

Chapter 1

Introduction

The referral

1.1 On 29 November 2012, on the recommendation of the Selection of Bills Committee, the Senate referred the provisions of the National Disability Insurance Scheme Bill 2012, contingent upon its introduction in the House of Representatives,¹ for inquiry and report by 13 March 2013.²

1.2 References to page numbers in Committee Hansards are references to the Proof Hansard transcripts. Page numbers may differ to those in the Official Hansard when the Official Hansard becomes available.

Scrutiny of Bills consideration

1.3 The bills were considered by the Scrutiny of Bills Committee in its *Alert Digest No. 1 of 2013*. The Scrutiny of Bills Committee identified a number of concerns with elements of the bill. As of 12 March 2013, the committee had not prepared its final report on the matter.

Conduct of the inquiry

1.4 The committee advertised the inquiry in the national press and on its website and invited a large number of known stakeholders to make submissions. The committee received approximately 1600 submissions (listed at Appendix 1) Submissions are available for viewing on the committee's website http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=clac_ctte/ndis/submissions.htm. 11 public hearings were held in a number of locations: Townsville, Brisbane, Newcastle, Sydney, Perth, Adelaide, Geelong, Melbourne, Hobart and Canberra. A list of stakeholders who appeared before the committee is set out in Appendix 2.

The evidence

1.5 With over one and a half thousand submissions, and eleven days of public hearings held across Australia in the space of five weeks, the committee amassed a wealth of information in a very short period of time.

1.6 The committee wishes to particularly place on record its appreciation to the hundreds of people with disability, their families and carers, whose accounts were submitted from all over the country. Few of those personal submissions are quoted in this report, and a large number of them were confidential. The accounts they

1 *House of Representatives, Votes and Proceedings*, 29 November 2012, p. 2013.

2 *Journals of the Senate*, 2012, p. 3481.

contained, however, spoke eloquently of the reasons why this revolutionary policy proposal is currently before the parliament. And, while not directly quoted, the accounts had a strong influence on the committee's understanding of the burning issues for people with disability and their carers. These included:

- The need for services to be available – there were many accounts of capped programs and eligibility constraints causing people to miss out on needed support;
- The need to end the delays – they harm everyone, and can have particularly harsh consequences for people with degenerative conditions;
- The need to end substandard services and provide choice – we often heard 'take it or leave it' approach to supports, and of a workforce with high turnover or insufficient skills;
- The need to prevent fragmentation – there were numerous accounts from exhausted carers and people with disability, tired of repeating their stories to service after service, and of services not coordinating with one another
- The need for the scheme to be extensive enough that unpaid carers, particularly families, get sufficient support – there was a disturbing number of accounts involving family breakdown linked to the demands of care.

1.7 The committee would like to thank the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) for its cooperation during the later stages of the inquiry, and in particular for its presentation of evidence to the committee at the hearing on 5 March 2013. The committee was pleased to note that the department had reviewed the evidence being received by the committee, and responded to many key issues raised with the committee.

1.8 Governments will sometimes follow the work of a parliamentary committee inquiry and use the evidence to influence their policy thinking before the committee finalises its report. Such a process was evident during the current inquiry. This is particularly important in the case of the Nation Disability Insurance Scheme (NDIS) because of the volume of evidence and time frames involved. While this report has targeted a significant number of issues raised by inquiry participants, it was unable in the time available to be exhaustive of the arguments, or proposed amendments, put forward by submitters. The committee expects that the government will continue to consider suggestions made to this committee by stakeholders, whether or not explicitly addressed in this report.

Availability of the Rules

1.9 A regular issue raised in the evidence for this inquiry was the lack of access to the draft Rules that would provide much of the detail on how the NDIS will function. People with disabilities, their families, carers and organisations were understandably frustrated that they were unable to answer many basic questions about the NDIS because the information was not yet available. The committee understands these frustrations, and regrets that hundreds of people who took the time to examine the legislation and provide detailed comment to the committee were unable to do so with the benefit of having the full legislative picture before them.

1.10 While the committee accepts that the officers of the Department of Families, Housing, Communities and Indigenous Affairs (department) were not 'sitting around twiddling our thumbs and wondering how late we can provide [the Rules] to the committee', the committee's inquiry was made more difficult due to a lack of knowledge regarding what the Rules contained.³

1.11 The committee considers that, as a matter of good public policy, when a bill seeking to institute significant national reforms is going to rely on extensive subordinate legislation, a draft of that ancillary material should be released as close as possible to the introduction of the bill itself, to enable both Parliament and the public to fully consider the issue before it.

