

**INQUIRY INTO IMPLEMENTATION OF THE NATIONAL
DISABILITY INSURANCE SCHEME AND THE PROVISION
OF DISABILITY SERVICES IN NEW SOUTH WALES**

Organisation: National Disability Services

Date Received: 9 August 2018

NDS Submission to the NSW parliamentary Inquiry into:

Implementation of the National Disability
Insurance Scheme and the provision of
disability services in New South Wales

August 2018

About NDS

National Disability Services is the peak industry body for non-government disability services. It represents service providers across Australia in their work to deliver high-quality supports and life opportunities for people with disability. Its Australia-wide membership includes over 1100 non-government organisations which support people with all forms of disability. Its members collectively provide the full range of disability services—from accommodation support, respite and therapy to community access and employment. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Federal governments.

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Introduction

National Disability Services welcomes the opportunity to contribute to this Inquiry. Our paper will focus on the NSW provider and participant experience of the National Disability Insurance Scheme (NDIS) and mainstream service access in NSW.

NSW disability service providers remain committed to the NDIS and were instrumental in the campaign for the introduction of the NDIS. However, implementation of the Scheme has experienced a number of challenges (comprehensively detailed in these reports and elsewhere)¹ including:

- Inadequate pricing of some NDIS supports
- Lack of myplace portal functionality, inefficient systems and processes
- Inconsistency of planning and plan implementation
- Lack of communication from the NDIA to the sector and to participants, families and carers
- Significant delays in both scheduled and unscheduled plan reviews
- Workforce challenges and thin markets

In this submission we wish to draw on the evidence and experiences of our members in NSW as well as high level observations of the NDIS transformation. Our submission focuses on Terms of Reference: (d) (e) (f) (g) (h) (i) and seeks to examine the roles of the NSW government in the following three areas:

1. **The transition to a market based framework;** NDS's view is that the NDIS's marketization of supports has visibly failed many participants, even where the market itself may not have failed. In its own submission to the Productivity Commission's Review of NDIS Costs, the NSW Government acknowledged that "transitioning to a market framework from government-led support provision will require ongoing market stewardship and oversight to ensure that the benefits of market-provided supports can be maintained over time".² While the NDIA, Department of Social Services and now the NDIS Commission refine their respective roles in providing these market stewardship and oversight functions, *NDS believes the NSW Government retains a responsibility to monitor – and possesses the capabilities required to exercise – the development and functioning of service delivery markets across the state.*

2. **Promoting workforce development and planning initiatives**

Significant growth in the disability workforce is required to meet the increased demand under NDIS. Equally important is the extent to which the workforce,

¹ [NDS How to get the NDIS on Track](#); [NDS State of the Sector Report 2017](#); [National Disability Insurance Scheme – Management of the Transition of the Disability Services Market Australian National Audit Office](#); [Productivity Commission National Disability Insurance Scheme Cost 2017](#); [Australian Disability Workforce Reports](#); [UNSW NDIS Prices and the Disability Workforce](#); [RMIT University report on Wage theft, underpayment and unpaid work in Marketised social care](#) [McKinsey & Co Independent Price Review](#); [Commonwealth Ombudsman's report](#)

² NSW Government Submission to the *Productivity Commission Review of NDIS Costs: Issues Paper*, March 2017 p3 at https://www.pc.gov.au/data/assets/pdf_file/0019/215407/sub0060-ndis-costs.pdf

including those recently recruited, are suitably skilled, motivated and capable to deliver the supports and services available under the NDIS in a manner that meets the quality aspirations of people with disability and the Scheme itself. The NSW Government has made significant investments in the development of the workforce through the Industry Development Fund and the Disability Sector Scale Up (DSSU) funding, however *an assessment of the current state of play, identification of the current priorities and the development of NSW Disability Workforce Strategy (in the absence of a National one) are required.*

3. **Continuity of support, access to mainstream/community inclusion supports and supports in crisis or last resort situations.** The third section explores the role of the NSW government in ensuring that people with a disability receive the support that they need as it withdraws from funding and delivering disability supports. This includes the effectiveness of the continuity of support arrangements and transfer of disability support services to the NGO sector. We outline the critical importance of mainstream services which continue to be delivered by the state government including housing, justice, health, transport, education, child protection and local government and their role in supporting people with disability. The key pressure point we have identified in this section is the lack of a crisis response present at all levels of government. NDS supports the recommendation of the Joint Standing Committee (JSC) on the NDIS that the Australian, *state and territory governments and the NDIA work together to include crisis accommodation and Provider of Last Resort arrangements for housing (among other supports) in their respective bilateral agreements and operational plans.*³

1. The transition to a market based framework; re-conceptualising market failure and assumptions underlying the roles of participants, providers and scheme design

NDS's consistent position has been that the principal sources of risk to the NDIS arising from this transition relate to what are generally referred to as 'market failures' in respect of particular support types, locations, and cohorts of persons with disability. The NDIA has also repeatedly acknowledged the same risks. Market failure and its associated impact on people with a disability and providers is a key concern and issue for our sector. At NDS' Essential Briefing held in Sydney on 6th August 2018 it was voted the most critical concern by the 350 disability providers in attendance.

The forms these failures take are detailed throughout this report and their proximate causes are diverse: mis-pricing of supports by the market operator so that providers cannot recover their costs on the prices offered in the context of the markets where the support is required; limited understanding at a community level of the opportunities and challenges associated with participating in the Scheme; and workforce capacity constraints at both the individual worker (skill-base) and market (supply) levels.

³ Joint Standing Committee of the NDIS, *Report into transitional arrangements* February 2018, p7
https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/Transition/Report

However too exclusive a focus on the failures of the market obscures the reality that the NDIS is not a free market – in the sense that the term ‘market based’ supposedly evokes – but a managed market. In this context, these ‘failures’ may not necessarily be the responsibility of the market but a function of the management of that market and the design and operation of the rules by which it is governed.

Assumption of participant capacity

Perhaps the clearest demonstration of this is in the foundational assumption of participant capacity on which the Scheme is built and the consequences for the implementation of the Scheme which flow from that. The assumption of capacity on the part of persons with disability is the most revolutionary and potentially transformative element of the NDIS. It reverses an historical bias in the delivery of government-funded assistance to people which determined the ‘take it or leave it’ character of the offer of supports to which people with disability have responded with such force in the recent past.

But it begs the question: what if people don’t have the very specific forms of capacity required to fully participate in the NDIS? Capacity covers a spectrum of abilities, not all of which may be within immediate – or even, in some cases, long-term – prospect for some individuals.

The Agency recognises in its strategy documents and many public statements that in order to participate in the NDIS marketplace, many people with disability will need assistance to do so that includes information about providers and their service offers and quality as well as support to engage with providers and negotiate service agreements on which service delivery will be based.

Local Area Co-ordination (LAC) and Support Co-ordination

In response to the observed difficulty of many participants in early trial site experience to understand or activate their plans, the Agency introduced two principal forms of plan implementation support: support connection and support coordination. Neither of these arrangements is working satisfactorily for many participants or providers in NSW.

One of the chief sources of complaint from the latter is that LAC’s are so burdened with the tasks of plan development (another of their responsibilities) that they are unwilling or unable to take on any of the plan implementation workload, which falls inevitably to providers. The introduction of Support Coordination was also poorly handled.

Re-defining complexity

This has led to providers having to undertake an enormous unfunded workload associated with assisting families to understand and engage with the Scheme. The scale of this workload in the worst cases almost defies comprehension.

While the NDIA is currently addressing the issue of complexity in participants’ behaviours and support needs, for many providers it is the complexity in the participants’ life circumstances which gives rise to the most burdensome uncompensated workload at the plan implementation stage. This is not adequately realised.

Such complexity includes chaos and dysfunction in the participant's family life, in many cases associated with undiagnosed levels of disability in the parents and other family members; a limited understanding of what is required to navigate complex bureaucratic processes; and consequently limited or no capacity to engage with the computer-based portal and engagement platforms which are the Agency's preferred mechanisms for engaging with participants. Participants report that navigating the NDIS is complex and for some, requires significant support from families and other networks.

Where these supports are present participants report increased opportunities to exercise choice and control.⁴ However when they are not, helping people in these situations to navigate the access request, plan development, and plan approval and implementation processes is in some cases requiring hundreds of hours of unfunded support for participants by providers. This is unsustainable.

Provider sustainability

In NSW, many providers have been covering the above-price costs of supporting participants and their families to engage with the NDIS and implement or seek a review of their plans from reserves, sales of assets and other non-NDIS income.

With the exception of income derived from other business activities of the organisation, none of these options are sustainable and are only being employed by providers in the expectation that at some point the NDIS's business practices and approach to pricing will change in ways that make such juggling unnecessary. In our view, this is likely.

There is certainly significant room for improvement in NDIS business processes; they impose a significant administrative burden on providers which have required most to allocate increased staff resources at the very time when there are fewer resources available. (This burden is expected to increase significantly in the near-term as the compliance and best-practice requirements of the Quality and Safeguarding Framework are implemented by the NDIS Commission.)

