

Portfolio Committee No. 2 - Health and Community Services

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

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Terms of reference

That Portfolio Committee No.2 – Health and Community Services inquire into and report on the provision of disability services across New South Wales, and in particular:

- (a) the implementation of the National Disability Insurance Scheme and its success or otherwise in providing choice and control for people with disability,
- (b) the experience of people with complex care and support needs in developing, enacting and reviewing NDIS plans,
- (c) the accessibility of early intervention supports for children,
- (d) the effectiveness and impact of privatising government-run disability services,
- (e) the provision of support services, including accommodation services, for people with disability regardless of whether they are eligible or ineligible to participate in the National Disability Insurance Scheme,
- (f) the adequacy of current regulations and oversight mechanisms in relation to disability service providers,
- (g) workforce issues impacting on the delivery of disability services,
- (h) challenges facing disability service providers and their sustainability,
- (i) incidents where inadequate disability supports result in greater strain on other community services, such as justice and health services,
- (j) policies, regulation or oversight mechanisms that could improve the provision and accessibility of disability services across New South Wales, and
- (k) any other related matter.

The terms of reference self-referred by the committee on 21 June 2018.¹

¹ *Minutes*, NSW Legislative Council, 21 June 2018 pp 2806-2807.

Committee details

Committee members

Hon Greg Donnelly MLC	Australian Labor Party	<i>(Chair)</i>
Hon Paul Green MLC	Christian Democratic Party	<i>(Deputy Chair)</i>
Hon Scott Farlow MLC*	Liberal Party	
Hon Courtney Houssos MLC	Australian Labor Party	
Hon Shayne Mallard MLC**	Liberal Party	
Hon Bronnie Taylor MLC	The Nationals	
Ms Dawn Walker MLC	The Greens	

* The Hon Scott Farlow MLC substituted for the Hon Peter Phelps MLC from 25 June 2018 for the duration of the inquiry.

** The Hon Shayne Mallard MLC substituted for the Hon Scot MacDonald MLC from 25 June 2018 for the duration of the inquiry.

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Chair's foreword

Those we most often exclude from the normal life of society, people with disabilities, have profound lessons to teach us.

- Jean Vanier, L'Arche Founder

In recent years, there has been a significant shift in policy and in practice, both in New South Wales and more broadly across the country, towards providing support to people with disability that is centred on and driven by a focus on their rights and needs as individuals. A more flexible, person-centred approach to disability service provision has thus emerged, supported by policy makers, the disability sector and people with disability alike.

At the centrepiece of this shift is the National Disability Insurance Scheme (NDIS), designed to support Australians with a significant and permanent disability through individualised funding arrangements. Through this new model of care, the Scheme seeks to provide choice and control to people with disability by allowing them to determine the supports and services they need.

This inquiry was established to examine the implementation of this Scheme in New South Wales to date and to consider the wider provision of disability services to people with disability, regardless of their participation in the Scheme. Indeed, it was a broad-ranging inquiry which garnered an extensive body of evidence from many different stakeholders – an undertaking which reflects the scale and complexity of disability support at present.

While various issues were raised, a number of key themes were highlighted by the evidence. Among them is the view that, for many people with disability, the NDIS is truly a transformative reform that has and continues to significantly change lives. The committee unreservedly acknowledges this. However, evidence also suggested that, for many other people with disability, the potential of the Scheme has not been realised. In fact, the Scheme's implementation has raised a number of significant challenges, such that many people with disability, as well as their families and carers, have felt incredibly frustrated and overwhelmed by the transition to the Scheme.

The committee appreciates that turning the concept of individualised support to a practical and effective reality is no easy feat, but questions whether the total transfer of specialist disability services to non-government organisations under the NDIS has only exacerbated these challenges in New South Wales, rather than facilitated the effective implementation of the Scheme.

Another important theme raised during the inquiry is how all people with disability will be supported in New South Wales, regardless of their eligibility for the NDIS. Acknowledging the Scheme's intended scope and the number of people with disability across the state, the committee considers this a particularly significant issue. Indeed, we do not want to arrive at a situation where the NDIS represents, as one stakeholder so aptly described it, an 'oasis in the desert', where those who are not participants of the Scheme will be left without appropriate care and support. This cannot and must not be allowed to occur in New South Wales.

The committee believes, as the evidence suggested, that we must look beyond the NDIS and ensure that the support available outside of the Scheme is adequate and responsive to the needs of all people with disability in New South Wales. To this end, we look to the NSW Government to recognise and fulfil its responsibilities under the *Disability Inclusion Act 2014* as a priority.

The committee acknowledges the challenging task of managing broad and complex reform in an area of service provision that crosses multiple policy jurisdictions and levels of government. Moreover, we understand that the changing landscape will take time to settle, including the full assembly and maturation of the Scheme. The committee therefore presents a suite of recommendations that we hope will go some way towards addressing the challenges of the Scheme's implementation in New South Wales as well as providing greater clarity and certainty for the people of this state seeking support outside of the NDIS. After all, we want to ensure that *all* people with disability, whether they are participants of the Scheme or not, receive the support they need to lead fulfilling lives.

Many of the recommendations call on the NSW Government to actively pursue issues through its role on the Council of Australian Governments Disability Reform Council, including improvements to the planning process, Early Childhood Early Intervention approach, carer support, funded training to disability sector workers, and oversight mechanisms. We have also made recommendations to the NSW Government directly to address service gaps and to ensure that people with disability do not fall through the cracks, including establishing a provider of last resort and public sector safety net.

I thank my fellow committee members for their considered engagement and diligent collaboration on such an important issue. On their behalf, I would also like to thank the committee secretariat for their hard work and professional support.

Finally, I would like to thank the many people with disability, as well as their families and carers, who shared their stories and experiences with the committee. Your time, patience, energy and continued advocacy through your contributions to this inquiry are very much appreciated. We hope this report with its findings and recommendations will play some part in making your lives and futures better. You deserve it and we must all work together to help bring this about.



The Hon Greg Donnelly MLC
Committee Chair

Findings and recommendations

Finding 1

84

That, while the National Disability Insurance Scheme is a transformative, once-in-a-generation, person-centric reform with the capacity to significantly improve the lives of Australians with disability, its potential has not been realised for many individuals in New South Wales to date.

Finding 2

92

That, while many people have and are expected to benefit from the National Disability Insurance Scheme, there are many more people with disability in New South Wales who are not eligible for the Scheme and who will require access to ongoing appropriate services to meet their needs. The committee acknowledges that the NSW Government has implemented some transitional arrangements to manage the risks of service gaps and issues during the early years of the full scheme.

Recommendation 1

44

That the NSW Government actively pursue, through its role on the Council of Australian Governments Disability Reform Council, the resolution of implementation issues for the National Disability Insurance Scheme including:

- issues with the application of the eligibility criteria
- improving the navigation of and engagement with the Scheme
- enhancing the skills of National Disability Insurance Agency staff.

Recommendation 2

44

That the NSW Government advocate, through its role on the Council of Australian Governments Disability Reform Council, for the National Disability Insurance Scheme planning process to be strengthened and streamlined, including:

- ensuring that participants have access to skilled planners and Local Area Coordinators who are appropriately trained and experienced
- to ensure participants receive a timely response to plan reviews and that any revised plans are enacted promptly.

Recommendation 3

51

That the NSW Government actively pursue, through its role on the Council of Australian Governments Disability Reform Council, for the National Disability Insurance Scheme the resolution of issues relating to early childhood intervention supports, as delivered by the Early Childhood Early Intervention approach, including:

- ensuring that children have access to early childhood services, regardless of eligibility for the Scheme, particularly for children with developmental delay
- ensuring a timely response to access requests for early intervention supports through the National Disability Insurance Scheme
- ensuring that any outstanding plans for children seeking access to early intervention supports are developed and enacted as a matter of priority
- greater support for Early Childhood Partners to build their capacity to provide and facilitate a coordinated response to children requiring early intervention supports.

- Recommendation 4** **52**
 That the NSW Government develop and support, on an ongoing basis, an integrated early intervention program which addresses the fact that many children in need of early intervention services are not – and will not – be eligible for National Disability Insurance Scheme funding.
- Recommendation 5** **75**
 That the NSW Government investigate the adequacy of the provision of carer support, including respite services.
- Recommendation 6** **75**
 That the NSW Government advocate, through the Council of Australian Governments Disability Reform Council, that carer needs be acknowledged as an explicit and mandatory requirement of the National Disability Insurance Scheme planning process.
- Recommendation 7** **85**
 That the NSW Government pursue, on an ongoing basis, a more active role in governance arrangements of the National Disability Insurance Scheme in order to secure the resolution of issues for the people of New South Wales through its role on the Council of Australian Governments Disability Reform Council.
- Recommendation 8** **85**
 That the NSW Government actively promote the transitional arrangements and programs currently in place to support the transition to the National Disability Insurance Scheme.
- Recommendation 9** **86**
 That the NSW Government:
- provide funding up to five years post rollout of the National Disability Insurance Scheme for the current transitional arrangements and programs in New South Wales, including Ability Links and Safe and Supported at Home
 - undertake a review, involving thorough stakeholder consultation, to assess whether or not further funding on an ongoing basis is required.
- Recommendation 10** **93**
 That the NSW Government's review of the of the *Disability Inclusion Act 2014* include:
- a focus on the National Disability Strategy
 - enhancing governance arrangements to enable the NSW Ombudsman to have an oversight role in the review and monitoring of government agency Disability Action Plans.
- Recommendation 11** **105**
 That the NSW Government actively pursue, through its role on the Council of Australian Governments Disability Reform Council, an agreement about jurisdictional lines between the National Disability Insurance Scheme and New South Wales healthcare system as a matter of priority.
- Recommendation 12** **109**
 That the NSW Government reinstate its role as a public sector safety net to capture people with disability, particularly those with complex and challenging needs.

- Recommendation 13** **109**
That the NSW Government be established as a service provider of last resort to the National Disability Insurance Scheme to ensure crisis situations are managed appropriately.
- Recommendation 14** **109**
That the NSW Government address service gaps by investing in services and supports for people with disability, regardless of their eligibility for the National Disability Insurance Scheme.
- Recommendation 15** **121**
That the NSW Government provide ongoing funding and support to advocacy organisations beyond 2020.
- Recommendation 16** **147**
That the NSW Government advocate, through its role on the Council of Australian Governments Disability Reform Council, that the National Disability Insurance Agency provide access to funded training for disability employees, including consideration of portable training entitlements.
- Recommendation 17** **147**
That the NSW Government advocate, through its role on the Council of Australian Governments Disability Reform Council, that the National Disability Insurance Agency:
- develop a strategy to address thin markets, such as in regional, rural and remote areas
 - review its pricing structure with a view to ensuring disability sector workers and service providers are funded to provide quality services, including funding for case management, administration and supervision.
- Recommendation 18** **149**
That the NSW Government develop a New South Wales Disability Workforce Strategy, involving thorough stakeholder consultation, with a focus on supporting access to disability services in regional, rural and remote areas as a matter of priority.
- Recommendation 19** **158**
That the NSW Government advocate on an ongoing basis, through the Council of Australian Governments Disability Reform Council, for a strengthening of the oversight mechanisms to ensure service providers are complying with the comprehensive practice standards and the code of conduct that set out the rights of participants and the responsibilities of providers when delivering services.
- Recommendation 20** **162**
That the NSW Government advocate, through the Council of Australian Governments Disability Reform Council, for a strengthening of the oversight mechanisms in relation to the National Disability Insurance Scheme, through:
- supporting ongoing arrangements between the NSW Ombudsman and the NDIS Quality and Safeguards Commission beyond 1 July 2019; and
 - establishing a national approach to the review of deaths of people with disability in residential care.

Recommendation 21

162

That the NSW Government continue to support the ongoing funding of a New South Wales Official Community Visitors Scheme with the view of formally seeking the inclusion of such a scheme in the NDIS Quality and Safeguarding Framework.

Recommendation 22

168

That the NSW Government conducts on an ongoing basis an education campaign to ensure that people receiving disability support outside of the National Disability Insurance Scheme are aware of the complaint mechanisms available to them.

Recommendation 23

168

That the NSW Government establish an Office of a Public Advocate.

Conduct of inquiry

The terms of reference for the inquiry were self-referred by the committee on 21 June 2018.

The committee received 352 submissions and five supplementary submissions.

The committee held two public hearings at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.

Relevant legislation

Disability Inclusion Act 2014

National Disability Insurance Scheme Act 2013 (Cth)

National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Act 2017 (Cth)

Ombudsman Act 1974

Chapter 1 Background

The National Disability Insurance Scheme (NDIS) is the largest social reform since Medicare and was established by the *National Disability Insurance Scheme Act 2013* (Cth) (NDIS Act). The NDIS is an Australia-wide scheme. New South Wales was the first state to sign a Full Scheme Agreement with the Commonwealth Government.

This chapter provides background information on the NDIS, its purpose, governance, funding and implementation in New South Wales. It also describes relevant agencies, such as the National Disability Insurance Agency (NDIA) and the National Disability Insurance Scheme Quality and Safeguards Commission, the provision of disability services for people who are ineligible for the NDIS, and complaint mechanisms.

What is the National Disability Insurance Scheme?

- 1.1 The NDIS replaced the previous New South Wales disability support system. Prior to the NDIS, disability services were provided by the Department of Family and Community Services (FACS) and non-government organisations. There was a mix of block funding and individualised funding arrangements for specialist disability services in New South Wales, with non-government organisations delivering 60 per cent of disability services.²
- 1.2 Government funded disability services for eligible participants have been progressively transferred to non-government providers.³ The NDIS marks a shift away from a welfare model to an 'insurance-based approach, informed by actuarial analysis, to the provision of funding of supports for people with disability'.⁴ It is also a shift away from block funding of disability services to one in which participants choose the services and supports they need.⁵
- 1.3 Under the previous block funding arrangements, funding was used to provide specific activities and 'could not be tailored to the needs of individuals' and individuals 'could not easily change service providers or move to a new location and take their services with them'.⁶ As noted in the NSW Government submission, the NDIS 'moves away from previous State funded and delivered services, which limited individual choice and control'.⁷
- 1.4 According to Ms Vicki Rundle, Deputy Chief Executive Officer of Government Communications and Stakeholder Engagement at the NDIA:

The NDIS puts the person with a disability at the centre and acknowledges the important role that families, information supports, community and mainstream connections, as well as NDIS supports, equally play in the person's life. This is part of

² Submission 313, NSW Government, pp 2-3.

³ Submission 313, NSW Government, pp 3, 10.

⁴ *National Disability Insurance Scheme Act 2013* (Cth) s 3(2)(b).

⁵ Submission 313, NSW Government, p 10.

⁶ Submission 313, NSW Government, p 2.

⁷ Submission 313, NSW Government, p 6.

a broader ecosystem that all comes together to give them the lives that we want them to have.⁸

- 1.5** The NDIS covers a range of different support types, including early intervention services for young children, services aimed at capacity building for people with disability, and reasonable and necessary supports funded through individual participant plans.⁹
- 1.6** The NDIS is now fully operational in New South Wales, South Australia and the Australian Capital Territory. South Australia intended to move to full scheme rollout by July 2018, but has experienced some delays.¹⁰ Victoria, Tasmania and the Northern Territory will transition to full scheme by July 2019 and Western Australia in 2020. Each state and territory has a bilateral agreement with the Commonwealth for the transition to the NDIS.
- 1.7** Australia-wide, the NDIS is currently supporting over 200,000 Australians with almost one in three participants accessing supports for the first time.¹¹ The NDIS aims to be supporting all eligible Australians by July 2020 and it is estimated that the NDIS will have 460,000 participants when the NDIS is at 'full Scheme' (by June 2020).¹²
- 1.8** The NDIS provides participants with funding for reasonable and necessary disability supports.¹³ The types of supports that individuals can receive include support for daily personal activities, transport to enable participation in life activities, help with household tasks, therapeutic supports, mobility equipment, home and vehicle modification, and workplace help to allow a participant to successfully get or keep employment in the open or supported labour market.¹⁴

Funding of the Scheme

- 1.9** The NDIS is funded by both Commonwealth and state and territory governments.
- 1.10** The Commonwealth is responsible for the balance of all NDIS costs.¹⁵ The Commonwealth Government will contribute over half (53 per cent) of the \$22.2 billion total running cost of the

⁸ Evidence, Ms Vicki Rundle, Deputy Chief Executive Officer, Government Communications and Stakeholder Engagement, National Disability Insurance Agency, 17 September 2018, p 12.

⁹ Submission 313, NSW Government, p 6.

¹⁰ Submission 313, NSW Government, p 6. See also, National Disability Insurance Scheme, *Transition in South Australia*, <https://www.ndis.gov.au/about-us/our-sites/SA/transition.html>

¹¹ Council of Australian Governments Disability Reform Council, Quarterly Report: 30 September 2018, p 4 and p 8, <https://www.ndis.gov.au/medias/documents/q1-201819-report-full/Report-COAG-for-Q1-of-Y6-Full-report.pdf>

¹² Council of Australian Governments Disability Reform Council, Quarterly Report: 30 September 2018, p 8, <https://www.ndis.gov.au/medias/documents/q1-201819-report-full/Report-COAG-for-Q1-of-Y6-Full-report.pdf>

¹³ Submission 313, NSW Government, p 18.

¹⁴ Submission 313, NSW Government, pp 18-19.

¹⁵ Bilateral Agreement between the Commonwealth of Australia and the State of New South Wales on the National Disability Insurance Scheme, p 15, <https://www.coag.gov.au/sites/default/files/agreements/nsw-bilateral-agreement.pdf>

NDIS, with the states and territories providing the remaining funding.¹⁶ From July 2014, the Medicare Levy, which applies to taxable income, was increased from 1.5 to 2.0 per cent to fund 'DisabilityCare', which was the former name of the NDIS.¹⁷

- 1.11** The NDIA holds all funds contributed by the Commonwealth, state and territory governments in a single pool.¹⁸
- 1.12** States and territories have signed bilateral agreements with the Commonwealth detailing the operational and funding arrangements for the NDIS. The latest Bilateral Agreement between the Commonwealth of Australia and the State of New South Wales commenced on 1 July 2018.¹⁹
- 1.13** The NSW Government will contribute over \$3.2 billion in 2018-19.²⁰ This will include up to \$477.5 million in in-kind supports. New South Wales' contribution will pay for participant supports, including individualised support packages for Scheme participants and Information, Linkages and Capacity Building and other general supports.²¹
- 1.14** New South Wales' contribution will increase by 4.0 per cent each year to \$4.55 billion by 2027-28 as a result of inflation and population changes.²² In 2023 and 2028, NDIS costs will be reviewed.²³
- 1.15** NDIS funding is directed into two main areas, which are individual plans and Information, Linkage and Capacity Building (ILC).²⁴

Governance

- 1.16** Governance of the NDIS is shared between Commonwealth, state and territory governments. The decision-maker on NDIS policy issues is the Standing Council on Disability Reform, a COAG Ministerial Council made up of Treasurers and Ministers responsible for disability from the Commonwealth and each state and territory.²⁵
- 1.17** Mr Tim Reardon, Secretary of the Department of Premier and Cabinet, outlined the governance arrangements in place for the Scheme:

¹⁶ National Disability Insurance Scheme, *Federal funding*, <https://www.ndis.gov.au/about-us/governance/federal-funding>

¹⁷ *Medicare Levy Amendment (DisabilityCare Australia) Act 2013*.

¹⁸ National Disability Insurance Scheme, *Governance*, <https://www.ndis.gov.au/about-us/governance>

¹⁹ *Bilateral Agreement*.

²⁰ *Bilateral Agreement*, p 14.

²¹ *Bilateral Agreement* p 14. General supports are referred to in *National Disability Insurance Scheme Act 2013* (Cth), s 13(2).

²² *Bilateral Agreement* p 14.

²³ *Bilateral Agreement*, pp 10, 14.

²⁴ National Disability Insurance Scheme, *What help can I get?*, <https://www.ndis.gov.au/people-disability/what-help-can-i-get.html>

²⁵ *National Disability Insurance Scheme Act 2013* (Cth) s 12.

All Australian governments have an important stewardship role in working together to make sure the scheme delivers on its potential. A distinctive feature of the NDIS is that it is both co-funded and co-governed by every jurisdiction. While funding responsibility is shared, so too is decision-making. The scheme has enabled a robust intergovernmental governance structure including the Council of Australian Governments [COAG] comprised of first Ministers, the Disability Reform Council comprised of disability Ministers and Treasurers, and supporting working groups of government officials. The scheme will reach its full potential only if all governments remain committed to working together to make it happen.²⁶

- 1.18** The Ministerial Council is supported by a Senior Officials Working Group (SOWG), chaired by the Commonwealth.²⁷ The Ministerial Council may make recommendations to COAG, under the NDIS Act, about NDIS policy matters or matters that arise under the NDIS Act.²⁸
- 1.19** The NSW Government submission states that the transition to the NDIS 'helps to simplify the system and allow one level of government – the Commonwealth Government – to have clear responsibility for specialist support for people with disability'.²⁹

National Disability Insurance Agency

- 1.20** The NDIS is administered by the NDIA, which is the statutory authority responsible for implementing the NDIS.³⁰ The NDIA's statutory functions are set out in section 118 of the *National Disability Insurance Scheme Act 2013* (Cth). The NDIA manages Scheme funds, administers access to the Scheme, approves the payment of individualised support packages and holds all funds contributed by all governments. The NDIA also manages, advises and reports on the financial sustainability of the NDIS; develops and enhances the disability sector; builds community awareness of disabilities and the social contributors to disabilities; collects, analyses and exchanges data about disabilities and the supports for people with disability; and undertakes research related to disabilities.³¹
- 1.21** The NDIA has decision-making powers related to access decisions, such as whether a person meets the access criteria to become a participant in the NDIS or not, which includes the revocation of a person's status as a participant, and planning decisions, such as decisions related to the approval, suspension and review of participant plans.³²

National Disability Insurance Scheme Quality and Safeguards Commission

- 1.22** The NDIS Quality and Safeguards Commission (NDIS Commission) was established in 2018 by the *National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other*

²⁶ Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 17 September 2018, p 2.

²⁷ *Bilateral Agreement* p 4.

²⁸ *National Disability Insurance Scheme Act 2013* (Cth) s 12.

²⁹ Submission 313, NSW Government, p 3.

³⁰ *National Disability Insurance Scheme Act 2013* (Cth), Chapter 6 Part 1.

³¹ *National Disability Insurance Scheme Act 2013* (Cth) s 118(1).

³² National Disability Insurance Scheme, *Statutory functions of the NDIA*, <https://www.ndis.gov.au/about-us/governance/functions-ndia-including-decision-making>

Measures) Act 2017.³³ The NDIS Commission is an independent statutory agency which was newly established in New South Wales and South Australia on 1 July 2018 and will progressively commence in other jurisdictions over the next two years. The NDIS Commission will be fully operational across Australia from 1 July 2020.³⁴

- 1.23** Broadly speaking, the functions of the NDIS Commission are to improve the quality and safety of NDIS supports and services, regulate the NDIS market, provide national consistency, identify areas for improvement and resolve issues. The NDIS Commission will implement the *NDIS Quality and Safeguarding Framework*, which was released by COAG in February 2017 and comes into effect as each state and territory reaches full scheme NDIS.³⁵
- 1.24** The Framework provides 'a nationally consistent approach to help empower and support NDIS participants to exercise choice and control, while ensuring appropriate safeguards are in place and establishes expectations for providers and their staff to deliver high quality supports'.³⁶ The principles of the Framework are: human rights, choice and control, national consistency, proportionality, presumption of capability, minimisation of red tape and efficiency and effectiveness.³⁷

How does the NDIS work?

- 1.25** This section provides a brief outline of how participants can access the Scheme, including eligibility criteria, and also covers complaints mechanisms.

Eligibility criteria

- 1.26** The *National Disability Insurance Scheme Act 2013* (Cth) sets out the eligibility criteria for persons wanting to access the NDIS. To be eligible for the NDIS, participants must meet certain age, residency and disability requirements. Participants must be under the age of 65 years and be an Australian citizen, hold a permanent visa or hold a Protected Special Category Visa.³⁸
- 1.27** The *National Disability Insurance Scheme Act 2013* (Cth) states that a person meets the disability requirements if:

³³ *National Disability Insurance Scheme Act 2013* (Cth) s 181A.

³⁴ NDIS Quality and Safeguards Commission, *About*, <https://www.ndiscommission.gov.au/about>.

³⁵ Australian Government, Department of Social Services, *NDIS Quality and Safeguarding Framework*, https://www.dss.gov.au/sites/default/files/documents/04_2017/ndis_quality_and_safeguarding_framework_final.pdf

³⁶ Australian Government, Department of Social Services, Disability and Carers – NDIS Quality and Safeguarding Framework, <https://www.dss.gov.au/disability-and-carers/programs-services/for-people-with-disability/ndis-quality-and-safeguarding-framework>

³⁷ Australian Government, Department of Social Services, *NDIS Quality and Safeguarding Framework*, pp 11-13, https://www.dss.gov.au/sites/default/files/documents/04_2017/ndis_quality_and_safeguarding_framework_final.pdf

³⁸ *National Disability Insurance Scheme Act 2013* (Cth) ss 22-23.

- the person has a disability that is attributable to one or more intellectual, cognitive, neurological, sensory or physical impairments or to one or more impairments attributable to a psychiatric condition; and
- the impairment or impairments are, or are likely to be, permanent; and
- the impairment or impairments result in substantially reduced functional capacity to undertake, or psychosocial functioning in undertaking, one or more of the following activities:
 - communication;
 - social interaction;
 - learning;
 - mobility;
 - self-care;
 - self-management; and
- the impairment or impairments affect the person's capacity for social or economic participation; and
- the person is likely to require support under the NDIS for the person's lifetime.³⁹

1.28 As stated in the National Disability Insurance Scheme (Becoming a Participant) Rules 2016, 'a person will meet the disability requirements if they have a disability that is attributable to an impairment that is permanent or likely to be permanent and that results in substantially reduced functional capacity'.⁴⁰

1.29 The *National Disability Insurance Scheme Act 2013* (Cth) and the National Disability Insurance Scheme (Becoming a Participant) Rules 2016 also set out the early intervention requirements. A participant meets the early intervention requirements if they have an impairment or condition that is likely to be permanent and there is evidence that receiving early intervention will help the person by reducing how much help they will need in the future.⁴¹ As stated Rules:

[A] person can access the NDIS through the early intervention requirements without having substantially reduced functional capacity. Instead, the early intervention requirements consider the likely trajectory and impact of a person's impairment over time and the potential benefits of early intervention on the impact of the impairment on the person's functional capacity.⁴²

1.30 Importantly, people who, prior to the NDIS, were receiving disability supports in New South Wales who meet the age and disability eligibility requirements for the NDIS will be able to access the NDIS in New South Wales, regardless of their residential or visa status.⁴³

³⁹ *National Disability Insurance Scheme Act 2013* (Cth) s 24.

⁴⁰ National Disability Insurance Scheme (Becoming a Participant) Rules 2016, 2.5(a).

⁴¹ *National Disability Insurance Scheme Act 2013* (Cth) s 25; National Disability Insurance Scheme (Becoming a Participant) Rules 2016, Part 6.

⁴² National Disability Insurance Scheme (Becoming a Participant) Rules 2016, 2.5(b).

⁴³ NSW Government, *About the NDIS in New South Wales*, <http://ndis.nsw.gov.au/about-ndis-nsw/>

Accessing and engaging the Scheme

Steps to accessing the NDIS

- 1.31** People who meet the NDIS access requirements can apply to join the NDIS.⁴⁴ Generally, there are three pathways to accessing the NDIS:
- People already receiving disability support services are contacted by the NDIA as the NDIS becomes available in their area⁴⁵
 - Parents/carers with children aged 0-6 years can contact their local Early Childhood Early Intervention Coordinator to establish eligibility⁴⁶
 - Those who are currently not receiving any disability supports can contact the NDIA and request an Access Request Form which asks questions to confirm a person's identity and questions to ascertain eligibility.⁴⁷
- 1.32** Following the submission of forms, additional questions may be asked about a person's disability and how it impacts their life, as well as forms to be completed by a health professional.⁴⁸ The NDIA reviews access requests against the criteria in the NDIS Act, outlined above.⁴⁹
- 1.33** There are various roles within the NDIS to facilitate individual plans. For example, Local Area Coordinators (LAC) help participants navigate the NDIS and develop, implement and review their plans, however they are not involved in determining eligibility for the NDIS.⁵⁰ NDIA Planners are NDIA staff and can approve plans.⁵¹ Support coordinators, that is an NDIA registered service providers, assist people with complex support needs.⁵²
- 1.34** Plans can be self-managed, plan-managed and NDIA-managed, or a combination of those options (for example, a person may choose to self-manage one part of their plan to begin with

⁴⁴ National Disability Insurance Scheme, *Accessing the NDIS*, <https://www.ndis.gov.au/people-disability/access-requirements.html>

⁴⁵ National Disability Insurance Scheme, *How to apply*, <https://www.ndis.gov.au/people-with-disability/access-requirements/completing-your-access-request-form.html>

⁴⁶ National Disability Insurance Scheme, *understanding the NDIS, Booklet 1*, p 6.

⁴⁷ National Disability Insurance Scheme, *How to apply*, <https://www.ndis.gov.au/people-with-disability/access-requirements/completing-your-access-request-form.html>

⁴⁸ National Disability Insurance Scheme, *How to apply*, <https://www.ndis.gov.au/people-with-disability/access-requirements/completing-your-access-request-form.html>

⁴⁹ National Disability Insurance Scheme, *Providing evidence of your disability*, <https://www.ndis.gov.au/people-with-disability/access-requirements/completing-your-access-request-form/evidence-of-disability#later>.

⁵⁰ National Disability Services, *Working with the NDIS: Provider forum NSW*, https://www.nds.org.au/images/files/NDIS_forum_presentation_NDIA_October_November.pdf

⁵¹ National Disability Services, *Working with the NDIS: Provider forum NSW*, https://www.nds.org.au/images/files/NDIS_forum_presentation_NDIA_October_November.pdf

⁵² Submission 347, NSW Ombudsman, p 5.

and have the rest of their plan managed by the NDIA).⁵³ Further details on plan management are outlined in chapter 2.

- 1.35** A review of a participant's first NDIS plan generally occurs 12 months after the plan commences which can take place either face-to-face or over the phone and is an opportunity to assess whether supports and services are helping participants achieve their goals.⁵⁴ A participant may be offered a future plan that lasts up to 24 months if their needs are less likely to change.⁵⁵
- 1.36** A plan review for a child is usually conducted with the child's Early Childhood Early Intervention (ECEI) Coordinator.⁵⁶ A child's access to the NDIS 'will be assessed at each plan review' as the child may no longer need support from the NDIS if the child's development has improved and they are achieving their goals.⁵⁷

Complaint mechanisms

- 1.37** There are various options available to participants of the NDIS who wish to complain about the NDIS, the NDIA, plan decisions, service providers, staff conduct and other matters:
- Complaints can be made directly to the service provider. All registered NDIS service providers must implement and maintain a complaints management and resolution system that is appropriate for the size of the provider and for the classes of supports or services provided by the provider.⁵⁸
 - The NDIA handles complaints about the NDIA and participant plans, and will continue to do so with the establishment of the NDIS Commission.⁵⁹ This includes complaints concerning staff conduct, processes and decisions. If an individual has a complaint about a staff member or process, they can make a complaint directly to the NDIA by telephone, email, in person or in writing.⁶⁰

⁵³ National Disability Insurance Scheme, *Planning*, p 10, <https://www.ndis.gov.au/medias/documents/pathway-booklet2-pdf/NDIS014-Participant-Pathwa-y-Book2-16pp-A4-Accessible-.pdf>.

⁵⁴ National Disability Insurance Scheme, *Local Area Coordination*, <https://www.ndis.gov.au/communities/local-area-coordination>; National Disability Insurance Scheme, *Using your NDIS plan*, p. 15, <https://www.ndis.gov.au/medias/documents/pathway-booklet3-pdf/NDIS015-Participant-Pathwa-y-Book3-20pp-A4-Accessible-.pdf>

⁵⁵ National Disability Insurance Scheme, *Using your NDIS plan*, p. 15, <https://www.ndis.gov.au/medias/documents/pathway-booklet3-pdf/NDIS015-Participant-Pathwa-y-Book3-20pp-A4-Accessible-.pdf>

⁵⁶ National Disability Insurance Scheme, *Using your NDIS plan*, p. 15, <https://www.ndis.gov.au/medias/documents/pathway-booklet3-pdf/NDIS015-Participant-Pathwa-y-Book3-20pp-A4-Accessible-.pdf>

⁵⁷ National Disability Insurance Scheme, *Using your NDIS plan*, p. 15, <https://www.ndis.gov.au/medias/documents/pathway-booklet3-pdf/NDIS015-Participant-Pathwa-y-Book3-20pp-A4-Accessible-.pdf>

⁵⁸ *National Disability Insurance Scheme Act 2013* (Cth) s 73W.