This report

1.12 The structure of this report broadly reflects the order of material in the bill. It is organised as follows:

- The remainder of chapter 1 examines the history and context of the introduction of the NDIS, and places on record the strong support for the NDIS among submitters;
- Chapter 2 discusses the rights based approach, the need for a presumption of decision-making capacity on the part of people with disability, and accessibility issues;
- Chapter 3 discusses advocacy;
- Chapter 4 examines the processes around becoming a participant in the scheme;
- Chapter 5 looks at participant plans;
- Chapter 6 examines the provisions relating to registration of providers and conflict of interest issues that may arise;
- Chapter 7 considers the nominee provisions, and appeal mechanisms generally;
- Chapter 8 considers the compensation provisions and whether someone should be compelled to take legal action; and
- Chapter 9 considers a number of issues around the Agency, and the composition of the Board and Advisory Council.

The National Disability Strategy

1.13 Since the signing of the first *Commonwealth State Territory Disability Agreement* in 1991, which created a framework for the delivery of specialist disability services, agreements between the Commonwealth, state and territory governments have underpinned the development of public policy supporting Australians with a disability. Concern about inconsistencies in the framework, however, led to a Senate

3 FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 65.

inquiry being initiated and undertaken by a predecessor of this committee. In February 2007, that committee concluded that a national disability strategy was required. It recommended that:

While the [Commonwealth State Territory Disability Agreement] should remain the basis for the delivery of disability services, the Committee does not consider that it is an adequate national strategic policy document. In order to ensure a coordinated national approach to improving the delivery of disability services, to ensure that people with disability access the services they require throughout their lives, to address interface issues within the disability sector and to ensure that future need for services is adequately addressed, a renewed national strategic approach is required. The Committee considers that a national disability strategy would reaffirm our commitment to equity and inclusiveness in Australian society for people with disability.⁴

1.14 During the 2007 election campaign, the Australian Labor Party committed to the formation of a national disability strategy. After Labor formed government, and following Australia's ratification in July 2008 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), a discussion paper on the development of a national disability strategy was released.⁵ In 2009, a report on this consultation was published.⁶

1.15 On 13 February 2011, the Council of Australian Governments (COAG) agreed to a ten year National Disability Strategy. The stated purpose of the strategy is to:

- establish a high level policy framework to give coherence to, and guide government activity across mainstream and disability-specific areas of public policy;
- drive improved performance of mainstream services in delivering outcomes for people with disability;
- give visibility to disability issues and ensure they are included in the development and implementation of all public policy that impacts on people with disability; and
- provide national leadership toward greater inclusion of people with disability.⁷

4 Senate Standing Committee on Community Affairs, *Funding and operation of the Commonwealth State/Territory Disability Agreement*, February 2007, p. 21; see also recommendation 4, p. 40.

5 Australian Government, 'Developing a National Disability Strategy for Australia', October 2008.

6 National People with Disabilities and Carer Council, *Shut out: the experience of people with disabilities and their families in Australia*, 2009.

7 *National Disability Strategy 2010–2020*, agreement of the Council of Australian Governments dated 13 February 2011, www.fahcsia.gov.au/sites/default/files/documents/05_2012/national_disability_strategy_2010_2020.pdf (accessed 14 January 2013), p. 9.

Productivity Commission inquiry into disability care and support

1.16 As part of the development of the National Disability Strategy, in November 2009 the then Prime Minister announced that the Productivity Commission (Commission) would examine 'the feasibility of new approaches for funding and delivering long-term disability care and support'.⁸ As the Commission noted, this decision followed 'a succession of reports that found that the current system to support people with disability and their families is deeply flawed and will increasingly be unable to meet people's needs'.⁹

1.17 The Productivity Commission's final report, *Disability Care and Support*, was provided to the government on 31 July 2011 and released on 10 August 2011. In its report, the Commission gave a bleak assessment of existing arrangements, concluding that the current system is unsustainable and characterised by 'what some call the "lottery" of access to services' where support available to people with significant disabilities differed depending on what state or territory the person resided in, as well as the timing or the origin of their disability.¹⁰ The Commission noted that the total annual funding provided to the disability sector by the Commonwealth, state and territory governments totals over \$7 billion.¹¹ It estimated that current spending would need to increase by an additional \$6.5 billion a year to provide the necessary support to people with disabilities.¹² However, it suggested that underfunding 'is only part of the problem'. The Commission identified a number of systemic failures, including:

- the fragmented structure of the disability system, and a lack of coordination, which have made it extremely difficult for service users and their families to access services;
- a lack of interstate portability of disability support;
- out-dated service models which distort allocation decisions;
- a lack of person-centred planning and consumer choice;
- uncertainty around waiting times and the availability of supports, meaning that families cannot plan for the future; and

8 The Hon. Kevin Rudd MP, Senator the Hon. Nick Sherry, the Hon. Jenny Macklin MP and the Hon. Bill Shorten MP, 'Australian Government to Consider New Approaches to Disability', *Joint media release*, 23 November 2009.

