

Chapter 2

Key issues

2.1 The National Disability Insurance Scheme Savings Fund Special Account Bill 2016 (the bill) proposes to establish a special fund as a means of providing a protective mechanism in the event of a National Disability Insurance Scheme (NDIS) funding shortfall.

2.2 Submitters were unanimous in their support for a well-funded NDIS, with many also lending in principle support for the introduction of a future fund as a funding safety mechanism. Support for a sustainably funded NDIS notwithstanding, concern was noted regarding where budget savings for the currently projected shortfall in funding would be found, whether a special account is the best way to ensure sustainable funding, and how much discretion the bill would afford the Minister for Social Services (Minister).

2.3 These issues are examined below.

Ensuring sustainable funding

2.4 Funding for the NDIS is secured by way of a complex arrangement of revenue sources. These include Commonwealth funding, redirected state and territory disability funding and the NDIS component of the Medicare Levy.¹

2.5 The Department of Social Services (department) stated that the complexity of the NDIS funding arrangement is the result of 'jurisdictions gradually transitioning their specialist disability service systems to the Scheme and four different Commonwealth funding sources'.² There is no additional funding requirement until 2019–20 because the revenue for the increased Medicare Levy, together with redirected existing disability expenditure, is expected to be higher than the Commonwealth's required contribution, as per the table below:³

Table 1: Commonwealth funding streams for the NDIS¹

As at Budget 2016-17	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
Commonwealth Contributions (\$b)	8.8	11.2	12.1	12.9	13.6	14.3
- Existing Commonwealth Programmes (\$b)	-0.7	-1.1	-1.2	-1.2	-1.2	-1.2
- Existing Commonwealth Grants to States (\$b)	-1.5	-1.8	-1.9	-1.8	-1.9	-1.9
- Payments from DCAF (\$b)	-6.5	-3.9	-3.6	-3.8	-4.0	-4.3
General Consolidated Revenue (\$b)	-	4.4	5.4	6.1	6.6	6.9

1 Disabled People's Organisations Australia, *Submission 15*, p. 2.

2 Department of Social Services, *Submission 9*, p. 3.

3 Department of Social Services, *Submission 9*, p. 2.

2.6 By 2019-20 however, when the scheme is due for complete roll-out, more Commonwealth funding for that year is projected to be sourced from:

- existing funding from the Commonwealth specialist disability programmes transitioning to the NDIS (\$1.1 billion);
- existing funding provided to the States and Territories (states) under the National Disability Agreement and 2011 National Health Reform Agreement (\$1.8 billion);
- an increase in the Medicare Levy by 0.5 per cent, which will provide funding to the NDIS via the DisabilityCare Australia Fund (DCAF) (\$3.9 billion); and
- funding from consolidated revenue (\$4.4 billion).⁴

2.7 The above figures indicate that an additional \$4.4 billion in funding will be needed in the first year the NDIS is fully rolled out. By 2023–24, as the scheme matures, that funding requirement is projected to grow to \$7 billion.⁵

2.8 In the 2016 Federal Budget the government identified savings of \$2.3 billion which may be credited to the proposed NDIS special account over the forward estimates. This figure includes \$711.2 million 'as a result of revised NDIS transition assumptions arising from bilateral agreements for the transition' to the full roll-out of the scheme, as well as approximately \$1.6 billion in savings to social security payments, subject to legislation on savings proposals being enacted by Parliament.⁶ This would reduce the Scheme's future funding requirement and ensure sustainable funding.⁷

2.9 The process by which savings are identified and funding decisions made is explored below.

Funding the special account

2.10 The bill's explanatory memorandum states that the Minister would determine amounts to be credited to the proposed special account, where credits may result from:

- underspends and net savings from the NDIS and other portfolio savings, as determined by the Minister for Social Services;
- discretionary decisions by the Prime Minister or the Cabinet (for example, to establish a starting balance at the special account's commencement); and

4 Department of Social Services, *Submission 9*, p. 2.

5 Department of Social Services, *Submission 9*, p. 2.

6 Department of Social Services, *Submission 9*, p. 3.

7 Department of Social Services, *Submission 9*, p. 3.

- decisions by the Prime Minister or the Cabinet about identified savings from other Commonwealth portfolios.⁸