⁵⁹ NDIS Quality and Safeguards Commission, *Feedback about the NDIA*, <https://www.ndiscommission.gov.au/about/complaints-about-ndia>.

⁶⁰ National Disability Insurance Scheme, *Feedback and complaints*, <https://ndis.gov.au/about-us/contact-us/feedback-complaints.html>

- The NDIS Commission has primary responsibility for handling complaints and receiving notifications of reportable incidents involving NDIS service providers.⁶¹
- The Commonwealth Ombudsman has jurisdiction to investigate the administrative actions of the NDIA and the NDIS Commission.⁶²
- Participants can also lodge an appeal with the Administrative Appeals Tribunal (AAT) after an internal review of their plan has been conducted by the NDIA.⁶³

1.38 The NSW Ombudsman will continue to have jurisdiction over services funded, licensed or operated by FACS, including FACS-operated disability accommodation and assisted boarding houses and in coordinating the official Community Visitor Scheme.⁶⁴

1.39 Chapter 6 of this report examines the oversight of disability services in more detail.

Rollout of the NDIS in New South Wales

Disability service provision prior to the NDIS

1.40 Prior to the development of the NDIS, the National Disability Agreement (NDA) outlined Australian government and state and territory responsibilities regarding the disability sector.⁶⁵ Previously, the role of states and territories was to deliver specialist disability support services, including supported accommodation, community support, respite, case management, and early childhood intervention.

1.41 In New South Wales, specialist disability support services were delivered by Ageing, Disability and Home Care (ADHC) which was part of the Department of Family and Community Services (FACS). ADHC provided disability services and directly funded service providers to deliver disability services, including through block funding. However, the responsibility for providing disability support has transitioned to the Commonwealth and now falls under the responsibility

⁶¹ Submission 347, NSW Ombudsman, p 2.

⁶² Commonwealth Ombudsman, *Annual Report 2016-17: Part 4 – What We Do*, <http://www.ombudsman.gov.au/publications/reports/annual/all-reports/docs/2016-17/part-4-what-we-do>

⁶³ *National Disability Insurance Scheme Act 2013* (Cth) s 103; NDIS, *Planning*, p 14, <https://www.ndis.gov.au/medias/documents/pathway-booklet2-pdf/NDIS014-Participant-Pathwa-y-Book2-16pp-A4-Accessible-.pdf>.

⁶⁴ Evidence, Mr Steve Kinmond, Community and Disability Services Commissioner/Deputy Ombudsman, NSW Ombudsman, 2 October 2018, p 2. See also: Submission 347, NSW Ombudsman, p 10.

⁶⁵ Council on Federal Financial Relations, *National Disability Agreement*, 2009, http://www.federalfinancialrelations.gov.au/content/npa/national_agreements/national-disability-agreement.pdf. See also: Australian Government, Department of Social Services, *National Disability Agreement*, <https://www.dss.gov.au/disability-and-carers/programmes-services/government-international/national-disability-agreement>.

of the NDIS. ADHC ceased providing disability services in New South Wales from 30 June 2018.⁶⁶

1.42 As such, the 'key focus' of ADHC over the last few years has been 'to help NSW prepare for the NDIS'.⁶⁷ Since 1 July 2016, ADHC has done this by transferring services previously funded by ADHC to non-government organisations and by working with the NDIA 'to assist ADHC clients in making their transition to the NDIS as smooth as possible'.⁶⁸

1.43 The NSW Government continues to fund mainstream and community support services that may interface with disability services. This will be covered in more detail in chapter 4.

The NDIS in New South Wales

1.44 Prior to the NDIS, New South Wales had begun reform of the disability sector, which complemented the ethos of the NDIS and 'helped pave the way for the introduction of the NDIS'.⁶⁹ According to Mr Reardon, Department of Premier and Cabinet:

New South Wales first began investing over a decade ago in more flexible, person-centred, specialist disability services to respond to needs identified by people with disability and the sector more generally.⁷⁰

1.45 New South Wales became the first jurisdiction to agree to the full scheme in December 2012.⁷¹ Mr Michael Coutts-Trotter, Secretary of the Department of Family and Community Services, suggested that New South Wales played an important role in the success of the NDIS:

Arguably, if New South Wales had not committed to the NDIS there would not be an NDIS. It was the frisson of a Coalition Government committing to a then Labor Commonwealth Government reform that, I think, locked it in. New South Wales would not have been in a position to do that if it had not been in line with a continuum of reform. Also, New South Wales had the financial ability to make that commitment, in part because we are getting out of the direct delivery of disability services. That has freed up around \$200 million a year that was formerly consumed, quite appropriately,

⁶⁶ *Bilateral Agreement between the Commonwealth of Australia and the State of New South Wales on the National Disability Insurance Scheme*, <https://www.coag.gov.au/sites/default/files/agreements/nsw-bilateral-agreement.pdf>. See also, NSW Government, *Changes to provider block funding during transition to the NDIS*, <https://ndis.nsw.gov.au/serviceproviders/adhc-funding-arrangements-and-ndis-transition/>; NSW Government, *FAQs for service providers*, <https://ndis.nsw.gov.au/serviceproviders/adhc-funding-arrangements-and-ndis-transition/faqs-for-service-providers/>.

⁶⁷ NSW Government, Family and Community Services, *Delivering disability services in NSW*, <https://www.facs.nsw.gov.au/about/what/disability-services>.

⁶⁸ NSW Government, Family and Community Services, *Delivering disability services in NSW*, <https://www.facs.nsw.gov.au/about/what/disability-services>.

⁶⁹ NSW Government, *History of the NDIS*, <http://ndis.nsw.gov.au/about-ndis-nsw/history-of-the-ndis/>.

⁷⁰ Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 17 September 2018, p 2.

⁷¹ NSW Government, *NDIS: Key dates*, <http://ndis.nsw.gov.au/about-ndis-nsw/history-of-the-ndis/key-dates/>. See also: NSW Government, *NDIS reform factsheet*, http://ndis.nsw.gov.au/wp-content/uploads/2018/05/CS0535-NDIS-Reform-factsheet_v2.pdf.

inside my agency in management, policy and corporate and administrative support. That has all gone into the National Disability Insurance Scheme. So we were able to commit, without drawing money in from other services, to things like community mental health.⁷²

- 1.46** On 1 July 2013, a three-year trial site was established in the Hunter region, covering the local government areas of Newcastle, Maitland and Lake Macquarie, which moved to full scheme on 1 July 2016.⁷³
- 1.47** On 1 July 2015, an early transition site for children and young people (0-17 years) living in the Blue Mountains, Hawkesbury, Lithgow and Penrith local government areas was set up, which provided support for around 2,000 families.⁷⁴ This area moved to full scheme on 1 July 2016.⁷⁵
- 1.48** On 16 September 2015, a bilateral agreement was signed by then Prime Minister Malcolm Turnbull and then New South Wales' Premier Mike Baird for the rollout of the NDIS in New South Wales.⁷⁶
- 1.49** The NDIS was rolled out in New South Wales from 1 July 2016 following the trial in the Hunter area and the early transition site in the Nepean Blue Mountains.⁷⁷
- 1.50** On 25 May 2018, the Commonwealth and New South Wales governments entered into the Bilateral Agreement between the Commonwealth of Australia and the State of New South Wales on the National Disability Insurance Scheme, which commenced on 1 July 2018.⁷⁸
- 1.51** In July 2018, the NDIS became available across New South Wales.⁷⁹
- 1.52** There are currently more than 97,000 people with disability participating in the NDIS in New South Wales,⁸⁰ the majority of whom had previously accessed Government-funded disability

⁷² Evidence, Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, 17 September 2018, p 8.

⁷³ NSW Government, *NDIS Hunter trial site*, <https://ndis.nsw.gov.au/about-ndis-nsw/hunter-trial-site/>.

⁷⁴ NSW Government, *The NDIS in Nepean Blue Mountains*, <https://ndis.nsw.gov.au/about-ndis-nsw/nepean-blue-mountains/>.

⁷⁵ NSW Government, *The NDIS in Nepean Blue Mountains*, <https://ndis.nsw.gov.au/about-ndis-nsw/nepean-blue-mountains/>.

⁷⁶ *Bilateral Agreement between the Commonwealth and New South Wales for the transition to an NDIS*, http://www.federalfinancialrelations.gov.au/content/npa/community_services/other/CNSW_Bilateral_Agreement.docx.

⁷⁷ NSW Government, *The NDIS in Nepean Blue Mountains*, <https://ndis.nsw.gov.au/about-ndis-nsw/nepean-blue-mountains/>.

⁷⁸ *Bilateral Agreement between the Commonwealth of Australia and the State of New South Wales on the National Disability Insurance Scheme*, <https://www.coag.gov.au/sites/default/files/agreements/nsw-bilateral-agreement.pdf>.

⁷⁹ NSW Government, *NDIS: Key dates*, <http://ndis.nsw.gov.au/about-ndis-nsw/history-of-the-ndis/key-dates/>.

⁸⁰ Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 17 September 2018, p 2.

services delivered primarily by the former ADHC.⁸¹ According to the NSW Government, 99 per cent of existing New South Wales disability clients have transitioned into the Scheme, are receiving alternate supports, such as aged care, mainstream services, community services, or no longer require services.⁸²

- 1.53** Of the more than 97,000 NDIS participants in New South Wales, 26,000 are 'new entrants' having never received any state-funded disability supports before.⁸³ Accordingly, the NSW Government stated that under the NDIS 'more people will be accessing supports than through previous state-funded disability supports' in New South Wales.⁸⁴
- 1.54** According to the Productivity Commission's projections for the NDIS's reach, the Scheme is expected to cover approximately 410,000 people with a significant and permanent disability across the country,⁸⁵ with between 140,000 to 150,000 of those participants being from New South Wales.⁸⁶
- 1.55** The COAG Disability Reform Council performance report for New South Wales stated that as at 30 September 2018, there are 8,760 registered service providers, 3,874 are sole traders and 4,886 are organisations.⁸⁷

Role of the NSW Government

- 1.56** In addition to the national governance framework outlined earlier, there are several governance frameworks related to the NDIS and other related portfolios within New South Wales. As noted in the NSW Government submission:

There are a number of forums and processes in place in NSW to consider operational issues as the NDIS is implemented, and drive effectiveness of the Scheme in NSW. NSW mainstream agencies, the NDIA and the Commonwealth Government participate in these.

The NSW Government has a number of structures in place to oversee NSW's role in supporting the Commonwealth Government in implementing and administering the NDIS, and oversee the NSW Government's disability inclusion policy and reform activities.⁸⁸

⁸¹ Submission 313, NSW Government, p 8.

⁸² Submission 313, NSW Government, p 8.

⁸³ Evidence, Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, 2 October 2018, p 79.

⁸⁴ Submission 313, NSW Government, p 2.

⁸⁵ Answers to questions on notice, People With Disability Australia, 15 October 2018, p 11.

⁸⁶ Answers to questions on notice, National Disability Services, 11 October 2018, p 2; Answers to questions on notice, Mission Australia, 24 October 2018, p 1; Evidence, Ms Serena Ovens, Convenor, NSW Disability Advocacy Alliance, 2 October 2018, p 36; Evidence, Mr Tony Pooley, Senior Manager, State Operations, National Disability Services, 17 September 2018, p 31.

⁸⁷ Council of Australian Governments, Disability Reform Council: Quarterly Performance Report – New South Wales, 30 September 2018, p 71, <https://www.ndis.gov.au/medias/documents/q1-201819-report-full/Report-COAG-for-Q1-of-Y6-Full-report.pdf>

⁸⁸ Submission 313, NSW Government, p 30.

- 1.57** In 2015, a NSW Government secretary level NDIS Board was established which 'guided' New South Wales' transition to the NDIS.⁸⁹ Mr Reardon advised that this secretary level NDIS Board was 'supported by a dedicated NDIS Reform Group in the Department of Premier and Cabinet' and 'has provided whole-of-government coordination and project management'.⁹⁰ Mr Reardon also stated that the Board was established to 'basically bring us together as a single one-voice New South Wales approach':

That coordination has been very important for us. The collegiate role of having six secretaries out of 10 for the New South Wales Government together on a frequent basis, chaired by the Secretary of the Department of Family and Community Services and supported by the remaining secretaries, indeed has been a very collaborative and focused approach. It has really helped us with our Go Live activity leading to 1 July 2018, but it has been going on for some years.⁹¹

- 1.58** The NDIS Reform Group was established in 2016 'to support the successful implementation of the NDIS in NSW'.⁹² The NSW Government submission states:

[The Reform Group] focusses on strategic, policy, and cross-agency matters. The Reform Group is supported by the Inclusion & Early Intervention Directorate in FACS, which supports the Minister for Disability Services and drives the Government's inclusion agenda.⁹³

- 1.59** Ms Elizabeth Koff, Secretary of NSW Health also spoke about the interactions and governance set up within departments and portfolios that have crossover with the NDIS, such as NSW Health. Ms Koff explained to the committee the need for coordinators and leadership positions beyond the high-level governance to address issues at the operational level:

Under the governance of the health system with the local health districts we established an NDIS coordinator or leadership position within each district because, with the high level governance that is well established at a whole-of-government level, it is the issues on the ground at the operational level that represent the day-to-day challenges. We established the NDIS coordinator leader positions within Health and also have a governance structure at the system-wide level at the State level for NSW Health and NDIS issues management. As described by Mr Reardon earlier, when we have issues that we have trouble resolving at those local areas on a case-by-case issue, we escalate through the normal channels via the NDIS senior officers group and the board...

The other part of the governance that I think it is important to understand also is that all the Health secretaries across the country meet as part of the Australian Health Ministers' Advisory Council [AHMAC]. In the recently negotiated Health Reform Agreement, we have identified interface issues between the NDIS and Health systems nationally as an issue that we need to be fully aware of and understand what the challenges of the interface issues are. The response to health occurs at a number of

⁸⁹ Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 17 September 2018, p 2.

⁹⁰ Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 17 September 2018, p 2.

⁹¹ Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 17 September 2018, p 3.

⁹² Submission 313, NSW Government, p 30.

⁹³ Submission 313, NSW Government, p 30.

levels to ensure that we are delivering the best service possible for the clients for the NDIS.⁹⁴

NSW Government initiatives and services during transition

- 1.60** The NSW Government stated in their submission that they are ‘implementing a number of transitional arrangements to manage risks of service gaps and issues during the early years of full scheme NDIS, whilst roles and responsibilities are clarified as implementation of the Scheme is further embedded’.⁹⁵
- 1.61** These arrangements include funding advocacy support during the early years of full scheme NDIS with ‘the Transitional Advocacy Funding Supplement of up to \$26 million over two years for advocacy services until 2020’ and over \$40 million in funding for Ability Links in 2018/19.⁹⁶ Advocacy support is discussed in chapter 4.
- 1.62** The NSW Government outlined a number of other disability supports and services across agencies including:
- a mechanism to enable schools to access specialist allied health supports (such as speech pathology, occupational therapy, physiotherapy, and behavioural intervention) which is being implemented by the NSW Department of Education.⁹⁷
 - a service to provide specialist coordination expertise to assist people with co-morbid psychosocial and intellectual disability (including NDIS participants and non-participants), funded for three years and located in each Local Health District.⁹⁸ This includes a further \$4.7 million each year to enhance and expand specialised intellectual disability health services.⁹⁹
 - funding over two years to continue the Dysphagia Clinic at Westmead Hospital (providing expert assessment services for children and adults with swallowing impairment), and the Regional Assessment Services (providing assessments for children with suspected autism spectrum disorder who live in regional and rural districts).¹⁰⁰
 - establishing the SASH program, which provides clinical and non-clinical supports to people with functional impairments who are not eligible for funding through the NDIS but who require support to stay at home and out of hospital or residential aged care. This program is funded for two years and delivered by NSW Health.¹⁰¹
 - increasing state-wide support for people with disability in contact with the criminal justice system to enable a person with an intellectual disability and/or a cognitive impairment to

⁹⁴ Evidence, Ms Elizabeth Koff, Secretary, NSW Health, 17 September 2018, p 4.

⁹⁵ Submission 313, NSW Government, p 22.

⁹⁶ Submission 313, NSW Government, pp 22-23.

⁹⁷ Submission 313, NSW Government, p 23.

⁹⁸ Submission 313, NSW Government, p 23.

⁹⁹ Submission 313, NSW Government, p 23.

¹⁰⁰ Submission 313, NSW Government, p 23.

¹⁰¹ Submission 313, NSW Government, p 23.

receive support from a trained volunteer or staff member from the disability advocacy sector.¹⁰²

- supporting children with disability in voluntary out of home care (VOOHC) arrangements and their families to live together and, where this is not possible, the NSW Government, NDIS and NSW Office of the Children's Guardian working together to determine the best option for the child.¹⁰³

1.63 Regarding the implementation of the above transitional initiatives, the NSW Government stated that 'NSW agencies will consider use and demand closely to help determine any ongoing need. This includes considering where the Scheme has matured and clarity provided to roles and responsibilities'.¹⁰⁴

1.64 The NSW Government has also retained funding for its community based psychosocial mental health support services, which has not been retained in some other jurisdictions, and will continue to fund a range of community based psychosocial support programs, such as the Housing and Accommodation Support Initiative (HASI) and Community Living Supports.¹⁰⁵

1.65 The NSW Government also noted their commitment to supporting the inclusion of people with disability in the New South Wales community with the *Disability Inclusion Act 2014* (NSW), Disability Inclusion Action Planning and the NSW Disability Council.¹⁰⁶

1.66 Further discussion of disability supports and services to people outside of the NDIS, including initiatives and services available, will be discussed in chapter 4.

¹⁰² Submission 313, NSW Government, p 23.

¹⁰³ Submission 313, NSW Government, p 24.

¹⁰⁴ Submission 313, NSW Government, p 24.

¹⁰⁵ Submission 313, NSW Government, p 26; Evidence, Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, 17 September 2018, p 8.

¹⁰⁶ Submission 313, NSW Government, p 24.

Chapter 2 Implementation of the National Disability Insurance Scheme in New South Wales

The National Disability Insurance Scheme (NDIS) has been described as a once-in-a-generation reform, aimed at improving the lives of people with disability across Australia by providing for greater choice and control. In changing the way disability supports are funded, the NDIS represents a fundamental shift in the way disability services are delivered into the future.

This is the first of two chapters to explore how a reform of this magnitude has been implemented in New South Wales to date, with New South Wales being the first state to achieve full rollout of this national initiative. This chapter focuses on the key implementation issues identified by stakeholders seeking access to and engaging the Scheme, while chapter 3 examines the transfer of disability services from the NSW Government to the NDIS and the impact of this decision. Together, these chapters consider one of the fundamental questions of this inquiry – is the Scheme delivering on its promise to people with disability in New South Wales?

This chapter begins with a brief consideration of the Scheme's objectives and the principles underpinning the design of the NDIS. It then examines the key experiences and concerns of stakeholders as the Scheme becomes a practical reality, including challenges around eligibility, NDIS plans, and administrative systems supporting the Scheme. The chapter concludes with a focus on access to early intervention supports for children.

The NDIS promise

- 2.1 As outlined in chapter 1, the NDIS is a system under which Australians with significant and permanent disability are provided reasonable and necessary supports through individualised funding packages.¹⁰⁷ These packages are determined through plans prepared for each participant and tailored to support their individual needs and goals.¹⁰⁸ This section explores the underlying principles behind this design and the promise the Scheme holds for people with disability across the country.
- 2.2 According to Ms Vicki Rundle, Deputy Chief Executive Officer – Government, Communications and Stakeholder Engagement, National Disability Insurance Agency, the NDIS is driven, at every level, to deliver on its promise: that 'every Australian with a significant and permanent disability, along with their families and carers, can get the support they need to maximise their potential in their communities'.¹⁰⁹
- 2.3 Built on this promise, Ms Rundle advised that the NDIS is underpinned by the basic premise that people with disability have a right to be respected and included, and be given every opportunity for social and economic participation in the wider community:

¹⁰⁷ Submission 342, National Disability Insurance Agency, p 1.

¹⁰⁸ Evidence, Mr Scott McNaughton, General Manager – Government, National Disability Insurance Agency, 17 September 2018, p 20; Submission 313, NSW Government, p 10.

¹⁰⁹ Evidence, Ms Vicki Rundle, Deputy Chief Executive Officer – Government, Communications and Stakeholder Engagement, National Disability Insurance Agency, 17 September 2018, p 12.

We recognise that all Australians with a disability have the right to participate fully in and enjoy the benefits of being a member of their community, to have the dignity of being able to find employment to the extent that they can work, and to be respected for who they are as an individual.¹¹⁰

- 2.4** These values were also reflected by the NSW Government, who referred to the NDIS as a system 'designed to empower people'.¹¹¹ Mr Tim Reardon, Secretary of the Department of Premier and Cabinet, drew particular attention to what he considered to be at the heart of the Scheme – supporting people with disability to reach their full potential and to exercise choice and control over their lives:

The Scheme is often talked about in numbers—dollar figures and the number of people accessing it—and while all of that is important, it is not at the heart of it. The scheme is about supporting people with disability to reach their full potential and to exercise the same right of all Australians to have choice and management over their lives.¹¹²

- 2.5** On this basis, the National Disability Insurance Agency (NDIA) advised that the Scheme is grounded in principles of insurance, rather than welfare.¹¹³ Ms Rundle informed that the NDIS takes a 'whole-of-life view of the person' by investing in them, through individualised funding, at the earliest point to maximise the benefits they might receive from the Scheme.¹¹⁴ It is an approach the NDIA maintains gives participants the ability to exercise choice and control over their lives as they are able to determine the supports and services they need.¹¹⁵
- 2.6** While some stakeholders questioned the rationale behind the NDIS and the move towards individualised funding,¹¹⁶ many others throughout the inquiry expressed overwhelming support for the Scheme's intentions and what the Scheme represents, regardless of any experience they have had with the NDIS. As Ms Amber Curry, a young NDIS participant, simply put: 'What the NDIS stands for is good'.¹¹⁷ These inquiry participants consistently told the committee they valued and identified with the underlying principles of the Scheme.¹¹⁸
- 2.7** For example, Ms Anita Le Lay, Head of Disability, Uniting, stated that the Scheme 'embodies a critical change in the way that we as a society support people with disability'.¹¹⁹ Meanwhile, Dr

¹¹⁰ Evidence, Ms Vicki Rundle, Deputy Chief Executive Officer – Government, Communications and Stakeholder Engagement, National Disability Insurance Agency, 17 September 2018, p 12.

¹¹¹ Submission 313, NSW Government, p 2.

¹¹² Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 17 September 2018, p 2.

¹¹³ Submission 342, National Disability Insurance Agency, p 1.

¹¹⁴ Evidence, Ms Vicki Rundle, Deputy Chief Executive Officer – Government, Communications and Stakeholder Engagement, National Disability Insurance Agency, 17 September 2018, p 12.

¹¹⁵ Submission 342, National Disability Insurance Agency, p 1.

¹¹⁶ For example, Submission 343, Public Service Association of NSW and Community and Public Sector Union NSW, p 4.

¹¹⁷ Evidence, Ms Amber Curry, NDIS participant, 17 September 2018, p 39.

¹¹⁸ For example, Evidence, Dr Kim Bulkeley, Industry Adviser, Occupational Therapy Australia, 2 October 2018, p 56; Mr Tony Pooley, Senior Manager, State Operations, National Disability Services, 17 September 2018, p 29; Evidence, Mr Dennis Ravlich, Manager, Member Industrial Services Team, NSW Nurses and Midwives' Association, 2 October 2018, p 65.

¹¹⁹ Evidence, Ms Anita Le Lay, Head of Disability, Uniting, 2 October 2018, p 9.

Jacqueline Small, Fellow, Royal Australasian College of Physicians (RACP), conveyed support for the Scheme's 'underlying values and principles, including individual autonomy, non-discrimination of full, effective participation and inclusion in society'.¹²⁰ Reflecting these views, Ms Kim Bulkeley, Industry Adviser, Occupational Therapy Australia, endorsed 'the aspirations of this important public policy initiative'.¹²¹

2.8 To this end, numerous stakeholders regard the NDIS as an important and transformative reform, with the capacity to significantly change lives. As Ms Elena Katrakis, Chief Executive Officer, Carers NSW, said: 'We support the vision and goals of the NDIS and believe that the Scheme has great potential to improve the lives of people with disability, their families and carers'.¹²²

2.9 In their submission, the NSW Disability Advocacy Alliance, a coalition of independent disability advocacy, information and peak representative organisations, made similar assertions, telling the committee that the call for a reform of this nature had come from many within the disability sector itself:

The NDIS is considered by the members of the NSW Disability Advocacy Alliance to be the largest piece of social reform since the introduction of Medicare, with the capacity to make a substantial difference to the lives of people with disability if fully implemented in accordance with the NDIS Act and its underlying principles of choice and control. Many of our organisations campaigned for its instigation and implementation, and still believe it is a reform worth fighting for.¹²³

2.10 Indeed, Mr Reardon acknowledged that the sector had urged for disability supports and services to be reframed under the NDIS, such that people with disability would be at the core of the system:

[The new service delivery model] is what people with disability wanted in terms of our scheme design, that they were placed at the centre, quite rightly ... moving away from somewhat of a pillared or siloed approach of supply side with big agencies to a customer-centred approach ...¹²⁴

2.11 Mr Reardon advised that the NSW Government had progressively invested and worked towards 'more flexible, person-centred, specialist disability services' as a direct response to needs identified by people with disability and the sector more broadly.¹²⁵ He stated that the NDIS thus marks 'the culmination of a decade or more of disability reform',¹²⁶ and one that remains decidedly different from any previous models:

¹²⁰ Evidence, Dr Jacqueline Small, Fellow, Royal Australasian College of Physicians, 2 October 2018, p 57.

¹²¹ Evidence, Dr Kim Bulkeley, Industry Adviser, Occupational Therapy Australia, 2 October 2018, p 57.

¹²² Evidence, Ms Elena Katrakis, Chief Executive Officer, Carers NSW, 2 October 2018, p 23.

¹²³ Submission 294, NSW Disability Advocacy Alliance, p 3.

¹²⁴ Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 2 October 2018, p 80.

¹²⁵ Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 17 September 2018, p 2.

¹²⁶ Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 17 September 2018, p 2.

... [T]he key with the NDIS is you are moving to a customer-centric approach to services ... and there has been for the first time a scheme that is wrapped around [people with disability], not them having to reach out to every single area of a government. It is very much a different service delivery model and a service delivery model that ... has been 10 or more years in the making. To get to here is a very positive thing, but it is a very different service delivery model.¹²⁷

- 2.12** Given the magnitude of this reform, Ms Rundle, NDIA, highlighted the Agency's commitment to 'getting it right for participants' by ensuring that the Scheme remains 'person-focused and outcomes oriented'.¹²⁸
- 2.13** These sentiments were echoed by Mr Reardon, Department of Premier and Cabinet, who conveyed the NSW Government's 'ongoing commitment to improving outcomes for people with disability in this new customer-empowered environment'.¹²⁹

The lived reality

- 2.14** Among the key questions raised during the inquiry was whether the Scheme is delivering on its promise to provide the necessary supports for people with disability to meet their needs and achieve their goals.
- 2.15** The committee received extensive evidence representing the full range of stakeholder experience with the Scheme. For a number of inquiry participants, the Scheme's potential has already been realised, while for others the road to accessing disability supports has been long and difficult. For others still the Scheme has proven disappointing and out of reach, either leaving people with less or limited support, or without any support at all. As Dr Small, RACP, observed, the implementation of the Scheme across New South Wales has garnered 'incredibly varied experience'.¹³⁰

A promise fulfilled

- 2.16** For many people with disability supported by the NDIS, the Scheme has succeeded in meeting every objective. According to the NDIA, '[NDIS] participants and their families are saying the NDIS is helping them in many ways',¹³¹ stating:

Participants have reported improved outcomes across multiple life domains, with the highest impact felt within the domains of choice and control, daily living activities and health and wellbeing.¹³²

¹²⁷ Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 2 October 2018, p 80.

¹²⁸ Evidence, Ms Vicki Rundle, Deputy Chief Executive Officer – Government, Communications and Stakeholder Engagement, National Disability Insurance Agency, 17 September 2018, p 12.

¹²⁹ Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 17 September 2018, p 3.

¹³⁰ Evidence, Dr Jacqueline Small, Fellow, Royal Australasian College of Physicians, 2 October 2018, p 49.

¹³¹ Submission 342, National Disability Insurance Agency, p 1.

¹³² Submission 342, National Disability Insurance Agency, p 1.

- 2.17** Ms Rundle reported that satisfaction rates with the NDIS are at 88 per cent, with participants 'rating their overall experience with the NDIA as either "Good" or "Very Good"'.¹³³
- 2.18** Indeed, during the inquiry stakeholders acknowledged that positive outcomes are being delivered to certain individuals under the NDIS, particularly to people who were not previously receiving any disability support.¹³⁴ The NDIA advised that in fact 27 per cent of people who are currently receiving NDIS support were not previously receiving support from either the NSW or Commonwealth governments.¹³⁵
- 2.19** A number of NDIS participants themselves, as well as carers of participants, shared with the committee their experiences with the Scheme, and how it has enabled them to exercise choice and control over their lives and receive disability supports in a way that had not been available to them before.
- 2.20** For example, one inquiry participant, whose 55 year old partner has early onset Alzheimer's disease, told the committee how the NDIS has been a 'life saver', giving her family flexibility, freedom and peace of mind knowing that her partner is receiving care and assistance:
- ... [W]e have a young family and I work full-time. The NDIS has just commenced this year for us and so far, I cannot fault it. It has given me the opportunity to have services to him and assistance with our life as I cannot be at home with him 24/7, as well as being a mother and a carer. Thank you for the NDIS, it has been a life saver for our family!¹³⁶
- 2.21** Likewise, Ms Karen Wakely, whose teenage son has autism, said that the NDIS 'really has made a big difference in our life and it has given us the first meaningful support that we have had'.¹³⁷ She explained that before the Scheme, her son had received no effective support at all as therapy was not affordable. Ms Wakely told the committee: 'Now we have actually got access to affordable therapy and it has come at a critical time in the life of the family'.¹³⁸
- 2.22** Ms Melinda Paterson, an NDIS participant herself, shared how the Scheme is 'working really well for me'.¹³⁹ Currently in her second plan under the NDIS, Ms Paterson stated that she is a new entrant, having never previously sought or received any disability support because she does not have an intellectual disability and worked full time. Under the Scheme, Ms Paterson found the independence, control and flexibility she needed to receive services and engage providers who could work with her circumstances. She stated:

... I have come in purely as a consumer. So I looked in the market and I found a provider who would be flexible and who would see me as the boss rather than

¹³³ Submission 342, National Disability Insurance Agency, p 1.

¹³⁴ For example, Ms Therese Sands, Co-Chief Executive Office, People with Disability Australia, 17 September 2018, p 33; Evidence, Ms Melinda Patterson, NDIS participant, 17 September 2018, p 40; Evidence, Mr Tony Pooley, Senior Manager, State Operations, National Disability Services, 17 September 2018, p 34.

¹³⁵ Submission 342, National Disability Insurance Agency, p 1.

¹³⁶ Submission 43, Name suppressed, p 1.

¹³⁷ Evidence, Ms Karen Wakely, NDIS carer, 17 September 2018, p 51.

¹³⁸ Evidence, Ms Karen Wakely, NDIS carer, 17 September 2018, p 51.

¹³⁹ Evidence, Ms Melinda Paterson, NDIS participant, 17 September 2018, p 40.

themselves. I pay them to do what I want them to do and only what I want them to do.
... I am in charge of my care; no-one else is.¹⁴⁰

A Scheme falling short

2.23 While the Scheme has clearly worked for certain people with disability the committee received evidence that for others the experience has not been as positive. In fact, most inquiry participants contended that the NDIS has, more often than not, fallen short of meeting the expectations of people with disability, and their families and carers. As Mr Tony Pooley, Senior Manager, State Operations, National Disability Services, stated:

... [W]e acknowledge that when all aspects of the scheme come together—an appropriate plan, adequate funds and functioning administrative systems—there have been some great outcomes for people with a disability. But all too often this has not been the case.¹⁴¹

2.24 According to these stakeholders, the NDIS has not delivered on its promise – rather it has delivered less choice and control, a reduced quality of care, more confusion and less transparency.¹⁴² As a young NDIS participant who experienced much difficulty accessing the Scheme, Ms Curry stated frankly: 'I am being failed'.¹⁴³

2.25 For many of these people, the Scheme's inadequacies are directly tied to the total transfer of NSW Government specialist disability service provision, delivered primarily by the Department of Family and Community Services, to the NDIS. This is examined in detail in chapter 3.

2.26 For others, the Scheme has fallen short because of the challenges that have emerged with its implementation, with inquiry participants drawing attention to inefficiencies and signs of poor management during the Scheme's rollout. While many concerns were raised during the inquiry, the following section will focus on the key issues identified by stakeholders.