9 Examples given by the Productivity Commission include the 'Way Forward' report by the Disability Investment Group and the 'Shut Out' consultation report by the National People with Disabilities and Carer Council. Productivity Commission, *Disability Care and Support*, report no. 54, 31 July 2011, vol. 1, p. 93.

10 Productivity Commission, *Disability Care and Support*, 2011, Vol. 1., pp. 5–6.

11 Of which around \$2.3 billion is provided by the Australian government and \$4.7 billion is provided by the states and territories.

12 Productivity Commission, *Disability Care and Support*, 2011, Vol. 1., p. 3.

- the 'lack of essential frameworks that would allow the system to identify and solve its problems', such as a strong governance structure and data systems.¹³

1.18 Overall, the Productivity Commission found that:

Current disability support arrangements are inequitable, underfunded, fragmented, and inefficient and give people with a disability little choice. They provide no certainty that people will be able to access appropriate supports when needed.¹⁴

1.19 The Productivity Commission's 86 recommendations detailed its proposal for two nationwide insurance schemes to be established: a NDIS and a National Injury Insurance Scheme (NIIS).

1.20 The Commission considered that an NDIS should provide insurance cover for all Australians in the event of disability. It would fund 'long-term high quality care and support (but not income replacement) for people with significant disabilities' that are, or are likely to be, permanent. The Commission estimated that around 410,000 people would receive scheme funding support under the scheme.¹⁵

1.21 An NIIS would coordinate services and supports available under accident insurance schemes for catastrophic injury, such as major acquired brain injuries, spinal cord injuries, burns and multiple amputations. The Commission envisaged that under the NIIS, there would be nationally-consistent, no-fault insurance arrangements in place in all states and territories for catastrophic injuries incurred from an accident.¹⁶ As the bill referred to the committee relates to the NDIS, the proposed NIIS is not examined further.

Overview of the Productivity Commission's proposed NDIS

1.22 The Productivity Commission recommended that the NDIS should perform three main functions. The first function would be to, cost-effectively:

- minimise the impacts of disability;
- maximise the social and economic participation of people with a disability;
- create community awareness of the issues that affect people with disabilities; and
- facilitate community capacity building.

1.23 The second function would be an information and referral service that would be available to people with, or affected by, a disability. Finally, the NDIS should provide individually tailored, taxpayer-funded support, which should be targeted at people with a disability that is, or is likely to be, permanent, and who have 'significantly reduced functioning in self-care, communication, mobility or

13 Productivity Commission, *Disability Care and Support*, 2011, Vol. 1., p. 111.

14 Productivity Commission, *Disability Care and Support*, 2011, Vol. 1., p. 5.

15 Productivity Commission, *Disability Care and Support*, 2011, Vol. 1., p. 39.

16 See Productivity Commission, *Disability Care and Support*, 2011, Vol. 1., p. 43.

self-management and require significant ongoing support' or are in an early intervention group, 'comprising individuals for whom there is good evidence that the intervention is safe, significantly improves outcomes and is cost effective'.¹⁷

1.24 The Productivity Commission envisaged that the agency that would be created to supervise the NDIS would oversee assessments and determine efficient prices, but would also perform other roles such as research.¹⁸

The Productivity Commission's proposals for implementing and funding the NDIS

1.25 On how the transition to the NDIS should occur, the Commission suggested that the scheme be launched in mid-2014 in a few identified regions; regions that would, overall, incorporate all of the functions and structures that the NDIS would have. This would allow 'ongoing fine-tuning to test and refine the new scheme structures with a population that is not overwhelming. It would also help build a robust and sophisticated resource allocation process that would serve people's needs appropriately, while reducing the risks of cost blowouts'.¹⁹ In July 2015, the NDIS would progressively be extended nationally, with the final year of the rollout being 2018–19.²⁰ The Commission's estimates of the costs associated with this implementation schedule are reproduced in Table 1.