However the other drivers of provider expense and frustration emerge from the Scheme's design focus on fraud minimisation at the expense of provider responsiveness or participant choice. This in turn, when combined with the inadequate understanding of the transition/plan development and implementation challenge for many participants and their families, appears to drive much of the extra administration required and the unfunded workload which falls on providers as a result. These experiences are supported by research conducted by McKinsey and Company as part of their review into NDIS pricing⁵ and by the

⁴ University of Melbourne, *Choice, control and the NDIS Service users' perspectives on having choice and control in the new National Disability Insurance Scheme*, https://socialequity.unimelb.edu.au/data/assets/pdf_file/0010/2364499/Choice-Control-and-the-NDIS-Report-Melbourne-Social-Equity-Institute.pdf.

⁵ McKinsey & Co, Independent Price Review at 24 <https://www.ndis.gov.au/medias/documents/ipr-final-report-mckinsey/20180213-IPR-FinalReport.pdf>

NDS Annual Market Surveys of providers. Survey findings in the 2017 State of the Disability Sector (with a sample size of NSW 171 providers) reveal⁶

- That 22% of provider respondents made a loss and 15% broke even.
- 58% increased their scale and range of services while 6% decreased the scale and range of services
- Despite this only 49% of respondents in NSW were able to meet customer demand and an even lower amount (42%) think they will be able to satisfy demand in the future.
- 38% of respondents in NSW agreed or strongly agreed that the risks that the NDIS presents to their organisation outweigh the opportunities with a further 25% neither agreeing or disagreeing
- 72% of NSW provider are worried that they won't be able to provide services at the prices being offered under the NDIS while 12% are unsure
- 58% of NSW providers say that to provide services at the prices being offered by the NDIA they will have to reduce the quality of their services
- 57% of NSW providers are worried about their ability to adjust to changes resulting from the NDIS

More useful data can be found in Annexure 1

Providers are masking market failure and filling gaps

Providers continue to provide support in these situations for a range of reasons.

The irony of this provider willingness to go above and beyond what they are being compensated for is that their significant efforts are masking the market-place signals which in any other market would tell the market operator of the mismatch between providers' capacity to supply and buyers' capacity to purchase. In a genuinely market-based system in which the Agency was performing its market stewardship functions effectively, the failure of participants to take-up their plans and funding would serve as a market signal that plan implementation arrangements were not working as planned. That was the driver for the creation of Support Coordination and Support Connection in the first place.

However by continuing to undertake a large, unfunded workload that has the effect of helping participants to activate and use their plans – because their own capacity to do so is limited in ways that is not adequately acknowledged in the design of the NDIS – providers are effectively muffling these market-based signals and allowing the Agency to act as if the implementation of the Scheme is proceeding without difficulty when the opposite is the case.

⁶ NDS, State of the Sector Report, NSW Disaggregated data <https://www.nds.org.au/news/state-of-the-disability-sector-report-2017-reflects-sector-under-pressure>

A better managed market-based system

The comment has been made on a number of occasions that the Scheme fails the most disadvantaged because it has been designed on insurance principles – and for –people who are adept at working within and around complex, bureaucratic systems.

As Bruce Bonyhady, the first Chair of the Board of the NDIA, has observed *“I think when you think about the NDIS and where is it going to work best, it's going to work best with people with disability who have high intellectual function, who are able to make decisions about control and choice themselves and communicate and actualise them easily. It then works also best where people have strong family and friendship support networks because quality of life requires both. It works best in metropolitan areas where there's diverse supply. The moment you start to weaken any of those three, then you need to build support arrangements to ensure that the scheme delivers on its promise.”*⁷

People who do not fit the profile described by Bruce Bonyhady often simply give up applying for supports and disappear back into an unsupported obscurity. The promise of the NDIS's vision even further from realisation for them than it was before when at least there was someone in ADHC or a partner organisation who was willing to spend time to help them.

In a better managed market-based system, such people would constitute another market segment which a more nuanced policy approach would recognise as requiring a very different approach, at least until genuine capacity for self-management had been achieved. The final irony here is that in abolishing one 'one size fits all' system, for people in this situation, it has merely been replaced with another: the assumption of capacity proves as exclusionary of them as the assumption of incapacity earlier proved for others.

Re-characterising the operation of markets

Part of the challenge of understanding 'market failure' is that there is also a sense in which these 'failures' can also be seen as their very opposite – that is, markets working just as they are designed to do.

The most recent 'Transitional Arrangements for the NDIS' report of the Joint Standing Committee on the NDIS of the Australian Parliament evidenced this confusion in testimony from the ACT Minister for Disability, Children and Youth when she characterised providers choosing certain provider customer attraction and recruitment practices as 'cherry-picking' associated with the potential for market failure.⁸ This concern was echoed by other submissions to the Committee and by the Committee itself⁹ and is widely shared among providers.

However far from being evidence of market failure, these practices are proof that the market is working to achieve the outcome any well-functioning market should: the

⁷ Bruce Bonahady, Taking the pulse of the NDIS, The Policy Shop University of Melbourne Recorded on 6th December 2017 <https://pursuit.unimelb.edu.au/podcasts/taking-the-pulse-of-the-ndis>

⁸ Joint Standing Committee on the NDIS, above n 3, p66 quoted at 4.12

⁹ Joint Standing Committee on the NDIS, above n3, p. 70 at 4.30

identification of the correct price for supports (in this case only for a limited range of participants – whose support funding is sufficient to cover the cost to providers of supplying those supports – leaving everyone else un- or under-supported in the marketplace) and to achieve the most efficient allocation of resources across the market.

The risk to participants who may not receive supports due to the complexity of their disabilities and support needs is not a market failure but a market signal that the prices on offer are insufficient to justify any business's attempting to provide them at those prices. But still, many providers are driven by their sense of mission and purpose to persist in providing those supports.

Market research and intelligence

Another driver of market inefficiency (if not malfunction) is the absence of the kind of market research and intelligence a business in any other sector would expect to use to inform their business judgments and decision-making. The Agency is starting to develop the sorts of data sets required to meet this need but is exercising its own judgment not to share many of the most useful datasets with market entrants (providers) at this time.

At one level this means most of the data about how different markets are functioning is anecdotal and derived from our own provider engagement and marketplace intelligence reporting activities. At another it means that some of the evidence required to establish how the NDIS marketplace is operating is unavailable so that judgments on whether 'failure' – however it is characterised – is occurring are inherently problematic.

Another aspect of this lack of market detail is the continuing reliance in NDIA and government commentary on Productivity Commission (PC) estimates of likely demand from its report in 2011. The most notable evidence of this is the recent report of the Summer Foundation and AHURI on demand for Specialist Disability Accommodation¹⁰ (SDA) (released in March 2018). This interrogated a diversity of information sources about disability which identified a prospective gap between supply and demand for SDA amounting to several thousand above the Agency and PC's estimates in NSW alone. There has been no direct response from the Agency to the findings of this Report which contradict the estimates of demand on which it continues to rely.

However there is one respect in which the marketization of supports can clearly be said to fail participants, even if the market itself does not fail. This arises from the simple mismatch between the Scheme's individualised funding model and the inappropriateness of this model for many participants and potential participants. Aboriginal and Torres Strait Islander communities that have benefited from family- and community-based rehabilitation programs and similar interventions for example are struggling with the transition to a model which makes such holistic service delivery effectively impossible.

¹⁰ Summer Foundation, *Specialist Disability Accommodation Market Insights*, 2018
<https://www.summerfoundation.org.au/wp-content/uploads/2018/03/sda-market-insights-web-2.pdf>

These characteristics of the market and participants in that market need to be made visible to understand how participants and providers actually encounter the operational reality of the Scheme.

2. Promoting workforce development and planning initiatives

There are two main dimensions to the workforce challenges associated with the NDIS, and NSW is an important testing ground for both. The first is the overall size and growth of the disability-sector workforce. Understanding of this issue is hampered by the lack of data, but estimates are available as to what is needed and what is happening. The second is workforce quality – the extent to which the workforce, including those recently recruited, are suitably skilled, motivated and capable to deliver the supports and services available under the NDIS in a manner that meets the quality aspirations of people with disability and the Scheme itself.

Factors influencing both of these dimensions are quite similar. They include:

- The nature and size of the labour supply – the potential pool of people available and motivated to work in the disability sector
- Employer practices – the extent to which providers are effective at mobilising potential worker pools and retaining workers that they already employ, compared to other competitor sectors (such as aged care)
- Whether the workforce is well-utilised – the extent to which the workforce is productively deployed and further developed (especially important in a largely part-time, highly casualised workforce)

All of these factors, in turn are constrained by the market, NDIS pricing and a host of other factors. They are also susceptible to influence by government.

This section will describe NDS's learnings and experience in relation to all of the above, and propose government action that could assist in promoting good workforce outcomes from people with disability, and high quality jobs for the people of NSW.

The overall size and growth of the disability-sector workforce

As noted earlier, the unavailability of industry specific data from the ABS, NDIA or any other source hampers our understanding of workforce numbers or growth rates. The working assumption of the Australian Government has been that the workforce needs to roughly double in size over 5 years to meet expected demand under the NDIS. Workforce Wizard data, collected quarterly by NDS, tells us that:

- ✓ Nationally, the disability support workforce grew by nearly 14 per cent (net) in the 2017-2018 financial year
- ✓ In a similar period (May 2017 to May 2018) all-industry employment growth was just 2.6%¹¹
- ✓ NSW had the highest growth rate of any state or territory

¹¹ ABS, Labour Force Australia, Cat no. 6202.0, May 2018.