Committee comment

2.27 The NDIS promises to provide every Australian with a significant and permanent disability, along with their families and carers, the support they need to maximise their full potential in life. It is a promise underpinned by values and principles acknowledging the rights of people with disability to be treated with full dignity and respect.

2.28 The committee notes that the Scheme is designed to provide choice and control to participants through an individualised funding model, allowing them to determine the supports and services they need. In this way, the committee acknowledges the views of stakeholders who regard the Scheme as transformative in nature, bearing the capacity to significantly change lives.

¹⁴⁰ Evidence, Ms Melinda Paterson, NDIS participant, 17 September 2018, p 43.

¹⁴¹ Evidence, Mr Tony Pooley, Senior Manager, State Operations, National Disability Services, 17 September 2018, p 29.

¹⁴² For example, Submission 343, NSW Public Service Association and Community and Public Sector Union NSW; Submission 120, NSW Council for Intellectual Disability Advocacy Group, p 6.

¹⁴³ Evidence, Ms Amber Curry, NDIS participant, 17 September 2018, p 39.

- 2.29** Whether the Scheme is delivering on its promise, however, is one of the fundamental questions of this inquiry. The committee notes the evidence of inquiry participants who attested to the great difference the NDIS has and is continuing to make in the lives of many people with disability. The committee also notes that for many others, the Scheme has fallen short of meeting expectations and that some people with disability have encountered great difficulty in accessing the supports they need through the Scheme.

Implementation issues

- 2.30** While acknowledging the good the Scheme has done, stakeholders consistently told the committee that the NDIS rollout has raised various challenges and concerns which in turn have impacted significantly on people with disability and their families.¹⁴⁴ As People with Disability Australia (PWDA) advised:

The NDIS has contributed significantly to achieving greater choice and control for many people with disability in NSW. However, NDIS implementation has not been smooth and there are many issues and concerns that people with disability are consistently raising ...¹⁴⁵

- 2.31** Indeed, Mr Dennis Ravlich, Manager, Member Industrial Services, NSW Nurses and Midwives Association, suggested that at present there is a real disconnect between the intentions and principles of the Scheme and its function and practice in reality:

Disappointingly ... problems are being encountered in converting a most worthy concept and legislative framework to a practical and effective day-to-day scheme that truly delivers independence, choice and control to people with disability. Unless its implementation and approach is truly centred on people with disability and sufficiently resourced to provide timely and adequate services and support, the productivity to the community, along with the individual dignity it was meant to liberate, will not be realised.¹⁴⁶

- 2.32** Stakeholders drew attention to a number of aspects of the Scheme's implementation that has presented challenges to people with disability, including system navigation, access to the Scheme, NDIS plans, and administrative systems.

- 2.33** Mr Pooley, National Disability Services, alluded to many of these, stating:

... [M]ore than five years after the scheme launched, both providers and participants are faced with poor, inconsistent and inadequate annual plans; a dysfunctional portal and IT interface; lack of communication from the NDIA; inadequate telephone and email support; unacceptable delays in initial plan creation, plan reviews and plan

¹⁴⁴ For example, Evidence, Mr Tony Pooley, Senior Manager, State Operations, National Disability Services, 17 September 2018, p 29; Evidence, Dr Kim Bulkeley, Industry Adviser, Disability, Occupational Therapy Australia, 2 October 2018, p 55.

¹⁴⁵ Submission 329, People with Disability Australia, p 13.

¹⁴⁶ Evidence, Mr Dennis Ravlich, Manager, Member Industrial Services, NSW Nurses and Midwives' Association, 2 October 2018, p 65.

renewals; inadequate prices across a range of supports; and extensive delays in payments to providers.¹⁴⁷

Navigating the system

2.34 Among the key concerns raised by inquiry participants with the implementation of the NDIS is that the Scheme is incredibly difficult to navigate, unclear and overwhelming for the very people it was intended to assist. For example, the NSW Council for Intellectual Disability Advisory Group, comprised entirely of people with intellectual disability, identified a number of areas they found especially confusing, such as NDIS plans and funding.¹⁴⁸

2.35 Other stakeholders argued that even for the most competent, the system is challenging to understand and follow. As the NSW Disability Advocacy Alliance asserted: 'There are inherent challenges for even the most competent of us when navigating a new and complex system ...'.¹⁴⁹ Indeed, Dr Santhi Chalasani, mother and carer of a child with Autism Spectrum Disorder, told the committee:

I am medically trained. I trained in the New South Wales health system. I did internship, residency, physician training. I have had 20 years in the health system If I found [the NDIS] so confusing and so difficult to navigate, I can only imagine what other families, who perhaps do not have English as their first language or do not have that experience, have found it.¹⁵⁰

2.36 Likewise, the NSW Nurses and Midwives' Association expressed a similar view, arguing that it is not a system conducive to choice and control:

If health professionals and clinicians find the system daunting, one can readily appreciate the difficulties confronting those with a disability and/or their loving family members who have little to no experience of dealing with complex health and disability systems and processes. It does not equate to achieving control or increasing informed choice.¹⁵¹

2.37 Operating within such a system, inquiry participants such as Mr Scott Rand, carer of his disabled grandchild who requires care 'in all aspects of her life', expressed a real uncertainty about the future. As Mr Rand stated: 'When you are asking me about what the future looks like, I do not know what the future looks like ...'.¹⁵² He explained:

We have found that the NDIS for us has been a very, very confusing, complex system. We have concerns. We have concerns about the future of our child. For most people their goals for their children is to be a doctor, a lawyer, an engineer or to travel the world. Ours are pretty simple. We would like her to be able to get a glass of water from

¹⁴⁷ Evidence, Mr Tony Pooley, Senior Manager, State Operations, National Disability Services, 17 September 2018, p 29.

¹⁴⁸ Submission 120, NSW Council for Intellectual Disability Advocacy Group, pp 8-22.

¹⁴⁹ Submission 294, NSW Disability Advocacy Alliance, p 3.

¹⁵⁰ Evidence, Dr Santhi Chalasani, NDIS carer, 17 September 2018, p 55.

¹⁵¹ Submission 209, NSW Nurses and Midwives' Association, p 5.

¹⁵² Evidence, Mr Scott Rand, NDIS carer, 17 September 2018, p 53.

the tap by herself, to be able to change her clothes, to be able to have a bath. Going forward with the NDIS, we are concerned for the future of our children.¹⁵³

Accessing the Scheme

- 2.38** The committee heard that some inquiry participants struggled to access the Scheme as they were deemed not to meet the eligibility criteria. Moreover, some inquiry participants said that supporting an access request and proving a participant's disability involved a lot of paperwork, in addition to many costly assessments and reports.

Meeting the Scheme's eligibility criteria

- 2.39** Various stakeholders raised concerns about the clarity and scope of the eligibility criteria such that it is leaving the majority of people with disability in New South Wales without specific support under the NDIS.¹⁵⁴ The Scheme's reach in this regard is discussed in detail in chapter 4.

- 2.40** Indeed, a number of inquiry participants shared their struggles with gaining access to the Scheme because of an inability to meet the eligibility criteria.¹⁵⁵ For example, Ms Jennifer Clarke described how she had sustained an injury at work in 2007 that has resulted in living 'in constant and often debilitating pain'.¹⁵⁶ With significant mobility issues, Ms Clarke said that the injury has 'affected every part of my life including my social life', such that in 2013 she was medically retired from work. In 2017, Ms Clarke applied for the NDIS but was informed that she did not meet the access criteria as '... [the NDIA] do not consider my disability substantive enough'.¹⁵⁷ Ms Clarke explained:

They basically said that my issues are chronic, that the help I needed would be met by general health services, and that there was no way in hell I would be eligible for any other service at this point.¹⁵⁸

- 2.41** Other stakeholders identified similar examples of people falling outside of the Scheme, many of whom have health issues. Indeed, Dr Small, RACP, acknowledged the challenges experienced by these particular people, asserting that 'people are not being accepted into the NDIS despite very significant impairment if they have physical disabilities due to a variety of health problems'.¹⁵⁹ The intersection between health and disability, and its impact on eligibility for the Scheme, is discussed in further detail in chapter 4.
- 2.42** The committee also received other evidence suggesting issues with the application of the eligibility criteria. For example, Mr Jones, SCIA, discussed the eligibility of people who were previously in receipt of low level support through the Community Care and Support Program

¹⁵³ Evidence, Mr Scott Rand, NDIS carer, 17 September 2018, p 51.

¹⁵⁴ For example, Submission 275, Carers NSW, p 7.

¹⁵⁵ For example, Submission 6, Ms Jane Balke Andersen, p 1.

¹⁵⁶ Evidence, Ms Jennifer Clarke, Individual not covered by the NDIS, 17 September 2018, p 46.

¹⁵⁷ Evidence, Ms Jennifer Clarke, Individual not covered by the NDIS, 17 September 2018, p 46.

¹⁵⁸ Evidence, Ms Jennifer Clarke, Individual not covered by the NDIS, 17 September 2018, p 47.

¹⁵⁹ Evidence, Dr Jacqueline Small, Fellow, Royal Australasian College of Physicians, 2 October 2018, p 58.

(CCSP), a program funded by the NSW Government prior to the NDIS. (People requiring low level support will be examined more closely in chapter 3).

- 2.43** According to Mr Jones, SCIA had assisted former CCSP clients to test their eligibility and seek appeals against decisions that deemed them ineligible for the Scheme. Mr Jones advised that in all cases, the original decisions were overturned:

The SCIA has been assisting some of those clients through the AAT [Administrative Appeals Tribunal], all of which have had their original decision that they did not meet the access criteria overturned through appeal.¹⁶⁰

- 2.44** Moreover, Mr Jones argued that many of these clients would not have known to pursue an appeals process if additional support, such as an advocacy organisation, had not been sought:

No doubt there would be some CCSP recipients, having applied to the NDIS and been knocked back because they do not meet the disability criteria, who would most certainly now have no access to any services because they had no knowledge or support through the review mechanisms to test the full provisions of the National Disability Insurance Scheme Act... [G]enerally speaking, you might have someone with a disability previously receiving supports and had them removed because they are either isolated or lacking any support structures or perhaps simply did not make contact with an advocacy organisation then they are most certainly not getting supports they might be entitled to.¹⁶¹

- 2.45** Indeed, beyond any failures to meet the criteria for the Scheme, inquiry participants, such as PWDA, suggested that challenges to accessing the NDIS may not be attributable to eligibility criteria or definitions of disability at all, but rather to deficiencies in other aspects of the Scheme. PWDA explained:

Reworking the definitions of disability ... will not solve the current challenges with the implementation of the NDIS. ... [T]he challenges that some people with disability are experiencing with their access to the NDIS may be due to a range of factors such as lack of accessible information, inadequate referral pathways, isolated and marginalised living arrangements, lack of independent advocacy support, poor understanding of disability by NDIS planners, etc.¹⁶²

- 2.46** PWDA thus argued that implementation of the Scheme will be strengthened 'not by changing or redefining the definition of disability', but rather by addressing and improving key areas of the Scheme, such as the assessment and development of plans, the quality and skill of NDIA staff, and the functioning of administrative systems.¹⁶³

¹⁶⁰ Evidence, Mr Tony Jones, Policy and Advocacy Manager, Spinal Cord Injuries Australia, 2 October 2018, p 50.

¹⁶¹ Evidence, Mr Tony Jones, Policy and Advocacy Manager, Spinal Cord Injuries Australia, 2 October 2018, p 51.

¹⁶² Answers to questions on notice, People with Disability Australia, 15 October 2018, p 7.

¹⁶³ Answers to questions on notice, People with Disability Australia, 15 October 2018, p 7.

Supporting an access request

- 2.47** Inquiry participants raised concerns about the assessments and costs involved in supporting a request to access the Scheme. As the NSW Council for Intellectual Disability Advocacy Group stated simply: 'Getting the NDIS is hard'.¹⁶⁴
- 2.48** For example, stakeholders raised concerns about the requirement for assessments, with the NSW Council for Intellectual Disability Advocacy Group asserting: 'There are too many assessments to get the NDIS. Too much paperwork'.¹⁶⁵ For example, Dr Small, RACP, argued that the NDIS has introduced a growing demand for reports that are not only resulting in lengthy delays but, in reference to autism diagnoses,¹⁶⁶ are 'beyond what is appropriate from a clinical perspective':
- We are seeing a substantial increase in demand for comprehensive assessments that are expensive and time-consuming but valuable none the less, but there is an increased demand with the rollout of the NDIS, extensive demands for long documentations, repeatedly filling in questionnaires, writing more reports, and these are resulting in lengthy delays for the person to access the NDIS ...¹⁶⁷
- There are some things that the NDIS has introduced that were not present before. There is a new and growing demand for assessments and reassessments to meet eligibility criteria that are beyond what is appropriate from a clinical perspective.¹⁶⁸
- ... [W]hen I started in this field a letter from a good general paediatrician documenting the general delay was sufficient to initiate access to an early intervention sector. We have transformed what is required to access support for a very young child through a process that was meant to do the opposite.¹⁶⁹
- 2.49** For parents, such as Dr Santhi Chalasani, mother and carer of a child with Autism Spectrum Disorder, the requirement for assessments and reports has been confusing and at times unnecessary: 'It is very confusing for parents to know what we need to provide. We often spend a lot of money on different reports and many of them may not be relevant or may not be actually looked at'.¹⁷⁰ Indeed, the Royal Australasian College of Physicians alluded to the complex nature of gathering the proof required for the NDIS.¹⁷¹
- 2.50** Stakeholders also argued that the requirement for assessments to prove eligibility is a costly exercise and a financial burden that impedes equitable access to the Scheme. As a person with

¹⁶⁴ Submission 120, NSW Council of Intellectual Disability Advocacy Group, p 12.

¹⁶⁵ Submission 120, NSW Council of Intellectual Disability Advocacy Group, p 12.

¹⁶⁶ Evidence, Dr Jacqueline Small, Fellow, Royal Australasian College of Physicians, 2 October 2018, p 57.

¹⁶⁷ Evidence, Dr Jacqueline Small, Fellow, Royal Australasian College of Physicians, 2 October 2018, p 57.

¹⁶⁸ Evidence, Dr Jacqueline Small, Fellow, Royal Australasian College of Physicians, 2 October 2018, p 60.

¹⁶⁹ Evidence, Dr Jacqueline Small, Fellow, Royal Australasian College of Physicians, 2 October 2018, p 59.

¹⁷⁰ Evidence, Dr Santhi Chalasani, NDIS carer, 17 September 2018, p 52.

¹⁷¹ Submission 160, Royal Australasian College of Physicians, p 6.

intellectual disability cited in the NSW Council for Intellectual Disability Advocacy Group's submission stated: 'Proving your disability for funding is hard for people. Hard because people have to fork out money for assessment'.¹⁷²

- 2.51** For people seeking to maintain access, some inquiry participants told the committee that money allocated within the NDIS plan is being used to pay for reports rather than much needed therapy or services.¹⁷³ Other inquiry participants said that they would bear the cost of reports themselves,¹⁷⁴ sometimes upwards of \$1,000 for every occasion they make a submission to the NDIA. For example, Dr Chalasani stated:

... [E]very time you submit a review, put in the initial request for a plan or even access the scheme you have to have a lot of reports. We have funded most of our reports and to give you an idea of how much that would cost, a developmental paediatrician's report is about \$650 and OT and speech pathology reports are another \$100 each. Essentially, every time you submit something to the NDIS it is a minimum of \$1,000 in reports.¹⁷⁵

- 2.52** Ms Imelda Todd, Industry Advisor, Disability, Occupational Therapy Australia, argued that parents paying for reports privately is 'not the way the system was meant to work', telling the committee:

I think particularly for parents having to go to pay for reports privately, which are sometimes up to \$1,000 each, can be very expensive and that is not the way the system was meant to work. You were not meant to have to prove in order to get access to it. That puts people at certain disadvantage, not only in terms of finding someone to do the assessment but the financial one.¹⁷⁶

NDIS plans

- 2.53** Throughout the inquiry, a number of concerns were raised in relation to NDIS plans with many participants expressing concern about inconsistencies in planning development and the experience and understanding of staff preparing plans, lengthy delays in getting plans approved, inadequate funding provided for in the plan, and funding under-utilisation once plans had been approved.

Plan development and quality of planning staff

- 2.54** Inquiry participants raised a number of concerns relating to how plans are developed, including issues with the process, the quality of plans, and the people engaged to develop them. These concerns include:

¹⁷² Submission 120, NSW Council for Intellectual Disability Advocacy Group, p 12.

¹⁷³ For example, Evidence, Mr Scott Rand, NDIS carer, 17 September 2018, p 58.

¹⁷⁴ For example, Ms Jennifer Clarke, individual not covered by the NDIS, 17 September 2018, p 48.

¹⁷⁵ Evidence, Dr Santhi Chalasani, NDIS carer, 17 September 2018, p 58.

¹⁷⁶ Evidence, Ms Imelda Todd, Industry Advisor, Disability, Occupational Therapy Australia, 2 October 2018, p 59.

- planning conversations taking place primarily over the phone rather than in person¹⁷⁷
- the brevity of planning meetings¹⁷⁸
- the lack of opportunity for participants to check plan content before it is finalised¹⁷⁹
- the need to improve the quality, clarity and simplicity of plans¹⁸⁰
- an inconsistency in the way participants are treated based on the 'visibility' of their disability¹⁸¹
- an inconsistency – and in many cases, an inadequacy – in the knowledge and understanding people involved in the planning process have of people with disability.¹⁸²

2.55 In particular, stakeholders drew attention to the varied experiences of NDIS participants in dealing with staff developing their plans, with some participants having positive and constructive interactions with their planner or LAC to produce an appropriate plan, and others experiencing a more difficult time having their needs heard and captured in their plan.

2.56 For example, Ms Paterson, an NDIS participant, told the committee how the LACs that assisted with the development of both her plans to date 'are doing a really good job', such that the funding outcomes have been positive. Ms Paterson stated:

They listened to me. They treated me with respect. They explained the process properly and prompted me on a few things that they thought I should be talking to them about. As a result, both my plans have adequately provided funding to cover my needs.¹⁸³

2.57 In contrast, Ms Curry shared how negative her experience was with her planner, resulting in a plan that did not adequately represent who she was and what her needs were:

I felt I was treated like a child and I am a 20-year-old. My plan was written for a four-year-old and not for someone of my age. The person who came over to speak to me had never heard of my disability, dyspraxia. He did not understand how it could affect my daily life and my speech and muscle tone. I had to explain to him what it was and what barriers can occur with this. I had someone spend only 15 minutes with me to talk to me about my plan. They did not understand how this can affect my daily life.¹⁸⁴

¹⁷⁷ For example, Submission 160, Royal Australasian College of Physicians, p 3; Submission 299, Benevolent Society, p 8; Submission 343, Public Service Association and Community and Public Sector Union NSW, pp 6-7.

¹⁷⁸ For example, Submission 111, Ms Sharon Grocott, p 1.

¹⁷⁹ For example, Submission 329, People with Disability Australia, p 14; Submission 111, Ms Sharon Grocott, p 2; Submission 120, NSW Council for Intellectual Disability Advocacy Group, p 7.

¹⁸⁰ For example, Evidence, Ms Karen Wakely, NDIS carer, 17 September 2018, p 55; Submission 120, NSW Council for Intellectual Disability Advocacy Group, p 7.

¹⁸¹ For example, Evidence, Ms Melinda Paterson, NDIS participant, 17 September 2018, p 44.

¹⁸² For example, Evidence, Dr Santhi Chalasani, NDIS carer, 17 September 2018, p 54; Evidence, Mr Greg Killeen, Senior Policy and Advocacy Officer, Spinal Cord Injuries Australia, 2 October 2018, p 51; Submission 299, Benevolent Society, pp 8-9; Evidence, Ms Serena Ovens, Executive Officer, Physical Disability Council of NSW, 2 October 2018, p 51.

¹⁸³ Evidence, Ms Melinda Paterson, NDIS participant, 17 September 2018, p 40.

¹⁸⁴ Evidence, Ms Amber Curry, NDIS participant, 17 September 2018, p 39.

2.58 The PSA/CPSU acknowledged this mixed experience, arguing that the quality of a planner or LAC can very much determine the quality of a plan.

... [I]t would appear that the NDIS has now also become about 'luck of the planner'. The level of training and experience of the Local Area Coordinators (LAC) and Planners can either help or hinder the planning process, with many participants experiencing negative interactions with planners who do not understand the needs of people and families with disability.¹⁸⁵

2.59 Dr Bulkeley, Occupational Therapy Australia, agreed with this view, asserting that 'the effectiveness and appropriateness of NDIS plans is highly dependent on a planner's experience and understanding of an individual participants needs'.¹⁸⁶ Dr Bulkeley argued that planners 'lack such experience', which in turn impacts on the success – or failure – of a plan, creating a knock on effect on resources and time.¹⁸⁷

2.60 While stakeholders spoke of the impact planners and LACs have on the quality and outcomes of a plan, the CIDAG argued, among others, that '[i]t should not be that leading a good life depends on a good NDIA worker or LAC'.¹⁸⁸

2.61 Concerns about NDIS staff more broadly will be considered later in the chapter.

Plan assessment and decisions

2.62 Following the development of a plan, it is submitted to the NDIA for assessment and approval. It is at this point that decisions are made about the necessary and reasonable supports to be provided to a participant and the value of the funding for those supports.

2.63 Inquiry participants raised a number of issues with this stage of the planning process, including the lengthy delays in getting a plan approved, inconsistent decisions about the level of support to be given and, above all, inadequate funding provided for by the plan.

2.64 According to The Benevolent Society, a well documented problem with the planning process is the 'long timeframes for getting plans approved and for getting basic, but fundamentally necessary, equipment approved in plans'.¹⁸⁹ Various stakeholders supported this view, with a number of NDIS participants telling the committee that in their experience it has taken months for an assessment to be made and a plan to be approved.¹⁹⁰

2.65 For example, Ms Curry explained how after finishing high school, she was left waiting six months for her plan to be approved and for her funding to come. She said her friends also

¹⁸⁵ Submission 343, Public Service Association and Community and Public Sector Union NSW, p 6.

¹⁸⁶ Evidence, Dr Kim Bulkeley, Industry Adviser, Occupational Therapy Australia, 2 October 2018, p 56.

¹⁸⁷ Evidence, Dr Kim Bulkeley, Industry Adviser, Occupational Therapy Australia, 2 October 2018, p 56.

¹⁸⁸ Submission 120, NSW Council of Intellectual Disability Advocacy Group, p 16.

¹⁸⁹ Submission 299, Benevolent Society, pp 8-9.

¹⁹⁰ For example, Evidence, Mr Anthony Mulholland, Member, NSW Council for Intellectual Disability Advocacy Group, 2 October 2018, pp 42, 47; Evidence, Ms Ann Ridd, NDIS carer, 17 September 2018, p 59.

found themselves in the same position, however, she was able to progress her plan because she had strong advocates. Ms Curry recognised that not everyone has that opportunity and unless people are supported, 'they will be left behind in the system':

In my own experience, I had a waiting period with the NDIS after I finished school. It took six months for my funding to come through and the plan. I would have preferred to be out doing a placement at Fighting Chance and getting to meet new people and get my skills up in social and work skills. I sat at home for six months. Dad had to stay home and travel train me. ... other people like me, such as my friends who had already finished school, and they still were waiting on their plans ...

Other people like me cannot jump up and down and scream and do not have family members like mine who can help them deal with problems like this, and they will be left behind in the system. They will possibly never get the skills for employment. They will be sitting at home and relying on family members and government payments.¹⁹¹

- 2.66** Ms Ann Ridd, an NDIS carer whose son has motor neurone disease, shared how her son has been waiting on a new wheelchair for 16 months, the cost of which she argued is less than the cost of services she has had to engage to assist her in getting the chair, such as occupational therapy reports.¹⁹² Similarly, she reported that her son required a new bed which was ordered earlier in the year but has still not yet been approved:

... [My son] was in need of a new chair to sit in. Now, at 16 months down the line, he is still waiting for this chair ... He had gone on line and found a chair that he wanted. It was \$1,600. Currently, given the costs for getting the occupational therapist's report, paying the coordinator that is supposedly helping him get this chair, we are up to \$20,000 and we still have not got a chair. So, again, we cannot work out why we did not just get the \$1,600 chair in the first place. We would not have wasted all that other money.¹⁹³

- 2.67** With delays such as these, Ms Ridd told the committee she believes there is a 'no-care factor'¹⁹⁴ and that 'no one takes responsibility' for the decisions that have been made:

His carers, because he cannot move, have to pull him out of bed into the wheelchair. His caring company is saying that if this continues any longer they are going to cease sending carers. A bed was ordered probably in about February or March this year, and we are still waiting on that bed to be done. When we ask the question as to why this bed has not been approved, why we are not getting it done, they just keep on saying, 'We are still processing this'. That is the same sort of answer we get in regard to the chair. So you cannot help but, at the end of the day, say that there is a no-care factor. They do not really care. They have their rules in front of them. They do not treat you as a person; they treat you as a number, and it becomes very frustrating.¹⁹⁵

- 2.68** Inquiry participants also spoke of inconsistent decisions being made about the level of support to be provided to one participant compared with another. For example, The Benevolent Society

¹⁹¹ Evidence, Ms Amber Curry, 17 September 2018, p 39.

¹⁹² Evidence, Ms Ann Ridd, NDIS carer, 17 September 2018, p 52.

¹⁹³ Evidence, Ms Ann Ridd, NDIS carer, 17 September 2018, p 57.

¹⁹⁴ Evidence, Ms Ann Ridd, NDIS carer, 17 September 2018, p 57.

¹⁹⁵ Evidence, Ms Ann Ridd, NDIS carer, 17 September 2018, p 57.

shared about two clients, whose needs differed but whose funding did not seem to correspond to those needs when it came to support coordination. The Society explained:

The Benevolent Society's client Jane has a plan which includes \$7,000 for support coordination and only \$4,000 for services to assist 'improved daily living', which is where she needs the most support. In comparison, another client Barry, uses a wheel-chair and has severe mental health issues and will need significant support to coordinate his services needs and implement his plan. Barry's plan includes \$90,000 for services but only \$1,000 for support coordination.¹⁹⁶

2.69 Similarly, Dr Smalls shared about two cases, the first being a participant who received funding for home modifications and assistive technology after a period of self-funded and informal support, and the second being a participant with spina bifida who was given only given funding for one third of his catheter requirements and his transport allowance removed:

... a PDCN board member received funding through his first NDIS plan for both home modifications and assisted technology. Previously, he had been required to self-fund items and also rely on informal supports to achieve some tasks around his home. In stark contrast to this experience, we have another stakeholder who received a plan that significantly reduced his continence aid funding, leaving him unable to pay for more than one-third of his yearly catheter requirements. In addition, all of his transport allowance was removed. As a person with spina bifida who had significant balance issues, this meant severely restricting his ability to get around in the community as he was then unable to pay for much-needed taxi transport.¹⁹⁷

2.70 Above all concerns about plan assessments and decisions, inquiry participants were primarily concerned about decisions regarding funding, with many stakeholders arguing that the value of individual funding packages for many inquiry participants is grossly inadequate.

2.71 Ms Rundle, NDIA, explained to the committee the nature of funding allocations, as decided by the NDIA. She acknowledged that poor and inconsistent decisions have been made in some cases that require remedy but that these are rare. Ms Rundle told the committee that because the Scheme is based on insurance principles, the natural progression of funding will see increases and decreases as the needs of participants are met and then change over time:

...the fact that plans will reduce in value has been played out in the media. It is true that sometimes we have had some bad experiences where our planners have unfortunately made a very inconsistent decision; they have made a mistake and we have needed to remedy it. We hope that is fairly rare and that it becomes rarer. However, the insurance part of the NDIS goes to the fact that we want to ensure that the scheme funds are there for all time for anyone who needs them. That means that plans will go up and down depending on people's needs. So, some people will come in and get early supports—for example, capital supports, in the first year of the plan—and probably for another five years or whenever it is that they need a new wheelchair, their plan will go down, considerably probably if it is an expensive wheelchair, for the rest of the four years. Then the plan might get another boost in the subsequent year. That is the nature of the NDIS, and I think it is important that we make that point.¹⁹⁸

¹⁹⁶ Submission 299, Benevolent Society, p 9.

¹⁹⁷ Evidence, Ms Ellen Small, Policy Officer, Physical Disability Council of NSW, 2 October 2018, p 48.

¹⁹⁸ Evidence, Ms Vicki Rundle, National Disability Insurance Agency, 17 September 2018, p 18.

2.72 However, numerous stakeholders told the committee that the Scheme has consistently represented less choice and control for many participants as they are receiving inadequate funding packages to access the services and supports they need. Inquiry participants attributed this to poor planning. As the PSA/CPSU argued: 'A ramification of the unsatisfactory planning stage is that participants are not being equipped with the appropriate levels of funding. The provision of services is now entirely dependent on the amount of money in a participant's plan'.¹⁹⁹

2.73 The Benevolent Society expressed a similar view, asserting that often expert opinion is not reflected in plans to build the case for certain supports to be provided:

... many plans do not allocate enough services and supports for clients, and expert input from experienced clinicians about service and support needs is not being reflected in plans; inconsistency of plans between people with similar needs; that is, people with less severe needs getting more service and support funding than those with more complex needs ...²⁰⁰

2.74 Likewise, Dr Small, RACP, asserted that plans are highly variable and funding is provided that 'do not match the needs of the person'. She argued that for various cohorts of people with disability, particularly where there is challenging and complex behaviour, there is inadequate funding. Dr Small named many examples of people with disability requiring therapy or treatment that has not been accounted for in their plans, or supported more broadly by the Scheme itself:

There are problems with planning ... in that the highly variable plans and funding are provided that do not match the needs of the person. This is particularly the case where there is challenging behaviour where the line item is rarely used, even for children with complex and severe challenging behaviour, where their violence can risk harm to other people. Allied health therapy provision for adults with physical disability is often absent, and you have just heard about catheters that a colleague of mine was clear for you to be aware of. There are challenges for particular groups: adults with disability requiring therapy, as I have mentioned; children with severe challenging behaviour are often poorly supported by the NDIS; families with complex needs, particularly those who are more socially isolated and come from a different language background have added vulnerabilities in their contact with the NDIS; and those children who require intervention, such as children with autism spectrum disorder who are progressively being excluded if they are perceived to have mild needs that do not require specific support.²⁰¹

2.75 Ms Judd-Lam in turn drew attention to the 'fight' that often follows through the appeals processes, including formal appeals, where decisions are reviewed to ensure that adequate support is provided:

... There are a lot of families who have really had to fight, have lost a lot of things and it has really impacted their families. I think people are getting that resolved slowly but

¹⁹⁹ Submission 343, Public Service Association of NSW and Community and Public Sector Union NSW, p 8.

²⁰⁰ Submission 299, Benevolent Society, pp 8-9.

²⁰¹ Evidence, Dr Jacqueline Small, Royal Australasian College of Physicians, 2 October 2018, p 57.

often it is through formal appeals, going to the [Administrative Appeals Tribunal], and ministerial intervention.²⁰²

- 2.76** Ms Judd-Lam argued: 'It should not have to take that to get something that you have demonstrated need for'.²⁰³ Reviews will be discussed at the end of the chapter.

Plan enactment and fund management

- 2.77** Following a plan's approval, it is expected that the plan be implemented to ensure that people with disability receive the supports they need. However, the committee received evidence that this part of the process is particularly weak, especially in the area of fund management.

- 2.78** For example, The Benevolent Society stated that many of their clients had not even seen their plans following approval and that the idea of actioning them in some way is beyond their experience or capacity:

Many of our clients have not actually been into the NDIS portal and seen their plans. Managing a plan requires ongoing skill and attention, which some participants may not have the experience or capacity for. Understanding what the plan provides can also be a challenge, with many participants who have not previously had to deal with the financial aspects of services shocked to see the actual costs of the supports they receive.²⁰⁴

- 2.79** The Benevolent Society argued that often participants do not know what to do with their plans once they receive them, such that funding has been under-utilised:

Obtaining a suitable plan is just the first step. When some participants do get a plan approved they are then not sure what to actually do with them, and the plan gets put away in a drawer and forgotten about. This situation is reflected in the rates of under-utilisation of the NDIS.²⁰⁵

- 2.80** Mr Jones, SCIA, also spoke of funding under-utilisation, arguing that often the plan management preferences of participants have not been respected and so funds have not been managed appropriately:

With regard to plan implementation, there is still significant under-utilisation with a total of 48 per cent of participants having utilised less than 50 per cent of their funding allocation. Errors persist in not acknowledging the wishes of participants and how they want their funding to be managed—agency, plan managed or self managed. Even when reviews are successful with changes in funding allocations, the resulting new plan errs in not reinstating how the plan and funding is to be managed, much to the frustration of the participant.²⁰⁶

- 2.81** According to Mr Enis Jusufspahic, ECIA, parents who have gained access to early intervention supports under the NDIS have also demonstrated an under-utilisation of funds:

²⁰² Evidence, Ms Sarah Judd-Lam, Manager, Policy and Research, Carers NSW, 2 October 2018, p 29.