2.11 The explanatory memorandum does not, however, stipulate how savings decisions by the government are to be made. The committee noted some stakeholder unease on this issue, with a number of submitters and witnesses expressing concern about the link between savings identified in social services portfolios and funding for the NDIS. This concern, as put by Children and Young People with Disability (CYDA), is based on the savings identified in the 2016 Budget:

The 2016 Federal Budget identified savings to be credited into the NDIS Savings Fund. These include savings from: closing carbon tax compensation to new income support recipients; changes to how new Carer Allowance claims are backdated; reviewing 30 000 Disability Support Pension (DSP) recipients per year for three years to assess their capacity to work; and savings from within the NDIS.⁹

2.12 Many submitters, the Australian Council of Social Service (ACOSS) among them, were opposed to savings being identified in other social services areas in order to be injected into the proposed special account:

ACOSS strongly opposes linking savings in the area of social security for people with a disability to funding of the NDIS, not least because it creates a false economy. Moving people from DSP [Disability Services Pension] onto Newstart will result in them losing \$175 per week and plunge them into poverty.¹⁰

2.13 ACOSS added that using savings in other areas of social security would be "a false economy".¹¹

2.14 Queensland Advocacy Incorporated (QAI), despite supporting the creation of a special fund as a protective mechanism, did not support "addressing shortfalls in the Commonwealth's allocated NDIS funding...by decreasing other forms of social welfare funding."¹²

2.15 CYDA expanded on this:

Addressing the present NDIS funding gap through savings made from other areas of the budget will take vital funding away from vulnerable people and requires the NDIS to compete for funding with other areas of need. For example, the changes to the DSP announced in the Budget would involve DSP recipients deemed eligible for Newstart receiving around \$170 less income per fortnight. Given that the DSP is an essential income support program that provides a vital safety net, tying NDIS funding to reduced

8 Explanatory memorandum, National Disability Insurance Scheme Savings Fund Special Account Bill 2016, p. 1.

9 Children and Young People with Disability, *Submission 13*, pp 4–5.

10 Australian Council of Social Service, *Submission 11*, p. 1.

11 Australian Council of Social Service, *Submission 11*, p. 1.

12 Queensland Advocacy Incorporated, *Submission 5*, p. 2.

DSP spending creates a concerning tension between two areas of essential services.¹³

2.16 Similarly, the Australian Network on Disability (AND) sought assurance that existing social services would not be adversely impacted:

What assurance is there that funding credits are sourced from a social services program surplus or underspends, rather than by cutting existing programs, which may negatively impact on vulnerable groups of people, and especially for people with a disability.¹⁴

2.17 These views were echoed by others, such as Tandem, the Victorian peak body representing carers of people with mental illness, which sought assurance that the principle of ‘no disadvantage’ would in no way be undermined if the proposed legislation were enacted. Tandem concluded that more clarity was needed.¹⁵

How budget savings are identified

2.18 To clarify how government savings and funding decisions are made, and what separates the two processes, the committee sought evidence from the department.

2.19 The department explained that savings are identified through a range of processes. Every year departments and agencies follow a process for proposing savings on existing programs or spending on new or existing policies. These departmental proposals are then considered by the Expenditure Review Committee (ERC), which examines proposals from all agencies and departments, and then makes decisions about savings and funding accordingly.¹⁶

...[T]hose discretionary decisions around spends or savings are made by Prime Minister and Cabinet through normal government processes. If those decisions are made, it might be a decision for a saving over here and it may again be another decision of government to contribute some of those savings to the NDIS fund.¹⁷

2.20 The department confirmed that, while the Minister seeks advice on potential savings from his portfolio agencies, this process is separate to subsequent funding decisions, which are made once the balance of savings across portfolios is known:

[T]he Minister for Social Services, currently Minister Porter, is obviously responsible for the Social Services portfolio. He will take proposals in many policy areas for which he is responsible or for saves to the government. I assure you that that process is completely separate from the process of the government making decisions or the minister proposing to the government about some of those saves that might not come from the

13 Children and Young People with Disability, *Submission 13*, p. 5.

14 Australian Network on Disability, *Submission 3*, p. 1.

15 Tandem, *Submission 6*, p. 5.

16 Department of Social Services, *Proof Committee Hansard*, 14 October 2016, p. 32.

17 Ms Helen McDevitt, Group Manager, NDIS Transition Oversight, Department of Social Services, *Proof Committee Hansard*, 14 October 2016, p. 32.