Similar rates were recorded in the previous 12 month 2016 to 2017 period. This suggests that, despite the recruitment difficulties many providers experience, they are successfully growing their workforces. Whether this rapid growth is 'sufficient' is difficult to say. NDS's Annual Market Survey repeatedly finds that providers are most concerned about Allied Health Professional shortages, in particular psychologists, speech therapists, and occupational therapists.¹² Many other workforce trends influence the issue of overall workforce sufficiency including:

- Average working hours: the overall trend has been downward under the NDIS from 24 hours per week in September 2015 to 21 hours per week at the end of 2017. This is a national and a NSW trend, which however in the latest quarter reversed slightly (see NDS, Australian Disability Workforce Report 3, July 2018).
- Non-provider workforce: it is unclear how many people are working for agencies, are directly employed by NDIS participants, or are engaged as individual contractors, either through digital platforms or other services. In NSW 85-90% of funded supports are received by 25% of providers, so NFP providers certainly account for the largest segment of the market. However, 43% of over 7,000 registered providers are individuals or sole traders and some 23% of participants nationally are partly or fully self-managing.
- The distribution of the workforce: every indication is that the localised, and especially rural and remote workforce shortages evident before the NDIS have only accentuated since it. As well as the sheer lack of people available to the sector in rural areas, factors such as housing unaffordability and poor transport restrict the labour supply in areas such as North Sydney or the Central Coast.

Several factors that potentially reduce the labour supply to the disability sector have already been mentioned such as transport difficulties for people needing to move across the city or state, and the low labour force densities in parts of the state. These are multiplied by characteristics of the sector itself, which can mean that people choose other adjacent industries in preference, or alternatively, are not utilised as effectively as they might be within the sector.

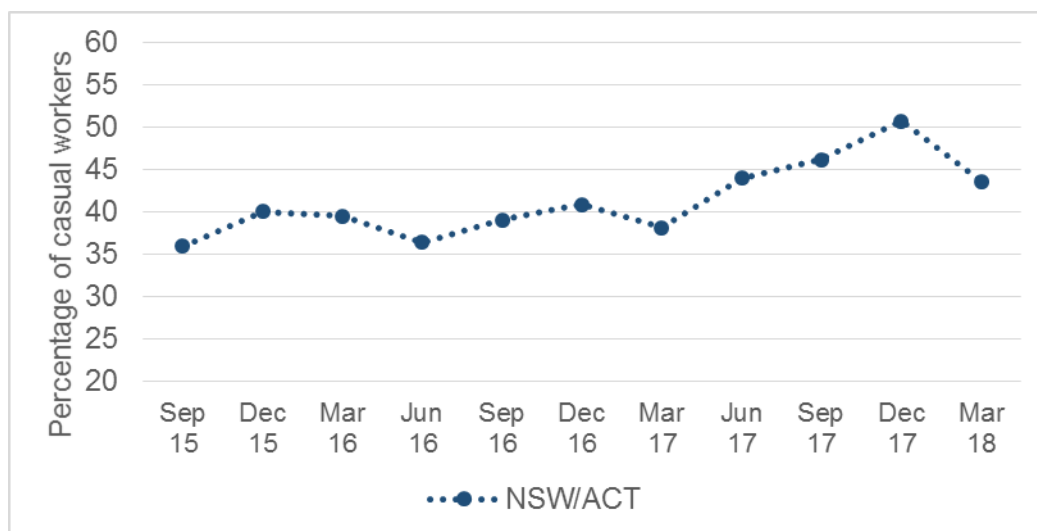
Workforce quality

The remarkable growth rates discussed above come overwhelmingly from the recruitment of casual workers. During the 2017 to 2018 financial year, the average permanent workforce growth rate nationally was just 1.3% per year, while the casual growth rate was 26% per year.

In NSW casual employment has risen rapidly, now making up over 45% of the total workforce.

¹² The proportions of organisations which found it difficult to recruit psychologists, speech therapists, and occupational therapists were 79%, 69% and 66% in 2017 and 51%, 53% and 55% in 2016 respectively (see NDS, State of the Sector Reports 2016 and 2017).

The proportion of casual workers in NSW and ACT



Source: Workforce Wizard data, collected quarterly. The number of NSW organisations using Workforce Wizard and contributing data varies each quarter but in March 2018 was 43, covering 11,000 workers.

Turnover is very high, with more than one-quarter of the disability support workforce turning over every year. This means that a mighty recruitment effort is needed to constantly recruit and on-board workers, whose commitment is limited by their need to supplement their short working hours or seek a longer hours job with another employer.

Employers are now less likely to require that new recruits come with formal qualifications, in part because the pricing discourages this, in part because they need to recruit from a broad pool, and in part because there is now more emphasis on people's values, orientation and broad life interests to align with the needs of clients. Workforce Wizard indicated that just one in five of newly recruited staff in the December quarter 2017 had a Certificate III or above in a disability-related qualification. Previous surveys of disability workforce qualification levels have indicated a very high rate of education, relative to the workforce as a whole^[1].

As noted above, provider decisions about workforce utilisation and development are constrained by the market, NDIS pricing and a host of other factors. NDS members clearly identify NDIS pricing as the most important of these factors. At last year's Senate Committee hearings, Mr Craig Moore, from Interaction Disability Services, warned that:

'the NDIS pricing structure reduces the ability of organisations to attract and induct the expected injection of new staff into the sector. In that regard, skills atrophy has been observed in overseas jurisdictions that have implemented initiatives similar to the NDIS' (page 65).

^[1] The 2014 NDIS Disability Service Provider employee survey conducted by the National Institute of Labour Studies found that more than 90% of the disability workforce had post-school qualifications, including 36% with a Bachelor degree, 34% with a Certificate IV, and 26% with a Certificate III (See NILS, Evaluation of the NDIS, December 2015). It is not clear how relevant to disability these qualifications were.

Prices for non-quoted services under the NDIS are based on the NDIA's Reasonable Cost Model^[2], which makes assumptions about non-client-facing time and supervisor ratios that in the view of NDS are highly unrealistic and too lean.

In particular we note:

- *Time for training under the scheme must be taken out of the 5 per cent of a worker's allocation for non-client-facing time.* In other words, the NDIA's expectation is that 95 per cent of working time (not including leave) will be client-facing. Non-client facing time is a resource needed to cover not only training and development, staff meetings, supervision and peer support, but also preparation for client visits and notes, liaison with other support providers and mainstream services, engagement with people in the client's circle of support, and travel time and additional service time not covered by the NDIS.
- *One supervisor is allowed for 15 full-time equivalent positions or roughly 30 individual staff.* This is a wide span of control considering the workforce is typically widely distributed and often people are working in isolation.

It is not surprising in this context that opportunities for staff to engage in learning and development activities, peer exchange, mandatory training, mentoring, induction and staff meetings is extremely limited. Casual workers, it is often reported, are difficult to engage even where their time is recompensed because they frequently have another job or commitment to attend.

Services vary in how they are managing workforce development in this environment. Common strategies include:

- cutting back on paid training hours
- funding training from other revenue or reserve funds
- expecting staff to undertake on-line training modules in their own time
- in some cases requiring that candidates attend induction training before they have been employed or started work
- integrating worker training into support work itself, sometimes involving the participant
- replacing paid external trainers or attendance at external courses with internal staff coaches
- training one worker who then trains others
- sharing the costs of training with other services
- in the case of therapy providers, cutting back on student placements since allied health professionals have reduced time for activities that are not directly billable.

While some of these strategies may be innovative and effective, overall the reduced time and funds for workforce development does not encourage the development of a highly skilled, professional disability workforce. Indeed, a recent report from the University of NSW¹³ found that lack of training was creating additional health and safety risks for workers

^[2] NDIA (2014) NDIA report on the methodology of the efficient price, NDIA, 18 July 2014.

¹³ Cortis, Natasha et al (2017) Reasonable necessary and valued: pricing disability services for quality support and decent jobs, University of NSW.

and participants. Around one-third of CEOs surveyed for this report agreed that workers in their organisations were not paid to attend training and development activities; one-third also said that workers were not paid to attend team meetings (p. 42).

The question many services face, however is whether they can support both quality service provision and support a fast rate of growth. Shortages of front line workers are primarily felt as quality problems in the sense that providers can usually find people to hire but not necessarily staff with the skills and experience needed.

Disability workers, like social care workers everywhere, are motivated by the intrinsic rewards of the job. Low wages are to some extent tolerated if not liked. If organisational support, working conditions and learning and development opportunities reduce under the NDIS, and workers feel their clients are not receiving quality care, workforce attraction will become harder and the quality of both the workforce and services for NDIS participants may decline accordingly.

The role of state government

As the weight of policy responsibility for disability services has shifted to the national level of government, responsibility for the development of a national workforce development strategy was expected to also be borne by the federal government.

In aged services, for example, there is a national Aged Care Taskforce, broad consultation process, and a series of new, coordinated and funded measures.

The Commonwealth Government has not taken on this responsibility for the disability sector workforce, despite commissioning from Windsor and Associates, together with NDS, a national workforce roadmap report in 2014.

Given this policy vacuum, several State Governments (e.g. Victoria, Queensland and South Australia) have developed their own strategies. NSW needs to do the same thing. There is no question that the NSW Government led the way in supporting sector preparedness initiatives through the Industry Development Fund. The Disability Sector Scale Up (DSSU) initiative also offers individual services assistance of a consulting and monetary kind.