²⁰³ Evidence, Ms Sarah Judd-Lam, Manager, Policy and Research, Carers NSW, 2 October 2018, p 29.

²⁰⁴ Submission 299, The Benevolent Society, p 9.

²⁰⁵ Submission 299, The Benevolent Society, p 9.

²⁰⁶ Evidence, Mr Tony Jones, Policy and Advocacy Manager, Spinal Cord Injuries Australia, 2 October 2018, p 50.

Going forward, some of the issues that are universal for a lot of we members are low plan utilisation. Many families are not using all the funding in their plan, and that could be because they are learning how to work within the NDIS framework and it takes a number of months to get up and running and families can be quite conservative in terms of using their funds, which is understandable.²⁰⁷

- 2.82** According to Mr Rand, there appears to be a shift in encouraging people to self-manage their plans, however, he questioned how this is possible for people with profound disabilities such as his granddaughter for whom he is carer. He expressed fear for her future, knowing that her care will have to be managed by someone else, without any guarantee of their integrity:

When you have a child that cannot talk and cannot communicate, the whole focus seems to be shifting people into self-managed plans. When we look to the future when we are not here, who is going to be responsible for that person? She cannot manage a plan on her own. She will never have that capacity to be able to do that. Currently, if we start looking at obtaining the services of a plan manager that they can provide through the NDIS, how do we guarantee their integrity? What sort of people are we going to be putting in charge of her for her future?²⁰⁸

- 2.83** Indeed, some inquiry participants shared their experiences with those who they had expected would provide support and assistance with the management of their plans and funds, but were let down. For example, Mr Mulholland shared that his LAC had withheld information from him and had not told him how much funding he had in his plan. He stated that when he found out, it made him 'very upset ... confused and irritated':

... I found out—it made me cry, very upset—... I was at a meeting with my coordinator and I saw how much money I had in and they did not tell me what I needed to know. I felt like I could have used that and I lost it because what NDIS tell us is not what we need to know, they only tell us what they think we need to know. By not telling us the whole story it made me and my friends feel confused and irritated.²⁰⁹

- 2.84** Mr Butcher shared how, on one occasion, his son's service provider sought to use his son's remaining funds for a service, knowing that his plan was due to expire, without considering his son's immediate needs at that time. Mr Butcher expressed disappointment because he felt it had become 'not what was best for my boy; it was what is best for an invoice getting generated':

I was really disappointed, when our plan was coming up for review, that the particular registered provider for support came to our house after school to do their occupational therapy [OT], and after the OT left the teacher from the provider came in and said, "You've got \$1,500 left on your plan. Your plan is about to expire so you need to use it. Can I go see your son?" I said, "He has just finished a day at school and he has just finished OT. It is about boys wanting to play—that is what boys do. Let him go play out the back. He has got the sprinkler and is having a good old time."

²⁰⁷ Evidence, Mr Enis Jusufspahic, National Manager, Sector Development, Early Childhood Intervention Australia, 2 October 2018, p 21.

²⁰⁸ Evidence, Mr Scott Rand, NDIS carer, 17 September 2018, p 53.

²⁰⁹ Evidence, Mr Anthony Mulholland, Member, NSW Council for Intellectual Disability Advocacy Group, 2 October 2018, p 42.

To me I was really disappointed because it started to become not what was best for my boy; it was what is best for an invoice getting generated.²¹⁰

Plan reviews

- 2.85** As outlined in chapter 1, internal reviews can be initiated for a number of reasons. The most commonly discussed during the inquiry were reviews requested because of a decision made about a plan, whether that be an error in the plan or an inadequacy of funding.
- 2.86** The committee was advised that, if there has been a request for an unscheduled review, a decision about whether to proceed with a review is to be made within 28 days.²¹¹ If a decision is made to proceed with a review, Ms Gunn, NDIA, advised that there 'there is no legislative timetable' prescribing when the review should be completed by. She stated: "There is no legislative timetable; it says "when reasonably possible" or "within a reasonable time frame".²¹²
- 2.87** As outlined in chapter 6, if a participant disagrees with an internal review decision, they can apply for an external review by the Administrative Appeals Tribunal (AAT), which exists outside the NDIA. Participants are not able to request the AAT to review a decision by the NDIA unless there has been an internal review conducted by the NDIA.²¹³
- 2.88** During the inquiry, numerous stakeholders were critical of the review process. For example, the PSA/CPSU stated:
- The review process has been described as 'appalling', with service providers noting that without access to an experienced disability advocate many clients are unable to successfully challenge the initial decisions of the NDIA. The waiting times for plan reviews are excessive, leaving PWD at a distinct disadvantage, and halting the provision of services ...²¹⁴
- 2.89** Indeed, a significant concern for many inquiry participants is the lengthy delays when a plan is reviewed.²¹⁵ As the Council for Intellectual Disability Advocacy Group stated: 'We have to ask for a review if they get the plan wrong. Reviews take a very long time which makes us very scared. Sometimes we have to wait more than three months'.²¹⁶

²¹⁰ Evidence, Mr Luke Butcher, Area Manager, Western NSW and Special Projects, Mission Australia, 2 October 2018, p 15.

²¹¹ Evidence, Ms Chris Faulkner, General Manager, Advisory Services, National Disability Insurance Agency, 17 September 2018, p 19.

²¹² Evidence, Ms Stephanie Gunn, General Manager, Advisory Services Issue Response, National Disability Insurance Agency, 17 September 2018, p 19.

²¹³ National Disability Insurance Scheme, *Using your NDIS plan*, Booklet 3 of 3, p 8.

²¹⁴ Submission 343, Public Service Association of NSW and Community and Public Sector Union NSW, p 7.

²¹⁵ For example, Evidence, Mr Tony Pooley, Senior Manager, State Operations, National Disability Services, 17 September 2018, p 35.

²¹⁶ Submission 120, Council for Intellectual Disability Advocacy Group, p 8.

2.90 According to Mr Pooley, a plan review can take '[m]onths and months and months'. He argued that there is a 'huge backlog' of plans waiting to be reviewed, with participants in New South Wales representing the bulk of people waiting.²¹⁷

2.91 Mr Jones, SCIA, expressed a similar view, suggesting that the NDIA appears 'at capacity' with undertaking reviews, and that the AAT is 'struggling with it's NDIS workload, leading to lengthy delays. Mr Jones argued for time frames to be improved:

... [G]etting any significant changes to participant plans can be a long, drawn-out process following the formal review pathways such as an internal review and then if that is not successful, external reviews through the Administrative Appeals Tribunal. This can take months before getting any outcome. The NDIA, it would appear, is at capacity with undertaking unscheduled reviews, as the recent Commonwealth Ombudsman report showed, and the Administrative Appeals Tribunal is struggling with its NDIS workload leading to delays in outcomes. SCIA would like to see the time factors of the review process significantly improved.²¹⁸

2.92 Concerns about the lengthy delays in the review process were also shared by Mr Steve Kinmond, Community and Disability Services Commissioner and Deputy Ombudsman, NSW Ombudsman, who told the committee that resolving matters quickly is critical to ensuring that the Scheme delivers the experiences and outcomes that it should:

What is critical is that the coalface experience and outcomes for people with disability deliver what they should. In practical terms the tests will be ... whether individual matters are resolved in a timely manner that minimises the adverse impact on the person with disability and often their family members as well. At the moment, while parties are often escalating matters and seeking to resolve issues, we need to solve things faster.²¹⁹

2.93 In their evidence to the committee, the NDIA acknowledged the lengthy delays in the review process, with Ms Chris Faulkner, General Manager, Advisory Services, NDIA, stating '...[I]t has not been acceptable'.²²⁰ In particular, Ms Faulker recognised there is currently a large backlog of review requests and advised that moves have been made to address this.²²¹ Ms Stephanie Gunn, General Manager, Critical Services Issues Resolution, NDIA, explained that the NDIA has established a special team to 'triage' and identify 'those where there is a priority through the nature of the changing circumstance that is being pursued'.²²²

²¹⁷ Evidence, Mr Tony Pooley, Senior Manager, State Operations, National Disability Services, 17 September 2018, p 32.

²¹⁸ Evidence, Mr Tony Jones, Policy and Advocacy Manager, Spinal Cord Injuries Australia, p 50.

²¹⁹ Evidence, Mr Steve Kinmond, Community and Disability Services Commissioner and Deputy Ombudsman, NSW Ombudsman, 2 October 2018, p 3.

²²⁰ Evidence, Ms Chris Faulkner, General Manager, Advisory Services, National Disability Insurance Agency, 17 September 2018, p 19.

²²¹ Evidence, Ms Chris Faulkner, General Manager, Advisory Services, National Disability Insurance Agency, 17 September 2018, p 19.

²²² Evidence, Ms Stephanie Gunn, General Manager, Critical Services Issues Resolution, National Disability Insurance Agency, 17 September 2018, p 19.

2.94 According to Ms Faulkner, '[w]e aim to have that backlog cleared by March' but noted 'we are still addressing new ones coming in at the point of time that that is occurring'.²²³ In any case, Ms Gunn maintained: 'Our teams have been really focused on getting back on top of those scheduled reviews'.²²⁴

Improving the participant planning experience

2.95 The NDIA acknowledged the many planning issues that have been raised since the Scheme's rollout, with Mr McNaughton, NDIA telling the committee that the planning process is 'one of the areas we got a lot of feedback on—that we needed to make that process a bit more consistent for people'.²²⁵

2.96 As such, the NDIA outlined in their submission a number of measures to improve the participant planning experience, stating:

The first and most critical priority for the NDIA is being able to deliver quality plans to participants that produce a high quality outcome for each individual participant and to ensure that it is done in a way that makes the participant feel understood and valued.²²⁶

2.97 These measures form part of a new 'general participant pathway' to be rolled out from October 2018, which will include 'face-to-face planning meetings that deliver easier-to-understand, accessible plans, supported by a consistent, single point of contact'.²²⁷

2.98 The NDIA advised that these improvements to the participant experience include:

- Clear links to other service systems to make sure that people get the supports they need from other services like housing, education, employment and health systems
- Stronger connections between NDIA planners and LACs, who will become a consistent point of contact during the participant's journey
- Face-to-face planning support will be offered to participants to assist during the critical pre-planning and plan implementation stages
- LACs and Planners will undertake improved disability awareness and cultural competency training to increase their ability to engage with and support the unique situations and diverse needs of participants
- An easy to understand plan that is simple, accessible and explained by planners
- Key information and communication material will be provided in Easy English and in languages other than English to help participants use their plan

²²³ Evidence, Ms Chris Faulkner, General Manager, Advisory Services, National Disability Insurance Agency, 17 September 2018, p 19.

²²⁴ Evidence, Ms Stephanie Gunn, General Manager, Critical Services Issues Resolution, National Disability Insurance Agency, 17 September 2018, p 19.

²²⁵ Evidence, Mr Scott McNaughton, General Manager – Government, National Disability Insurance Agency, 17 September 2018, p 20.

²²⁶ Submission 342, National Disability Insurance Agency, p 2.

²²⁷ Submission 342, National Disability Insurance Agency, p 2.

- Improvements to systems, including updates to the participant and provider portals and NDIS website to make the experience of engaging with the NDIS clearer, simpler, and more intuitive
- A dedicated specialist team established for participants with complex support needs to improve access support, connections and coordination across multiple service systems, including community, mainstream and informal
- Service enhancements for Aboriginal and Torres Strait Islanders, the LGBTIQ+ community, people living in remote and very remote locations and culturally and linguistically diverse communities.²²⁸

2.99 Moreover, the NDIA advised that they have already implemented 'a series of immediate actions'.²²⁹ For example, Mr McNaughton explained that face-to-face plan implementation meetings have been introduced because '[w]e heard quite strongly that we were not doing enough to help people implement their plan...'.²³⁰

2.100 The NDIA has recognised training as an issue for planners, and in response, NDIS planners who used to undertake an eight-day training course now undertake a six week induction program, which includes modules in disability awareness.²³¹

Administrative systems

2.101 Also among the concerns raised by inquiry participants are the challenges presented by the administrative systems in place to facilitate and support the NDIS. Stakeholders drew particular attention to issues with staff, problems with communication, and the bureaucracy.

Untrained and inexperienced staff

2.102 The NSW Disability Advocacy Alliance argued that 'being able to access support to achieve understanding would greatly enhance all NDIS participants' ability to achieve true choice and control over both their plans and their lives'.²³² However, a number of stakeholders spoke of their frustrations with NDIS staff who they feel do not have adequate understanding of participants and their disabilities to support their needs.²³³

2.103 For example, according to the NSW Council for Intellectual Disability Advocacy Group, 'NDIS staff are not always good at their job ... [they] do not take time to listen and care'.²³⁴ The Group

²²⁸ Submission 342, National Disability Insurance Agency, p 3.

²²⁹ Submission 342, National Disability Insurance Agency, p 3.

²³⁰ Evidence, Mr Scott McNaughton, General Manager – Government, National Disability Insurance Agency, 17 September 2018, p 20.

²³¹ Evidence, Mr Chris Faulkner, General Manager, Advisory Services, National Disability Insurance Agency, 17 September 2018, p 20, and Answers to questions on notice, National Disability Insurance Agency, 23 October 2018, p 3.

²³² Submission 294, NSW Disability Advocacy Alliance p 3.

²³³ For example, Evidence, Mr Anthony Mulholland, Member, NSW Council for Intellectual Disability Advocacy Group, 2 October 2018, p 42; Dr Santhi Chalasani, NDIS carer, 17 September 2018, p 53.

²³⁴ Submission 120, NSW Council for Intellectual Disability Advocacy Group, p 13.

cited one person with intellectual disability as stating: 'They are not offering me what I want. They are offering me limited options. There is less choice and control than before with [the Department of Ageing, Disability and Home Care (ADHC)]'.²³⁵

- 2.104** Ms Ridd, mother and carer of a 32 year old son with motor neurone disease, argued that inadequacies in staff understanding and experience points to a Scheme that was implemented hastily:

So you have got to say at the end of the day that NDIS staff, I do not know whether they are not trained properly or whether they have a big changeover in staff but it was evident from the time I started working with the NDIS from day one that it looked like it had been rushed. There was no real process or procedures put in place. Nobody really knew what was right and what was wrong. The rules had been changed on the run which is very frustrating. A lot of people I speak to all seem to have very similar complaints.²³⁶

- 2.105** Mr Jim Simpson, Senior Advocate, NSW Council for Intellectual Disability, expressed a similar point, referring to the growth of NDIS staff and their 'patchy' quality, which has made interactions with the Scheme difficult:

... the size of growth of their staffing and therefore the quality of their staffing is very patchy, the ability to get on to the right person in the agency who can provide educated responses to a participant's questions is ongoing difficult.²³⁷

Poor communication

- 2.106** A related issue to staffing is the way in which communication within the Scheme is being managed. Inquiry participants consistently told the committee of their difficulties in making and maintaining contact with the appropriate staff member within the NDIA.²³⁸ As Mr Jones explained, information to enable contact with the NDIA is limited:

... it is very difficult to be able to communicate to the right NDIS staff member, whether it is planners, branch managers or otherwise. By comparison to the funding models that existed under the Department of Ageing, Disability and Home Care with phone numbers and addresses listed by regions, the NDIA has no such information. There must be a reason behind why the NDIS does not list phone numbers for local officers or even some office addresses.²³⁹

- 2.107** Similarly, Mr Rand described engaging in communication with the NDIS as an 'absolute minefield', as there is never a return phone number nor is there consistency with the staff being spoken to:

²³⁵ Submission 120, NSW Council for Intellectual Disability Advocacy Group, p 13.

²³⁶ Evidence, Ms Ann Ridd, NDIS carer, 17 September 2018, p 52.

²³⁷ Evidence, Mr Jim Simpson, Senior Advocate, NSW Council for Intellectual Disability, 2 October 2018, p 46.

²³⁸ For example, Submission 299, Benevolent Society, p 4; Evidence, Ms Ann Ridd, NDIS carer, 17 September 2018, p 58.

²³⁹ Evidence, Mr Tony Jones, Policy and Advocacy Manager, Spinal Cord Injuries Australia, 2 October 2018, p 50.

The challenge with dealing with the NDIS is that there is never a return phone number. It is always from a private line. The staff hot desk; they are continually moving around, they have no permanent phone lines. You can never get to speak to the same person twice. We have insisted on that in our dealings with them. For people that would be time poor, not used to dealing with bureaucracies, or challenging authority, or standing up for their children, it is an absolute minefield.²⁴⁰

- 2.108** A number of stakeholders argued for more accessible material and simpler forms to assist people with disability to understand the information given to and being asked of them.²⁴¹ This was a particular concern for people with intellectual disabilities, who asserted that forms are confusing and often beyond comprehension.²⁴² For example, Mr Mulholland shared:

The forms were very complicated, beyond my comprehension. A lot of us are numeracy and literacy underweight, we do not know how to read and write really well and it was hard for us. The forms were so complex they were beyond the comprehension of our understanding. It felt to us that the questions were not being reasonable. It was also hard because it was confusing ... We feel like we are being led like little kids with the complicated forms.²⁴³

- 2.109** Mr Mulholland told the committee that, just as every disability is unique, approaches to communication and engaging with people in written form should be adjusted where necessary to make forms and material accessible:

... [E]very disability is unique. We want to make it easy read material because we cannot easily read material. Pictures would work better because sometimes words, I still have difficulty reading words. It is hard. I sometimes say to people—I try to make it in my own way. Pictures and symbols work. It is not one size fits all for the application. If you made it one size fits all then you are not thinking about that person; you are only thinking about "Here is the application. This is a simple application" when it can be complex for them ... It is about making it more accessible, more easy to read.²⁴⁴

'Working the system'

- 2.110** According to some inquiry participants, such as National Disability Services, the NDIS 'fails the most disadvantaged'²⁴⁵ because it is designed for people who have the knowledge and skill to work within and around complex, bureaucratic systems. In this way, NDIS participants are not held in equal stead when engaging the Scheme.

²⁴⁰ Evidence, Mr Scott Rand, NDIS carer, 17 September 2018, p 56.

²⁴¹ For example, Submission 209, NSW Nurses and Midwives' Association, p 5; Evidence, Dr Santhi Chalasani, NDIS carer, 17 September 2018, p 55; Submission 98, Name suppressed, p 3; Submission 120, NSW Council for Intellectual Disability Advocacy Group, pp 14, 24.

²⁴² Submission 120, NSW Council for Intellectual Disability Advocacy Group, p 13.

²⁴³ Evidence, Mr Anthony Mulholland, Member, NSW Council for Intellectual Disability Advocacy Group, 2 October 2018, pp 41-42.

²⁴⁴ Evidence, Mr Anthony Mulholland, Member, NSW Council for Intellectual Disability Advocacy Group, 2 October 2018, p 47.

²⁴⁵ Submission 258, National Disability Services, p 8.

2.111 Mr Reardon, Department of Premier and Cabinet, stated during the inquiry that the NDIS is 'a scheme for people with disability and ... is owned by all Australians',²⁴⁶ however, many stakeholders argued that outcomes are often based on knowing how to 'work the system'.²⁴⁷

2.112 For example, acknowledging that she has the capacity and skills to navigate the Scheme and advocate for herself, Ms Paterson asserted that the NDIS can be a success for those who can actively and adeptly engage it:

NDIS can work really well if you have the tools, going into it, that you understand how it works, you understand where the pressure points are and how you need to articulate your needs in a way that gets across to the people putting together the plans, and take advantage of whatever supports are out there to help you on that journey.²⁴⁸

2.113 Ms Imelda Todd, Industry Advisor, Disability, Occupational Therapy Australia, shared this view, stating: 'Those people who have the ability, or have a nominee that has the ability to work the system tend to be much better off ...'.²⁴⁹

2.114 In contrast, the committee heard that people with disability who have limited capacity or require complex care, or whose families and carers have limited time, resources or capacity to advocate or manage plans, receive poorer outcomes.²⁵⁰ This observation was made by Uniting:

The NDIS transition appears to be having a two-tiered impact on people with disability. It seems to us that the benefits are mostly accruing to those people and their families who can strongly advocate for themselves and who can understand and navigate the complexities of the scheme. People with more complex needs, those who cannot advocate for themselves or navigate the system, in our opinion, risk receiving lower levels of service and poorer NDIS plan outcomes.²⁵¹

2.115 The PSA/CPSU, expressed a similar view, stating:

Ironically the best way to assure that you get support out of the NDIS is to already have the support: the quality of a plan is dependent on the ability of the advocate, experience of the planner and/or the technical and bureaucratic savvy of a family member.²⁵²

²⁴⁶ Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 17 September 2018, p 2.

²⁴⁷ Evidence, Ms Imelda Todd, Industry Advisor, Disability, Occupational Therapy Australia, 2 October 2018, p 61.

²⁴⁸ Evidence, Ms Melinda Paterson, NDIS participant, 17 September 2018, p 40.

²⁴⁹ Evidence, Ms Imelda Todd, Industry Advisor, Disability, Occupational Therapy Australia, 2 October 2018, p 61.

²⁵⁰ For example, Submission 343, Public Service Association of NSW and Community and Public Sector Union NSW, p 6.

²⁵¹ Evidence, Ms Anita Le Lay, Head of Disability, Uniting, 2 October 2018, p 8; Evidence, Mr Tony Pooley, Senior Manager, State Operations, National Disability Services, 17 September 2018, p 34.

²⁵² Submission 343, Public Service Association and Community and Public Sector Union, p 6.

- 2.116** For people unable to navigate the system in this way, stakeholders such as Dr Small, RACP, expressed deep concerns 'because it is entrenching and extending the disadvantage' that people with disability, including children, experience.²⁵³

Committee comment

- 2.117** The committee acknowledges the many issues raised by inquiry participants about the implementation of the NDIS in New South Wales. We are of the view that many of these challenges that have emerged have come from turning a concept with the best intentions into a practical and effective reality. We recognise that this is no easy feat. However, we must acknowledge these issues in order to work towards improving the Scheme for those within it and those navigating to see if they are eligible to part of it.
- 2.118** Given the scale and complexity of the Scheme, the committee notes the trouble many people with disability and their families and carers have had navigating it, and understands how some may feel overwhelmed and frustrated by their interactions with the Scheme. We are particularly concerned for those who are not familiar with dealing with complex processes and procedures and share the concerns of those who question whether the Scheme in this way facilitates informed choice and control.
- 2.119** The committee also notes the difficulties many people have encountered when seeking access to the Scheme, particularly people who have ongoing health issues. We note that this will be discussed in further detail in chapter 3.
- 2.120** In particular, the committee acknowledges the evidence around the Scheme's eligibility criteria and questions about its scope and clarity. We note with interest the evidence suggesting that, rather than there being an issue with the eligibility criteria itself, many of the problems that have emerged are rooted in the way the criteria is being applied. We consider the evidence regarding appeals to the Administrative Appeals Tribunal being upheld for people formerly in receipt of the Community Care and Support Program (CCSP) particularly compelling. The committee wonders, however, why it must reach the point of judicial consideration for matters of eligibility to be resolved. Can challenges around eligibility be better addressed before this point? The committee agrees with those who have suggested that strengthening other aspects of the NDIS may go some way to addressing these issues, such as enhancing the skills of NDIA staff to better apply the criteria and participants' experience with the Scheme.
- 2.121** The committee also notes the experiences and concerns of NDIS participants with the planning process. In particular, the committee acknowledges the evidence around funding under-utilisation. Again the committee questions with concern why there is this emerging trend? The committee is particularly troubled by the prospect of service providers actively encouraging NDIS participants to 'use it or lose it', as some of the evidence we have received suggests. The committee is of the view that the Scheme should be used as intended, with the interests and needs of people with disability – and not their funding – always at the fore. The committee is well aware of the importance of the Scheme to have robust financial integrity to ensure its viability and sustainability over time.

²⁵³ Evidence, Dr Jacqueline Small, Fellow, Royal Australasian College of Physicians, 2 October 2018, p 61.

- 2.122** With this, the committee acknowledges recent efforts by the NDIA to address issues around plan implementation, and more broadly, to improve the participant planning experience. The committee notes that these improvements are new and may take some time to see their impact.
- 2.123** The committee also acknowledges the administrative troubles experienced by some NDIS participants, in particular the lengthy delays in having plans developed, assessed and reviewed. The committee notes the commitments of the NDIA to have the backlog cleared by early next year but considers the delays in plan reviews to be particularly unacceptable.
- 2.124** With the number of New South Wales participants already in the Scheme, and with more to come, New South Wales as a state has a significant stake in the success of the NDIS. With this in mind we believe the NSW Government should actively pursue the resolution of implementation issues through its role on the Council of Australian Governments Disability Reform Council and make recommendations to this effect.

Recommendation 1

That the NSW Government actively pursue, through its role on the Council of Australian Governments Disability Reform Council, the resolution of implementation issues for the National Disability Insurance Scheme including:

- issues with the application of the eligibility criteria
 - improving the navigation of and engagement with the Scheme
 - enhancing the skills of National Disability Insurance Agency staff.
-

Recommendation 2

That the NSW Government advocate, through its role on the Council of Australian Governments Disability Reform Council, for the National Disability Insurance Scheme planning process to be strengthened and streamlined, including:

- ensuring that participants have access to skilled planners and Local Area Coordinators who are appropriately trained and experienced
 - to ensure participants receive a timely response to plan reviews and that any revised plans are enacted promptly.
-

Access to early intervention supports for children

- 2.125** In examining the implementation of the NDIS in New South Wales, inquiry participants gave particular consideration to the accessibility of early intervention supports for children, given that the Scheme provides a specific pathway to accessing supports for children aged 0 to 6 years.

Early Childhood Early Intervention (ECEI) approach

- 2.126** Under the NDIS, the Early Childhood Early Intervention (ECEI) approach supports children aged 0-6 years who have a developmental delay or disability, and their families and carers. This

support is provided through Early Childhood Partners who are engaged to deliver the ECEI approach across the country.²⁵⁴

- 2.127** According to the NSW Government, Early Childhood Partners support families and carers to help children ‘develop the skills they need to take part in daily activities and achieve the best possible outcomes throughout their life’.²⁵⁵ This support includes:

... connecting the child and family with appropriate mainstream and/or community supports such as the local community health centre, educational setting and playgroup, or through the provision of short-term early intervention support.²⁵⁶

- 2.128** The NSW Government advised that providing early childhood intervention support is a coordinated effort, as Partners work in partnership with community services and mainstream agencies, which is ‘critical in ensuring appropriate referrals and supports are in place for children and families’.²⁵⁷

- 2.129** The committee was told that the referral pathway for early childhood intervention under the NDIS involves parents or carers approaching an Early Childhood Partner if there is a concern about a child’s development, who will then undertake an assessment, provide initial supports and refer that child to a particular service as necessary.²⁵⁸

- 2.130** According to Mr Enis Jusufspahic, National Manager, Sector Development, Early Childhood Intervention Australia, the ECEI approach can be considered in terms of a progression of functions, the first few of which are available to all children and do not require meeting an eligibility criteria. Once a child is considered as requiring ongoing support, the ECEI approach provides additional functions to support an access request being made to the NDIS to become a participant.²⁵⁹ The NSW Government advised that children are referred to access the NDIS if ‘their disability significantly impacts their ability to engage in a daily activities and is likely to be permanent’.²⁶⁰

- 2.131** Mr Jusufspahic, explained all functions of the ECEI approach are geared towards ‘building the capacity of the family to support the child, generalising the supports within the child's natural environment’. He advised:

The first function is the profile development; getting an understanding of the child and the family, linking them in with community supports ... because we want to include children in the community and have them access other government services as early as possible to build inclusion. Then the [Agency] will provide some strategies around how

²⁵⁴ National Disability Insurance Scheme, Support for your child, <https://www.ndis.gov.au/ecei#deliveredndia>

²⁵⁵ Submission 313, NSW Government, p 22.

²⁵⁶ Submission 313, NSW Government, p 22.

²⁵⁷ Submission 313, NSW Government, p 22.

²⁵⁸ Evidence, Ms Stephanie Gunn, General Manager, Critical Services Issues Resolution, National Disability Insurance Agency, 17 September 2018, p 20 ; Evidence, Mr Enis Jusufspahic, National Manager, Sector Development, Early Childhood Intervention Australia, 2 October 2018, p 17.

²⁵⁹ Evidence, Mr Enis Jusufspahic, National Manager, Sector Development, Early Childhood Intervention Australia, 2 October 2018, p 17.

²⁶⁰ Submission 313, NSW Government, p 22.

to support the child in the home and in the community, and they are built a basic plan. If the family is going along well, then that is great. But if they need ongoing support, they will start the NDIS access process.

Then once they have been deemed eligible, they start the planning process. The plan comes back, they support the family with implementation of the plan, then they would eventually do the plan review. Those initial three functions, anyone can access. There is no eligibility criteria. They can get some supports, referral to community services and some, we call them soft supports, interim supports. Those do include some playgroups, but they can include some one-to-one services.²⁶¹

- 2.132** Mr Jusufspahic further informed that while the Partners are new under this approach and are ‘learning... and building capacity’, ECEI service providers will have been in their local communities for many years.²⁶²

The importance of early childhood intervention

- 2.133** Numerous stakeholders told the committee how critical access to early intervention supports are to ensure the best possible outcomes for children with disability. As Ms Yvonne Keane, Chief Executive Officer, Early Childhood Intervention Australia, stated: ‘... [T]he early childhood years lay the foundation for all future development, so it is critical that we ensure every possibility and every pathway is open to children to access the right supports and services as soon as they possibly can’.²⁶³
- 2.134** Ms Keane shared how her own personal experience attested to this: ‘As a mother of a child with a hearing impairment, I know how critically important it is to have access to consistent and high-quality and best practice services and supports. I know firsthand just how life-changing early childhood intervention can be’.²⁶⁴
- 2.135** Ms Keane highlighted that without such supports, there is a higher likelihood for greater support being needed in the future, thereby impacting on the child and their family’s quality life:

Without consistent and equitable access to early intervention under the best practice model, children missing vital support and intervention in their early formative years will be faced with a much greater need for support as they get older, significantly impacting on both the child and the family's quality of life and, indeed, placing a greater need on government-funded services and supports into the future.²⁶⁵

²⁶¹ Evidence, Mr Enis Jusufspahic, National Manager, Sector Development, Early Childhood Intervention Australia, 2 October 2018, pp 19-20.

²⁶² Evidence, Mr Enis Jusufspahic, National Manager, Sector Development, Early Childhood Intervention Australia, 2 October 2018, p 19.

²⁶³ Evidence, Ms Yvonne Keane, Chief Executive Officer, Early Childhood Intervention Australia, 2 October 2018 p 17.

²⁶⁴ Evidence, Ms Yvonne Keane, Chief Executive Officer, Early Childhood Intervention Australia, 2 October 2018 p 17.

²⁶⁵ Evidence, Ms Yvonne Keane, Chief Executive Officer, Early Childhood Intervention Australia, 2 October 2018, p 17.

- 2.136** Likewise, Dr Santhi Chalasani, mother of child with Autism Spectrum Disorder, added that there are long-term benefits to accessing early intervention, such that specialised support in education, for example, may not be necessary: ‘It benefits the community to invest in early intervention because after two or three years if a child can avoid special schooling and achieve mainstream schooling the community has made up that money’.²⁶⁶
- 2.137** Ms Karen Wakely, mother of a teenage son with Autism Spectrum Disorder, expressed a similar view, telling the committee that in her son’s case, an absence of early intervention may have played a role in him developing a co-occurring diagnosis. She advocated for early intervention to potentially avoid developing further conditions:

We do know that people with autism experience extremely high anxiety so by the time they get to 13 or 14 years that is when they are likely to develop co-occurring diagnosis. In the case of my son he developed oppositional defiant disorder ... I often wonder would he have developed that had he got appropriate early intervention, which he did not get. So if you spend a buck now and get those kids the support they need early they may not—do not wait for them to get worse. Get into it, get them therapy, get them strong in the early instance and then they will not develop these co-occurring conditions as well.²⁶⁷

Concerns about accessing early childhood intervention supports

- 2.138** During the inquiry, stakeholders raised a number concerns about accessing early childhood intervention supports under the ECEI, as early childhood services transition to the NDIS.
- 2.139** One of the key concerns identified by stakeholders was a loss of an integrated approach to accessing early intervention, such that children are falling through the cracks as the Scheme is implemented across the state. These stakeholders argued that many children are being deemed ineligible for the NDIS but still require specific supports and face long waiting lists to access services that were once readily available. For example, Ms Keane, Early Childhood Intervention Australia, expressed this view to the committee, arguing that the NDIS has shifted focus away from outcomes and towards diagnoses instead:

... [W]here once New South Wales enjoyed ... an integrated approach to access for best practice early intervention for children and children without a diagnosis, ECIA has identified a significant cohort of children who have fallen through the gaps. These are the children who are at risk, who do not fit the ECIA model under NDIS ... [ECIA’s research] identifies a significant number of children who are not eligible for the NDIS plan but who are caught up in ... limbo as the sector has shifted suddenly to a model focused not primarily on outcomes but focused on NDIS plans and diagnosis. These are at-risk children who face long waiting lists to access services and supports, where once access was more readily available. Without an integrated approach from government, from the agency and from the sector, these children might continue to fall through the gaps until they become a critical problem.²⁶⁸

²⁶⁶ Evidence, Dr Santhi Chalasani, NDIS carer, 17 September 2018, p 54.

