ramp up of the NDIS, it is envisaged that prices will eventually be deregulated as the market matures in size, quality and innovation.¹⁹

1.29 The NDIA summarised the activities it needed to undertake as part of its market stewardship role in those terms:

The Agency's market stewardship role will therefore require monitoring, evaluation, oversight and where necessary, support and intervention, in pursuit of a sustainable and successful NDIS.²⁰

1.30 At present, the NDIA has lead responsibilities for: setting pricing and price controls, producing and communicating market signals, engaging with and providing information to stakeholders, and developing and supporting an e-market.²¹

NDIA initiatives

1.31 To date, the NDIA has undertaken a number of market stewardship activities including:

- publication of Market Position Statements in all jurisdictions except WA;
- delivery of a series of market insight products;
- provider communication and engagement including a Provider eNewsletter and strategic communications on hot topics, and development of a network model for regional provider and industry engagement;
- a provider benchmarking project to deliver information to providers that will support their NDIS transition and enable better market stewardship decision making by the NDIA;
- further developing market monitoring capability consistent with the NDIA's role as market steward with a view to assessing instances where market intervention by the NDIA is appropriate; and
- annual pricing reviews.²²

18 NDIA, *NDIS Market Approach – Statement of Opportunity and Intent*, November 2016, p. 2.

19 NDIA, *Submission 52*, p. 16.

20 NDIA, *NDIS Market Approach – Statement of Opportunity and Intent*, November 2016, p. 3.

21 NDIA, *Submission 52*, p. 15.

22 NDIA, *Submission 52*, pp. 15–16.

Sector Development Fund

1.32 As part of market stewardship initiatives, the Sector Development Fund (SDF) was established to support the substantial changes required in the disability sector to realise the vision of a flourishing support market driven by the choices of people with disability.²³

1.33 Now administered by the Department of Social Services (DSS), the SDF funding supported activities to:

- build community capacity and engagement;
- increase capacity of people with disability and their families to exercise choice and control and develop new forms of support to meet the needs of people with disability;
- build disability sector capacity and service provider readiness to manage the transition;
- assist with the expansion and diversification of the workforce required to meet increased demand; and
- build the evidence base about what works.²⁴

1.34 SDF funding was available between 2012–13 and 2017–18 to support the transition to the NDIS environment for participants and the disability sector.

1.35 At 30 June 2018, the SDF had funded 91 projects and provided over \$105 million in funding to a range of agencies and organisations including the NDIA, National Disability Services (NDS), state and territory governments, research entities and consulting firms.²⁵

1.36 From 1 July 2018, the Jobs and Market Fund (JMF) replace the SDF and has a stronger focus on growing the workforce in number and capability.²⁶ The JMF and other initiatives to grow the workforce are discussed in Chapter 3.

Lack of clarity of roles and responsibilities

1.37 As noted by the UK Institute for Government, effective market stewardship requires governments to clarify roles, responsibilities and accountability arrangements.²⁷

23 NDIA, *What is the Sector Development Fund?*, <https://www.ndis.gov.au/SDF/whatisSDF> (accessed 19 July 2018).

24 NDIA, *What is the Sector Development Fund?*, <https://www.ndis.gov.au/SDF/whatisSDF> (accessed 19 July 2018).

25 NDIA, *What is the Sector Development Fund?*, *List of SDF expenditure as at 30 June 2018*, <https://www.ndis.gov.au/SDF/whatisSDF> (accessed 19 July 2018)

26 Department of Social Services, *What is the NDIS Jobs and Market Fund?* <https://www.dss.gov.au/disability-and-carers/programs-services/what-is-the-ndis-jobs-and-market-fund> (accessed 17 August 2018)

1.38 In the case of the NDIS, whilst the NDIA has a lead role as market steward, it is not solely responsible for market stewardship:

The NDIA has an important shared role as market steward in the new disability support services marketplace.²⁸

1.39 According to the NDIA Market Approach Statement, DSS has lead role for market oversight and a shared role with the NDIA for market monitoring and evaluation.²⁹

1.40 The Productivity Commission is of the view that 'although the NDIA is designated as the market steward, all governments take actions that affect market outcomes, and so have some responsibility for market stewardship'.³⁰

1.41 The NDIA says it plays a key role in working with the DSS and the states and territories to promote the provision of high quality and innovative supports for participants.³¹

1.42 At the public hearing held on 4 July 2018, the newly established Quality and Safeguarding Commission (the Commission), which began operating on 1 July 2018 in NSW and SA, acknowledged that it has a role to play in market monitoring and development but stressed that the role of the Commission does not 'supplant the role of the agency in respect of market stewardship more generally and those issues to do with service provision under people's plans'.³²