However, a state-wide consultation and strategy development is currently needed to do the following:

- ✓ re-assess the state of play now full roll out has been reached
- ✓ identify provider, participant and workforce priorities
- ✓ consider how promising measures from across the country can be replicated, adapted and extended. These include, the proposal for a Training Fund, a Skills Passport, and innovations funded through the National Innovative Workforce Fund (several of which took place in NSW) or operating elsewhere (such as SA's Allied Health Public Sector Mutual).

3. Continuity of support, access to mainstream/community inclusion supports and supports in crisis or last resort situations.

[Schedule D](#) of the Bi-lateral agreement signed between NSW and Commonwealth governments confirms that people in NSW would not be disadvantaged during the transition to the full roll out of the NDIS.

There are two aspects to this:

1. That people with a disability in NSW are not 'worse off' (in terms of the outcomes that they achieve) under the NDIS than they would have been under a NSW disability service system.
2. That people with a disability who were previously deemed as requiring disability supports under the state based system but who do not meet the access threshold for the NDIS would receive support. Importantly Schedule D acknowledges that people with significant ongoing needs will be provided with assistance to prevent hardship where this would significantly undermine the person's wellbeing, or social and economic participation.

In reality providers and participants have reported that some participants in the NDIS are significantly 'worse off'. This is particularly where the NDIS rules or operational guidelines prevent the funding of items or areas of support that were previously funded under the NSW arrangements as shown in the below case study. NDIS Planning and bureaucracy has on occasion failed to take into account what supports were previously being provided under State-based funding and this has resulted in critical gaps in support for some participants, often with little time to reconfigure support models to fit with the reasonable and necessary supports approved by the plan.

Case Study

One provider we have been working with supports a participant who needs to live on a semi-rural property due to her disability. FACS assisted this participant to find this accommodation on a private property and assisted her in paying the rent. The client cannot live with anyone else as she displays behaviours of concern. Recently, the owner of the property has given notice to terminate the lease and the individual is at risk of homelessness due to the lack of availability of other suitable accommodation. The NDIS has provided no response to her situation. Under the NDIS, it is not clear whether she will receive Specialist Disability Accommodation (SDA) in her plan and getting the relevant assessments completed to determine eligibility is taking upwards of 9 months due to assessment waitlists in her location. Worryingly, the recently released [NDIS SDA Brief](#) suggests the NDIA will, in most cases, require people with disability to live in group-home style accommodation settings, even if it is not their preference. Without FACS in the picture, the participant's support provider is the only organisation supporting this participant.

Transfer of NSW Government run disability services to the NGO sector

These comments predominantly relate to term of reference (d) the effectiveness and impact of transferring government-run disability services.

Please note NDS does not agree or accept that these services have been 'privatised'.

For the benefit of committee Members I note that the Cambridge English Dictionary defines privatisation as ‘the process of selling companies or organisations that are owned by the government to private investors’.

NDS makes the obvious point that the disability services in question were neither sold nor were they transferred to private investors, and to be clear, we believe that those organisations such as the PSA and indeed the Legislative Council Member(s) who framed these terms of reference fail to understand the circumstances of the transfer.

Notwithstanding the comments above, NDS believes that the transfer of the services has gone fairly smoothly and with little obvious disruption to participants.

The tender process was conducted over too short a time frame and consequently only a small number of providers were successful in securing a ‘slice’ of those services. While over the long term this will benefit those service providers, it will not have the effect of more broadly supporting the wider disability service system.

There are also the obvious problems associated with the two different awards and pay scales that successful providers need to now pay their ‘joint’ workforce and the demonstrable lack of planning and preparation that FaCS undertook with the NDIA during the course of transfer process.

This has resulted in the successful providers now approaching the NDIA for financial assistance to support an already tight funding regime on the basis that for all transferred services they are paying higher wage rates for transferred staff – but with no consequent adjustment in NDIA prices.

NDS firmly believes that the NGO sector has the skill, capacity, commitment and determination to provide the complete breadth of disability service provision, and indeed has been doing so, for many decades.

But the administrative burden that an inefficient and poorly managed NDIS, combined with the rapid and unseemly exit of the State Government from its disability service responsibilities has made it a very difficult environment in which to operate.

People with complex housing and support needs

The overarching issue is the lack of appropriate and available housing stock for people with disability. SDA is a small piece of the puzzle, as it is anticipated to only support around 6 per cent (or 28,000)¹⁴ participants nationally who have very high physical support needs and who need adaptations to their built environment.

¹⁴ NDIS, SDA Provider and Investor Brief, <https://www.ndis.gov.au/medias/documents/sda-provider-investor-brief-pdf/SDA-provider-investor-brief.pdf> p5

Provider of last resort

In NSW the NGO sector has been providing supports to people with a disability in crisis effectively for many years. The NSW Government via ADHC provided a coordinated response to deal with personal emergencies experienced by people with disability. With the withdrawal of ADHC this vital coordination function has not been replaced. Some NDIS participants will have coordination of support funded in their plan which has a role in supporting participants in crisis – however funding for coordination of supports is often inadequate and eaten up by administrative work, fixing plan errors. The sector has raised this matter with both the NDIA and the NSW Government early on, but with virtually no response from the NDIA.

Statements by the new CEO of the NDIA to the most recent Senate Estimates Hearings suggest that this is now, at last, receiving senior level attention. Even so, it will not be achieved in NSW without involvement of the NSW Government. Not every person with disability has or will be eligible for an NDIS plan. Not every emergency for a person with a disability involves or directly arises from their disability or is necessarily the responsibility of the NDIS. Yet all such persons, as NSW citizens, have a reasonable expectation that their community will provide some support when such circumstances arise.

NDS submits that in acknowledgement of the problems arising from the NDIS transition, the NSW government must have some capacity to provide immediate support in crisis or last resort situations. Where people won't be supported by a 'market system', FACS should seriously consider block funding some disability supports and providing a safety net for its citizens. We also ask the NSW Government to question the current mechanisms employed by the NDIA to pay providers for their assistance in such cases. In our experience clear policies and processes do not exist or are so ad-hoc that they are ineffective. "The buck, not the dollar, stops with the provider" stated one of our members.

NDS has outlined a few of the critical areas for consideration and action below.

Although not all people with disability require the SDA design features funded through the NDIS, this does not mean that they do not have complex housing and support needs and many will still rely on a state-government funded housing response. Specialist Disability Accommodation (SDA) is a great initiative under the NDIS but it is certainly not a panacea due to its extremely limited scope and systemic problems.

NDS's main concerns are that:

- 1) Even for people eligible for SDA, the pace to SDA development/build cannot meet the growing demand and those people will remain inappropriately housed in the meantime; in residential aged care, the family home, or forms of homelessness
- 2) People who have complex support needs will have access to support under the NDIS (namely, Supported Independent Living), but not to the housing infrastructure that will enable them to live independently in accommodation appropriate to their needs .

- 3) Housing in open market in NSW is unaffordable and inaccessible, furthermore, Social and Affordable Housing systems are un-coordinated and limited in scale to meet the needs of the above two groups of people with disability
- 4) Participants who transitioned into the Scheme in state government funded housing programs are now required to have their eligibility for both the SDA and SIL component of that housing tested whenever they want or need to move house. This is giving rise to concerns that the Agency may be managing demand pressure on SDA by deeming some of these older residents ineligible for SDA in order to create space for new entrants whose needs may be greater. This will put long terms support arrangements for people with disability at risk.

NDS supports the recommendation that the Australian, state and territory governments and the NDIA work together to include crisis accommodation and Provider of Last Resort arrangements for housing in their respective bilateral agreements and operational plans.¹⁵

A NSW Disability Housing strategy

Given the complexity and scale of the housing needs of people with disability, NDS is asking the NSW Government to develop a disability housing strategy to address existing and emerging need from the NDIS transition. The focus of our call for a state-wide strategy is on scaling up social and affordable housing and private rental options, introducing a shared equity scheme and better supporting people with disability who are living on the margins (see Annexure 2).

Other at-risk housing models: Host and Alternative Family accommodation placements

FACS has a role in supporting the continuing operation of service models that do not fit the NDIS pricing framework. In particular, there is a great deal of uncertainty and concern as there appears to be no consistency in the way the NDIS is handling Host and Alternative Family accommodation placements which have been previously funded via non-taxable allowances under State funding (as agreed with the ATO due to the situations). Many people are being left without Host family placement support funding (though anecdotally a small number are retaining funding under the NDIS).

Residential Voluntary Out-of-Home-Care

While there is clearly a continuing role for the state government in supporting young people in out of home care, there is still uncertainty among providers about the operationalisation of agreements between the State and Commonwealth that NSW will fund board and lodgings for children and young people in full time care (under the age of 16 years and those who are not in receipt of a Disability Support Pension).¹⁶

¹⁵ Joint Standing Committee on the NDIS, above n 3, p7

¹⁶ DSS, Media release, Supporting out of home care for children with severe disability, 8 May 2018
<https://ministers.dss.gov.au/media-releases/3026>

NDIS and NSW Criminal Justice System (CJS) interface

NDS believes that over-representation of people with disability in the criminal justice system is likely to worsen with the withdrawal of ADHC Services. The COAG interface principles have dispersed responsibilities that were formerly well co-ordinated in the one program.¹⁷ However, if the Justice and Corrections systems step-up to deliver and fund the functions specified in the interface principles, then this issue may be remedied.