Table 1: Productivity Commission's estimates of the progressive costs of the NDIS, 2011–12 to 2018–19

<i>Year</i>	<i>Stage of implementation</i>	<i>Likely annual costs</i>
remainder of 2011-12	getting agreement	\$10 million
2012-13	planning the details of the scheme	\$50 million
2013-14	setting up legislation	\$550 million
2014-15	bedding down administrative arrangements	
2014-15	scheme begins with regional rollouts	\$900 million (net)
2015-16	first full year of national rollout	\$2.4 billion (net)
2016-17	second full year of national rollout	\$3.9 billion (net)
2017-18	third full year of national rollout	\$5.4 billion (net)
2018-19	final year — rollout now complete	\$6.5 billion (net)

Source: Productivity Commission, *Disability Care and Support*, report no. 54, 31 July 2011, vol. 1, p. 61.

1.26 The Productivity Commission recommended that the Australian government should be the sole funder of the NDIS. This should be achieved by pooling payments from consolidated revenue into a dedicated fund, the income from which would

17 Productivity Commission, *Disability Care and Support*, 2011, Vol. 1., p. 63. Individuals with newly-acquired catastrophic injuries who are covered by the proposed NIIS would be excluded from receiving individually tailored, funded supports from the NDIS.

18 Productivity Commission, *Disability Care and Support*, 2011, Vol. 1., p. 39.

19 Productivity Commission, *Disability Care and Support*, 2011, Vol. 1., p. 57.

20 Productivity Commission, *Disability Care and Support*, 2011, Vol. 1., p. 60.

provide stable revenue for the NDIS.²¹ However, the Productivity Commission did outline other acceptable funding models, including the use of intergovernmental agreements between the Australian government and the states and territories that provide 'a transparent and accountable basis for contributions by each jurisdiction'.²²

Response to the Productivity Commission report

1.27 In August 2011, soon after the Productivity Commission finalised its report, the government announced that it would 'start work immediately with states and territories on measures that will build the foundations for a National Disability Insurance Scheme'.²³ An advisory group led by Dr Jeff Harmer AO was established by the government and, within COAG, a select council of Commonwealth, state and territory treasurers and disability ministers was formed to consider the Productivity Commission's recommendations.²⁴

1.28 In October 2011, it was announced that the COAG select council had identified the key areas of reform that would be necessary to implement the NDIS and that the first stage of implementing the NDIS would commence by mid-2013.²⁵ As part of the 2012–13 Budget, the government committed to over \$1 billion to help fund the first stage of the NDIS (Table 2).

Table 2: Funding for first stage of the NDIS, 2012–13 Budget (\$m)

2012–13	2013–14	2014–15	2015–16
83.9	234.3	345.4	363.0

Source: Australian Government, *2012–13 Budget: Budget paper no. 2*, May 2012, p. 142.

Launch sites

1.29 In April 2012, the government announced that the NDIS would commence in selected launch sites from mid-2013.²⁶ During 2012 it was confirmed that the launch sites would be the Australian Capital Territory (ACT), the Barwon region of Victoria

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- 21 The Commission also explored other options such as a dedicated levy on personal income, cutting GST payments or other transfer payments to the states, or by agreements to replace inefficient states taxes with more efficient Commonwealth taxes. See Productivity Commission, *Disability Care and Support*, 2011, Vol. 2, pp. 637–91, in particular recommendations 14.1–14.5 on pp. 690–91.
- 22 Productivity Commission, *Disability Care and Support*, 2011, vol. 2, pp. 690–91.
- 23 The Hon. Jenny Macklin MP, 'Productivity commission's final report into disability care and support', *Media release*, 10 August 2011.
- 24 Council of Australian Governments, *Communiqué of 19 August 2011 meeting*, www.coag.gov.au/sites/default/files/2011-19-08.pdf, pp. [3]–[4].
- 25 The Hon. Wayne Swan MP, the Hon. Jenny Macklin MP, the Hon. Bill Shorten MP and Senator the Hon. Jan McLucas, 'Early delivery of foundation reforms for National Disability Insurance Scheme', *Joint media release*, 20 October 2011.
- 26 The Hon. Jenny Macklin MP and Senator the Hon. Jan McLucas, 'National Disability Insurance Scheme to launch in 2013', *Joint media release*, 30 April 2012.

(includes Geelong and the surrounding area), the Hunter region of New South Wales (NSW) (includes Newcastle and the surrounding area), South Australia (SA) and Tasmania. Table 3 provides further information about the arrangements agreed to for these launch sites.