²⁶⁷ Evidence, Ms Karen Wakely, NDIS carer, 17 September 2018, p 60.

²⁶⁸ Evidence, Ms Yvonne Keane, Chief Executive Officer, Early Childhood Intervention Australia, 2 October 2018 p 16.

2.140 Indeed, Mr Jusufspahic, Early Childhood Intervention Australia, argued that early childhood intervention supports in New South Wales used to operate on a ‘universal model [that] would accept everyone and work with everyone based on their needs’, however, with the NDIS ‘now there is a very clear eligibility criteria about who is able to gain access to a package and who is not’.²⁶⁹

2.141 The Royal Australasian College of Physicians (RACP) also expressed concerns about children failing to meet eligibility criteria, highlighting those between 0 to 6 years of age with mild development delays who are considered ineligible for the NDIS.²⁷⁰ The College raised concerns about these children in particular as they may have difficulty accessing services outside of the NDIS. These include children with disruptive behaviours and complex developmental trauma.²⁷¹ Dr Jacqueline Small, Fellow, Royal Australasian College of Physicians, explained this position, stating:

I think it is unclear how these children are going to be supported. We have seen, particularly around children with autism, that ... [the NDIS] always foreshadowed that they would not support all the children who are diagnosed with a significant developmental delay or disability, and I think it is really challenging to know what to do with those children. It is very important that children are supported in the mainstream sectors, but that is usually not enough for children with additive needs, particularly in the early years where we know time is crucial; you can lose time and lose opportunities for future development.²⁷²

2.142 With many children falling outside of the Scheme, Mr Jusufspahic told the committee that increasing numbers of children are seeking access to community services, however, many are put on waiting lists as services are sparse and the demand is high:

A lot of providers tell me that they are seeing much larger numbers of children seeking supports from ECIA services. So there are more children coming and there are more children attempting to access services in their local community, and in some communities there is not a great deal available, so those children would go on waiting lists. It is different for different regions, based on resourcing. In some regions the waitlists for playgroups that have a therapeutic-type element to them, it could be six to 12 months, and that is a very long time for a child to wait. So families are looking at all other possible solutions to try and access services.²⁷³

2.143 Mr Jusufspahic highlighted the pressing need for people to access support in the short term, but that access to this support is really dependent on the area that one lives in:

It depends on the local community and what is actually available there. In the remote communities it is a real challenge because there needs to be a relationship built with those communities and there needs to be outreach.

²⁶⁹ Evidence, Mr Enis Jusufspahic, National Manager, Sector Development, Early Childhood Intervention Australia, 2 October 2018, p 17.

²⁷⁰ Submission 160, Royal Australasian College of Physicians, p 6.

²⁷¹ Submission 160, Royal Australasian College of Physicians, p 6.

²⁷² Evidence, Dr Jacqueline Small, Fellow, Royal Australasian College of Physicians, 2 October 2018, p 58.

²⁷³ Evidence, Mr Enis Jusufspahic, National Manager, Sector Development, Early Childhood Intervention Australia, 2 October 2018, pp 17-18.

We have identified around the State certain pockets in certain communities where there are significant numbers of children who do need assistance who have not had access to any early childhood intervention before.

... [F]or the short to medium term they do need to access something from the community ... It is very different for different communities and different children and based on their needs. If it is a mental health service for a child zero to six there are limited services of that kind that are available across New South Wales if that is required. Depending on the needs of the child and where they sit and where they live they are able to access different things.²⁷⁴

- 2.144** On a broader level, the RACP called for the NSW Government to provide a coordinated approach to supporting children who are not eligible for the Scheme by ensuring access to mainstream services and appropriate interventions. The RACP argued:

Although the recent introduction of the NDIA's ECEI approach from July 1 2018 will help to link those not eligible for an NDIS plan to other government services and the community, children not eligible for the NDIS require a coordinated response from the NSW Government. The NSW Government must ensure that ineligible children and their families are supported to access mainstream health services and assist them in obtaining effective intervention and support.²⁷⁵

- 2.145** Another key concern raised by stakeholders during the inquiry relates to those who seek to access the NDIS and pursue the pathway to individualised funding. For these people, among the most significant issues faced are the lengthy delays children and families encounter when obtaining a plan under the NDIS. Indeed, according to Ms Keane, Early Childhood Intervention Australia, one of the major issues that she hopes will be immediately addressed is 'the current enormous backlog of children and families waiting for NDIS plans who are currently not accessing vital services and supports'.²⁷⁶

- 2.146** Ms Keane expressed deep concerns about the devastating and lasting impact of such delays, stating: '... [A] delay of between six and 12 months for access to vital and life-changing early intervention treatment can have a devastating and arresting impact on the future of the child and that of their family'.²⁷⁷

- 2.147** Dr Chalasani shared these concerns, telling the committee about her personal experience with seeking access to the Scheme and the delays she faced trying to get support for her son. Dr Chalasani stated that if she had not pursued intensive therapy upon her son's diagnosis, her son may have required ongoing support from the NDIS. She shared:

By the time that whole process finished it was 12 months between the time I initially made contact with the NDIS and the time we got an initial planning meeting, and that is critical time in early intervention. If I had not just gone ahead and done intensive

²⁷⁴ Evidence, Mr Enis Jusufspahic, National Manager, Sector Development, Early Childhood Intervention Australia, 2 October 2018, p 17.

²⁷⁵ Submission 160, Royal Australasian College of Physicians, p 6.

²⁷⁶ Evidence, Ms Yvonne Keane, Chief Executive Officer, Early Childhood Intervention Australia, 2 October 2018 p 16.

²⁷⁷ Evidence, Ms Yvonne Keane, Chief Executive Officer, Early Childhood Intervention Australia, 2 October 2018 p 16.

therapy my son would probably still be non-verbal. Because he has been getting such intensive therapy we have every expectation he will be able to attend mainstream schooling with no supports and not be an NDIS participant, which is exactly the outcome that we want.²⁷⁸

- 2.148** Ms Keane suggested that the delays being experienced by parents and carers are a symptom of the nature of the transition to the new ECEI approach under the NDIS, the high demand for intervention services, and the time it is taking for Early Childhood Partners to build capacity:

This backlog, or waiting list ... is a symptom of both the nature of the transition across New South Wales, higher than expected demand for ECIA services and the time that it is taking for the early childhood partners across New South Wales to scale up and stand up their business models and also for service providers to overcome the significant workforce issues that they are facing.²⁷⁹

- 2.149** The impact of the transition of services to the NDIS on service providers in the early intervention space was also raised by Ms Keane, who argued that it has been difficult for many providers. She asserted that sustaining businesses during this transition period is proving challenging:

The transition for a large part of our membership has been very difficult. You are going from one business model to a completely different business model. Ultimately, for consumers this is great because what will happen is you will be making a choice and you will be picking the best services for you. But that transition from block funding to choice by the client, has been very difficult, not just because they might not select your service again, but largely because the financial model has changed. In order to sustain yourself through this transition period you would have to have put away a sum of money so that your business can survive and you can pay your overheads through this transitional time. The problem with that is a lot of the services do not have any fat and the transitional time seems to be spinning out.

We are seeing some services in quite critical condition at the moment, and we are doing our best to work with them and the National Disability Insurance Agency [NDIA] to find some agile interim solutions for those members. They always say that nothing worth doing is easy, and this transition is not easy. It is not impossible, we just need to find ways that we can work together, as I said, in an agile fashion to address the problems in the short term. They are real and they can be quite critical, particularly in those remote areas, we are finding that access to services can be difficult.²⁸⁰

- 2.150** Further discussion on the impact of the NDIS on service providers can be found in chapter 5.

- 2.151** Mr Coutts-Trotter, Department of Family and Community Services, responded to these concerns by giving assurances that much work has been done in early childhood intervention to ensure greater accessibility to services and a more coordinated inter-agency approach. Mr Coutts-Trotter explained:

²⁷⁸ Evidence, Dr Santhi Chalasani, NDIS carer, 17 September 2017, p 55.

²⁷⁹ Evidence, Ms Yvonne Keane, Chief Executive Officer, Early Childhood Intervention Australia, 2 October 2018 p 16.

²⁸⁰ Evidence, Ms Yvonne Keane, Chief Executive Officer, Early Childhood Intervention Australia, 2 October 2018 pp 20-21.

I read with interest the submission, for example, of Early Childhood Intervention Australia and their concerns about children who might be referred by early childhood partners to mainstream community settings, so for example a community run preschool funded by colleagues in the Department of Education. They have done some considerable work and are now beginning to implement a strategy to build the inclusiveness of those community preschool settings, so training for staff, minor capital works to make facilities more physically accessible and scholarships for early childhood educators who want to develop a disability specialty.²⁸¹

Committee comment

- 2.152** The committee acknowledges that with the rollout of the new Early Childhood Early Intervention (ECEI) approach in New South Wales, together with the implementation of the NDIS, there has been significant change in the early childhood early intervention space.
- 2.153** The committee notes in particular the concerns of stakeholders that access to early intervention supports in this transition period is inadequate, particularly for those who are not eligible for the Scheme. The committee acknowledges the difficulty many families are experiencing in gaining access to community services at a time when demand is high and availability is limited.
- 2.154** As previously acknowledged, the committee notes with concern the lengthy delays involved in the planning process. However, the committee finds it particularly unacceptable that many families are waiting for plans for children seeking early intervention support given how critical time is in early childhood for future development.
- 2.155** The committee therefore recommends that these issues be resolved as a priority to ensure children, regardless of eligibility for the Scheme, receive access to early intervention support.

Recommendation 3

That the NSW Government actively pursue, through its role on the Council of Australian Governments Disability Reform Council, for the National Disability Insurance Scheme the resolution of issues relating to early childhood intervention supports, as delivered by the Early Childhood Early Intervention approach, including:

- ensuring that children have access to early childhood services, regardless of eligibility for the Scheme, particularly for children with developmental delay
 - ensuring a timely response to access requests for early intervention supports through the National Disability Insurance Scheme
 - ensuring that any outstanding plans for children seeking access to early intervention supports are developed and enacted as a matter of priority
 - greater support for Early Childhood Partners to build their capacity to provide and facilitate a coordinated response to children requiring early intervention supports.
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²⁸¹ Evidence, Mr Michael Coutts-Trotter, Secretary, Family and Community Services, 2 October 2018, p 73.

Recommendation 4

That the NSW Government develop and support, on an ongoing basis, an integrated early intervention program which addresses the fact that many children in need of early intervention services are not – and will not – be eligible for National Disability Insurance Scheme funding.

Chapter 3 **The transfer of specialist disability services to the National Disability Insurance Scheme**

Following on from chapter 2, this chapter considers the implementation of the National Disability Insurance Scheme (NDIS) in New South Wales within the context of the NSW Government's decision to transfer all specialist disability services to non-government organisations. It explores the impact of this decision, not only on the Scheme's efforts to provide reasonable and necessary supports to its participants, but on the broader provision of support to people with disability in New South Wales. In particular, the chapter examines the concerns of inquiry participants who argued that there are significant gaps in service following the transfer, such that many cohorts of people with disability are 'falling through the cracks'. The challenges faced by people with disability in regional, rural and remote communities will also be discussed. Finally, the chapter will consider the compounded effect of the Scheme's implementation, including the impact of the service transfer initiated by the NSW Government, on mainstream services such as health, justice and education.

The decision to transfer services from the NSW Government to the NDIS

- 3.1** As discussed in chapter 2, there has been significant disability reform in New South Wales over the course of more than a decade, with a distinct focus on what Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, described as 'individualising support for people with disability'.²⁸² The committee was told that the move towards and investment in a more flexible, person-centred approach to disability service delivery over this time was a direct response to needs identified by people with disability and the sector more broadly.²⁸³
- 3.2** According to Mr Coutts-Trotter, the NDIS was then 'the next logical step in that continuum of reform'.²⁸⁴ Indeed, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, called the Scheme the 'culmination' of the many years of work in this area.²⁸⁵
- 3.3** To support the establishment of the NDIS in New South Wales, the NSW Government made the decision to transfer all specialist disability service provision to non-government organisations, stating that the transfer has been 'critical to the implementation of the NDIS'.²⁸⁶
- 3.4** The NSW Government asserted that non-government organisations are best placed to deliver specialist disability services because they are 'able to be responsive and dynamic to support individuals, already had the skills and experience to appropriately support people with disability,

²⁸² Evidence, Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, 17 September 2018, p 8.

²⁸³ Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 17 September 2018, p 2.

²⁸⁴ Evidence, Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, 17 September 2018, p 8.

²⁸⁵ Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 17 September 2018, p 2.

²⁸⁶ Submission 313, NSW Government, p 10.

and are able to provide individuals more choice and control'.²⁸⁷ They advised that these organisations were already delivering 60 percent of disability services in New South Wales before the transfer began, and were the primary providers in many parts of the state.²⁸⁸

- 3.5** The NSW Government argued that transferring service provision to non-government organisations under the NDIS 'helps to simplify the system and allow one level of government – the Commonwealth Government – to have clear responsibility for specialist support for people with disability'.²⁸⁹
- 3.6** They maintained that '[o]peration of a dual NSW Government run system would limit choice and control and create duplicative and confusing funding and accountability arrangements',²⁹⁰ citing the Productivity Commission's findings that 'a single national NDIS, operated by a single national agency, [is] the best model to provide disability care and support'.²⁹¹
- 3.7** The NSW Government also advised that the transfer of services formerly delivered by the Department of Family and Community Services (FACS) through the division of Ageing, Disability and Home Care (ADHC) 'has allowed the NSW Government to redirect its specialist disability budget directly into the NDIS'.²⁹²
- 3.8** Indeed, NSW Government advised that it expects the NDIS will 'more than double specialist disability service funding in NSW',²⁹³ increasing the total funding from approximately \$3 billion per year previously spent on specialist disability services in New South Wales, to over \$6.5 billion per year once the full Commonwealth Government contribution has been realised.²⁹⁴

A withdrawal of responsibility?

- 3.9** For numerous stakeholders, the decision to transfer services to the NDIS represents a withdrawal of the NSW Government from its responsibility to people with disability, with inquiry participants expressing deep concerns about what they considered to be a void left by the NSW Government in disability service provision that cannot be filled.
- 3.10** According to the National Disability Insurance Agency (NDIA), the NDIS is designed to 'complement, not replace, existing government services by providing supports that are reasonable and necessary and are required for individuals to achieve their goals'.²⁹⁵ Yet many inquiry participants argued that the NSW Government has used the NDIS to do just that.
- 3.11** For example, Mr Dennis Ravlich, Manager, Member Industrial Services Team, NSW Nurses and Midwives Association, asserted that problems with the Scheme's implementation have been

²⁸⁷ Submission 313, NSW Government, p 10.

²⁸⁸ Submission 313, NSW Government, p 10.

²⁸⁹ Submission 313, NSW Government, p 3.

²⁹⁰ Submission 313, NSW Government, p 10.

²⁹¹ Submission 313, NSW Government, p 10.

²⁹² Submission 313, NSW Government, p 3.

²⁹³ Submission 313, NSW Government, p 2.

²⁹⁴ Submission 313, NSW Government, p 2.

²⁹⁵ Submission 342, National Disability Insurance Agency, p 4.

'compounded by the decision of the New South Wales Government to use the rollout of the NDIS to vacate the field entirely as a provider of disability and accommodation services'.²⁹⁶ Mr Ravlich added: 'To be clear, that is a decision that the Association and our members have rejected from the day it was announced'.²⁹⁷

- 3.12** Likewise, Mr Troy Wright, Assistant General Secretary, NSW Public Service Association and Branch Secretary, Community and Public Sector Union NSW (PSA/CPSU), argued that the NSW Government's decision to transfer services was a 'voluntary abrogation of responsibility' leaving 'no residual service provision by the State, effectively meaning that all public sector services which were within the responsibility of ADHC were to be privatised'.²⁹⁸ Mr Wright contended:

Representatives of both the government and the department have repeatedly claimed this was a decision made because of the introduction of the NDIS. The experience and position of other States and Territories shows this to be untrue and to claim so is misleading. It was a voluntary abrogation of responsibility, leaving the provision of most basic and essential services for the most vulnerable people in society to the whims of market forces.²⁹⁹

- 3.13** People with Disability Australia (PWDA) also believed that the NSW Government has withdrawn from its responsibility and argued that it did so on an 'erroneous view' that the NDIS will take responsibility for all people with disability:

PWDA is concerned that the NSW has withdrawn from its responsibility to provide inclusive and accessible services, including disability supports because of a pervasive, but erroneous view that the NDIS will cover all responsibility for people with disability. We strongly reject this...³⁰⁰

- 3.14** Stakeholders consistently acknowledged that the NDIS was 'never designed to support every person with disability',³⁰¹ and therefore argued that the NSW Government indeed has a role to play in providing disability support, particularly for people who are not eligible for the Scheme and may still require specialist disability services.³⁰² As PWDA stated:

... [t]he NSW Government must continue to provide a role in disability support for NSW people with disability. Parallel to the implementation of the NDIS, and critical to

²⁹⁶ Evidence, Mr Dennis Ravlich, Manager, Member Industrial Services Team, NSW Nurses and Midwives' Association, 2 October 2018, p 65.

²⁹⁷ Evidence, Mr Dennis Ravlich, Manager, Member Industrial Services Team, NSW Nurses and Midwives' Association, 2 October 2018, p 65.

²⁹⁸ Evidence, Mr Troy Wright, Assistant General Secretary, NSW Public Service Association and Branch Secretary, Community and Public Sector Union NSW, 2 October 2018, p 64.

²⁹⁹ Evidence, Mr Troy Wright, Assistant General Secretary, NSW Public Service Association and Branch Secretary, Community and Public Sector Union NSW, 2 October 2018, p 64.

³⁰⁰ Submission 329, People with Disability Australia, p 5.

³⁰¹ For example, Evidence, Mr Tony Pooley, Senior Manager, State Operations, National Disability Services, 17 September 2018, p 31.

³⁰² For example, Ms Therese Sands, Co-Chief Executive Officer, People with Disability Australia, 17 September 2018, p 31; Submission 329, People with Disability Australia, p 5.

its success is the reform required to realise all the human rights of people with disability
...³⁰³

- 3.15** Indeed, inquiry participants repeatedly raised concerns about all other people with disability who fall outside of the Scheme, particularly as the NSW Government has invested so heavily in the NDIS. Ms Melinda Paterson, an NDIS participant who herself works in the sector, expressed this view, stating:

What was really scary for someone who worked in the sector was watching all the State money go into one bucket. As soon as you put it all in one bucket there are people who are going to be left out.³⁰⁴

- 3.16** Likewise, Mr Jim Simpson, Senior Advocate, NSW Council for Intellectual Disability, shared this concern, likening NDIS participants to an 'oasis in the desert'³⁰⁵ – the chosen few among many, many more who are not eligible or in receipt of NDIS supports.

- 3.17** For these stakeholders, the success of the Scheme is very much tied to the support available to all other people with disability who are not eligible for the NDIS. As Mr Simpson argued:

... what the success of the NDIS is predicated on is for the rest of those 1.3 million, there being a wide range of community support, not the specialised kind of disability support that we are talking about for participants, but nonetheless a wide range of disability support ...³⁰⁶

- 3.18** Supporting people with disability, regardless of their eligibility for the NDIS, will be considered in detail in chapter 4.

The impact of the service transfer

- 3.19** During the inquiry, the committee heard that the transfer of specialist disability service provision to non-government organisations has impacted significantly not only on the implementation of the NDIS but on the provision of disability supports more broadly. According to Mr Wright, PSA/CPSU:

... [A]ny concerns that have arisen through the introduction of the NDIS have been exacerbated by the New South Wales Government's additional decision to cease any level of direct service provision in its own right.³⁰⁷

- 3.20** For example, for some, such as Mr Ravlich, NSW Nurses and Midwives Association, the transfer of services to the NDIS has reduced choice by removing the opportunity for people to seek specialist disability support from the NSW Government. Mr Ravlich argued:

³⁰³ Submission 329, People with Disability Australia, p 5.

³⁰⁴ Evidence, Ms Melinda Paterson, NDIS participant, 17 September 2018, p 42.

³⁰⁵ Evidence, Mr Jim Simpson, Senior Advocate, NSW Council for Intellectual Disability, 2 October 2018, p 47.

³⁰⁶ Evidence, Mr Jim Simpson, Senior Advocate, NSW Council for Intellectual Disability, 2 October 2018, p 48.

³⁰⁷ Evidence, Mr Troy Wright, Assistant General Secretary, NSW Public Service Association and Branch Secretary, Community and Public Sector Union NSW, 2 October 2018, p 63.

The withdrawal of government-operated services reduced choice, which seems to be the very antithesis of the NDIS philosophy. It removed the option completely to continue to have one's needs met by FACS.³⁰⁸

- 3.21** Mr Ravlich insisted 'there must be a reliable and accountable government sector option for people with disability', arguing that the option should not just be one of 'last resort' because '[f]or many it is the option of first resort due to their complex and multiple needs'.³⁰⁹
- 3.22** The notions of a public safety net and a provider of last resort will be discussed in chapter 4.
- 3.23** For others, the service transfer has marked uncertainty among people with disability and their families and carers that the quality and level of care previously received will not be maintained, as alluded to by Mr Steve Kinmond, Deputy Ombudsman and Community and Disability Services Commissioner, NSW Ombudsman. Mr Kinmond spoke of the 'understandable concern that the service that has been delivered, will continue to be delivered',³¹⁰ and argued that strong communication is critical to ensuring supports are provided and concerns are addressed as early as possible.³¹¹
- 3.24** The committee also received evidence about the impact of the transfer of services on service providers themselves, with inquiry participants highlighting the significant cultural change in custom and practice experienced by providers who must now operate within an insurance-based scheme. As Ms Jo-Anne Hewitt, Executive Director Disability, The Benevolent Society, explained:
- ...[T]here are cultural and systemic issues that organisations have to work through to make the price point work for us ...[W]hen you are dealing with a workforce who are accustomed to providing whatever it takes to support a person with a disability and they suddenly need to provide services within a finite framework of an NDIS plan, so they need to stick to particular billable hours and get used to charging for things like writing their case notes and preparation and those kinds of things—making that cultural change with the workforce and recording everything that they do to ensure that we are billing cannot be underestimated ...³¹²
- 3.25** The challenges facing service providers with the implementation of the NDIS is examined further in chapter 5.
- 3.26** Beyond these issues, however, the most deepest concerns were expressed for the significant gaps in service that have emerged with the transfer of services from the NSW Government to non-government organisations. The following sections explore these concerns in detail.

³⁰⁸ Evidence, Mr Dennis Ravlich, Manager, Member Industrial Services Team, NSW Nurses and Midwives' Association, 2 October 2018, p 66.

³⁰⁹ Evidence, Mr Dennis Ravlich, Manager, Member Industrial Services Team, NSW Nurses and Midwives' Association, 2 October 2018, p 66.

³¹⁰ Evidence, Mr Steve Kinmond, Deputy Ombudsman and Community and Disability Services Commissioner, NSW Ombudsman, 2 October 2018, p 4.

³¹¹ Evidence, Mr Steve Kinmond, Deputy Ombudsman and Community and Disability Services Commissioner, NSW Ombudsman, 2 October 2018, p 4.

³¹² Evidence, Ms Jo-Anne Hewitt, Executive Director Disability, The Benevolent Society, 2 October 2018, p 12.

People 'falling through the cracks'

- 3.27** For many inquiry participants, a key issue during the inquiry was whether there are people with disability who are 'falling through the cracks' as the Scheme is implemented in New South Wales and services are transferred from the NSW Government to non-government organisations. Indeed, numerous stakeholders raised concerns about those who may not be eligible for the Scheme but who still require specific disability supports that they had access to previously.³¹³ As Ms Therese Sands, Co-Chief Executive Officer People with Disability Australia, stated:

... [T]here are many people who are not eligible for the NDIS who are now struggling to find the supports they need to continue to live their lives the way they did before.... They are in quite dire situations in many cases.

... they may have lost those supports because it has been transferred through to the NDIS, so there is nowhere else for them to go, or the services are charging for those supports and they do not have the means to pay for them.³¹⁴

- 3.28** Inquiry participants identified a number of cohorts of people to whom this applies, including people requiring low level support, carers, people with psychosocial disabilities and young people in aged care facilities.

People requiring low level support

- 3.29** Of the various groups of people with disability identified as potentially falling outside of the Scheme, those requiring low level support were the most widely discussed by inquiry participants. Many stakeholders raised concerns about the many people with disability who may no longer have access to supports that facilitate independent living in the home previously delivered by ADHC through the Community Care and Support Program (CCSP) because they have not been deemed eligible for the NDIS.³¹⁵
- 3.30** Indeed, Mr Coutts-Trotter advised that approximately 4,000 people who were previously receiving ADHC disability support were not deemed eligible for the NDIS, and that of this number, the overwhelming majority were those under the CCSP.³¹⁶

³¹³ For example, Evidence, Ms Therese Sands, Co-Chief Executive Officer, People with Disability Australia, 17 September 2018, p 31; Evidence, Ms Serena Ovens, Convenor, NSW Disability Advocacy Alliance, 2 October 2018, p 32; Evidence, Ms Ya'el Frisch, Project Officer Advocacy, NSW Council of Social Service, 2 October 2018, p 31; Evidence, Dr Jacqueline Small, Fellow, Royal Australasian College of Physicians, 2 October 2018, pp 57-58.

³¹⁴ Evidence, Ms Therese Sands, Co-Chief Executive Officer People with Disability Australia, 17 September 2018, p 30.

³¹⁵ For example, Evidence, Mr Tony Pooley, Senior Manager, State Operations, National Disability Services, 17 September 2018, p 34; Answers to questions on notice, People with Disability Australia, 15 October 2018, p 9; Evidence, Ms Ellen Small, Policy Officer, Physical Disability Council of NSW, 2 October 2018, p 49; Mr Tony Jones, Policy and Advocacy Manager, Spinal Cord Injuries Australia, 2 October 2018, p 50; Dr Kim Bulkeley, Industry Advisor, Occupational Therapy Australia, 2 October 2018, p 56; Evidence, Ms Serena Ovens, Convenor, NSW Disability Advocacy Alliance, 2 October 2018, p 32.

³¹⁶ Evidence, Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, 17 September 2018, p 9.

- 3.31** Under the CCSP, recipients received support such as domestic assistance and community transport to assist them to be able to live at home, remain in employment and access the community.³¹⁷ A number of stakeholders spoke of the importance of these services, with Ms Paterson stating: 'Some of the people in the community care supports program use quite low levels of service, but they are crucial services to keep them out and about and keep them at work'.³¹⁸
- 3.32** Indeed, the following case study of Mr Anthony Mulholland demonstrates the need and value of these supports, particularly travel assistance, to keep people with disability connected with the community.

Case study – Anthony Mulholland³¹⁹

Anthony Mulholland is a 36 year old Aboriginal man from Western Sydney. Anthony was born with an intellectual disability and is a member of the NSW Council for Intellectual Disability Advocacy Group.

Anthony loves to be involved in the community. He plays touch football in an inclusion league for people with a disability in the Penrith area. He is one of the leading scorers for the team. Once having access to NSW State Government funding for his touch football inclusion league, Anthony had to use his own NDIS funding to continue to play as the league was not covered by the NDIS. Anthony had to use his social funding from the NDIS to be able to continue to play in the league, sacrificing seeing his friends for three months.

Anthony said that the transition from NSW State funding to the NDIS 'has been stressful because a lot of my friends are not able to access the community anymore; they are missing out on getting out in the community, being able to live their life.'

One of the hurdles Anthony sees for people with a disability accessing the community is transport. With the NDIS not providing funding for community transport, some of his friends cannot get out of the house because they do not know how to travel on trains, buses or ferries.

Anthony likes to do advocacy work, giving people with disability a voice to speak up. He wants to help make sure his friends do not face the same problems he has faced. Anthony says too much red tape, with complicated forms beyond his comprehension, and communicating with NDIS staff has brought a lot of stress to him and his friends.

³¹⁷ Evidence, Ms Ya'el Frisch, Project Officer Advocacy, NSW Council of Social Service, 2 October 2018, p 31; Answers to questions on notice, Physical Disability Council of NSW, 23 October 2018, p 1.

³¹⁸ Evidence, Ms Melinda Paterson, NDIS participant, 17 September 2018, p 42.

³¹⁹ Evidence, Mr Anthony Mulholland, Member, NSW Council for Intellectual Disability, 2 October 2018, pp 39-48.

3.33 Mr Coutts-Trotter acknowledged the loss of low level support to people with disability as a significant issue. He advised that it was identified as an area of concern in the early stages of the Scheme's transition such that a transition agreement was made with the Commonwealth 'to make sure that anybody in those circumstances deemed ineligible would have some kind of continuity of support'.³²⁰

3.34 Mr Coutts-Trotter told the committee that this has resulted in a number of outcomes, with funding for the continuity of support to be extended until September 2018 to ensure an effective transition.³²¹ Mr Coutts-Trotter asserted that this arrangement 'seems to have worked pretty well', explaining:

Essentially, that [continuity of support] function has done three things for people. For some people who were deemed ineligible it supported them to test that decision and some people have been able to get access to the scheme—the minority of the group. Then there are people, with appropriate supports and the help of family, friends and community organisations, who can manage perfectly well without any additional support ... Then there were people who were on the brink of being eligible for the Commonwealth aged-care system.

Over the past couple of years, around 5,000 people have had that continuity of support provided to them and we extended the funding of that through till the end of September to make sure that the transition was effective. That seems to have worked pretty well.³²²

3.35 However, many stakeholders insisted that there are many people with disability who have not been captured by a continuity of support and have been gravely impacted by the loss of services provided under the CCSP. For example, the Physical Disability Council of NSW stated:

PDCN has observed that many former CCSP recipients are now no longer receiving services and subsequently are heavily reliant on informal supports from family and friends or are forgoing essential personal care and community access.³²³

3.36 Similarly, Ms Karen Stace, NSW Sector Operations Manager, National Disability Services, argued that 'there are individuals facing gaps and that the Commonwealth Continuity of Support Programme is not adequate or that it is not picking up the services they had previously'.³²⁴ Ms Stace stated:

With the withdrawal of that funding going into the NDIS bucket, those individuals are not eligible for the NDIS. ... they have to look at other mechanisms to meet their needs. It falls back to the health system and to providers to stretch their limited resources to

³²⁰ Evidence, Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, 17 September 2018, p 9.

³²¹ Evidence, Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, 17 September 2018, p 9.

³²² Evidence, Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, 17 September 2018, p 9.

³²³ Answers to questions on notice, Physical Disability Council NSW, 23 October 2018, p 1.

³²⁴ Evidence, Ms Karen Stace, NSW Sector Operations Manager, National Disability Services, 17 September 2018, p 37.

provide some of those supports ... we are still finding that people who are not eligible who were receiving services are still wondering how they will get their needs met.³²⁵

- 3.37** Without access to this support, Ms Ya'el Frisch, Project Officer Advocacy, NSW Council of Social Service (NCOSS), asserted that these people have experienced 'less independence and greater isolation'.³²⁶ Moreover, some stakeholders reported instances where a loss of this assistance has led to poor health outcomes or an inability to live at home unassisted such that they have had to call on health services.³²⁷ The NSW Disability Advocacy Alliance explained:

The loss of community based supports to assist with activities such as shopping, cleaning, assistance with meals and personal care has to date seen some people in this category unable to maintain their health and in order to access assistance are calling emergency ambulance services, or being admitted to hospital.³²⁸

- 3.38** Ms Serena Ovens, Executive Officer, NSW Disability Advocacy Alliance, shared one such example of a man who, otherwise capable of living independently with supports, had to be hospitalised because he could no longer care for himself. Ms Ovens highlighted the impact of this on the health system:

... [W]e have a gentleman who has had to be moved out of home into hospitalisation because he was no longer able to care for himself in the home. This is a great gap. If it is picked up, that is great and he gets some care, but it is a much greater strain on the health system as he sits in a hospital bed where he probably did not need to be if he had that more minor care at home.³²⁹

- 3.39** The impact of the NDIS on the health system is discussed further later in the chapter.
- 3.40** Some stakeholders also raised concerns about the way in which recipients of the CCSP were made aware of and supported during the Scheme's implementation and transition of services.³³⁰
- 3.41** For example, Mr Tony Jones, Policy and Advocacy Manager, Spinal Cord Injuries Australia, (SCIA), argued that CCSP recipients were not adequately informed of the transition nor encouraged to test their eligibility, and criticised communication efforts by FACS and the NDIA.³³¹ Mr Jones stated:

³²⁵ Evidence, Ms Karen Stace, NSW Sector Operations Manager, National Disability Services, 17 September 2018, p 37.