NDS also has concerns about the potential absence of the Criminal Justice Support Network post June 2019 when funding is due to end, and calls for continued funding for this program. We also support the recommendations made by NCOSS around the justice interface outlined in their paper entitled 'Way Forward to an Inclusive Service System challenges for People with disability with the closure of ADHC.'¹⁸

A key concern by NDS members are that lengthy and delayed NDIS processes stifle post release planning for prisoners with disability, particularly regarding plan reviews and Supported Independent Living (SIL) quote approvals. These delays mean that often appropriate support and accommodation is not in place at the time of the person's release. This places them at increased risk of homelessness and reoffending. On the other end of the spectrum the delays lead to people with disability unable to leave prison on their release date because they have inadequate NDIS support in place or no accommodation to go. It is not beyond Corrective Services to adapt their post-release planning to occur at an earlier stage so that suitable accommodation and support can be secured for a person disability in a planned manner and well-before they exit custody on parole.

There has also been a fundamental deficit in the number of hours of behaviour support that the NDIS has been willing to fund for people exiting the CJS. The NDIS has only tended to initially fund 15 hours of behaviour support a year which would be vastly less than what would have been provided by the CJP.¹⁹ The current work of support co-ordinators who work with forensic participants is also largely unfunded according to NDS members. There is no longer a provider of last resort when the market fails to offer care to people with complex needs and as a consequence, people with disability are worse off and the state is wearing the cost of homelessness, recidivism and extended prison stays. This demonstrates a critical need for market intervention and block funding by FACS.

Additionally, NDS recommends that the NSW government must take a housing first approach by investing in more transitional and crisis housing for people with disability exiting the criminal justice system including purpose-built Community Justice Program (CJP)

¹⁷COAG, *Principles to Determine the Responsibility of NDIS and other Service Systems*, p23, <https://www.coag.gov.au/sites/default/files/communique/NDIS-Principles-to-Determine-Responsibilities-NDIS-and-Other-Service.pdf>

¹⁸ NCOSS, *Way Forward to an Inclusive Service System* https://www.ncoss.org.au/sites/default/files/public/policy/2018%20ADHC%20gaps%20report%20-%20Final%20approved%20version_0.pdf

¹⁹ Community Restorative Centre (CRC), *Submission to the NDIS Joint Standing Committee 2017* p32 <https://www.crcnsw.org.au/wp-content/uploads/2017/08/Submission-NDIS-Joint-Standing-Committee-Final.pdf>

type accommodation. The terms upon which disability service providers lease this accommodation from government must also be fair as was discussed earlier in our paper.

Health interface and gaps

There are a range of areas in which the transition to the NDIS has created serious gaps and interface issues that are, as yet, unresolved.

Support in hospital

Work is needed to ensure that people with disability and complex health conditions and children with disability who have planned or emergency hospital admissions receive the support they require. Under former block-funded arrangements, disability support workers accompanied a participant to hospital and for all or part of their stay where required. Under the NDIS, people with disability are being unaccompanied to hospital by the people who understand their needs and can assist with communication.

NDS supports and applauds the work of the FACS/SES LHD on the 'Admissions 2 Discharge' Project and the decision to fund the Agency for Clinical Innovation to continue this work. We also note the Summer Foundation's recent project focused on supporting better hospital journeys of people with disability. Despite these initiatives, on a practical level, NDS believes NSW Health should appoint an authorised social worker or other relevantly-qualified staff member to support a person with disability through their hospital journey.

We also note the recent absence of clear memorandums of understanding about the roles and responsibilities of different parties, since the previously joint ADHC-Health memorandum was rescinded. For example, providers are no longer being granted access to people with disability admitted to hospital to deliver therapy support to participants due to the absence of those agreements. Participants are having to be discharged and re-admitted to and from hospital in order to receive their therapy support at a day program (should they have access to one) which is not only unworkable but also risky. There is an urgent need for NSW Health to drive procedures and protocols to support people with disability through and out of hospital.

Discharge planning and co-ordination

As we understand it, it is unclear whether the NDIA will undertake NDIS planning for someone who is still in hospital. When there are delays with a person's plan being approved, a hospital may be unable to discharge a person if they don't have somewhere to go with appropriate support. However, the longer the person stays in hospital, the greater their actual cost of support.

There are implications where a supported person's condition has changed and the provider may be unwilling or unable to continue support because of the increased cost of support or uncertainty on this issue. Equally, where the change of conditions is less significant, there is need for appropriate communication about specific support needs on discharge. Upon discharge from hospital appropriate coordination is needed – much of which is not provided for in the NDIS funding and inadequate hours of support co-ordination.

The Integrated Service Response team being run out of the Ministry of Health (MoH) targets people with disability with complex support needs involving multiple agencies of government who are at risk of 'falling between the cracks' of those agencies. NDS's concerns are the small scale of this program (limited to 300 participants over 2 years) and the inadequate hours of support to participants in crisis (three months). Providers cannot make a direct referral to this program themselves. In addition, the hours spent by disability service providers working with this program are not billable leaving them out of pocket. Providers and participants need a process that they are able to work through. NDS would support a similar model of larger scope in NSW.

Training medical professionals

Drawing from feedback from our members, there are significant barriers as a result of a lack of training of medical professionals in the needs of people with disability, including how to communicate effectively. FACS drove a lot of this work historically and for it to continue we recommend that each LHD develop a publicly-accessible plan to provide disability education and education on the NDIS to staff in each district.

Variation in NDIS funding of health supports & Clarification of interfaces

There are difficulties in determining what is clinical support and rehabilitation, in contrast to support for an ongoing permanent or likely to be permanent disability. The NSW Government should engage with the disability sector and the NDIA to address interface areas in NSW requiring clarification in relation to funding of supports for people with disability caught between the NDIS and the NSW health systems. Examples include services to people on ventilator support for whom the responsibility of the NDIS is contested as well as responsibility and funding of eating and drinking management plans for people with dysphagia in NSW, even though death via choking is the number one cause of preventable deaths of people with disability in ADHC services.²⁰

Rather than making an executive decision behind the scenes, the NDIA and health system have left families in limbo, and often in crisis.²¹ In its recent submission to the Productivity Commission the NSW government stated that 'NSW considers reviewing scheme boundaries by the PC to be of limited value given extensive work is still required by governments to define and agree boundaries.'²² Yet NSW has entered its fifth year of rollout and these issues remain unresolved, with participants and families paying the price.

Continuity of support for people ineligible for the NDIS; including people with psycho-social disability in NSW

As outlined at the start of this section, the NSW government is responsible for providing continuity of supports to those who were currently receiving supports but did not meet the

²⁰ NSW Ombudsman *Reviewable Deaths Disability*, 2015 p1
https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0013/25015/Report-of-reviewable-deaths-in-2012-and-2013-Volume-2-Deaths-of-people-with-disability-in-residential-care-2.pdf p21

²¹ Carers NSW *Submission to the JSC Transitional Arrangements on the NDIS*, 17 August 2017
<http://www.carersnsw.org.au/Assets/Files/Carers%20NSW%20Submission%20on%20Transitional%20Arrangements%20for%20the%20NDIS.pdf>

²² NSW Government, above n2

access criteria for the NDIS. *For people over the age of 65* continuity of supports is provided by the Commonwealth Department of Health. *For people under the age of 65*, such as the former CSSP clients, the Pathways Program provides a process to support individuals to access mainstream services.

The latest NDIS Quarterly report identifies that 2,430²³ people previously receiving support from state based programs have not met the access threshold for the NDIS. An additional 13,625 people were unable to be contacted, declined or are under review. Figures for NSW are unavailable, however given that NSW participants make up over 50% of all participants it would be fair to say that people with disability living in NSW would make up a significant proportion of this number.

For participants over the age of 65, providers have voiced concerns around how the calculation of the amount of block funding previously utilised by a person with disability was reached. On the surface it appears that a simple formula of the number of residents or clients divided by the amount of the block grant was used. This failed to take into account the specific needs of the individual. Whilst some providers have reported success in renegotiating this amount, others have had a less positive experience. In shared accommodation models particularly a miscalculation can place the support of other residents at risk.

For participants under 65, NSW Health has historically provided a range of specialist services to NSW residents with disability, largely through the Community Care Supports Program (CCSP), funded by ADHC. A large number of CCSP clients are not eligible for the NDIS and withdrawal of CCSP funding from the health service system has resulted in critical gaps for people with disability. The ineligible group includes many people with disability who have complex needs, but whose disability is either not 'permanent' or 'significant' enough to meet the NDIS eligibility criteria, or is a functional impairment resulting from a chronic or serious illness, which is therefore excluded. Unless the CCSP funding previously used by the health system is replaced, a significant population of people with functional impairments risk losing out on much needed support²⁴

Concerningly, we are hearing reports of participants who transitioned into the NDIS under defined programs having their eligibility for the NDIS retested on plan review. It is unclear how the NSW government will be made aware of these participants and how the obligation to provide continuity of supports will be realised.