Table 3: Summary of NDIS launch site arrangements

Launch site	Details	Estimated valued of cash contributions to the scheme over the trial period
Australian Capital Territory	As at December 2012, details about the launch of the NDIS in the ACT are being finalised. It may start in July 2013 or July 2014 and may take a phased-in approach. An estimated 6,000 people under the age of 65 with disability will be covered.	Australian Government: \$43.8 million over 2014–15 to 2015–16; 2017–18 contributions not yet confirmed. ACT Government: \$113.8 million over 2014–15 to 2015–16; 2017–18 contributions not yet confirmed.
New South Wales (Hunter Region)	From 2013, all eligible persons in the region will be covered (about 10,000 people with significant and profound disabilities).	Australian Government: \$112.3 million over 2013–14 to 2015–16. NSW Government: Existing funding (capped at \$550 million over three years) plus an additional \$35 million over four years.
South Australia	From mid-2013, focus will be on children aged 0–5 with significant and permanent disability. By 2014–15 the age range will be 0–13 years, and 0–14 years in 2015–16. It is estimated that around 4,800 children will be covered.	Australian Government: \$22.7 million over 2013–14 to 2015–16. SA Government: \$20 million over 2013–14 to 2015–16.
Tasmania	From 2013, people aged 15–24 years will be covered (approximately 1,000 people with disability).	Australian Government: \$19.0 million over 2013–14 to 2015–16. Tasmanian Government: \$13.5 million over 2013–14 to 2015–16.
Victoria (Barwon Region)	From 1 July 2013 all eligible persons will be covered (an estimated 5,000 people with significant and profound disabilities).	Australian Government: \$94.5 million over 2013–14 to 2015–16. Victorian Government: \$130.7 million over 2013–14 to 2015–16.

Sources: The Hon. Julia Gillard MP, 'COAG progresses the National Disability Insurance Scheme', *Media release*, 7 December 2012; the Hon. Jenny Macklin MP, media releases dated 26 July 2012, 1 August 2012 and 12 August 2012; the *Intergovernmental Agreement for the National Disability Insurance Scheme* dated 7 December 2012; and the bilateral agreements for the NDIS launch between the Commonwealth and NSW, Victoria, South Australia, Tasmania and the ACT dated 7 December 2012, www.coag.gov.au/node/485 (accessed 15 January 2013).

1.30 In December 2012, the Australian and NSW governments agreed to a framework to implement the full NDIS in NSW by 1 July 2018. Under the agreement,

in 2018 the Australian government will provide \$3.32 billion of funding while the NSW government will contribute \$3.13 billion.²⁷

The National Disability Insurance Scheme Bill 2012

1.31 On 29 November 2012, the government introduced the National Disability Insurance Scheme Bill 2012 (bill)—the bill being examined by this inquiry—into the House of Representatives. The bill contains a proposed framework for the NDIS, including provisions that:

- outline the objects and general principles of the scheme;
- would establish the National Disability Insurance Scheme Launch Transition Agency (transition agency);
- outline the process for becoming a participant in the scheme; and
- would provide for a review of the operation of the legislation after a two-year period.

Objects and principles of the NDIS

1.32 The objects of the bill are contained in clause 3. They include: providing for the NDIS, supporting the independence and social and economic participation of people with disability, providing supports for participants during the NDIS launch, enabling people with a disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports, and facilitating the development of a nationally-consistent approach regarding access to, planning and funding of supports. Further objects include the provision of high-quality and innovative supports, raising community awareness and facilitating greater inclusion of people with disability, and giving effect to certain obligations that Australia has as a party to the UNCRPD.²⁸

1.33 Clauses 4 and 5 contain a number of principles to guide actions taken under the legislation, including the actions of people who may do acts or things on behalf of others. For example, paragraph 5(a) stipulates that it is Parliament's intention that 'people with disability should be involved in decision making processes that affect them, and where possible make decisions for themselves'.²⁹

Creation of the National Disability Insurance Scheme Launch Transition Agency

1.34 The transition agency is intended to oversee the implementation of the first stage of the NDIS. Chapter 6 of the bill proposes the creation of the transition agency as a statutory body subject to the *Commonwealth Authorities and Companies Act 1997*

27 National Disability Insurance Scheme, 'NDIS launch: NSW', www.ndis.gov.au/ndis-launch/launch-locations/nsw/ (accessed 15 January 2012).