³²⁶ Evidence, Ms Ya'el Frisch, Project Officer Advocacy, NSW Council of Social Service, 2 October 2018, p 31.

³²⁷ For example, Evidence, Ms Ellen Small, Policy Officer, Physical Disability Council of NSW, 2 October 2018, p 49.

³²⁸ Answers to questions notice, NSW Disability Advocacy Alliance, 23 October 2018, p 1.

³²⁹ Evidence, Ms Serena Ovens, Executive Officer, NSW Disability Advocacy Alliance, 2 October 2018, p 34.

³³⁰ For example, Submission 271, Central and Eastern Sydney Primary Health Network, p 2; Submission 275, Carers NSW, p 8; Submission 204, Summer Foundation, p 16; Submission 258 National Disability Services, p 22; Answers to questions on notice, Physical Disability Council of NSW, 23 October 2018, p 1; Answers to questions on notice, NSW Disability Advocacy Alliance, 23 October 2018, p 1.

³³¹ Evidence, Mr Tony Jones, Policy and Advocacy Manager, Spinal Cord Injuries Australia, 2 October 2018, p 50.

Other than a letter they would have received stating that their funding would be ceasing and that they must now apply to the NDIS, I do not know what other support was provided by the department. And many of those [people] did literally fall through the gaps.³³²

...

My understanding is that for anyone in receipt of New South Wales government funding, we were under the impression that once there was a removal of those services, that Family and Community Services would be passing on details to the NDIS, the national access team, and then the national access team would make contact with those individuals for them to either make an application or be able to speak with the NDIS around their eligibility but there seems to have been quite a lot of people who were not contacted so they had to just make an application off their own bat.³³³

3.42 However, the NSW Government advised that a number of strategies were implemented to support the transition of existing NSW disability clients, 'including making direct contact with clients and carers to enable an effective transfer to the NDIA's National Access Team'.³³⁴

3.43 These measures were explained further in their submission:

FACS also implemented a number of strategies to support the transition of existing clients, including making direct contact with clients and carers to enable an effective transfer to the NDIA's National Access Team. Correspondence was sent to clients and carers encouraging contact with the NDIA, and FACS liaised with service providers to obtain updated contact details, where required, or to identify clients who were no longer receiving services.

The NDIA put in place a process of phone calls and correspondence to individuals who were unable to be contacted, in addition to steps undertaken through regional and local services to contact individuals directly. FACS expanded on this and undertook further correspondence to the individual, carer and providers to ensure every possible effort was made to contact individuals during the transition period. A minimum of 6 attempted contacts and up to 11 attempts for each client/carer were made by the NDIA and FACS.³³⁵

3.44 The NSW Government further advised that some existing clients have declined to enter the NDIS or have been uncontactable during the transition period.³³⁶

3.45 Notwithstanding this, Ms Ovens expressed deep concern that in June 2018 there were still over 600 people in receipt of the CCSP who had not come forward or been contactable by the NSW

³³² Evidence, Mr Tony Jones, Policy and Advocacy Manager, Spinal Cord Injuries Australia, 2 October 2018, p 50.

³³³ Evidence, Mr Tony Jones, Policy and Advocacy Manager, Spinal Cord Injuries Australia, 2 October 2018, p 54.

³³⁴ Submission 313, NSW Government, p 8.

³³⁵ Submission 313, NSW Government, p 8.

³³⁶ Submission 313, NSW Government, p 8.

Government.³³⁷ She argued further that effort needs to be extended to these people, particularly as many of them have psychosocial disabilities that require a certain approach:

That is the big issue; the fact that many of these people are very isolated, particularly in the CCSP area where we see a high percentage of those people with psychosocial disability. They are not often interested in dealing with people they do not know. They often isolate themselves, so just getting a letter that might tell them that transferring is going to happen is not enough; we need to ensure that we continue to try to work with whomever might be used to supporting them to ensure that they get that contact and that they are aware ... that they have the right to access the NDIS, and if they are not considered eligible, that there are steps and processes in place.³³⁸

Carers

3.46 Inquiry participants told the committee that there is a critical lack of support for carers under the NDIS. These stakeholders asserted that, while the NDIS focuses quite rightly on the person with disability, considerations about that person impact across the whole family – an understanding that many inquiry participants believe the NDIS has failed to take into account. According to these stakeholders, carer support funding has transitioned to the NDIS without corresponding measures under the Scheme to ensure that carers and families are appropriately supported.³³⁹

3.47 For example, Ms Naomi Fraser, Respite Client Liaison Officer, Ageing, Disability and Home Care, NSW Public Service Association and Community and Public Sector Union, explained how support for carers, such as respite, was forthcoming prior to the transfer of services but that, since then, many families have found themselves 'crumbling':

The amount of respite that was provided under the ADHC system met the needs of many families very well. Jumping to the NDIS funding model ... a lot of families are crumbling. The people I directly support have identified the limited number of days that they are getting as being inadequate. They are also talking of relinquishing children. For those people who support adults, they are pushing them into supported accommodation because they acknowledge that they can no longer cope with the level of funding that they are receiving. It is really tragic.³⁴⁰

3.48 Indeed, several inquiry participants, including Ms Elena Katrakis, Chief Executive Officer, Carers NSW, highlighted the plight of carers, most often family members of people with disability, who often reach breaking point because their role is relentless yet 'there are not the supports in place and they feel they have nowhere to go'.³⁴¹ She described the situation of one

³³⁷ Evidence, Ms Serena Ovens, Executive Officer, Physical Disability Council of NSW, 2 October 2018, p 54.

³³⁸ Evidence, Ms Serena Ovens, Executive Officer, Physical Disability Council of NSW, 2 October 2018, p 54.

³³⁹ For example, Submission 352, Uniting, p 8; Evidence, Ms Elena Katrakis, Chief Executive Officer, Carers NSW, 2 October 2018, p 23.

³⁴⁰ Evidence, Ms Naomi Fraser, Respite Client Liaison Officer, Ageing, Disability and Home Care, NSW Public Service Association and Community and Public Sector Union NSW, 2 October 2018, p 69.

³⁴¹ Evidence, Ms Elena Katrakis, Chief Executive Officer, Carers NSW, 2 October 2018, p 28; see also Ms Sarah Judd-Lam, Manager, Policy and Research, Carers NSW, 2 October 2018, p 29.

family whose child had profound physical and intellectual disabilities that required around the clock care to demonstrate the relentless situation many families find themselves in. She stated:

That family was reaching breaking point ... they had no out, not even with ... other supports. They could not sleep; they needed to be turning the child. She would be screaming during the night, all these kinds of things. It was a relentless situation'.³⁴²

- 3.49** The committee received evidence that an increasing number of children with disability are at risk of or have been 'relinquished' into the care system because preventative services and supports have been withdrawn and parents are unable to resume care of their children.³⁴³ Mr Coutts-Trotter, FACS, advised that this situation applies to 'a very, very small group of children with disability', and that measures have been put in place together with the NDIA to make considered case-by-case decisions about access to temporary accommodation.³⁴⁴
- 3.50** Nevertheless, stakeholders insisted that the impact of the Scheme's implementation on carers is widespread. Inquiry participants identified two key issues of particular concern – the evolving role of carers of people with disability and the need for respite.
- 3.51** A number of stakeholders drew attention to the changing role of carers under the NDIS. Acknowledging that the Scheme was initially expected to significantly reduce or even eliminate the need for carers,³⁴⁵ inquiry participants asserted that the role has instead evolved and increased into an arguably more stressful and challenging role than simply looking after someone.³⁴⁶
- 3.52** For example, Ms Sarah Judd-Lam, Manager, Policy and Research, Carers NSW, asserted that carers under the NDIS are increasingly adopting a support coordination role to manage the various supports and services a participant might engage, a role previously undertaken by a case manager:
- What is happening is that carers, who are often vulnerable, older carers with their own health problems, are actually being faced with having to take on a full-time support coordination role, which previously a funded case manager would have provided. We are seeing that a lot ... it is causing a lot of stress.³⁴⁷
- 3.53** Mr Harms, Mental Health Carers NSW, informed that this was indeed the experience of mental health carers in the United Kingdom when self-directed funding was introduced. He informed that these carers saw a significant increase in the number of hours of care – but not from directly delivering that care themselves:

³⁴² Evidence, Ms Elena Katrakis, Chief Executive Officer, Carers NSW, 2 October 2018, p 28.

³⁴³ Evidence, Ms Anita Le Lay, Head of Disability, Uniting, 2 October 2018, p 8. See also Evidence, Ms Elena Katrakis, Chief Executive Officer, Carers NSW, 2 October 2018, p 28.

³⁴⁴ Evidence, Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, 2 October 2018, p 76.

³⁴⁵ Evidence, Ms Elena Katrakis, Chief Executive Officer, Carers NSW, 2 October 2018, p 26.

³⁴⁶ For example, Evidence, Mr Jonathan Harms, Chief Executive Officer, Mental Health Carers NSW, 2 October 2018, p 26.

³⁴⁷ Evidence, Ms Sarah Judd-Lam, Manager, Policy and Research, Carers NSW, 2 October 2018, p 26.

With mental health carers in particular, I believe the experience from the United Kingdom where self-directed funding was introduced was that they actually found that carers were spending on average an extra eight hours a week in their caring role, but instead of actually delivering the care themselves it was about identifying and managing the other providers of that care. The caring role changed rather than being eliminated.³⁴⁸

- 3.54** According to Ms Judd-Lam, carers under the NDIS are having the same experience, with carers reporting an increase in the amount of time they spend per week organising support for the people they care for.³⁴⁹ For example, Mr Scott Rand, NDIS carer, informed the committee:

If I am looking at the hours that we put in currently and just through the coordination, that is a full day a week—a minimum of eight hours a week reconciling, submitting invoices, coordinating services. That is just for the plan alone; that is not for every other aspect of life that requires full-time attention.³⁵⁰

- 3.55** Ms Judd-Lam said that in many cases, the NDIS plans for these participants do not include any funding for support coordination 'even though from our perspective as service providers they very much need it'.³⁵¹ Indeed, Ms Judd-Lam discussed the impact of carers who are ill-equipped for support coordination on the broader enactment of a participant's plan, including the full use of funding in the plan:

In transition, what we are really seeing is a huge crisis with particularly vulnerable carers taking on a huge amount of support coordination that they are not equipped for and therefore the person is not spending the money in their plan; they are just overwhelmed and the local area coordinators have been also overwhelmed and not able to provide that plan implementation support to them.³⁵²

- 3.56** Ms Judd-Lam suggested that while the increasing trend of support coordination by carers may reduce over time, support coordination will continue to be an ongoing challenge for carers and families because of its limited funding under the NDIS. She explained:

... I think there will be an ongoing challenge because support coordination funding under the NDIS is very limited ... So while there is a recognition that some people will need support coordination funding ongoing, the overall picture is you get it until you build your capacity and then it is taken away. I think in the long term there is going to be a lot of families who are going to be expected to basically become case managers because case managers do not exist as a funded support anymore so I think it is a really bad problem at the moment but it will probably been an ongoing problem as well.³⁵³

- 3.57** Given the increasing demands on carers, respite was raised as a significant issue during the inquiry as funding for these services has either ceased or been repurposed for the NDIS.

³⁴⁸ Evidence, Mr Jonathan Harms, Chief Executive Officer, Mental Health Carers NSW, 2 October 2018, p 26.

³⁴⁹ Evidence, Ms Sarah Judd-Lam, Manager, Policy and Research, Carers NSW, 2 October 2018, p 26.

³⁵⁰ Evidence, Mr Scott Rand, NDIS carer, 17 September 2018, p 53.

³⁵¹ Evidence, Ms Sarah Judd-Lam, Manager, Policy and Research, Carers NSW, 2 October 2018, p 26.

³⁵² Evidence, Ms Sarah Judd-Lam, Manager, Policy and Research, Carers NSW, 2 October 2018, p 27.

³⁵³ Evidence, Ms Sarah Judd-Lam, Manager, Policy and Research, Carers NSW, 2 October 2018, p 27.

- 3.58** While acknowledging the positive impact the Scheme has had on some carers, Mr Harms, Mental Health Carers NSW, explained the struggle of many others who had previously accessed respite services that are now no longer available:

The potential of the NDIS is significant and we have heard many stories from carers who have told us that receiving a package has been life changing for their loved ones and has allowed the carer time to pursue personal goals or employment for the first time in many years. On the other hand, many carers are now struggling to access much-needed carer supports ... many of which have been defunded and their funding repurposed for the NDIS. This is especially so for respite and, in particular, mental health carer respite that had been funded by the Commonwealth is now 100 per cent rolled into the NDIS.³⁵⁴

- 3.59** In explaining what respite means for carers of people with disability and the broader impact it has on a carer's well being, Mr Harms urged for respite services to be reinstated as a matter of urgency:

Respite for carers is more than a person looking after their loved one for a few hours. There are specific needs that carers have as individuals and human beings, as well as the need for spare time that need to be and are addressed by carer respite programs when they are well designed and appropriately resourced. We think that those services need to be continued. As they have been stopped and all of the funding put into a different purpose, that decision needs to be reconsidered as a matter of urgency.³⁵⁵

- 3.60** In addition, stakeholders called for a more conscious, consistent and prescribed effort to acknowledge carer needs, as stakeholders asserted that there is currently no formal mechanism by which carers' needs are assessed and can then be supported under the NDIS. While inquiry participants noted that there is opportunity in the planning process for this to take place, it is not a required consideration – it often remains in the expertise and good will of the planner as to whether opportunities for respite are included in a participant's plan. Ms Judd-Lam explained:

Some carers are accessing what they need in that planning conversation, but it really relies upon the knowledge and the goodwill of the planner and of the participant to actually identify that as a need and to work together to build that into the plan.

... [W]hile you are expecting carers to continue to care you cannot assume that their needs will be captured without actually assessing them. There is an opportunity for carers to make a carer statement under the NDIS plan, but this is not something that has been formalised or promoted or is mandatory, so it is very variable as to if someone even asks a carer.³⁵⁶

- 3.61** Ms Smit-Colbran, Mental Health Carers NSW, advised that particularly for participants with a psychosocial disability, carer needs may not be a consideration at all during the planning process and in fact in some instances carers have been excluded from the process altogether:

³⁵⁴ Evidence, Mr Jonathan Harms, Chief Executive Officer, Mental Health Carers NSW, 2 October 2018, p 24.

³⁵⁵ Evidence, Mr Jonathan Harms, Chief Executive Officer, Mental Health Carers NSW, 2 October 2018, p 24; see also Evidence, Ms Elena Katrakis, Chief Executive Officer, Carers NSW, 2 October 2018, p 26.

³⁵⁶ Evidence, Ms Sarah Judd-Lam, Manager, Policy and Research, Carers NSW, 2 October 2018, p 30.

We would point to the significant difference between participant needs and carer needs; they are two different worlds often, especially in the case of psychosocial disability where a person may not identify that their carer has needs or, in fact, they have a carer where somebody is providing them with significant support. We have noted and heard from many carers that they have been excluded from NDIS processes or they have not been asked to actively participate in NDIS processes and, as a result, their needs really have not been heard.³⁵⁷

- 3.62** Stakeholders thus called for plans and the planning process to actively acknowledge and include carers.³⁵⁸

People with psychosocial disabilities

- 3.63** Stakeholders also expressed concerns about supporting people with psychosocial disabilities who may not be for the NDIS.³⁵⁹ As The Benevolent Society stated: '... [T]here are major challenges with the transition to the NDIS for people with psychosocial disabilities'.³⁶⁰
- 3.64** For example, Mission Australia shared concerns about people with mental health issues who are either participants of Partners in Recovery (PiR) or Personal Helpers and Mentors (PHaMs) or people with mental health issues who are currently not accessing mental health services, for the Scheme may not apply.³⁶¹ Indeed, the NDIS reported that data suggests that people with psychosocial disability are 'less likely to be deemed eligible for the NDIS'.³⁶²
- 3.65** According to Mission Australia, there have been numerous instances of people with psychosocial disabilities with functional impairments who were not approved for the NDIS 'due to insufficient evidence to demonstrate the impact of mental health despite providing evidence from their current mental health services'.³⁶³
- 3.66** Similarly, The Benevolent Society argued that people with psychosocial disability are having 'disproportionate trouble' accessing the NDIS, including issues meeting the eligibility criteria given the nature of their disability, and the knowledge of medical professionals in supporting people seeking access to the NDIS.³⁶⁴

³⁵⁷ Evidence, Ms Peta Smit-Colbran, Policy Support Officer, Mental Health Carers NSW, 2 October 2018, p 30; see also Evidence, Mr Jonathan Harms, Chief Executive Officer, Mental Health Carers NSW, 2 October 2018, p 24.

³⁵⁸ For example, Submission 291, Mental Health Carers NSW Inc., pp 4, 11; Evidence, Mr Jonathan Harms, Chief Executive Officer, Mental Health Carers NSW, 2 October 2018, p 24; Evidence, Ms Sarah Judd-Lam, Manager, Policy and Research, Carers NSW, 2 October 2018, p 25; Submission 275, Carers NSW, pp 3, 11-12;

³⁵⁹ For example, Answers to questions on notice, Mission Australia, 24 October 2018, p 2; Answers to questions on notice, Uniting, 19 October 2018, p 4; Answers to questions on notice, People with Disability Australia, 15 October 2018, p 9; Answers to questions on notice, National Disability Services, 11 October 2018, p 2.

³⁶⁰ Submission 299, The Benevolent Society, p 12.

³⁶¹ Answers to questions on notice, Mission Australia, 24 October 2018, p 2.

³⁶² Answers to questions on notice, National Disability Services, 11 October 2018, p 2.

³⁶³ Submission 298, Mission Australia, p 6.

³⁶⁴ Submission 299, The Benevolent Society, p 5.

3.67 Mr Harms, Mental Health Carers NSW, shared this view, informing the committee that:

... [T]he overwhelming feedback from carers and the people they support is that some of the barriers in identifying the course of action you need to undertake in order to be recognised and accepted into the scheme is quite difficult and challenging for people with psychosocial disability and their families and carers.³⁶⁵

3.68 Mr Harms explained the impact this then has on the person and their decision to enter the Scheme: 'If the person with psychosocial disability does not receive a lot of support they often will not undertake that process at all. If they are refused or experience any difficulties they will often want to stop'.³⁶⁶

3.69 The RACP also asserted that people with psychosocial disability face varying impacts from their disability over time, which may exclude them from NDIS eligibility.³⁶⁷ The RACP drew particular attention the requirement for disabilities recognised by the Scheme to be permanent. The RACP argued that this is 'incompatible with recovery models used in supporting people living with psychosocial disability'.³⁶⁸ The RACP advised that the recovery model of mental health is focused on building capacity, however, periods of severe disability may still occur.³⁶⁹

3.70 The RACP asserted that this needs to be addressed if the Scheme seeks to support people living with psychosocial disability to be able to enter and exit the Scheme, particularly during periods of impairment.³⁷⁰

Young people in aged care facilities

3.71 Discussions about people 'falling through the cracks of the Scheme' also included young people in aged care facilities.

3.72 While it was acknowledged during the inquiry that the majority of young people living in retirement or aged care facilities are NDIS participants, the committee received evidence that there are 138 young people who have yet to access the Scheme. In addition, 170 people have exited from the Scheme, either by death or because the 'participant elects to revoke access for any reason'.³⁷¹

3.73 When questioned about those young people in aged care facilities who are not currently covered under the NDIS, Ms Stephanie Gunn, General Manager – Critical Services Issue Response, NDIA, advised that there may be a number of reasons why these people have not accessed the Scheme and received a plan, including the NDIA not being able to establish contact or to access

³⁶⁵ Evidence, Mr Jonathan Harms, Chief Executive Officer, Mental Health Carers NSW, 2 October 2018, p 24.

³⁶⁶ Evidence, Mr Jonathan Harms, Chief Executive Officer, Mental Health Carers NSW, 2 October 2018, p 24.

³⁶⁷ Answers to questions on notice, Royal Australasian College of Physicians, 24 October 2018, p 1.

³⁶⁸ Submission 160, Royal Australasian College of Physicians, p 6.

³⁶⁹ Submission 160, Royal Australasian College of Physicians, p 6.

³⁷⁰ Submission 160, Royal Australasian College of Physicians, p 6.

³⁷¹ Answers to questions on notice, National Disability Insurance Agency, 12 October 2018, p 2.

the facility, or the person choosing to delay contact, or the person receiving other types of support within those facilities, such as palliative care.³⁷²

- 3.74** Ms Chris Faulkner, General Manager – Advisory Services, NDIA, stated that the Agency is nevertheless actively seeking to have these people included within the Scheme.³⁷³ Mr Scott McNaughton, General Manager – Government, NDIA, explained the process of securing a plan for participants under these circumstances, noting that 'the gap would be how many we are still working through that process':

... we have dedicated teams within our regions who are out there managing, they are more highly skilled planners. We go out to the settings, work with the potential participant, the family, the aged-care facility, do all the planning face-to-face with all those parties involved. It does take a little bit longer. We are not doing any of the access decisions over the telephone, we go and visit each of those settings personally and do a lot of work with them one on one.³⁷⁴

- 3.75** Ms Faulkner also noted some of the challenges with gaining access to residential aged-care facilities who may not be familiar with the NDIS, stating:

It is making the connection with the residential aged facility to access their facility to work with the participant we have found has been our greatest challenge to date.

...

Often they do not have family members who have had contact with them for a while, so it is the facility that looks after them. It is about trying to make ourselves familiar and making the time to sit down and to talk with those individuals.³⁷⁵

Service gaps

- 3.76** Inquiry participants also discussed areas of support that they argued have suffered with the transfer of services under the Scheme's implementation in New South Wales, including support coordination and interdisciplinary responses, accommodation and transport.

Support coordination and interdisciplinary responses

- 3.77** Many inquiry participants raised significant concerns about the impact of the NDIS on the provision of case management or support coordination, with stakeholders drawing particular attention to the challenges experienced by participants now that services have transferred to non-government organisations and participants must be deemed eligible for funding under the Scheme in order to access that function.

³⁷² Evidence, Stephanie Gunn, General Manager, Critical Services Issue Response, National Disability Insurance Agency, 17 September 2018, p 15.

³⁷³ Evidence, Ms Chris Faulkner, General Manager, Advisory Services, National Disability Insurance Agency, 17 September 2018, p 16.

³⁷⁴ Evidence, Mr Scot McNaughton, General Manager, Government, National Disability Insurance Agency, 17 September 2018, p 15.

³⁷⁵ Evidence, Ms Chris Faulkner, General Manager, Advisory Services, National Disability Insurance Agency, 17 September 2018, p 16.

3.78 For example, the committee heard that many NDIS participants are not receiving the necessary funding for support coordination or funding has been inadequate to meet their needs.³⁷⁶ This has presented a significant gap in service for those who do not specifically have support coordination included in their NDIS plan. Ms Hewitt argued it is an area that is 'typically falling down', explaining:

Support coordination links people to the right services and liaises with other services but there is no capacity within the price point to bring professionals together with participants or families to coordinate a case in any meaningful way. That at the moment is typically falling down.³⁷⁷

Some organisations are privileging that for some people and actually bearing the cost of that kind of work but, given that it is an individually-based scheme, unless someone has what is called specialist support coordination in their plan, typically that is not occurring at all. It is a huge gap.³⁷⁸

3.79 Stakeholders told the committee that access to case management and support coordination is particularly important for certain cohorts of people with disability, such as people with complex needs, including those in boarding houses, but is no longer readily accessible.³⁷⁹

3.80 Indeed, inquiry participants drew attention to the need for ongoing support coordination for people with complex needs, including 'those who lack negotiation skills, or have a complex network of support providers'.³⁸⁰ People with Disability Australia (PWDA) explained the importance of funded support coordination for these NDIS participants, and the impact of its absence under the NDIS:

A critical issue for people with complex care and support needs in NSW is the lack of case management currently available. Case management was a service provided by Ageing, Disability and Home Care (ADHC) for people with disability. However, this is not something the NDIS provides. Given the complexity of the transition for people who need multiple services and specialised supports, a significant gap in case management is requiring independent advocates, such as those at PWDA to fill. However, this is not, nor should it be the role of independent advocacy, which provides short-term support to address issues.³⁸¹

3.81 PWDA recommended that for those with complex needs, ongoing support coordination should be funded.³⁸²

³⁷⁶ Submission 191, Physical Disability Council of NSW, p 4.

³⁷⁷ Evidence, Ms Jo-Anne Hewitt, Executive Director Disability, Benevolent Society, 2 October 2018, p 15.

³⁷⁸ Evidence, Ms Jo-Anne Hewitt, Executive Director Disability, Benevolent Society, 2 October 2018, p 15.

³⁷⁹ For example, Evidence, Mr Matthew Bowden, Co-Chief Executive Officer, People with Disability Australia, NSW Disability Advocacy Alliance, 2 October 2018, p 33.

³⁸⁰ Submission 329, People with Disability Australia, p 13; also see Submission 347, NSW Ombudsman, p 5.

³⁸¹ Submission 329, People with Disability Australia, p 15.

³⁸² Submission 329, People with Disability Australia, p 13.

3.82 The challenges experienced by people with psychosocial disabilities were also discussed, as stakeholders argued that support of this kind is vital to these participants given the fluctuating nature of their needs. As Mr Harms, Mental Health Carers NSW, explained:

... [T]his is an issue that particularly impacts people with psychosocial disability and other forms of cognitive impairment because they obviously do need additional support to make decisions and to navigate complex systems. We are lucky when their families and carers happen to have those skills but we cannot rely on that as a linchpin of the architecture of this scheme. We need to be able to provide a funded service for that.³⁸³

3.83 Ms Peta Smit-Colbran, Policy Support Officer, Mental Health Carers NSW, added: 'We are of the opinion that because mental illness is a fluctuating disability often, people do require a constant level of support coordination in many cases and it is not really clear that the NDIS will provide or continue to provide support coordination at review'.³⁸⁴

3.84 Without adequate access to case management or support coordination, inquiry participants told the committee that NDIS participants are consistently looking to people already within their circle of support to perform this function. For example, stakeholders raised concerns about carers, often older, vulnerable family members, who are increasingly assuming the role of coordinating supports and services.³⁸⁵ This was discussed earlier in the chapter.

3.85 Service providers also reported taking on the case manager role, among other emerging and additional functions, often at their own expense, such that they are assessing their place in the market.³⁸⁶ According to Ms Sands, People with Disability Australia, the function has been assumed because of an absence of that support that was once provided by the NSW Government:

Increasingly we are finding that we are taking on a case management role because there is nowhere else to support those people or no-one who is supporting the person through the service system and connecting them to services. So we are also trying to fill the gaps, working with service systems to try and get the supports around that person, whereas before we may have had the contact within the New South Wales Government to actually talk with them directly about supporting that person and taking on the case management for that person. So we are increasingly stepping outside of our role as independent advocates and having to do case management because there is no other way to support the person.³⁸⁷

3.86 The impact of the NDIS on the sustainability of service providers is examined more closely in chapter 5.

³⁸³ Evidence, Mr Jonathan Harms, Chief Executive Officer, Mental Health Carers NSW, 2 October 2018, p 27.

³⁸⁴ Evidence, Ms Peta Smit-Colbran, Policy Support Officer, Mental Health Carers NSW, 2 October 2018, p 27.

³⁸⁵ For example, Evidence, Ms Sarah Judd-Lam, Manager, Policy and Research, Carers NSW, 2 October 2018, p 26; Evidence, Mr Jonathan Harms, Chief Executive Officer, Mental Health Carers NSW, 2 October 2018, p 27..

³⁸⁶ Evidence, Ms Anita Le Lay, Head of Disability, Uniting, 2 October 2018, p 8.

³⁸⁷ Evidence, Evidence, Ms Therese Sands, Co-Chief Executive Officer, People with Disability Australia, 17 September 2018, p 31.

3.87 Other inquiry participants argued that the transfer of services from the NSW Government to the non-government sector has resulted in a loss of leadership in the sector and collaboration for an interdisciplinary response to a person's needs.

3.88 For example, Dr Jacqueline Small, Fellow, Royal Australasian College of Physicians, expressed this view, asserting that this loss has been particularly felt in policy and practice development:

We have lost the leadership of the disability sector. I know that Ageing, Disability and Home Care [ADHC] had a very important role in the health sector, a very influential role in the health sector, but at a cross-government level we have lost that. We have lost some of the leadership that they brought in policy and practice development that you have heard.³⁸⁸

3.89 While acknowledging the change in service delivery models under the NDIS, Dr Small also argued that prior to the service transfer interdisciplinary responses were facilitated and it was possible to 'work collaboratively across the sectors', an opportunity now lost:

There were not enough services before and it was not perfect. I do not think we have gone from a perfect system to an imperfect system. But there have been problems that have been introduced that we did not experience before. It was possible to work collaboratively across sectors, and I still work very closely with some of my colleagues in education, and we are both really desperate and despairing because we have lost the capacity to collaborate with the disability sector in any sustained way.³⁸⁹

3.90 According to Dr Small, the lack of coordination in this regard has been particularly difficult for health professionals:

There is a lack of coordination and communication across the sectors the like I have never seen before in my 20 years of working in this area. This is resulting in higher stress and professional challenges for many of my colleagues as we endeavour to provide the support and collaboration with other sectors that we believe that these children and families absolutely require, but are frustrated in our attempts to do so.³⁹⁰

3.91 Mr Ravlich expressed a similar view, highlighting the role of collaborative networks when addressing the needs of people with profound disabilities or complex comorbidities.³⁹¹ Mr Ravlich argued that the integrated approach to care for these people is being lost with the transfer of services:

[The withdrawal of government-operated services] has created a situation whereby current models of care being provided in an integrated way to those in the New South

³⁸⁸ Evidence, Dr Jacqueline Small, Fellow, Royal Australasian College of Physicians, 2 October 2018, p 60.

³⁸⁹ Evidence, Dr Jacqueline Small, Fellow, Royal Australasian College of Physicians, 2 October 2018, p 60.

³⁹⁰ Evidence, Dr Jacqueline Small, Fellow, Royal Australasian College of Physicians, 2 October 2018, p 58.

³⁹¹ Evidence, Mr Dennis Ravlich, Manager, Member Industrial Services Team, NSW Nurses and Midwives' Association, 2 October 2018, p 66.

Wales community with complex health care and disability support needs are being eroded and lost.³⁹²

Accommodation

3.92 Some inquiry participants also raised concerns about accommodation following the Scheme's implementation and the transfer of services to the non-government sector. For example, the NSW Council for Intellectual Disability Advocacy Group stated: "The NDIS does not help us with housing. We want the same things as everyone else like to live independently. We need more public housing. Housing and living independently is hard".³⁹³

3.93 In particular, Mr Simpson, NSW Council for Intellectual Disability, drew attention to the security of tenure in accommodation. He explained that prior to the service transfer, people with disability were very rarely evicted from their ADHC-supported accommodation based on an 'invariably respected understanding that you have got security of tenure'.³⁹⁴ Mr Simpson argued that now '[n]on-government organisations quite naturally do not have those same obligations'.³⁹⁵

3.94 Mr Simpson expressed concerns about moves to permit evictions 'for any reason on 90 days' notice or if your behaviour was problematic on 30 days' notice, irrespective of the fact that if your behaviour is problematic it may well be because you are not getting the right disability support'.³⁹⁶ He argued for more protection for people with disability, including:

... to build into the statutory regime at least a starting assumption that this is your home for as long as you want and need it, as things have always been. [And] to have a robust role for the NSW Civil and Administrative Tribunal so that if there is a proposal to evict someone from their supported accommodation it would be in a robust, rights-protection-focused way adjudicated on by the NCAT.³⁹⁷

Transport

3.95 Access to transport was also an area of concern for numerous inquiry participants. For example, NSW Council of Social Service (NCOSS) drew attention to the impact the loss of ADHC funding has had on community transport and the people it services, especially those in regional areas:

Many people with disability, particularly in regional areas, use community transport to enable them to participate in the community and attend to their health needs. ADHC

³⁹² Evidence, Mr Dennis Ravlich, Manager, Member Industrial Services Team, NSW Nurses and Midwives' Association, 2 October 2018, p 66.

³⁹³ Submission 120, NSW Council for Intellectual Disability Advocacy Group, p 19.

³⁹⁴ Evidence, Mr Jim Simpson, Senior Advocate, NSW Council for Intellectual Disability, 2 October 2018, p 43.

³⁹⁵ Evidence, Mr Jim Simpson, Senior Advocate, NSW Council for Intellectual Disability, 2 October 2018, p 40.

³⁹⁶ Evidence, Mr Jim Simpson, Senior Advocate, NSW Council for Intellectual Disability, 2 October 2018, p 43.