Mental health supports

NSW health programs for people ineligible for the NDIS will not be sufficient to address unmet mental health need for people ineligible for the NDIS. The majority of clients accessing community mental health services have not received access to the NDIS, resulting in reduced access to supports and increased risk of psychiatric illness. At the end of March

²³ NDIS, Report to the Disability Reform Council, <https://www.ndis.gov.au/medias/documents/report-q3-y5-pdf/Report-to-the-COAG-Disability-Reform-Council-for-Q3-of-Y5.pdf>

²⁴ Carers NSW, above n22

2018, only 7% of people with an approved plan had a primary psychosocial disability.²⁵ NDS recognises that despite the Ministry of Health growing mental health programs, as opposed to withdrawing services, the potential impact of the loss of the commonwealth mental health programs which have been around for 10 years will be substantial.²⁶ There is no clear articulation by NSW government or the NDIA about what Continuity of Support looks like in practice for people needing mental health support.

Use of Information, Linkages and Capacity Building (ILC) and local council solutions to build social inclusion

True and full inclusion is largely about engaging with, and education of, the local community as much as for the person with a disability. NDS is concerned that effective social inclusion pathways for many people with disability and the community are likely to be diminished despite the introduction of ILC, with a negative impact particularly on people ineligible for the NDIS and the capacity of mainstream services to include people with disability.

Since transition, hundreds of provider initiatives have been dismantled in favour of a competitive ILC grants process in which the NSW Government is placing significant faith to meet the needs of people with disability.²⁷ However the amount of funding available nationally is small (\$132 million), short-term and grant-based. NSW should seek a more stable, long term funding arrangement for services falling within the Information, Linkages, and Capacity Building (ILC) framework. These services will not be able to continue operating if they are to rely on short-term grant based funding.

We recommend that organisations receive funding outside the competitive grants process for the work they are doing and their performance could be tracked and their funding modified accordingly over time. If their performance is less than expected, a competitive process could be used to find a replacement.²⁸

Local Councils can play a major role in achieving community inclusion through their many mainstream services, venues, facilities, networks and resources at a time when Local Area Co-ordination is engaged in planning and less on inclusion. NDS supports a review into the potential of local councils to address inclusion issues given their unique advantage of being a state-wide connected service provider and local community hub for metro and rural communities.

Many local councils across NSW currently provide direct and indirect support to people with disability and as such are a significant contributor to the provision of disability services. In regional areas, many local councils are still undecided as to whether they will continue to provide direct disability services with many of the small providers already withdrawing

²⁵ NDIS NSW Statistics 31 March 2018 <https://www.ndis.gov.au/about-us/our-sites/NSW.html>

²⁶ MHCC Submission to the NDIS Joint Standing Committee 24 February 2017 ; https://www.mhcc.org.au/wp-content/uploads/2018/05/mhcc_submission_to_ndis_joint_standing_committee_20170224_final.pdf

²⁷ <http://ndis.nsw.gov.au/serviceproviders/adhc-funding-arrangements-and-ndis-transition/faqs-for-service-providers/#65-ineligible>

²⁸ NDS, *Submission to the Joint Standing Committee on the NDIS: Transitional Arrangements for the NDIS*, 2017 https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/Transition/Submissions

these services to the community. Their role may not involve direct service provision but with their ongoing presence in local communities they have a key role in localised community engagement and connection on a sustainable basis, something the ILC grants cannot provide. NDS believes local councils can be a significant stakeholder in the long term viability and coverage of the NDIS given the right resourcing and consultation.

Service delivery for people with disability living in Regional, Rural and Remote NSW

The lack of services and providers operating in rural and remote areas is not new or unique to the NDIS. However, in an environment where services are not block funded there must be some guarantee of demand for providers to be sustainable in regional, rural and remote areas. To overcome this block funding or hybrid-based funding would need to be considered until that demand has reached a point where it can be sustained.²⁹ In addition, greater clarity is required on how the NDIA intends to intervene in areas of thin markets. NDS supports the Joint Standing Committee recommendation that the NDIA develop and publically release a strategy to address thin markets³⁰ in co-operation with state governments and peak bodies.

For culturally and linguistically diverse communities to engage with disability services, those services and supports must be culturally appropriate. We believe there has been some lost opportunities in the roll-out of the NDIS in NSW through a lack of engagement of providers servicing CALD and Aboriginal communities on a state and indeed national basis. From our work with many new and existing providers operating in the disability space, it is clear the entry bar has been set so high that many of these providers may fail to engage with the NDIS as registered providers due to overly onerous regulatory requirements.

In response to some of these challenges the DSSU has been a generous initiative that has grant rounds targeted towards assisting the sector/new providers to scale up their operations. The Department's *Making it our Business* Initiative for Aboriginal Businesses is also welcomed. In saying this, NDS feels that the application guidelines for these grants are too broad and that this funding could be better used to target thin markets and specific gaps. Information about the successful DSSU applicants has not been made public and it is not clear whether the effectiveness of those grants will be evaluated on their outcomes to inform the next funding round. NDS calls for greater transparency and consultation with regard to initiatives targeting thin markets and provider readiness in particular for organisations serving CALD and Aboriginal customers.

Transport

Transport for participants in the NDIS emerged as a major issue in trial and remains a significant issue for both participants and providers. Where there is inadequate public transport options or where people with a disability are unable to utilise public transport due to their disability, service providers have traditionally filled this gap. However transport

²⁹ Ms Noelene Swanson, Committee Hansard, *Joint Standing Committee into the Transitional Arrangements for the NDIS* 21 September 2017

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/Transition/Report

³⁰ Joint Standing Committee, above n3 p70

funding from the NDIS is inadequate to meet the transport needs of individuals and the inadequacy of NDIS pricing for community access supports means that providers are unable to utilise operational budgets to subsidise the cost of transport. NDS is aware that many providers are disposing of their fleets resulting in reduced options for people with a disability. Please refer to our submission to the NSW Parliamentary Inquiry about Transport for Seniors and Disadvantaged People in NSW³¹ and NDS's paper "Getting Transport on Track" to glean more about these issues.³²

Community Transport

NDS welcomes the announcement of a 'supplement' for Community Transport Organisations to address the significant gap between the transport funding received by most participants and the real cost for these participants to meet their basic transport funding.³³ However in regional and remote locations, a \$10.00 supplement is still not going to meet the transport needs of people living in these areas.

NSW Taxi Subsidy and Incentives

We applaud the NSW government's commitment to Transport Taxi Subsidy and Incentive Scheme without which people with disability would not be able to capitalise on their NDIS plan. NDS's submission to the Review of Subsidies and Incentives³⁴ recommended that provider neutrality be extended to include disability service providers delivering transport options to people with a disability as this would enable customers with disability greater choice and control in the use of their subsidy.

School Transport interface challenges

Funding of school transport for children with disability under the NDIS remains clouded in uncertainty. Currently, in NSW, there is a mix of funding for school transport, as both the Department of Education (as an in-kind support) and Department of Transport provide school transport for eligible students (via local contractors). The Assisted School Travel program provides transport only to and from school to home. The Department of Education has confirmed that transport will not be provided from school to NDIS funded activities such as after-hours school care, on the basis that this should be funded in a child's plan. Historically, children have not had transport included as a funded support as there is an expectation that families and informal supports should meet this need.

³¹ NDS NSW Submission, the NSW Parliamentary Inquiry about Transport for Seniors and Disadvantaged People in NSW, 2017 <https://www.parliament.nsw.gov.au/ladocs/submissions/55537/No.64,%20National%20Disability%20Services.pdf>

³² NDS Getting Transport on Track Paper 2018 https://www.nds.org.au/images/news/Getting_transport_on_track-May2018.pdf

³³ Transport NSW, More Affordable Transport for those on NDIS, 12 July 2018 <https://www.transport.nsw.gov.au/news-and-events/media-releases/more-affordable-transport-for-those-on-ndis>

³⁴ NDS, *Submission to the NSW Subsidies and Incentives Review*, 2017 <https://www.nds.org.au/item/nds-submission-to-the-transport-disability-incentives-and-subsidies-tdis-review>

We note that DSS issued a discussion paper relating to the future of school transport, and re-state our concerns that there are too many challenges in funding this critical support through an NDIS planning processes. Those processes continue to be fraught with significant delays in plan review and gaps which could mean affected students may not have access to funds for school transport, which may affect some families' capacity to ensure their children attend school.

Children and Families

Education & Employment opportunities

For the first time, many children with disability will have access to much needed Individual and early intervention support, including access to aids and equipment. With their core support needs met, families and students will likely have higher expectations of the education system. NDS is confident that most schools will welcome this challenge as they will no longer be overwhelmed by the support needs of students and can instead focus on education outcomes, while noting that some teachers have expressed ambivalence over their confidence to adequately educate students with disability.³⁵

Disability Service Providers have traditionally had an important role in building the capacity of classroom teachers through co-working, collaboration, formal partnerships and professional development. Under the NDIS it will become more difficult for schools and parents to capitalise on the expertise of these providers.

A recent and worrying trend with the roll-out of the NDIS and the development of School Leaver Employment Supports (SLES), is that personnel in some schools have decided that career development should happen post-school for students with disability, through SLES. We need to change this, along with the culture of low expectations from school personnel, and ensure that students with disability get opportunities in career development.