28 National Disability Insurance Scheme Bill 2012, clause 3.

29 NDIS Bill, paragraph 5(a).

(CAC Act). The transition agency will be governed by a board³⁰ and supported by an advisory council 'made up of people with lived experience of disability and caring'.³¹ A Chief Executive Officer (CEO) would be responsible for the day-to-day administration of the transition agency; in July 2012 the government announced that Mr David Bowen would take up this position.³²

1.35 Under the provisions outlined in chapter 2 of the bill, the transition agency would provide a broad range of assistance, including:

- coordination, strategic and referral services, as outlined in chapter 3 of the bill, to ensure 'that there is 'no wrong door', and that people with disability are not passed from one service to another'; and³³
- funding to individuals and organisations for the purposes of enabling them to assist people with disability to realise their potential for physical, social, emotional and intellectual development, and to participate in social and economic life.³⁴

Participation in the NDIS

1.36 A person may make a request, in the required form, to participate in the NDIS. The transition agency must consider the request within 21 days unless: (a) further information; (b) an assessment; or (c) a medical, psychiatric or psychological examination is requested by the agency.³⁵ Eligibility and assessment of need will be based on the World Health Organisation's (WHO) *International Classification of Functioning, Disability and Health*³⁶ (ICF) and subject to access criteria, which include:

- age requirements (the person must be aged under 65 when they first enter the scheme or the prescribed age contained in the NDIS rules);

30 The responsible minister will appoint the chair (following consultation with host jurisdictions about the appointment). For board members other than the chair, both the Commonwealth and a majority of the group consisting of the Commonwealth and the host jurisdictions must agree to the appointment. See NDIS bill, clause 127.

31 Explanatory memorandum, p. 48.

32 According to the Minister's media release announcing the appointment, 'Mr Bowen has been a consultant to the insurance industry, health and disability sectors and was a member of the Independent Panel which advised the Productivity Commission in its inquiry into a national disability care and support scheme. A lawyer with a strong background in administrative and insurance law, Mr Bowen was also one of the architects of the NSW Lifetime Care and Support scheme and its inaugural CEO. He is the Chair of the National Injury Insurance Scheme Advisory Committee and previously also General Manager of the NSW Motor Accidents Authority for 11 years'. The Hon. Jenny Macklin and Senator the Hon. Jan McLucas, 'CEO appointed to lead NDIS Agency', *Joint media release*, 6 July 2012.

33 Explanatory memorandum, p. 7.

34 NDIS Bill, paragraph 14(a).

35 NDIS Bill, clauses 18, 20, 26.

36 Statement of Compatibility with Human Rights, p. 7.

- residence requirements (the person must reside in Australia and be either a citizen, holder of a permanent visa or a special category visa holder who is a protected Special Category Visa (SCV) holder—defined in clause 9); and
- disability or early intervention requirements (outlined in clauses 24 and 25 of the bill, these requirements are designed to 'assess whether a prospective participant has a current need for support under the scheme, based on one or more permanent impairments that have consequences for the person's daily living and social and economic participation on an ongoing basis').³⁷

1.37 Once a person becomes a participant, work by the transition agency to facilitate the preparation of their plan must occur.³⁸ The plan must contain the participant's statement of goals and aspirations and a statement of the supports that will be provided, including those funded by the NDIS.³⁹ A participant in the NDIS can request that the plan be managed either by themselves, a registered plan management provider of their choosing, or by a person specified by the transition agency.⁴⁰

1.38 The bill also outlines the processes by which:

- a person can make decisions for children with disabilities; and
- a nominee (a plan nominee and/or a correspondence nominee) can be appointed to make decisions on behalf of a participant.⁴¹

Impact on Philanthropy

1.39 The committee heard some concerns regarding the impact the introduction of the NDIS would have on philanthropic donations. A number of organisations that provided evidence to the committee rely on non-governmental funding. Those organisations, and those that support them, will be required to adapt to the new funding environment under the NDIS. For example, Mr Ah Tong from Vision 2020 Australia explained to the committee the tension and changes that the NDIS may cause:

Vision Australia has a \$90 million operating budget every year and 60 per cent of that comes through our fundraising, philanthropic giving, bequests, donations and other means. This is an issue, but when this issue comes up it comes up as an either/or type of discussion. What I mean by that is that people are suggesting that we would be better off to just not have this NDIS. That is not what we think should occur. It is an issue that we need to

37 NDIS Bill, clauses 21–25; explanatory memorandum, p. 12.

38 NDIS Bill, clause 32.

39 NDIS Bill, clause 33.

40 NDIS Bill, clause 33.

41 NDIS Bill, chapter 4.

deal with, but we think it is an issue that we need to deal with in collaboration with the reforms as they roll out.⁴²

1.40 When inquiring regarding the likely impact of the NDIS on philanthropic contributions, the committee received mixed evidence. The Australian Blindness Forum (ABF) indicated that the NDIS would have an impact:

We believe that the NDIS will have an impact on the philanthropic contributions of the Australian public to organisations that support people who have a disability.⁴³

...