1.43 The Commission's website says it 'will provide market oversight by collecting, analysing and advising on a range of unique market information to identify trends and changes in the NDIS market'.³³

1.44 The Office of the Public Advocate noted in its submission that, 'based on the NDIS Market Approach strategy, the distinctions between the market steward (NDIA) and market oversight (NDIS Quality and Safeguards Commission) are unclear'.³⁴

1.45 Professor Gemma Carey told the committee that 'at the moment, market stewardship is sitting across Commonwealth government, the NDIA and the new

27 Gash, T et al., *Making public service markets work*, Institute for Government, London 2014, p. 6.

28 NDIA, *Submission 52*, p. 2.

29 NDIA, *NDIS Market Approach – Statement of Opportunity and Intent*, November 2016, p. 21.

30 Productivity Commission, *National Disability Insurance Scheme (NDIS) Costs Study report*, October 2017, p. 393.

31 NDIA, *Submission 52*, p. 15.

32 Mr Graeme Head, NDIS Quality and Safeguards Commissioner, *Committee Hansard*, 4 July 2018, p. 9.

33 NDIS Quality and Safeguards Commission, *Commission role in NDIS market oversight*, <https://www.ndiscommission.gov.au/providers/commission-role-ndis-market-oversight> (accessed 27 August 2018)

34 Office of the Public Advocate, *Submission 82*, p. 17.

Commission' and identified that there are no 'clear delineations about how each of those groups are going to work with each other or intervene in a case of market failure or potential market failure'.³⁵

1.46 Dr Ken Baker from National Disability Services called for clarity:

We need clarity about the roles of the different government agencies involved in market stewardship—the role of the National Disability Insurance Agency, the role of the new quality and safeguard commission, the role of the Department of Social Services, the role of state governments.³⁶

1.47 The Productivity Commission recommended clarification of the roles and responsibilities of the Australian, state and territory governments with respect to market stewardship.³⁷

1.48 In its updated Corporate Plan 2018-2022 released on 27 July 2018, the NDIA provides information about the DSS role in relation to market stewardship and market oversight:

DSS plays an important role in developing the new disability support services market, including having responsibility for supporting and facilitating responses to workforce challenges; identifying key strategic market pressures and risk points that may impact on transition; and, developing a market oversight function that will include the prudential oversight of the financial viability of providers.³⁸

Committee view

1.49 International experiences where government has moved social and other services towards market-led service delivery show that lack of clarity around who the market steward is and its functions has compromised the quality of service delivery and the intended policy outcomes.³⁹ The committee is concerned that whilst the NDIA has a lead role as market steward, it is unclear how it is shared with other agencies, including the DSS, the Commission and state and territory governments. Importantly, it is presently unclear how these groups work together to share information and develop strategies to address key emerging issues in the development of the market.

1.50 The committee believes that in addition to clarification of responsibilities, there should also be more effective information sharing, cooperation and coordination between agencies, Australian and state and territory governments to ensure participant

35 Associate Professor Gemma Carey, Director, Centre for Social Impact, University of New South Wales, p. 28.

36 Dr Ken Baker, CEO, National Disability Services, *Committee Hansard*, 4 July 2018, p. 28.

37 Productivity Commission, *National Disability Insurance Scheme (NDIS) Costs Study report*, October 2017, p. 396.

38 NDIA, *Corporate Plan 2018-22 NDIS*, July 2018, <https://www.ndis.gov.au/about-us/information-publications-and-reports/corporate-plan> (accessed 1 August 2018)

39 Gash, T et al., *Making public service markets work*, Institute for Government, London 2014.

readiness and development of the market. In particular, market supply issues, which will be discussed throughout this report, need the attention of all market stewards.

1.51 The committee notes that the NDIA Market Approach strategy document does not articulate the roles, functions and activities of the market stewards beyond the transition period ending 30 June 2020. The committee believes the Market Approach strategy needs to be updated. Further, the committee is of the view that market stewardship will be required well beyond the transition period as it will take time for the market to mature and participants to learn how to fully explore service options. The committee recommends that the DSS and the NDIA urgently develop a strategy document that clearly articulates the roles, responsibilities and activities of all those responsible for market stewardship.

Recommendation 1

1.52 The committee recommends the DSS and the NDIA urgently develop a strategy document that clearly articulates the roles, responsibilities and activities of all those responsible for market stewardship.