³⁹⁷ Evidence, Mr Jim Simpson, Senior Advocate, NSW Council for Intellectual Disability, 2 October 2018, p 43.

provided one source of funding for community transport; its cessation will leave resources stretched and people with disability potentially isolated.³⁹⁸

- 3.96** Mr Mulholland expressed these same concerns, telling the committee that the 'cuts to transport training have been disgusting'.³⁹⁹ He explained that without access to transport, he and his friends are unable to leave their homes:

Now some of my friends cannot even get out of home because they have no idea how to travel on trains, buses or ferries. They have not got mum or dad there. How are they supposed to get out? They cannot get out of their homes.⁴⁰⁰

- 3.97** Ms Frisch, NCOSS, argued that recent increases in funding to community transport are 'really insufficient to cover the increased need and the service is erratic, particularly in rural areas. There is increased demand'. She asserted: 'What we need is actually a far greater increase of this, a doubling of community participation funding over five years'.⁴⁰¹

Committee comment

- 3.98** The committee acknowledges the decision of the NSW Government to transfer all specialist disability service provision to non-government organisations, and notes the argument presented that it did so to support the establishment of the NDIS in New South Wales.
- 3.99** The committee also acknowledges the concerns of inquiry participants that this decision represents an abdication of responsibility on the part of the NSW Government. By transferring all services away from their remit, we understand how this has been seen and interpreted as a transfer of all responsibility as well.
- 3.100** The committee notes, in particular, the evidence of the NDIA that the NDIS is designed to 'complement, not replace' existing government services. The committee shares the concerns of a number of inquiry participants who suggested that the NSW Government has used the NDIS to replace existing services, rather than complement them.
- 3.101** Indeed, the committee notes the experiences of inquiry participants that highlight the gaps in service following the transfer. The committee is particularly concerned about the cohorts of people who are 'falling through the cracks' of the system and the areas of service provision that have suffered with the transition to the NDIS. For example, we note the people with disability who are otherwise capable of living independently with supports that are now having to leave their homes because of a withdrawal of low level support.

³⁹⁸ NSW Council of Social Service, *Way forward to inclusive service system: Challenges for people with disability with closure of ADHC*, April 2018, p 25, as cited in Submission 152, NSW Council of Social Service, p 2.

³⁹⁹ Evidence, Mr Anthony Mulholland, Member, NSW Council for Intellectual Disability, 2 October 2018, p 45.

⁴⁰⁰ Evidence, Mr Anthony Mulholland, Member, NSW Council for Intellectual Disability, 2 October 2018, p 45.

⁴⁰¹ Evidence, Ms Ya'el Frisch, Project Officer Advocacy, NSW Council of Social Service, 2 October 2018, p 32.

- 3.102** We acknowledge especially the carers of people with disability who are languishing with the implementation of the Scheme and the transfer of services. The committee notes with concern the evidence that there is a critical lack of support for those who care for people with disability under the NDIS, particularly given their evolving role. We are most troubled by the lack of respite support available. The committee therefore recommends that the NSW Government investigate the adequacy of the provision of carer supports, including respite services.

Recommendation 5

That the NSW Government investigate the adequacy of the provision of carer support, including respite services.

- 3.103** The committee strongly believes there should be a place in the NDIS planning process to acknowledge carers and their needs, and to have those needs met accordingly. This should be included in the planning development stage, not as an optional statement but as a mandatory requirement. The committee therefore recommends that the NSW Government advocate, through the Council of Australian Governments Disability Reform Council, that carer needs be acknowledged as an explicit and mandatory requirement of the NDIS planning process.

Recommendation 6

That the NSW Government advocate, through the Council of Australian Governments Disability Reform Council, that carer needs be acknowledged as an explicit and mandatory requirement of the National Disability Insurance Scheme planning process.

- 3.104** To this end, the committee remains unconvinced that the total transfer of specialist disability service provision – and along with it, the funding for these services – was critical to the implementation of the NDIS in New South Wales.

Support in regional, rural and remote communities

- 3.105** During the inquiry, stakeholders highlighted the ongoing challenges for NDIS participants living in regional, rural and remote communities, particularly in accessing a range of services and supports. As Mr Pooley, National Disability Services, stated: 'The provision of servicing for rural, remote and thin markets is a key issue for this scheme going forward'.⁴⁰² Many of these inquiry participants acknowledged that the transfer of services to the NDIS and the subsequent absence of NSW Government funded services have contributed to these challenges.
- 3.106** Acknowledging that 'access in rural and regional areas to health workers who understand the systems and services required by people with disability is important', the RACP argued that there

⁴⁰² Evidence, Mr Tony Pooley, Senior Manager, State Operations, National Disability Services, 17 September 2018, p 36.

are currently a number of barriers to receiving the support needed by people with disability in these areas. The RACP advised:

Evidence shows that there are barriers to greater access, delivery of therapy supports and choice in rural and remote areas. There are currently gaps in allied health services (e.g. medical, paediatric and mental health services) in remote, rural and regional areas.⁴⁰³

3.107 The RACP asserted that, as a result, there are longer wait times and great distances travelled to access services.⁴⁰⁴ Professor Graham Vimpari, Fellow, RACP, shared that this was indeed the case for the many children with disability he works with in regional and rural communities seeking to access the NDIS.⁴⁰⁵

3.108 Similarly, Mr Matthew Bowden Co-Chief Executive Officer, PWDA, told the committee:

... therapists are not on the ground, so you might not have an occupational therapist or a speech pathologist for your child in a remote area. They might only visit once every six months or annually, and so you might be on a long waiting list for that service, and then you get the service but you can only spend a small amount of your plan on that and you are not getting the therapy that you actually need.⁴⁰⁶

3.109 Mr Pooley, National Disability Services, shared this view, recognising that service provision in regional and rural areas is a problem 'beyond disability services'. Mr Pooley informed, however, that NDIS participants can usually access core supports through at least one provider or outreach support from a nearby town, but questioned whether this represents choice and control. Moreover, access to regular therapy services is limited. He explained:

...[G]enerally, rural and remote areas suffer from service provision across the range of supports, broader than disability services. Usually in New South Wales almost all service areas are supported by at least one provider—you can argue whether that provides choice and control—or there is an outreach support from a more substantial town. People with a plan can usually access core supports ... [W]here it becomes difficult is if you have regular need for therapy services but only a visiting therapist, then that becomes a specific problem if you cannot provide the travel yourself to get to the therapist.⁴⁰⁷

3.110 From a service provider perspective, Mr Butcher, Mission Australia, argued that it is difficult to establish services out in regional and rural communities, as it is not financially viable:

... the choices of service providers are limited in some areas, particularly in regional and rural New South Wales. There are simply not the number of participants or an

⁴⁰³ Submission 160, Royal Australasian College of Physicians, p 3.

⁴⁰⁴ Submission 160, Royal Australasian College of Physicians, p 4.

⁴⁰⁵ Evidence, Professor Graham Vimpari, Fellow, Royal Australasian College of Physicians, 2 October 2018, p 58.

⁴⁰⁶ Evidence, Matthew Bowden, Co-Chief Executive Officer, People with Disability Australia, 2 October 2018, p 36.

⁴⁰⁷ Evidence, Mr Tony Pooley, Senior Manager, State Operations, National Disability Services, 17 September 2018, p 35.

economy of scale for services to operate financially viable business models within the rural communities.⁴⁰⁸

... the cost of doing business in regional and rural communities is quite expensive—we have travel, office infrastructure, attracting a workforce.⁴⁰⁹

3.111 Mr Bowden expressed a similar view, stating:

The market is also not ready, particularly in areas in rural and regional and remote locations in New South Wales. People have money in their plans and they are not able to spend it because there is not the service system there, or there might be only a fly in, fly out service.⁴¹⁰

3.112 Disability workforce issues are discussed in chapter 5.

3.113 The RACP argued that implementation of the NDIS provides opportunity to 'examine ways of providing more tailored supports in rural and remote communities to ensure access to health care, including local training and provision of culturally appropriate supports'.⁴¹¹ They suggested identifying agencies to provide groups of services to concentrate skilled staff:

It would be more beneficial to NDIS participants to identify different agencies to cover grouped areas of services such as allied health services, housing support services, respite and social participation and education issues to concentrate skilled staff within less agencies. In regional and remote areas this could improve professional support and continuing education of NDIS service providers ultimately improving the standard of service provided, as well as avoiding duplication of services and inefficient expenditure.⁴¹²

Impact on mainstream services

3.114 Throughout the inquiry, stakeholders consistently acknowledged the significant impact of the Scheme's implementation, including the transfer of disability services to the non-government sector, on mainstream services delivered by the NSW Government such as health and justice. As Ms Ovens argued: '[o]ther service systems will take the brunt of the gaps that are being caused where services are disappearing if someone does not have the support of the NDIS ...'.⁴¹³

3.115 Indeed, these inquiry participants expressed grave concerns about people being inappropriately directed to mainstream services now that the accessibility of disability support has changed under the NDIS, thereby causing a huge strain on these services. For example, Mr Wright,

⁴⁰⁸ Evidence, Mr Butcher, Area Manager (Western NSW and Special Projects), Mission Australia, 2 October 2018, p 9.

⁴⁰⁹ Evidence, Mr Butcher, Area Manager (Western NSW and Special Projects), Mission Australia, 2 October 2018, p 11.

⁴¹⁰ Evidence, Matthew Bowden, Co-Chief Executive Officer, People with Disability Australia, 2 October 2018, p 36.

⁴¹¹ Submission 160, Royal Australasian College of Physicians, p 3.

⁴¹² Submission 160, Royal Australasian College of Physicians, p 4.

⁴¹³ Evidence, Ms Serena Ovens, Convenor, NSW Disability Advocacy Alliance, 2 October 2018, p 34.

PSA/CPSU, contended that the total transfer of specialist disability services from the NSW Government to the non-government sector was 'a proposal doomed to fail' because people will be forced to access support from inappropriate services. He argued:

Without a public sector safety net providing services to those beyond the capacity of the private sector, the association predicted people would land in other, less appropriate services such as the State's hospitals, its aged care system, its child protection agencies and even corrections. To consider it in the crudest terms, effectively the cost to the State Government of providing services to people with a disability will be transferred from a specialised agency such as ADHC to less appropriate services and sectors.⁴¹⁴

- 3.116** Mr Pooley, National Disability Services, expressed a similar view, arguing that people without support will – and have already – turned to mainstream services, particularly in crisis situations. He explained with an example:

A person who became homeless on a Friday night in the Hunter region two weeks ago; urgent attempt to contact the agency; net result was it was after 4.30 on a Friday ... the suggestion was to take the person to the emergency room or the local police station. Cut a long story short, the provider came up with an interim solution and there is some money flowing now. But they are the default mainstream departments that people who cannot generally be supported end up in.⁴¹⁵

- 3.117** Accessing support in crisis situations, including the notion of a 'provider of last resort' will be discussed further in chapter 4.

- 3.118** Inquiry participants, such as Ms Ovens, NSW Disability Advocacy Alliance, thus called for the NSW Government to actively ensure that people do not end up 'taking up much needed beds or ... in jail' and receive adequate support from the appropriate services, regardless of their eligibility for the Scheme – a call also made by others in chapter 4:

... even if they are not supported through the NDIS, they need the support of the State Government to ensure that they are not in systems taking up much-needed beds or people are in jails where they should not be, just because they are unable to speak for themselves correctly and tell the story of what may have happened, particularly in the case of someone with an intellectual disability where telling that story can be a lot more difficult.⁴¹⁶

- 3.119** Stakeholders drew particular attention to the impact of the Scheme's implementation on health services, with Mr Pooley, National Disability Services, stating that the Department of Health is 'the obvious default' for many people with disability.⁴¹⁷ As discussed previously in relation to people with disability in need of low level support, health services are being actively engaged when people who are otherwise capable of living independently with supports, have those

⁴¹⁴ Evidence, Mr Troy Wright, Assistant General Secretary, NSW Public Service Association and Branch Secretary, Community and Public Sector Union NSW, 2 October 2018, p 64.

⁴¹⁵ Evidence, Mr Tony Pooley, Senior Manager, State Operations, National Disability Services, 17 September 2018, pp 36- 37.

⁴¹⁶ Evidence, Ms Serena Ovens, Convenor, NSW Disability Advocacy Alliance, 2 October 2018, p 34.

⁴¹⁷ Evidence, Mr Tony Pooley, Senior Manager, State Operations, National Disability Services, 17 September 2018, p 36.

supports taken away. As Dr Small argued: 'Now that they are not receiving services we have had numerous individuals who we know of who have ended up in hospital'.⁴¹⁸

3.120 Indeed, Dr Small referred to the example of a person who 'with the loss of home care services meant that his health deteriorated greatly. He was unable to remain at home and was hospitalised at a significant cost to the New South Wales government'.⁴¹⁹

3.121 Ms Frisch, NCOSS, argued there is also a lack of mental health services, such that people are seeking support from community and mainstream services:

In relation to people missing out on mental health services, we have heard that the lack of access to these services because of the closure of ADHC has put increasing pressure on mainstream services such as community mental health services. Antisocial behaviour caused by the loss of these supports have made people vulnerable to eviction and homelessness. It illustrates the lack of disability supports and the increasing pressure on mainstream services.⁴²⁰

3.122 Other inquiry participants discussed the impact of the Scheme, including the service transfer away from the NSW Government, on justice services, with Mr Simpson advising that roundtable discussions, that have included the NSW Government, about meeting complex behaviour support needs under the NDIS found that 'people are currently being stuck in jail or are being at risk of being sent to jail for want of the disability support that they used to get under the old ADHC system'.⁴²¹

3.123 Others highlighted the long delays within the Scheme which in turn have contributed to the strain on mainstream services as people wait for plans to be developed and enacted.⁴²² For example, Ms Ovens advised:

We have had people in hospitals for months whether or not because of CCSP or other services where they are held until such time. Some of them might be eligible for plans and yet have not had a plan administered or prepared and they are held until such time as they can get their plan instigated, get the funding and then find services to get them back into the home and be supported.⁴²³

3.124 Ms Ovens shared with the committee a specific example of an individual who had suffered a stroke, and while deemed eligible for the NDIS, is currently being cared for in an aged care facility as he waits for his plan to be prepared. She explained:

⁴¹⁸ Evidence, Dr Jacqueline Small, Fellow, Royal Australasian College of Physicians, 2 October 2018, p 53.

⁴¹⁹ Evidence, Dr Jacqueline Small, Fellow, Royal Australasian College of Physicians, 2 October 2018, p 49.

⁴²⁰ Evidence, Ms Ya'el Frisch, Project Officer Advocacy, NSW Council of Social Service, 2 October 2018, p 31.

⁴²¹ Evidence, Mr Jim Simpson, Senior Advocate, NSW Council for Intellectual Disability, 2 October 2018, p 44.

⁴²² For example, Evidence, Dr Jacqueline Small, Fellow, Royal Australasian College of Physicians, 2 October 2018, p 58.

⁴²³ Evidence, Ms Serena Ovens, Executive Officer, Physical Disability Council of NSW, 2 October 2018, p 53.

We have [a] situation which is a person who has recently had a major stroke and needs significant services. He has become and is deemed eligible for the NDIS but he is actually sitting in aged care services at the moment. It is the only place capable of taking him until such time as that plan can be fully prepared. He can then find services and supports that will allow him to go back into his own home and transition back out. We are talking about two months that I know of now that he has sat in an aged care facility completely inappropriately amongst people with dementia whilst he waits to get the services and supports he needs to transition to his own home.

... He has never had services before, he has never had a disability before. He has now got a significant disability. Those things can take months. Yet in that time, whilst he is sitting in an aged care facility, he is not getting the true rehabilitation that he needs as well to ensure that we can very speedily operate and bring back as much as we can of his physical ability after the stroke whilst he sits in that scenario. It is that sort of mid-ground where you are in suspension waiting for things to happen.⁴²⁴

- 3.125** Acknowledging that the 'disability reforms associated with the NDIS are, at this point in time, resulting in greater strain on community services such as justice and health services', Mr Kinmond, NSW Ombudsman, argued that these strains 'are not always because of inadequate supports by disability services'. He asserted that they are likely related to the 'repositioning' of support to mainstream services as part the current disability reform:

Let me stress that: These strains are not always because of inadequate supports by disability services. Instead they can be related to a critical part of the current reforms which involve appropriately repositioning the provision of community services for people with disability to mainstream services.⁴²⁵

- 3.126** The NSW Government themselves recognised that '[s]uccessfully resolving interface issues between the NDIS and mainstream services is critical to ensuring that services are delivered in a streamlined way to support people to live independently'.⁴²⁶
- 3.127** Further discussion about the intersection between the NDIS and health services, focusing on drawing the line between the two in service provision, can be found in chapter 4.

Committee comment

- 3.128** The committee acknowledges the significant impact of the Scheme's implementation, including the transfer of disability services to the non-government sector, on mainstream services delivered by the NSW Government. The committee notes the evidence suggesting that people with disability have and will continue to be inappropriately directed to seek support from mainstream services now that the accessibility of disability support has changed under the NDIS.

⁴²⁴ Evidence, Ms Serena Ovens, Executive Officer, Physical Disability Council of NSW, 2 October 2018, pp 53-54.

⁴²⁵ Evidence, Mr Steve Kinmond, Deputy Ombudsman and Community and Disability Services Commissioner, NSW Ombudsman, 2 October 2018, p 2.

⁴²⁶ Submission 313, NSW Government, p 4.

Transitional arrangements

3.129 With a reform of this scale and complexity, many inquiry participants accepted that, while the NDIS is fully operational in New South Wales, the Scheme is still very new as its implementation continues to be embedded across the State. These stakeholders acknowledged that there would be challenges in this period of transition and that it will take time to address new and unexpected issues as they emerge.

3.130 For example, Ms Yvonne Keane, Chief Executive Officer, Early Childhood Intervention Australia, noted the 'teething problems' associated with any new initiative and suggested finding 'agile ways to work together to overcome these in the very short term so that we can make sure those outcomes in the long term are as spectacular as they can be'.⁴²⁷

3.131 Indeed, Ms Rundle, NDIA, acknowledged that, as a 'world-leading insurance scheme, the first of its kind', the NDIS has been impacted by 'a range of process, system and data' issues since the beginning of its rollout.⁴²⁸

3.132 Ms Le Lay, Uniting, spoke of the Scheme's implementation as being likened to 'a plane that we are flying and building at the same time'.⁴²⁹ She explained that while there is a concerted effort amongst key stakeholders to tackle any challenges as they arise, moving towards a fully mature scheme will simply take time. She stated:

... [W]e really are sitting inside a transitional period. I think originally in New South Wales ... we were thinking conceptually as the transition period being 2018 and we kind of get to where we needed to be. I think the whole sector is realising now it is more likely to be 2020-21 before actually we are in full transition and we are sitting inside a nicely mature scheme.⁴³⁰

3.133 Likewise, Ms Rundle, NDIA, asserted that 'a reform of this significance and complexity is bound to take time',⁴³¹ a view shared by the NSW Government who insisted that they along with other key stakeholders remain committed to addressing any implementation issues:

Implementation challenges were going to be experienced with a reform of the scale of the NDIS. The NSW Government recognises it will take time to address implementation issues. There is a strong commitment to continuously analyse and improve the Scheme. Ongoing work is underway between the Commonwealth Government, NDIA and NSW Government to address issues as they arise.⁴³²

3.134 Indeed, according to Mr Reardon, '[o]ur desire is to see the NDIA successful ... to do its job well and to have a customer focus as part of its DNA and how it goes about its business for

⁴²⁷ Evidence, Ms Yvonne Keane, Chief Executive Officer, Early Childhood Intervention Australia, 2 October 2018, p 18.

⁴²⁸ Evidence, Ms Vicki Rundle, Deputy Chief Executive Officer, Government, Communications and Stakeholder Engagement, National Disability Insurance Agency, 17 September 2018, p 12.

⁴²⁹ Evidence, Ms Anita Le Lay, Head of Disability, Uniting, 2 October 2018, p 10.

⁴³⁰ Evidence, Ms Anita Le Lay, Head of Disability, Uniting, 2 October 2018, p 10.

⁴³¹ Evidence, Ms Vicki Rundle, Deputy Chief Executive Officer, Government, Communications and Stakeholder Engagement, National Disability Insurance Agency, 17 September 2018, p 12.

⁴³² Submission 313, NSW Government, p 36.

every single client with which it comes into contact'.⁴³³ Mr Reardon expressed the NSW Government's commitment in this regard, stating: 'We will assist it with everything we can to ensure that is the case'.⁴³⁴

3.135 To this end, the NSW Government advised that a range of supports for people with disability have been funded during the early years of the Scheme in acknowledgment of the significant shift in service delivery and the risks that might arise with transition to the Scheme.⁴³⁵

3.136 Key among these supports is the Ability Links program which provides assistance to people with disability to connect to various opportunities, including employment, volunteering and education. This assistance is delivered by Ability Linkers, of which there are 295 across New South Wales. The NSW Government advised that Linkers do not themselves provide support but link to the support via their networks.⁴³⁶

3.137 Due to have ended in June this year,⁴³⁷ the NSW Government advised that the program is to be funded for a further year 'in recognition that additional support may be needed in the early stages of the NDIS, considering the scale and maturity of the Scheme'.⁴³⁸

3.138 With Uniting as an Ability Linker, Ms Anita Le Lay, Head of Disability, Uniting, explained the work of Ability Linkers through the example of a child with cerebral palsy who wanted to be a nipper:

A really quick example is a child in Corrimal with cerebral palsy who wanted to be a nipper. Mum and dad really did not know how to approach the surf club. The little boy was in a wheelchair. Everybody looked at that scenario and went, 'Oh, my goodness. How are we going to do this?' The role of the linker at that point was to work with mum, with dad, with the participant themselves to understand what it is that they wanted to do and then to work with the surf club about how they could be more welcoming and more inclusive and how all the safety parameters and anything else that needed to happen was put in place. That all happened and that is just an example.⁴³⁹

3.139 Stakeholders, such as Ms Le Lay and Ms Ovens, expressed strong support for Ability Links.⁴⁴⁰

3.140 Other transitional arrangements and supports provided by the NSW Government, as referred to in chapter 1, include:

- the Transitional Advocacy Funding Supplement for advocacy services, funded for two years
- a mechanism through the Department of Education to enable schools to access specialist allied health supports as needed

⁴³³ Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 2 October 2018, p 78.

⁴³⁴ Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 2 October 2018, p 78.

⁴³⁵ Submission 313, NSW Government, p 22.

⁴³⁶ Submission 313, NSW Government, p 23.

⁴³⁷ Evidence, Ms Anita Le Lay, Head of Disability, Uniting, 2 October 2018, p 8.

⁴³⁸ Submission 313, NSW Government, p 23.

⁴³⁹ Evidence, Ms Anita Le Lay, Head of Disability, Uniting, 2 October 2018, p 14.

⁴⁴⁰ Evidence, Ms Serena Ovens, Convenor, Disability Advocacy Alliance, 2 October 2018, p 33.

- a service to provide specialist coordination expertise to assist people with co-morbid psychosocial and intellectual disability, to be located in each Local Health District, funded for three years
- funding for the Dysphagia Clinic at Westmead Hospital, providing services for swallowing impairment, and the Regional Assessment Services, for children with suspected Autism Spectrum Disorder, funded for two years
- the Safe and Supported at Home (SASH) program, providing clinical and non-clinical supports with functional impairments not eligible for the NDIS, funded for two years
- increasing support for people with disability in contact with the criminal justice system, funded for two years
- arrangements for supporting children with disability in voluntary out of home care (VOOHC), agreed to by the NSW and Commonwealth Governments.⁴⁴¹

3.141 With regard to the SASH program, Mr Coutts-Trotter advised that the program will 'provide access for some people who may emerge in the future who otherwise would have got access to the Community Care and Support Program'.⁴⁴² Ms Koff confirmed that the SASH program is 'specifically designed for that group of individuals who do not meet the [NDIS?] requirement but still need both clinical and non-clinical support in the home setting'.⁴⁴³

3.142 The committee received evidence that transitional funding to support these arrangements have been considered carefully,⁴⁴⁴ and have been made to manage the transition risks of a Scheme that is yet to reach maturity.⁴⁴⁵ In this regard, Mr Coutts-Trotter expressed optimism that the issues experienced with the implementation of the NDIS are 'just issues of transition', explaining:

... there is an awful lot happening, but we remain really optimistic that a lot of this is just issues of transition, and that the scheme is already demonstrating that it offers the prospect of solving problems that have existed in New South Wales and other States for people with disability for a very long period of time. But there is this period of transition, where things are not mature, things are not bedded down and people are still learning. The Government has committed two or three years funding to a range of interventions to manage the risks of that transition.⁴⁴⁶

⁴⁴¹ Submission 313, NSW Government, pp 23-24.

⁴⁴² Evidence, Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, 17 September 2018, p 9.

⁴⁴³ Evidence, Ms Elizabeth Koff, Secretary, NSW Health, 17 September 2018, p 9.

⁴⁴⁴ Evidence, Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 2 October 2018, p 78.

⁴⁴⁵ Evidence, Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, 17 September 2018, pp 7, 13.

⁴⁴⁶ Evidence, Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, 17 September 2018, p 7.

3.143 In addition, Mr Reardon advised that to ensure the transition ran as smoothly as possible, ADHC 'sat with us right up to the 1 July transition to ensure that they could see how arrangements would be placed into health, education and justice et cetera'.⁴⁴⁷ He added:

... we have still got lessons to learn, but we are a long way down the line. Being the first and the biggest jurisdiction to enter into the arrangement ... we are quite proud... But we want to ensure that we continue to get it right and we continue to see customer satisfaction rates improve.⁴⁴⁸

Committee comment

3.144 With consideration of all of the stakeholder experiences and concerns that have emerged with the implementation of the NDIS in the New South Wales and the transfer of disability services from the non-government sector under the NDIS, the committee is of the view that the NDIS is indeed a transformative reform. Evidence suggests that many people with disability have had and continue to have their lives changed by the choice and control afforded to them by the Scheme.

3.145 The committee noted in chapter 1 that, of the more than 97,000 NDIS participants in New South Wales, 26,000 are new entrants having never received any state-funded disability support before. Recently, the NSW and Commonwealth Governments announced that the NDIS has reached a major milestone with 100,000 people in New South Wales now receiving support through the scheme. The 100,000 people now enrolled in New South Wales includes more than 31,000 people who were not previously receiving government funded disability support.⁴⁴⁹

3.146 Since July 2013, over \$9.5 billion worth of supports have been committed to NDIS participants in NSW through their NDIS plans and \$4.5 billion has been paid to date.⁴⁵⁰

3.147 However, it is clear to the committee that this has not been the case for everyone. In fact, there are many more people for whom the potential of the Scheme has not been realised.

Finding 1

That, while the National Disability Insurance Scheme is a transformative, once-in-a-generation, person-centric reform with the capacity to significantly improve the lives of Australians with disability, its potential has not been realised for many individuals in New South Wales to date.

3.148 As mentioned in chapter 2, with the number of New South Wales participants already in the Scheme, and with more to come, New South Wales as a state has a significant stake in the success of the NDIS. With this in mind we recommend that the NSW Government pursue, on an ongoing basis, a more active role in governance arrangements of the Scheme in order to

⁴⁴⁷ Evidence, Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 17 September 2018, p 9.

⁴⁴⁸ Evidence, Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 17 September 2018, p 9.

⁴⁴⁹ Media release, National Disability Insurance Scheme, '100,000 people in NSW now accessing life-changing NDIS supports', 21 November 2018.

⁴⁵⁰ Submission 313, NSW Government, p 2.

secure the resolution of issues through its role on the Council of Australian Governments Disability Reform Council.

Recommendation 7

That the NSW Government pursue, on an ongoing basis, a more active role in governance arrangements of the National Disability Insurance Scheme in order to secure the resolution of issues for the people of New South Wales through its role on the Council of Australian Governments Disability Reform Council.

- 3.149** The committee notes the evidence to the inquiry suggesting that the Scheme's implementation is like 'a plane flying while being built'. The committee acknowledges the challenging task of managing such broad and complex reform and understands that it will take time for the Scheme to fully assemble and mature.
- 3.150** The committee recognises the transitional arrangements that have been put in place by the NSW Government to support people with disability during this period. In particular, the committee draws attention to the Ability Links program which stakeholders expressed support for, but notes has been extended only for a further year. The committee sees merit in extending the program for as long as required to ensure people with disability are provided with every assistance to engage opportunities and support.
- 3.151** The committee also acknowledges the transitional support provided through the Safe and Supported at Home (SASH) program which provides access to clinical and non-clinical support in the home. The committee notes in particular evidence from the NSW Government suggesting it is a program for people who would have received support from the Community Care and Support Program (CCSP). Given the evidence received from inquiry participants about the CCSP, the committee is not sure whether people are aware of this program or have sought to engage it. The committee sees merit in promoting this and other transitional and programs to those who for whom it may apply.

Recommendation 8

That the NSW Government actively promote the transitional arrangements and programs currently in place to support the transition to the National Disability Insurance Scheme.

- 3.152** The committee also believes that, while all of these transitional arrangements are supportive of people in the interim, a funding commitment of two to three years for these programs is a finite period which may not appropriately reflect expectations about when the Scheme is expected to be fully mature. The committee is of the view that funding for these transitional arrangements should be extended for at least up to five years post rollout of the Scheme in New South Wales. A review, involving thorough stakeholder consultation, should then be undertaken to assess whether or not further funding on an ongoing basis is required.

Recommendation 9

That the NSW Government:

- provide funding up to five years post rollout of the National Disability Insurance Scheme for the current transitional arrangements and programs in New South Wales, including Ability Links and Safe and Supported at Home
 - undertake a review, involving thorough stakeholder consultation, to assess whether or not further funding on an ongoing basis is required.
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Chapter 4 Supporting people with disability in New South Wales

While the National Disability Insurance Scheme (NDIS) seeks to provide support to those with a significant and permanent disability, questions were raised during the inquiry about how all people with disability in New South Wales will be supported moving forward, regardless of their eligibility for the Scheme. Indeed, concerns expressed about the implementation of the NDIS and the transfer of specialist disability services to non-government organisations led stakeholders to ask whether the support that is available is appropriate and adequate, and fulfils the responsibilities of the NSW Government to the full range of people with disability in the state.

This chapter considers these questions, with a focus on the approach of the NSW Government to supporting people with disability moving forward, concerns about this provision, and the way forward. The chapter concludes with a focus on the role of advocacy organisations within the disability sector.

Beyond the Scheme's reach

- 4.1** As outlined in chapter 1, there are currently more than 97,000 people with disability participating in the NDIS in New South Wales.⁴⁵¹ That number of New South Wales participants is expected to grow to between 140,000 to 150,000 when the Scheme becomes fully operational across the country.⁴⁵²
- 4.2** In discussing the Scheme's reach, numerous stakeholders drew attention to the number of people with disability currently living in New South Wales and how this compares with the number of people expected to be covered by the NDIS into the future.⁴⁵³
- 4.3** The committee received evidence that, according to the Australian Bureau of Statistics, there are 1.37 million people in New South Wales with a disability,⁴⁵⁴ and that of this number there are over 450,000 people with disability in New South Wales with 'profound and severe core activity limitations'.⁴⁵⁵

⁴⁵¹ Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 17 September 2018, p 2.

⁴⁵² Answers to questions on notice, National Disability Services, 11 October 2018, p 2; Answers to questions on notice, Mission Australia, 24 October 2018, p 1; Evidence, Ms Serena Ovens, Convenor, NSW Disability Advocacy Alliance, 2 October 2018, p 37; Evidence, Mr Tony Pooley, Senior Manager, State Operations, National Disability Services, 17 September 2018, p 31.

⁴⁵³ For example, Answers to questions on notice, Mission Australia, 24 October 2018, p 1; Evidence, Ms Romola Hollywood, Director Policy and Advocacy, People with Disability Australia, 17 September 2018, p 30; Submission 275, Carers NSW, p 7.

⁴⁵⁴ For example, Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings, 2015*, as cited in Submission 329, People With Disability Australia, p 5; Submission 298, Mission Australia, p 8; Answers to questions on notice, People with Disability Australia, 15 October 2018, p 5; Answers to questions on notice, Mission Australia, 24 October 2018, p 1; Evidence, Ms Serena Ovens, Convenor, NSW Disability Advocacy Alliance, 2 October 2018, p 37.

⁴⁵⁵ For example, Submission 298, Mission Australia, p 8; Answers to questions on notice, Mission Australia, 24 October 2018, p 1; Submission 275, Carers NSW, p 7.