Social Services portfolio—some might come from other portfolios or from NDIS savings or underspends. Those decisions are completely separate and subsequent to the save decisions.¹⁸

2.21 Furthermore, as pointed out by National Disability Services (NDS), it is important to note that the bill would allow the government to identify savings from any portfolio, not just the Social Services portfolio.¹⁹

Committee view

2.22 The committee acknowledges concerns about savings from other social services areas being used to fund the proposed special account. However, the committee notes that savings decisions are made through established and known government processes, not by an individual minister. Decisions on savings are made after consultation with departments and agencies, separately from decisions about how any savings will subsequently be allocated and to which policy programs. In essence, money identified through budget savings is pooled before being re-allocated elsewhere. The committee is therefore satisfied that the proposed legislation does not reflect or establish a link between savings in any particular portfolio area and funding for the NDIS.

2.23 The committee is of the view that Budget measures and the objective of this bill—that is, establishing a dedicated account to quarantine funding for the NDIS—should not be conflated.

The need for a special account

2.24 A number of submitters questioned the need for a special account. CYDA, for example, submitted:

The need for a 'special account' in addition to the *DisabilityCare Australia Fund* to hold funds for the NDIS is therefore unclear. It is CYDA's understanding that this is not a typical funding arrangement for other core areas of government such as health or education. Current special accounts cover a broad range of policy area but are typically created for more specific programs.²⁰

2.25 Queensland Advocacy Incorporated (QAI), an independent advocacy organisation and community legal service, extended in principle support for the special account, but expressed a concern that the NDIS could become 'the focus of an ongoing political battle each budget cycle.'²¹ To ensure adequate and sustainable

18 Ms Felicity Hand, Deputy Secretary, Department of Social Services, *Proof Committee Hansard*, 14 October 2016, pp 31–32.

19 National Disability Services, *Submission 8*, p. 1. NDS was of the view that identifying significant and justified savings from other social services areas would be difficult, but did, however, support welfare savings achieved through helping people who can work find employment.

20 Children and Young People with Disability, *Submission 13*, p. 4.

21 Queensland Advocacy Incorporated, *Submission 5*, p. 2.

funding, QAI instead proposed that NDIS costs on full roll-out be paid through an expanded DisabilityCare Australia Fund (DisabilityCare).²²

2.26 Like QAI, People with Disabilities Western Australia (PWdWA) asked why the DisabilityCare Australia Fund was not amended to enable credits to be made from other sources, as an alternative to the mechanism proposed by the bill:

Our understanding is that there is already an account set up to fund the NDIS. So, if it requires changes to increase the variety of sources that can put credits into that account, then why not amend the legislation? We do not understand why multiple legislative instruments are required for what should be the same purpose. We think that to be able to put underspends and savings from the NDIS back into the NDIS fund again should be part of the original fund that was set up or a change made to that fund for that to be able to happen.²³

2.27 Like the other organisations above, Disabled People's Organisations Australia (DPO Australia) suggested the existing DisabilityCare Australia Fund as a better alternative to the bill:

The DisabilityCare Australia Fund was established as a Special Account to fund the NDIS, and we are unclear as to why an additional Special Account needs to be established. If additional funding for the NDIS needs to be sourced through alternate revenue measures, this funding could be channelled directly through the existing DisabilityCare Australia Fund.²⁴

2.28 The committee put this question to the department, and was informed that all possible mechanisms, including the DisabilityCare Australia Fund, were looked at before the government settled on the proposed fund. Policy advice on amending the DisabilityCare Fund was sought:

...[O]ur policy advice was also that it would be unwise because the Disability Care Australia Fund is an investment fund that was set up to reimburse the states and Commonwealth for funding expended for the purposes of the NDIS. It is an investment fund and it is very hard to quickly withdraw funds from it for emergency purposes—for instance, for the NDIS.²⁵