Our final point in relation to the NDIS and Education relates to the use of positive behaviour support expertise and strategies in place of the use of restrictive practices. NDS is concerned that education settings are typically outside the jurisdiction of policy and oversight relating to restrictive practice. This means families do not have any particular recourse through this authority for restraint and seclusion experienced in schools, in contrast to disability service settings. This represents a significant gap in protections for students with disability. It is also important to note that in other contexts, the intent is to reduce and eliminate restrictive practices yet in school settings there are no similar policies with this purpose.³⁶

Early Childhood Early Intervention (ECEI)

In late 2017, NDIA invited organisations to tender for the new ECEI role (replacing the transition advisor role), and the closing date was 22 November 2017. Although the

³⁵ Whitburn, Moss and O'Hara, The Policy Problem: NDIS and implications for access to education, Journal of Education Policy, 20 Jan 2017 at 9

³⁶ NDS NSW, Submission the NSW Parliamentary Inquiry into Education of students with disability or special needs in NSW Schools, p8-9
<https://www.parliament.nsw.gov.au/lcdocs/submissions/57305/0161%20National%20Disability%20Services.pdf>

announcement of successful providers was expected in March 2018, it occurred on 6 June 2018, leaving providers with less than 3 weeks to prepare. The extensive delay in announcing the new ECEI partners is having a significant impact on the sector in NSW, including:

- Providers were only able to give very short notice to existing NDIS participants and their families about changes to their service arrangements from 1 July 2018
- Many new NDIS participants and their families have been on waiting lists, with very little information about when services will commence, and which provider will do so
- There is a gap for some participants between the end of services on 30 June 2018, and the commencement of new services in their area. This affects children in regions where the ECEI partner is new and needs to establish its services.

The ECEI transition is occurring at the same time as NSW transitions into full scheme, FACS finalises the transition of children into NDIS, the commencement of new requirements for providers under NDIS Commission, changes to the Price Guide 2018-19, and closure of Early Linkers program in September 2018. In addition, it is occurring in the context of very little information or market development support from NDIA. NDS is concerned about children and families falling through the cracks and urges FACS to work with providers to monitor gaps in support for children.

Lack of in-home and family support services under the NDIS

Under the previous FACS (ADHC) funding arrangement, families were receiving a much wider range of in-home support. The NDIS is also doing little to acknowledge the family support work, including domestic violence, crisis support and other preventative child protection work that was formerly done by disability organisations working with children and families in the old block funded system. It needs to be acknowledged that central to working with children and young people with disability, is a holistic approach that involves sustaining the wellbeing of the families.

There has been a significant impact for parents when children have very complex needs, or have terminal/ fragile conditions. Without additional in-home support, some parents are sustaining injuries from lifting, leaving their jobs, or staying awake 24 hrs to prevent their child choking in the night. There is now a heightened risk that some families will be unable to cope, and their children could be relinquished into care.

Providers have been told by the NDIA that in principle, families should provide all other 'typical' supports. ECI providers have also been told by NDIA that all other supports are mainstream responsibilities (such as FACS, and DHS), and that it would only fund in-home support when all other options have been exhausted. However, providers are having significant difficulties in finding mainstream organisations that will provide in-home support, and are using their own reserves to fill the gaps in the meantime.

Advocacy

The Practice Standards for the NDIS Quality and Safeguards Commission require many instances where providers are obliged to refer participants to advocates for independent

support. We have included a list of these in Annexure 3. This underscores the necessity of a vibrant well-resourced advocacy sector. NDS welcomes the recent announcement by the NSW Government that advocacy services, including peer advocacy, would be funded until June 2020 however we are concerned that there is no certainty of funding for these services beyond this date. NDS calls for the NSW Government to confirm its commitment to advocacy services beyond this timeframe.

Mainstream supports and community inclusion

The success of the NDIS, which in reality only funds a limited set of the needs of people with disability, will depend on the access for people with disabilities to employment, health, education and housing which remain funded through existing state and federal arrangements. *‘That is, many of the services and programs that have the potential to contribute to full inclusion that many of us enjoy, sit outside of the NDIS’* (quote from Rights Now [article](#)). NSW needs to be engaged in this monitoring/discussion as the result will see greater demand on mainstream services and NSW citizens with a disability not receiving the supports that they need. This is part of an obligation to NSW citizens through the [NSW Disability Inclusion Act 2014](#) and [National Disability Strategy](#) and, as NDS asserts, part of NSW Government’s market oversight role.

It is our strong belief that the inherent rigidities in the funding approach for the NDIS means that the capacity for flexibility lies almost entirely with the NSW Government and the NSW mainstream systems. Currently, one of the biggest issues with the mainstream interface is that NDIS participants get stuck between mainstream systems and the NDIS with neither accepting responsibility for the support required. This means that providers are picking up the slack as well as being in a position of trying to influence two (generally) government-based entities with little support. NDS believes the NSW government can do more and that mainstream services should rise to the challenge of supporting the most vulnerable in NSW.

Conclusion

The success of the NDIS is of critical importance to all in the disability sector. The people of NSW have made a significant investment to the NDIS, however participants, providers and the community are concerned that the Scheme will not deliver on its promises. We ask that the NSW government maintain an active role in monitoring the impact of the NDIS on people with a disability in NSW through:

- **Enacting its role as a market steward** in partnership with the NDIA and NDIS Commission, including monitoring the impact of NDIS pricing, implementation and policy decisions on the sustainability and diversity of the disability sector. This also includes holding the NDIA accountable in the implementation of their various strategies to support people from Aboriginal and Torres Strait Islander and CALD backgrounds, rural and remote communities and those with the most people with the most complex support needs.

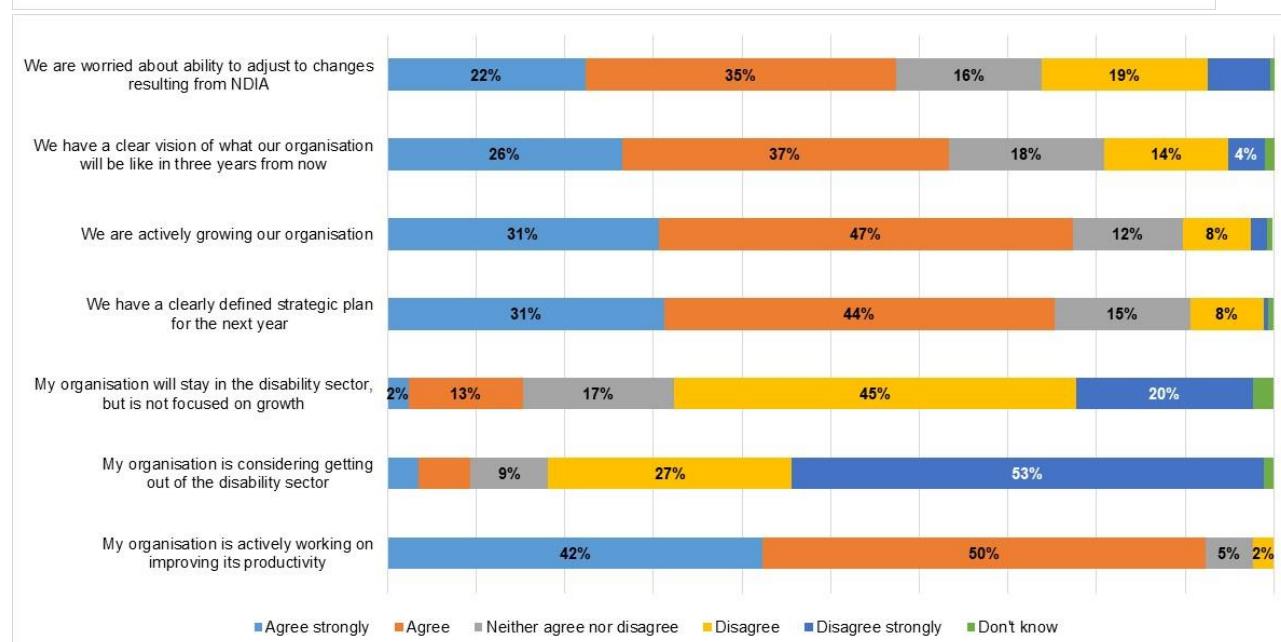
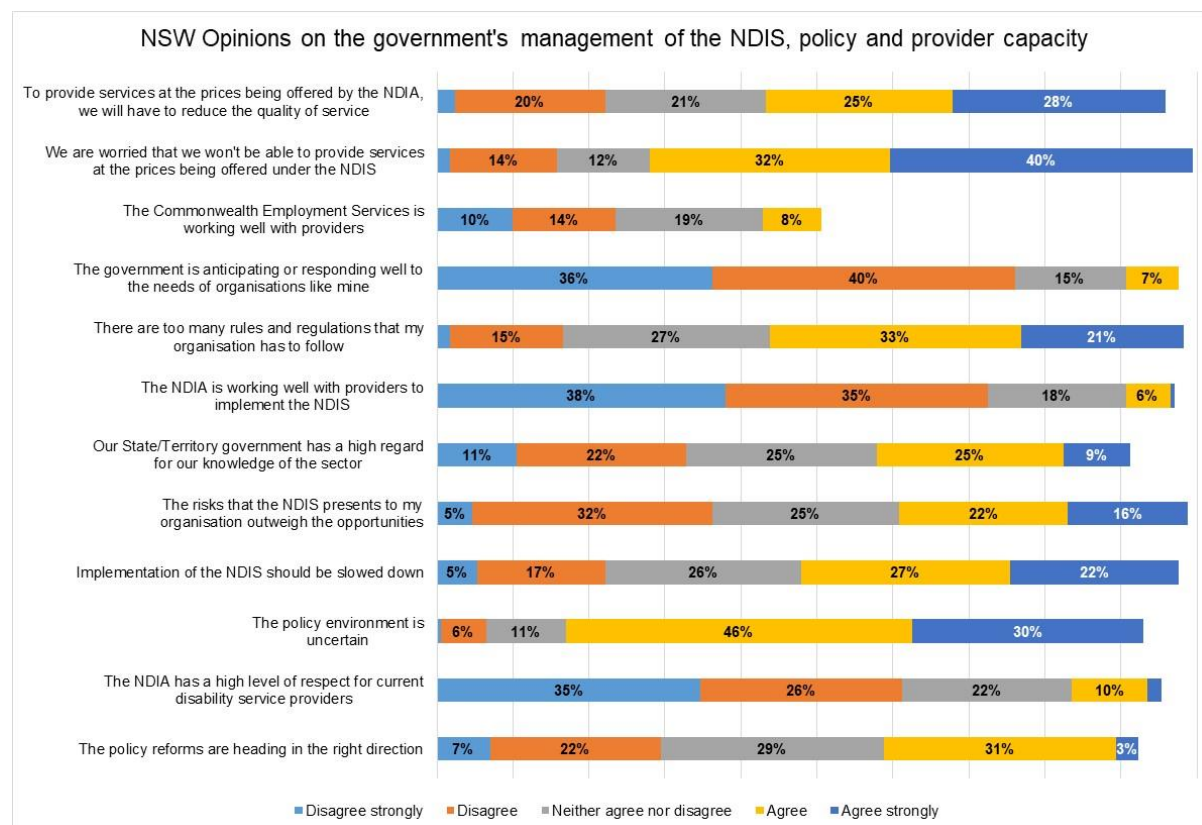
- **Developing a NSW workforce strategy** that sees the quality of service provision which rests on the skills, expertise and support that is provided to the disability workforce developed and maintained. Exciting initiatives such as the DSSU should be targeted where gaps in the market are emerging, and the learnings of these projects used to develop the capacity of the disability sector.
- **Monitoring the impact of the NDIS on mainstream services** and identifying what is needed to prevent both participants and those who do not meet the eligibility threshold for the NDIS falling through the gaps. This includes developing strategies and being an active player in implementing the National Disability Strategy.
- **Considering and developing their role as a provider of last resort** for some of our most vulnerable citizens.