I don't think that anybody is saying that we do not believe an NDIS is valid. What we are saying is do not forget about incredible contributions.⁴⁴

1.41 In contrast, Karingal Inc. – a not-for-profit organisation providing a range of services for people with a disability or mental illness – indicated that most philanthropic giving is not dependent upon strict assessments of financial need:

We are finding that philanthropists are keen to invest or donate to charities who have a sound track record of delivering what they say they will, irrespective of their financial positions. I do not know that that will be a major challenge, but it is something to be conscious of because, if that perception gets out, that would make it difficult.⁴⁵

1.42 Although it was not always clear from the evidence what the impact of the NDIS would be on charitable giving, there was an apparent consensus regarding the need to ensure that the right message regarding the NDIS is put into the public domain. It was emphasized to the committee that NDIS not be perceived as a cure-all that removes the need for charitable organisations and funding for them:

But if [people] are not educated about the fact that philanthropy is still very, very important then they may just naturally perceive that this is the [NDIS] and everybody with a disability is covered, and they are going to be ok.⁴⁶

1.43 While the NDIS is rightly seen as an improvement over the current disability support system, there will still be a need for charitable donations:

It is really important that our donors know that the NDIS, and the publicity it is getting – and rightly so, because it is a great reform – it is not a panacea. It is not going to fund everybody. We as an organisation are wondering, what do we do? We do not want to slam the NDIS and say: 'The NDIS isn't that good. It's not going to fund us,' because we think it is a good

42 Mr Ah Tong, Vision 2020 Australia, *Proof Committee Hansard*, 21 February 2013, p. 11. Cf. Mr English, Australian Blindness Forum, *Proof Committee Hansard*, 22 February 2013, p. 18.

43 Mr English, Australian Blindness Forum, *Proof Committee Hansard*, 22 February 2013, pp. 18–19.

44 Mr English, Australian Blindness Forum, *Proof Committee Hansard*, 22 February 2013, p. 21.

45 Mr Starkey, Karingal Inc., *Proof Committee Hansard*, 20 February 2013, p. 50.

46 Mr English, Australian Blindness Forum, *Proof Committee Hansard*, 22 February 2013, p. 23.

reform. On the other hand, we have to convey a message to our very generous donors that we still need donations.⁴⁷

1.44 While acknowledging the concerns raised, the department noted that other sectors that receive significant government funding have not subsequently been unable to raise private donations, and that the NDIS may actually enhance the fundraising capacity of organisations:

It is, however, not the experience of other sectors that public funding necessarily crowds out private donations and bequests, or makes an organisation that receives public funding unable to compete for private donations and bequests. Many health organisations that receive substantial amounts of government funding are also highly successful at raising private donations.

In addition, the design of the NDIS will allow providers to remain highly visible in the community. This will not shield providers from competition for private donations by organisation from other community sectors. However it will ensure that they have the resources, expertise and presence to actively market themselves in this increasingly competitive environment.⁴⁸

1.45 As summarised by the Royal Institute for Deaf and Blind Children (RIDBC): 'One of the challenges in the marketing of the NDIS is not to present a message that says: "this problem does not now need people to dip into their pockets."' ⁴⁹

Support for the NDIS

1.46 The committee heard overwhelming support for the introduction of an NDIS. The committee did not hear from a single submitter, be that an organisation or an individual, that did not support the introduction of some form of structural and funding overhaul of the provision of disability services and support. There were varying views on the scale of the scheme and how the scheme should be structured and paid for, but none thought the status quo provided adequate and equitable access to services.

1.47 Generally speaking, there was widespread support for the principles underlying the NDIS in its proposed form, and the scheme itself was regarded as a paradigm shift in the management of disability in Australia. The Australian Federation of Disability Organisations (AFDO) argued that 'the NDIS presents a once-in-a-generation opportunity for transformative change in the lives of people with disability.'⁵⁰ Nation Disability Services (NDS) – speaking for around 800 non-

47 Mr Hurd, Guide Dogs Victoria, *Proof Committee Hansard*, 21 February 2013, p. 10.

48 Ms Wilson, Department of Families, Housing, Community Services and Indigenous Affairs, *Proof Committee Hansard*, 5 March 2013, p. 37.