2.29 Asked to expand on this, the department explained the limitations of DisabilityCare:

A significant limitation of the DCAF is that any payments made are reimbursements to the Commonwealth and states and territories for expenditure incurred in relation to the National Disability Insurance Scheme Act 2013. In contrast, the Savings Fund would allow payments to

22 Queensland Advocacy Incorporated, *Submission 5*, p. 2.

23 People With Disabilities (Western Australia), *Proof Committee Hansard*, 14 October, p. 1.

24 Disabled People's Organisations Australia, *Submission 15*, p. 2.

25 Ms Felicity Hand, Deputy Secretary, Department of Social Services, *Proof Committee Hansard*, 14 October 2016, p. 36.

be made to the National Disability Insurance Agency in advance to avoid any cash flow issues. This flexibility would better enable the Commonwealth to meet its funding obligations for the *National Disability Insurance Scheme Act 2013*.²⁶

2.30 The proposed NDIS savings account, conversely, would be a special, dedicated account to be used only for the purposes of the NDIS, and only for meeting the Commonwealth's funding requirement, not for state expenditure:²⁷

...[A]s the Savings Fund is a special account in the Consolidated Revenue Fund, it would ensure the Government has greater flexibility to respond to urgent funding needs. If a funding risk materialises, funds could be withdrawn from the special account as determined by the Minister for Social Services. Withdrawing invested funds (such as the DCAF) takes longer relative to withdrawing funds in a special account in the Consolidated Revenue Fund.²⁸

2.31 The committee understands that two of the key benefits of the proposed special account are minimising delays between funding allocation and expenditure and mitigating the resulting risk of any unspent funds being returned to consolidated revenue.

2.32 As put by NDS:

During the trial phase of the NDIS, delays between the allocation of funds to the National Disability Insurance Agency and the expenditure of those funds have been longer than expected, reflecting, in part, the time between people requesting access to the Scheme and the activation of their plans. The NDIS Savings Fund Special Account will prevent funds unspent because of a timing lag from being returned to consolidated revenue and lost to the NDIS. The Special Account, in effect, quarantines these funds for their original intended purpose. NDS supports the creation of such an Account.²⁹

2.33 The reason for time delays between funding allocation and expenditure are complex. NDS explained:

People develop plans, they have the plans approved and it then takes them some time to identify appropriate providers of supports and to receive those supports and then for the providers or themselves as self-managing participants to bill the agency. In other words, it is a timing issue. It does not reflect in any sense that the plans are overestimating the need for supports, and I would expect that as the scheme matures the timing lag will reduce. Nevertheless, while it exists there is a risk that money unspent at the end of the financial year would be returned to consolidated revenue, and

26 Department of Social Services, *answer to questions on notice*, received 27 October 2016, p. 7.

27 Ms Felicity Hand, Deputy Secretary, Department of Social Services, *Proof Committee Hansard*, 14 October 2016, p. 36.

28 Department of Social Services, *answer to questions on notice*, received 27 October 2016, p. 7.

29 National Disability Services, *Submission 8*, p. 1.

the savings fund would allow for that money to be quarantined for the purpose for which it was initially meant. That is very important.³⁰

2.34 The key benefit of creating the proposed special account, therefore, is the effect it will have by quarantining all available funding for NDIS use. This would ensure the money is there when needed. Once the NDIS reaches full scheme, the committee understands, funds would only be returned from the special account to the Consolidated Revenue Fund 'if the balance of the special account becomes greater than required.'³¹

The Minister's level of discretion

2.35 The Minister's discretion in managing the proposed special account was another concern identified by submitters and witnesses. One of these, ACOSS, suggested that, if enacted, the bill would alter the balance of power between the Minister and the National Disability Insurance Agency (NDIA):

The governance structure to administer the scheme was set up through the NDIA. If the minister has direct control of the stream of funds going to the NDIA that sets up a different kind of dynamic in the relationship between the minister and the authority. The original idea was that the authority would have a degree of autonomy so that it could undertake long-term planning, and also because there are stakeholders other than the Commonwealth government that are involved in this. So it does change the dynamic. How that will play out is anybody's guess. But I expect it to empower the minister, relative to the NDIA, if I could put it that way.³²

2.36 CYDA raised concerns that the bill would provide the Minister with discretionary powers to identify savings from other portfolio areas to be placed in the NDIS Savings Fund:

This vests significant control over the fund with the Commonwealth Government. Funding for the NDIS will therefore be dependent on the capacity of the government of the day to identify savings according to their priorities and have them passed through Parliament. This puts funding for the NDIS in a precarious position, determined by the budget cycle.³³

2.37 The committee notes the explanatory memorandum outlines that credits to the special account would be announced and committed for a period of ten years³⁴, which would somewhat quarantine such funds from the usual budget cycle pressures.