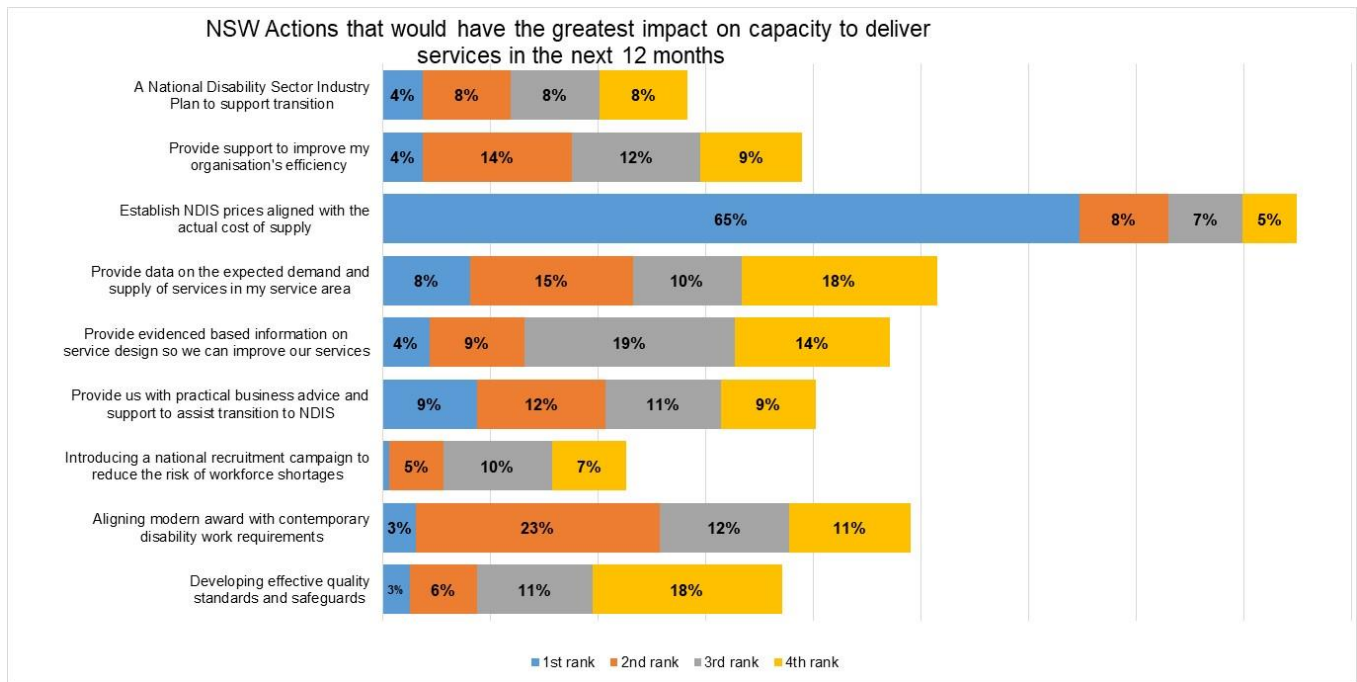
ANNEXURES

ANNEXURE 1: STATE OF THE DISABILITY SECTOR REPORT

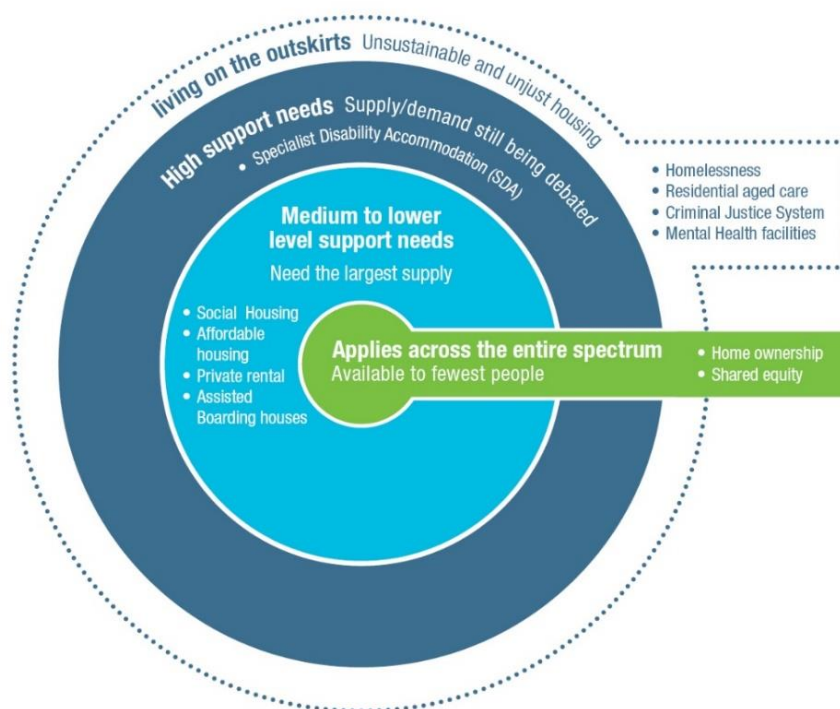
Summary Data New South Wales (sample size (n=171 for NSW).

NSW Providers' opinions on their organisations' strategy in the last 12 months





ANNEXURE 2 SCOPE OF NDS HOUSING POSITION PAPER



ANNEXURE 3: NDIS GUIDELINES THAT REQUIRE ADVOCACY REFERRAL

NDIS (Quality Indicators) Guidelines 2018

Part 2 Core Module;

Division 1-Rights and Responsibilities

9. Independence and Informed Choice

(5)- Each participant's right to access an advocate (including an independent advocate) of their choosing is supported, as is their right to have the advocate present.

10. Violence, Abuse and Neglect Exploitation and Discrimination

(2) - Each participant is provided with information about the use of an advocate (including an independent advocate) and access to an advocate is facilitated where allegations of violence, abuse, neglect, exploitation or discrimination have been made.

Division 2- Governance and Operational Management

15. Feedback and Complaints Management

(2) Each participant is provided with information on how to give feedback or make a complaint, including avenues external to the provider, and their right to access advocates. There is a supportive environment for any person who provides feedback and/or makes complaints.

NDIS (Incident Management and Reportable Incidents) Rules 2018

10. Incident Management Systems and Procedures

1 (d) to provide support and assistance to people with a disability affected by an incident access to advocates.

NDIS (Complaints Management and Resolution) Rules 2018

Part 2 Complaints management and resolution system for registered NDIS providers.

7 Complaints management and resolution system that complies with the requirements set out in this Part.

Note: The complaints management and resolution system must also be appropriate for the provider's size and classes of supports or services provided and make provision in relation to advocates and other representatives of persons with disability (see paragraphs 73W(a), (aa) and (ab) of the Act).

Part 3 Complaints to, and inquiries by, the Commissioner

Division 2, Subdivision A

15 Making a Complaint to the Commissioner

4(b) a person making a complaint, and persons with disability affected by a complaint, are provided with information about accessing an independent advocate.