49 Mr Rehn, Royal Institute for Deaf and Blind Children, *Proof Committee Hansard*, 1 February 2013, p. 8.

50 Australian Federation of Disability Organisations, *Submission 514*, pp. 2–3.

government organisations – similarly emphasized the life-changing importance of the NDIS, stating:

When implemented nationally the NDIS will transform disability support in Australia. It will expand access to disability services; increase choice for people with disability and their families and carers; generate economic and social benefits for Australia; and establish an equitable and efficient disability support system that is sustainable over the long-term.⁵¹

1.48 Carers Queensland expressed a complementary position, highlighting how the NDIS will alter service delivery:

The NDIS bill represents a move from a paternalistic platform of service determination and delivery to self-directed and self-managed support and assistance for people with disability who have decision-making capacity, enabling them to rightly assume and enjoy full responsibility for their lives and their citizenship.⁵²

1.49 The importance of the NDIS was reinforced by the evidence provided by Disability Advocacy Network Australia (DANA) – an organisation representing almost 70 agencies whose primary purpose is to provide independent advocacy support to people with disabilities:

The significance of the NDIS cannot be overstated. It has the potential to be the most important change to the provision of support for people with disability to occur in any nation, at any time.⁵³

1.50 Some witnesses, although supporting the idea of an NDIS, expressed caution regarding the proposed implementation, arguing that it was important to get it right the first time. The Law Society of South Australia, for example, argued that criteria and funding issues – among others – need to be resolved before the scheme comes into effect. While recognising the imperative of making the scheme operation, the Society cautioned that without resolving outstanding issues the NDIS may not meet the potential that it otherwise might.⁵⁴

1.51 But others, particularly those representing people with disabilities, preferred that the scheme be established, even if some changes are required at a later time. For example, the CEO of Townsville Independence Program for Adult Community Living (TIPACL) stated:

I have been waiting for an NDIS to happen for many years. Although what is proposed is not perfect, it is a start and all journeys start with a first step.⁵⁵

51 National Disability Services, *Submission 590*, p. 3.

52 Ms Walbank, Carers Queensland, *Proof Committee Hansard*, 30 January 2013, p. 2.

53 Disability Advocacy Network Australia, *Submission 516*, p. 2.

54 Mr White, Law Society of South Australia, *Proof Committee Hansard*, 19 February 2013, p. 35.

55 Mr Brown, Townsville Independent Program for Adult Community Living, *Proof Committee Hansard*, 29 January 2013, p. 39.

1.52 AFDO similarly acknowledged that the NDIS scheme may not be perfect, but argued that the proposed approach provides the opportunity to learn from the proposed test sites and use that information to improve any subsequent national system:

We know and we would acknowledge that the scheme is not going to be perfect from the start. We think that the mechanism of having launch sites is actually a really good way to deal with that. As long as the legislation and the rules are set up to provide enough flexibility in the areas where we need to do some learning and that we are very good about monitoring and evaluating those areas...Moving forward [with the NDIS] is possible and we think that moving forward should happen, but we really need to make sure that we [build] in the appropriate systems and supports to learn as we go along.⁵⁶

1.53 Representatives from the Tasmanian Department of Premier and Cabinet (DPC) assured that committee that they are 'keen to see the legislation proceed as quickly as possible', and that:

If there are hiccups along the way, they are not signs that the NDIS was a bad idea or that governments, stakeholders or families are doing anything wrong. It is just that this is a big thing and we all need to be aware of that, and to give the NDIS the time to mature and grow into the system that we all want it to be.⁵⁷

1.54 At the same time as recognising that it is inevitable that any new national program will have its challenges, everyone involved in the development and implementation of the NDIS is striving to make the scheme as successful as possible, as soon as possible. With that sentiment in mind, the following chapters of this report highlight a number of areas in which stakeholders sought amendment. The committee also presents recommendations to the Senate arising from issues raised during the course of this inquiry.

1.55 As noted above, the committee recognises that the NDIS is being launched across a number of sites, in some cases targeting particular age cohorts. The phased launch of the NDIS will allow people with disability, carers, advocacy organisations, service providers and governments to gain experience in the implementation of the NDIS and to consider whether improvements could be made to its design. The importance of learning from the launch sites is underlined by inclusion in the bill of a formal review of the legislation, to take place two years after the scheme commences. The committee endorses the phased approach and believes that there will be opportunities to implement lessons learned along the way.

56 Ms Hobson, Australian Federation of Disability Organisations, *Proof Committee Hansard*, 20 February 2013, p. 2.

57 Mr Evans, Department of Premier and Cabinet, *Proof Committee Hansard*, 22 February 2013, p. 8.