30 Dr Ken Baker, Chief Executive, National Disability Services, *Proof Committee Hansard*, 14 October 2016, p. 1.

31 The Hon. Mr Christian Porter, Minister for Social Services, *House of Representatives Hansard*, 31 August, p. 104.

32 Mr Peter Davidson, Senior Advisor, Australian Council of Social Service, *Proof Committee Hansard*, 14 October 2016, p. 8.

33 Children and Young People with Disability Australia, *Submission 13*, p. 4.

34 Explanatory memorandum, National Disability Insurance Scheme Savings Fund Special Account Bill 2016, p. 1.

2.38 Both CYDA and Young People in Nursing Homes Alliance (YPNHA) raised concerns that the control over the fund given to the Minister was at odds with the shared responsibility structure between jurisdictions of the NDIS governance framework.³⁵

2.39 Another concern raised by multiple submitters, was that the creation of a special account controlled by a government minister was moving the NDIS away from the recommendation of the Productivity Commission that the NDIS be managed as a social insurance scheme:

To be a viable social insurance scheme, the NDIS needs to have predictable and secure revenue sources. The fact that the Bill enables the Minister alone to decide deposits to the fund; and the PM and Cabinet to make discretionary payments to the fund, make this a poorly designed long term funding mechanism for the scheme.

A related problem with the fund as described in the Bill is that it casts the NDIS as a program of the Minister rather than a truly independent scheme. The Bill thus makes the scheme vulnerable to the political ebb and flow future governments may confront. This is one of the key reasons the Productivity Commission recommended an insurance model that would be free of the budget related political tussles that plagued the old disability system.³⁶

2.40 The AND also raised concerns with ministerial discretion for managing the account, stating that the proposed bill does not contain any 'legislated consultation provisions with groups that may be negatively affected by such decision.' The AND also raises questions as to whether such decisions would be subject to review.³⁷ Once savings are identified across the portfolios through government decision-making processes, if the bill were enacted the Minister would have responsibility, as manager of the fund, for the mechanism by which credits are made to the special account.

2.41 However, in its submission, the Department outlined that the Minister does not retain sole decision-making discretion for making credits to the fund, which are made through a ministerial determination 'in line with Government decisions.'³⁸

2.42 Furthermore, the committee understands that the proposed fund would be subject to the *Public Governance, Performance and Accountability Act 2013*, which sets out the internal governance arrangements that sit across the entire Commonwealth.³⁹

35 See *Submission 13*, p. 4 and *Submission 14*, pp 2–3.

36 YPNHA, *Submission 14*, p. 3.

37 Australian Network on Disability, *Submission 3*, p. 1.

38 Department of Social Services, *Submission 9*, p. 3.

39 See discussion with ACOSS, *Proof Committee Hansard*, 14 October 2016, p. 10.

Committee view

2.43 Evidence presented to the committee sets out the value of establishing the proposed special account.

2.44 It is the committee's view that concerns about where savings will be made, although important, do not reflect or address the purpose of the bill: namely, establishing a mechanism by which funding intended for the NDIS is secured to be available for that purpose, when and as needed. The committee notes that savings decisions are made separately from decisions on funding distribution. This bill does not, in any discernible way, link savings in social services areas to NDIS funding. Instead, the bill would assist the Commonwealth to meet future financial commitments to the NDIS, ensure that NDIS funding is managed in a transparent and quantifiable way, and mitigate the risk of unspent money being returned to consolidated revenue prematurely, as currently occurs.

2.45 The committee is of the view that this legislation presents a significant step toward ensuring that NDIS funding is both adequate and sustainable.

Recommendation 1

2.46 The committee recommends that the bill be passed.

Senator Jonathon Duniam

Chair