4.4 Inquiry participants observed that, based on these statistics, only approximately 10 per cent of people with disability in New South Wales will be eligible for individualised funding packages under the NDIS.⁴⁵⁶ Ms Therese Sands, Co-Chief Executive Officer, People with Disability Australia (PWDA) explained:

The eligibility for the NDIS is based on having a permanent disability, and a significant and profound level of disability. So there is only a certain number of people that meet that. Currently the estimates are that 10 per cent of people will be eligible based on that criteria and then other people with disability will not be receiving funded packages or a funded plan through the NDIS.⁴⁵⁷

4.5 Reflecting on the number of people who will not receive individual funding support under the NDIS, stakeholders raised numerous concerns about the gap in numbers,⁴⁵⁸ the most important being: how will the overwhelming majority of people with disability – or even those with a significant impairment – be supported in New South Wales, if not under the Scheme? As Ms Melinda Paterson, a participant of the NDIS herself, stated: 'I have very serious concerns about people who do not fit into the NDIS—people who are not eligible or who are simply not covered by the NDIS'.⁴⁵⁹

4.6 Mr Jim Simpson, Senior Advocate, NSW Council for Intellectual Disability, likened NDIS participants to an 'oasis in the desert' – the chosen few among many, many more who are not eligible or in receipt of NDIS supports.⁴⁶⁰ He argued that 'the fear is that ... in New South Wales [those] who are participants in the NDIS, will be in an oasis surrounded by the rest of the 1.3 million out there in the desert'.⁴⁶¹ He argued then that 'what the success of the NDIS is predicated on is for the rest of those 1.3 million, there being a wide range of community support ...'.⁴⁶²

4.7 At the outset, inquiry participants acknowledged that the Scheme was, as Mr Tony Pooley, Senior Manager, State Operations, National Disability Services, described, 'never designed to support every person with disability'.⁴⁶³ In fact, some stakeholders, such as the Royal Australasian College of Physicians, called out the 'false assumption' that the NDIS would provide for everyone:

⁴⁵⁶ For example, Answers to questions on notice, People With Disability Australia, 15 October 2018, p 5.

⁴⁵⁷ Evidence, Ms Therese Sands, Co-Chief Executive Officer, People with Disability Australia, 17 September 2018, p 30.

⁴⁵⁸ For example, Evidence, Dr Jacqueline Small, Fellow, Royal Australasian College of Physicians, 2 October 2018, p 61.

⁴⁵⁹ Evidence, Ms Melinda Paterson, NDIS participant, 17 September 2018, p 40.

⁴⁶⁰ Evidence, Mr Jim Simpson, Senior Advocate, NSW Council for Intellectual Disability, 2 October 2018, p 48.

⁴⁶¹ Evidence, Mr Jim Simpson, Senior Advocate, NSW Council for Intellectual Disability, 2 October 2018, p 48.

⁴⁶² Evidence, Mr Jim Simpson, Senior Advocate, NSW Council for Intellectual Disability, 2 October 2018, p 48.

⁴⁶³ Evidence, Mr Tony Pooley, Senior Manager, State Operations, National Disability Services, 17 September 2018, p 31; see also Submission 294, NSW Disability Advocacy Alliance, p 4.

... [I]t is important to recognise that the NDIS will not cover large numbers of NSW residents who are living with disability. It is imperative that services that provide them with support are not shut down or scaled back under the false assumption that the NDIS will provide them with an appropriate substitute package.⁴⁶⁴

- 4.8** In this regard, Mr Steve Kinmond, Deputy Ombudsman and Community and Disability Services Commissioner, NSW Ombudsman, argued that it is necessary to consider the broader picture of disability support if we seek to advance the rights of people with disability to lead full and inclusive lives, stating: 'The only game in town is not the NDIS'.⁴⁶⁵ He explained:

If we think the only game in town is the National Disability Insurance Scheme, then we have got it wrong There are many people with disability who need to have full and inclusive lives in our community.⁴⁶⁶

The state's responsibility

- 4.9** To this end, inquiry participants consistently drew attention to the state's responsibility under the *Disability Inclusion Act 2014*, among other instruments, to all people with disability, whether they are participants of the NDIS or not.⁴⁶⁷ As Ms Paterson stated: '... [T]he State of New South Wales has an obligation to people with disabilities. We have a *Disability Inclusion Act* and we have the International Convention on the Rights of Persons with Disabilities'.⁴⁶⁸

- 4.10** Likewise, Ms Serena Ovens, Convenor, Disability Advocacy Alliance, highlighted the state's obligations, arguing that it is important the state remains committed to ensuring people with disability are 'fully included members of society':

The State has an obligation to everybody with disability under both the *Disability Inclusion Act* and the NDIS. There are so many different obligations that it still needs to meet, whether a person has a plan under the NDIS. Until people with disability can be fully included members of society, we would suggest that it is still incredibly important the State commits to helping those people.⁴⁶⁹

- 4.11** With this, stakeholders argued that the NSW Government indeed maintains a very important and active role to play in supporting people with disability through the mainstream services it is responsible for.⁴⁷⁰ These inquiry participants contended that such services must be, as Mr

⁴⁶⁴ Submission 160, Royal Australasian College of Physicians, p 2; see also Submission 329, People with Disability Australia, p 48.

⁴⁶⁵ Evidence, Mr Steve Kinmond, Deputy Ombudsman and Community and Disability Services Commissioner, NSW Ombudsman, 2 October 2018, p 6.

⁴⁶⁶ Evidence, Mr Steve Kinmond, Deputy Ombudsman and Community and Disability Services Commissioner, NSW Ombudsman, 2 October 2018, p 6.

⁴⁶⁷ For example, Evidence, Mr Jim Simpson, Senior Advocate, NSW Council for Intellectual Disability, 2 October 2018, p 48; Evidence, Ms Therese Sands, Co-Chief Executive Officer, People with Disability Australia, 17 September 2018, p 36.

⁴⁶⁸ Evidence, Ms Melinda Paterson, NDIS participant, 17 September 2018, p 42.

⁴⁶⁹ Evidence, Ms Serena Ovens, Convenor, NSW Disability Advocacy Alliance, 2 October 2018, pp 37-38.

⁴⁷⁰ For example, Submission 258, National Disability Services, p 15.

Simpson, NSW Council for Intellectual Disability, stated, 'fully accessible to and responsive to the needs of people with disability'.⁴⁷¹ Mr Simpson explained:

New South Wales retains an enormous responsibility to ensure that its mainstream services, whether they are justice, health, education or transport, are responsive to people with disability so that we do not end up with that oasis in the desert.⁴⁷²

- 4.12** Similarly, Ms Sands, People with Disability Australia, asserted that the NSW Government must ensure the accessibility of all services to all people with disability so they can receive they support they need:

All people with disability in New South Wales will ... need accessible and inclusive services, for example in health, justice, education and housing ...⁴⁷³

...

The New South Wales Government must ensure that all service systems in New South Wales are fully accessible for people with disability, that people with disability do not fall through the cracks of service provision, and that those who are not eligible for the NDIS still receive the disability-specific supports they may require.⁴⁷⁴

- 4.13** Mr Matthew Bowden, Co-Chief Executive Officer, People With Disability Australia, expressed a similar point, stating:

... [W]e are talking about the accessibility for blind or deaf people or people who might not be ever received ADHC funded support, and people who might not get supports from the NDIS. But they are still people with disability who live in New South Wales; they are still people who need specific supports and adjustments made so that people can fully participate in our society and our communities in the events that we hold.⁴⁷⁵

- 4.14** According to the NSW Ombudsman's submission, the NDIS must therefore be used as a catalyst to ensure that mainstream services are delivered inclusively of people with disability:

It is imperative that the transition to the NDIS in NSW is used as a catalyst to ensure that mainstream services provide accessible and appropriate supports to people with disability, to enable maximum participation and engagement in the community on an equal basis with other citizens.⁴⁷⁶

- 4.15** In this regard, Mr Kinmond, NSW Ombudsman, argued that action must be taken by the NSW Government and its agencies to give effect to its responsibilities:

⁴⁷¹ Evidence, Mr Jim Simpson, Senior Advocate, NSW Council for Intellectual Disability, 2 October 2018, p 48.

⁴⁷² Evidence, Mr Jim Simpson, Senior Advocate, NSW Council for Intellectual Disability, 2 October 2018, p 48.

⁴⁷³ Evidence, Ms Therese Sands, Co-Chief Executive Officer, People with Disability Australia, 17 September 2018, p 29.

⁴⁷⁴ Evidence, Ms Therese Sands, Co-Chief Executive Officer, People with Disability Australia, 17 September 2018, p 30.

⁴⁷⁵ Evidence, Mr Matthew Bowden, Co-Chief Executive Officer, People with Disability Australia, 2 October 2018, p 37.

⁴⁷⁶ Submission 347, NSW Ombudsman, p 8.

Substantial and sustained action is required across all government agencies and other mainstream services to give effect to the UN Convention on the Rights of Persons with Disabilities and the National Disability Strategy.⁴⁷⁷

- 4.16** Mr Kinmond pointed to the *Disability Inclusion Act* which he explained introduced enhanced requirements relating to whole-of-government disability inclusion planning, including the development of the State Disability Inclusion Plan and individual government agency Disability Inclusion Plans. He argued that while these plans are valuable, they have not resulted in real and fundamental change for people with disability in New South Wales:

While [disability inclusion planning] provides an important legislative articulation of the desire for transformational change for all people with disability in New South Wales, it has not resulted in the fundamental and widespread changes that are needed to make critical and lasting gains in the outcomes for and the genuine community inclusion of people with disability in New South Wales.⁴⁷⁸

- 4.17** Mr Kinmond asserted that, with the upcoming review of the *Disability Inclusion Act*, 'it will be important to ensure that the review... results in a renewed focus on the National Disability Strategy and enhanced governance arrangements'.⁴⁷⁹ According to Mr Kinmond, such governance arrangements should include 'independent review of the implementation of each agency's disability inclusion action plans and the implementation of those plans in terms of whether they are delivering substantial and ongoing outcomes for members of the community with disability'.⁴⁸⁰ Mr Kinmond contended: '...[I]t will be critical to get right those governance arrangements so that we can drive real reform'.⁴⁸¹

- 4.18** In their submission, the NSW Ombudsman acknowledged the role of the Disability Council in existing governance arrangements, but noted that the Council sits within FACS. The NSW Ombudsman argued that an independent body is required instead, stating: 'In our view, the importance of the disability reforms and the work that is required by mainstream services warrant the additional rigor of independent oversight and scrutiny'.⁴⁸²

- 4.19** To this end, the NSW Ombudsman suggested how this oversight role could be formalised in legislation, using Part 3B of the *Ombudsman Act 1974*:

Regardless of which independent body provides the oversight, Part 3B of the Ombudsman Act provides a useful example of how such a role could be formalised in legislation. Part 3B provides the Ombudsman's office with the role of monitoring and assessing Aboriginal programs (specifically, the NSW Government's OCHRE program), and outlines specific provisions relating to the provision of information by

⁴⁷⁷ Evidence, Mr Steve Kinmond, Deputy Ombudsman and Community and Disability Services Commissioner, NSW Ombudsman, 2 October 2018, p 6.

⁴⁷⁸ Evidence, Mr Steve Kinmond, Deputy Ombudsman and Community and Disability Services Commissioner, NSW Ombudsman, 2 October 2018, p 6.

⁴⁷⁹ Evidence, Mr Steve Kinmond, Deputy Ombudsman and Community and Disability Services Commissioner, NSW Ombudsman, 2 October 2018, p 6.

⁴⁸⁰ Evidence, Mr Steve Kinmond, Deputy Ombudsman and Community and Disability Services Commissioner, NSW Ombudsman, 2 October 2018, p 6.

⁴⁸¹ Evidence, Mr Steve Kinmond, Deputy Ombudsman and Community and Disability Services Commissioner, NSW Ombudsman, 2 October 2018, p 6.

⁴⁸² Submission 347, NSW Ombudsman, p 9.

public authorities that have functions under OCHRE, and reporting on any matter concerning OCHRE.⁴⁸³

Committee comment

- 4.20** Among the fundamental questions of this inquiry is how will all people with disability be supported in New South Wales, regardless of their eligibility for the NDIS. Acknowledging the Scheme's reach and the total number of people with disability across the state, the committee considers this a particularly important issue.
- 4.21** Indeed, the committee notes the evidence of inquiry participants who highlighted the gap in numbers and argued that there are many people who will fall outside of the Scheme but will still require access to ongoing appropriate services to meet their needs. The committee does acknowledge that the NSW Government has implemented some transitional arrangements to manage the risks of service gaps and issues during the early years of the full scheme.
-

Finding 2

That, while many people have and are expected to benefit from the National Disability Insurance Scheme, there are many more people with disability in New South Wales who are not eligible for the Scheme and who will require access to ongoing appropriate services to meet their needs. The committee acknowledges that the NSW Government has implemented some transitional arrangements to manage the risks of service gaps and issues during the early years of the full scheme.

- 4.22** To this end, the committees agrees with inquiry participants who argued that we do not want a situation where NDIS participants will represent an 'oasis in the desert' – where those who are not deemed eligible will be left without appropriate care and support. The committee believes, as the evidence suggests, that we must look beyond the NDIS and ensure that the support available outside of the Scheme is adequate and responsive to the needs of people with disability across the state. In this regard, the committee acknowledges that the NDIS is 'not the only game in town'.
- 4.23** Together with stakeholders, the committee points to the state's responsibilities under the *Disability Inclusion Act 2014* and acknowledges the expectations that are raised because of them. We believe – and expect – that disability inclusion should be a priority in this state and thus see the State Disability Inclusion Plan and individual agency Disability Inclusion Plans as essential to driving change.
- 4.24** We also note, however, that plans must be implemented, and that this implementation must be governed and monitored. The committee notes the evidence suggesting that governance structures need to be strengthened such that an independent body is charged with overseeing plan implementation.

⁴⁸³ Submission 347, NSW Ombudsman, p 9.

- 4.25 Therefore, the committee recommends that the upcoming review of the *Disability Inclusion Act* includes a focus on the National Disability Strategy and enhancing governance arrangements to enable the NSW Ombudsman to have an oversight role in the review and monitoring of government agency Disability Action Plans.

Recommendation 10

That the NSW Government's review of the of the *Disability Inclusion Act 2014* include:

- a focus on the National Disability Strategy
 - enhancing governance arrangements to enable the NSW Ombudsman to have an oversight role in the review and monitoring of government agency Disability Action Plans.
-

A cross-agency approach to inclusion

- 4.26 During the inquiry, the NSW Government acknowledged its responsibilities under the *Disability Inclusion Act*, stating that it is 'continuing to ensure that NSW is a place where people with disability can access mainstream services and be part of the community'.⁴⁸⁴ The committee received evidence that how the NSW Government is doing this – that is, its approach to supporting people with disability through mainstream services – has shifted dramatically with the implementation of the NDIS and the transfer of services to the non-government sector, and with broader reform in this area. Essentially, the shift has seen responsibility for supporting people with disability move from a single agency (Ageing, Disability and Home Care (ADHC)) to all agencies across government.

- 4.27 Mr Michael-Coutts Trotter reflected on this shift, explaining that the 'important conceptual backdrop' to the transition in governance is inclusion. Mr Coutts-Trotter explained:

What we have seen over a long period in New South Wales and other jurisdictions is a terrible lack of clarity in this area and an inability within some of the mainstream service systems for Health or Justice or Education to provide a strong and appropriate response to people with disabilities. The NDIS, much of the focus is drawn to people who have funded packages, but the great bulk of the reform is about equipping the community and universal government services to better meet the needs of people with disabilities. We strongly believe the fact that my colleagues are making that a priority and building capability inside their own agencies is a really positive step. They are taking responsibility for it.⁴⁸⁵

- 4.28 Mr Coutts-Trotter drew comparisons between the old 'rationed' system and today's model which is 'imbued with a principle of inclusivity', stating:

I think the old days of relying on a specialist agency was a necessary reality but it was a rationed system. It was a system where people looked to Ageing, Disability and Home

⁴⁸⁴ Submission 313, NSW Government, p 4.

⁴⁸⁵ Evidence, Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, 17 September 2018, p 5.

Care NSW [ADHC] and now we have a system that is no longer rationed, that is imbued with a principle of inclusivity and where people with disabilities get to exercise choice and control, which includes making their way through universal service systems as they choose to.⁴⁸⁶

- 4.29** Mr Tim Reardon, Secretary, Department of Premier and Cabinet, explained how this shift in responsibility has translated in practical terms, advising the committee that, since 2015, the Secretary-level National Disability Insurance Scheme Board has worked together 'as a single one-voice New South Wales approach'.⁴⁸⁷ Stating that this 'coordination has been very important for us', Mr Reardon explained how the Board's operation and function has facilitated a 'very collaborative and focused approach':

The collegiate role of having six secretaries out of 10 for the New South Wales Government together on a frequent basis, chaired by the Secretary of the Department of Family and Community Services and supported by the remaining secretaries, indeed has been a very collaborative and focused approach.⁴⁸⁸

- 4.30** Mr Reardon told the committee that the Board is supported by a dedicated project team within the Department of Premier and Cabinet (DPC), which functions as the central and lead agency.⁴⁸⁹ He argued that this has worked 'really effectively' because it has allowed a coordination and project management role over 'each agency to understand what the interface issues are'.⁴⁹⁰ He added: 'Our alignment has been good ... [I]t has been quite a complex but well-defined and coordinated approach we have taken. That is an overarching view'.⁴⁹¹
- 4.31** With regard to the NSW Government's interaction at the federal level, Mr Reardon informed for day-to-day management and operations, the Department of Family and Community Services interacts with the National Disability Insurance Agency (NDIA).⁴⁹²
- 4.32** Mr Coutts-Trotter advised that through this 'coherent approach', there are issues that 'fall appropriately to a lead Minister's agency' but that individual agencies are now 'simply reflecting their proper responsibilities to be disability capable and disability inclusive'.⁴⁹³

⁴⁸⁶ Evidence, Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, 17 September 2018, p 5.

⁴⁸⁷ Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 17 September 2018, p 3.

⁴⁸⁸ Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 17 September 2018, p 3.

⁴⁸⁹ Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 17 September 2018, p 3.

⁴⁹⁰ Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 17 September 2018, p 3.

⁴⁹¹ Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 17 September 2018, p 3.

⁴⁹² Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 17 September 2018, p 3.

⁴⁹³ Evidence, Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, 17 September 2018, p 5.

- 4.33** For example, Ms Elizabeth Koff, Secretary, Department of Health, advised that within her Department there is an Executive Director within the Government Relations Branch who is the lead for the NDIS within the ministry.⁴⁹⁴ The committee received evidence that supporting that position is the NDIS Project Management Office (now Social Policy Implementation Unit).⁴⁹⁵ NSW Health also advised that an NDIS Working Group was established within the Department to plan and coordinate NSW Health's transition to the NDIS.⁴⁹⁶
- 4.34** Within the Department of Justice, Mr Peter Severin, Acting Secretary, Department of Justice, advised that the responsibility for broader coordination rests with the Justice Services division, while the service delivery arms of the Department, such as Corrective Services, Juvenile Justice, Trustee & Guardian and the Public Guardian, have various arrangements in place. For example, Mr Severin advised that in Corrective Services there is state-wide disability service coordination group that is 'very strongly focused on ensuring that ... offenders who [are] at the end of their sentence get access to the program'.⁴⁹⁷
- 4.35** Some stakeholders applauded the coordinated cross-agency approach with the Department of Premier and Cabinet as lead agency, with Mr Simpson, NSW Council for Intellectual Disability, stating:
- We have really valued the role that the Department of Premier and Cabinet has played increasingly over the last few years in providing some leadership at a central agency level on those sorts of issues and we would strongly advocate that if governments of whichever persuasion are fair dinkum about people with disability being entitled to a fully included life in their community, we would look to the political parties to commit to maintaining central agency leadership responsible to the Premier or another senior Minister for that kind of disability strategy leadership. It is very hard for that kind of role to have oomph if it is in a comparatively junior portfolio.⁴⁹⁸
- 4.36** Commenting on this coordinated cross-agency approach to supporting people with disability through mainstream services, Mr Kinmond argued that there are still many challenges and concerns as responsibilities shift and new models of service delivery are implemented. He explained:
- ... [I]n New South Wales there is recognition of the need to provide a sophisticated and well-calibrated multiagency response to certain groups and to fill some of the gaps, especially for people with complex needs. However, from our work we can confirm that there are still significant challenges and concerns, and many of the witnesses who have appeared before this Committee have outlined some of those concerns.⁴⁹⁹
- 4.37** Indeed, these concerns about service gaps and people 'falling through the cracks' as services have transferred away from the NSW Government to non-government organisations, were raised with the committee throughout the inquiry, as discussed in chapter 3.

⁴⁹⁴ Evidence, Ms Elizabeth Koff, Secretary, Department of Health, 17 September 2018, p 4.

⁴⁹⁵ Answers to questions on notice, NSW Government, 9 October 2018, p, 2.

⁴⁹⁶ Answers to questions on notice, NSW Government, 9 October 2018 p, 2.

⁴⁹⁷ Evidence, Mr Peter Severin, Acting Secretary, Department of Justice, 17 September 2018, p 5.

⁴⁹⁸ Evidence, Mr Jim Simpson, Senior Advocate, NSW Council for Intellectual Disability, 2 October 2018, p 40.

⁴⁹⁹ Evidence, Mr Steve Kinmond, Deputy Ombudsman and Community and Disability Services Commissioner, NSW Ombudsman, 2 October 2018, p 2.

Supports and activities for people with disability in New South Wales

- 4.38** The committee received evidence about a range of supports provided to people with disability in New South Wales, from both the NSW Government and the NDIA.
- 4.39** The NSW Government advised that they have supported and funded a range of activities, programs and services to support people with disability and to ensure mainstream services are inclusive and accessible.⁵⁰⁰
- 4.40** Among these, inquiry participants drew particular attention to the Housing and Accommodation Support Initiative (HASI) and its extension, Community Living Supports (CLS), community based psychosocial support programs aimed at provide both clinical and social support for people with mental ill health to reside in the community.⁵⁰¹
- 4.41** The NSW Government advised that, unlike some other jurisdictions, it has retained funding for HASI and CLS, among other community based psychosocial mental health support services⁵⁰² – 'an extraordinarily wise decision', according to Ms Koff, Department of Health.⁵⁰³
- 4.42** Ms Koff, Department of Health, explained why funding was retained, and acknowledged the difficulties faced by other jurisdictions who chose to redirect their funding to the NDIS:

. . . we believe the dominant contributor to the HASI is, in many cases, the clinical or therapeutic intervention that is required. We saw it as a primary health function with some social support to it. When I talked to my counterparts in other States, they are really experiencing some difficult challenges now in having contributed some of their community-based mental health services to the NDIS.⁵⁰⁴

- 4.43** Indeed, Mr Luke Butcher, Area Manager (Western NSW and Special Projects), Mission Australia, told the committee that '... other States look to New South Wales with envy that we have maintained those programs...', explaining that the cyclical nature of mental ill health and psychosocial disability has meant people have had issues attracting an NDIS package.⁵⁰⁵ Mr Butcher stated:

... [W]e do note and applaud the New South Wales State Government for retaining the Housing and Accommodation Support Initiative [HASI] and Enhanced Adult Community Living Supports [EACLS] psychosocial support programs that provide case management, coordination and support to consumers with complex needs.⁵⁰⁶

...

⁵⁰⁰ Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 17 September 2018, p 7; Submission 313, NSW Government, pp 24-26.

⁵⁰¹ Evidence, Ms Elizabeth Koff, Secretary, Department of Health, 2 October 2018, p 81.

⁵⁰² Submission 313, NSW Government, p 26.

⁵⁰³ Evidence, Ms Elizabeth Koff, Secretary, Department of Health, 2 October 2018, p 81.

⁵⁰⁴ Evidence, Ms Elizabeth Koff, Secretary, Department of Health, 2 October 2018, p 81.

⁵⁰⁵ Evidence, Mr Luke Butcher, Area Manager (Western NSW and Special Projects), Mission Australia, 2 October 2018, p 11.

⁵⁰⁶ Evidence, Mr Luke Butcher, Area Manager (Western NSW and Special Projects), Mission Australia, 2 October 2018, p 9.

The HASI and Community Living Supports [CLS] programs are really held up as examples of good practice.⁵⁰⁷

4.44 Other NSW Government-supported initiatives, programs or arrangements include:

- a FACS-implemented campaign, 'See the Possibilities', aimed at engaging employers to understand the value of people with disability in the workforce
- the Createability Internship Program, a partnership between Create NSW, FACS and Accessible Arts
- funding for Remarkable, a disability-tech accelerator which supports technology start-ups for people with disability
- funding for Transport for NSW's Transport Access Program, which includes the Taxi Transport Subsidy Scheme and the Community Transport and Home Community Care services
- the provision of social housing options for eligible individuals and families, including people with disability who can live independently without support or with appropriate support in place
- implementation of the recommendations of the Legislative Council's *Inquiry into the education of students with a disability or special needs in NSW* to support students with disability.⁵⁰⁸

4.45 The committee also received evidence regarding the support available to people with disability through the NDIA, including those not eligible for the Scheme.

4.46 This support is primarily delivered through the Information, Linkages and Capacity Building (ILC) policy which is aimed at connecting people with disability (both NDIS and non-NDIS participants) to their community to assist them to achieve their goals and access opportunities and services.⁵⁰⁹

4.47 The committee was advised that ILC grants are provided to organisations 'to deliver activities in the community that increase the capacity of communities to be more inclusive and diverse',⁵¹⁰ such as providing information about a particular disability through a website or phone line, or activities that aim to help services and communities become more inclusive.⁵¹¹

4.48 According to the NSW Government, '[a]dequate investment in ILC is critical to ensuring that NDIS participants and other people with disability are supported to engage with the NDIS and exercise choice and control over their support options, including mainstream and community

⁵⁰⁷ Evidence, Mr Luke Butcher, Area Manager (Western NSW and Special Projects), Mission Australia, 2 October 2018, p 11.

⁵⁰⁸ Submission 313, NSW Government, pp 24-26.

⁵⁰⁹ Submission 342, National Disability Insurance Agency, p 4; Submission 313, NSW Government, p 9.

⁵¹⁰ Submission 342, National Disability Insurance Agency, p 4.

⁵¹¹ Submission 313, NSW Government, p 20.

based supports. It is also critical for people with disability not in the NDIS to be linked to the services and supports they need'.⁵¹²

- 4.49** However, some inquiry participants expressed concerns about the ILC funding design, with Ms Sands, People with Disability Australia, questioning the sustainability of grant-based programs such as the ILC. She argued:

... the ILC is funded on a project grant basis. There are concerns about the sustainability of those projects after they have finished their deliverables for a particular contract, the life of the projects, and the impact they can have. The design of the ILC is really critical as is the level of investment ... Some of the ILC projects have been really innovative and important. The issue is sustainability when you get a project for one year or two years and how it is maintained.⁵¹³

- 4.50** For Mr Pooley, National Disability Services, the ILC 'has potential, but it is just not there yet', arguing that it has not established those wraparound measures for people who are ineligible for the Scheme:

The ILC was supposed to provide a wraparound set of supports outside the specialist system. Like the scheme itself, we believe it has potential, but it is just not there yet. There has been one funding round in New South Wales. ... There is not a wraparound suite of measures supporting those people who are not eligible for the NDIS and dealing with a disability of some kind—yet.⁵¹⁴

- 4.51** Other supports are also available through the Early Childhood Intervention approach, discussed in chapter 2.

Concerns about the support for people with disability in New South Wales

- 4.52** With moves towards more inclusive mainstream services and efforts to ensure that people with disability, whether they are participants of the NDIS or not, are supported, many stakeholders still expressed concerns about the adequacy and scope of the supports available to people with disability in New South Wales.

- 4.53** In particular, inquiry participants questioned the availability of disability specific supports for people who are not eligible for the Scheme, the lack of clarity around the intersection between the NDIS and health services, and the absence of both a 'safety net' and a provider of last 'resort'.

⁵¹² Submission 313, NSW Government, p 20.

⁵¹³ Evidence, Ms Therese Sands, Co-Chief Executive Officer, People with Disability Australia, 17 September 2018, p 37.

⁵¹⁴ Evidence, Mr Tony Pooley, Senior Manager, State Operations, National Disability Services, 17 September 2018, p 37.

Providing disability specific supports

- 4.54** Some inquiry participants argued that among those who are deemed ineligible for the NDIS are people with disability who may still require specific supports, supports that may not be available through mainstream services. As Ms Sands, People with Disability Australia, asserted:

We note that only 10 per cent of people with disability will be assessed or deemed eligible for the NDIS. This means that 90 per cent of people with disability not eligible for the NDIS, including children and young people, and older people with disability in New South Wales, may still need to receive disability-specific supports.⁵¹⁵

- 4.55** According to Ms Sands, there may be a number of factors impeding a person's access to disability specific supports. She suggested that having access to these supports through mainstream services would be beneficial:

Some people may not have the financial means to do that. Some people might be in situations in very isolated, segregated systems where they really need substantial support to be able to go and access in the mainstream system, or even other kinds of services as well. From our point of view, we are seeing people who still need some kind of specialist disability support, it is not currently in the mainstream system, it would be great if it was.⁵¹⁶

- 4.56** Ms Sands argued that 'more investment' is needed, such that what 'agencies need to be doing across government [is] to look at how they include people with disabilities'.⁵¹⁷ She explained:

That might be anything from accessible information provision, to having specific programs or supports within their systems. Some agencies are doing that. All agencies are meant to have disability inclusion plans...There needs to be recognition that for some people there is no provider of last resort and there is nowhere for them to go, except for going to advocates or hoping that service providers will provide them with supports unfunded, et cetera. That is what we are seeing currently.⁵¹⁸

- 4.57** Indeed, Mr Kinmond, NSW Ombudsman, called for a considered response to address the risks that have emerged with the Scheme's implementation and the NSW Government's cross-agency approach to responsibility, noting that at this time, mainstream services are still building their capacity:

While we agree that the shifts are necessary, we also note that they present significant risk to people with disability in the short term. Therefore, it is vital that there is a comprehensive approach to addressing these heightened risks, particularly while mainstream services are building their expertise and capacity.⁵¹⁹

⁵¹⁵ Evidence, Ms Therese Sands, Co-Chief Executive Officer, People with Disability Australia, 17 September 2018, p 29.

⁵¹⁶ Evidence, Ms Therese Sands, Co-Chief Executive Officer, People with Disability Australia, 17 September 2018, p 36.

⁵¹⁷ Evidence, Ms Therese Sands, Co-Chief Executive Officer, People with Disability Australia, 17 September 2018, p 36.

⁵¹⁸ Evidence, Ms Therese Sands, Co-Chief Executive Officer, People with Disability Australia, 17 September 2018, p 36.

⁵¹⁹ Evidence, Mr Steve Kinmond, Deputy Ombudsman and Community and Disability Services Commissioner, NSW Ombudsman, 2 October 2018, p 2.

4.58 Working towards ensuring mainstream services have the capability to provide the supports needed by people with disability was also acknowledged by Mr Coutts-Trotter, who stated:

... if someone is not eligible for a funded package of reasonable and necessary supports through the NDIA and needs universal services we would hope to progressively build our capability to provide those services to people and to do it well.⁵²⁰

4.59 Mr Simpson, NSW Council for Intellectual Disability, provided a brief example of an area of need for disability specific support, and how that need has been met with recent funding granted to intellectual disability health services. He stated:

... [W]e have been advocating towards and more recently working with NSW Health on the whole issue of health inequalities for people with intellectual disability for 15 to 20 years. The need to have specialist intellectual disability health teams to backup mainstream health professionals has been recognised by NSW Health and the recent budget initiative is very positive.⁵²¹

The intersection between the NDIS and health

4.60 One of the key areas of concern for many stakeholders during the inquiry was determining the intersection between the NDIS and health services. Indeed, inquiry participants grappled with the lack of clarity around who looks after what, and the challenges with gaining access to the services that are needed if it is not clear who is responsible for those services.⁵²² As Mr Greg Killeen, Senior Policy and Advocacy Officer, Spinal Cord Injuries Australia described, the 'crux of the argument' is: 'Health is saying it is a disability, NDIS is saying it is chronic health—depending on where you are, who you are, where you live, the area health and your circumstances'.⁵²³

4.61 The committee heard that intersection issues are in fact impacting people with disability from the very outset in terms of seeking eligibility for the Scheme.⁵²⁴ For example, Dr Jacqueline Small, Fellow, Royal Australasian College of Physicians, argued that 'people are not being accepted into the NDIS despite very significant impairment if they have physical disabilities due to a variety of health problems'.⁵²⁵

4.62 Indeed, various individuals who were not deemed eligible for the Scheme told the committee about their experiences, including Ms Jennifer Clarke.

⁵²⁰ Evidence, Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, 17 September 2018, p 10.

⁵²¹ Evidence, Mr Jim Simpson, Senior Advocate, NSW Council for Intellectual Disability, 2 October 2018, p 46.

⁵²² For example, Evidence, Ms Anita Le Lay, Head of Disability, Uniting, 2 October 2018, p 8; Submission 160, Royal Australasian College of Physicians, p 4; Submission 4, Ms Jodie Bailie, pp 2-3.

⁵²³ Evidence, Mr Greg Killeen, Senior Policy and Advocacy Officer, Spinal Cord Injuries Australia, 2 October 2018, p 51.

⁵²⁴ For example, Evidence, Ms Romola Hollywood, Director Policy and Advocacy, People with Disability Australia, 17 September 2018, p 33.

⁵²⁵ Evidence, Dr Jacqueline Small, Fellow, Royal Australasian College of Physicians, 2 October 2018, p 58.

4.63 Ms Clarke shared how she had sustained an injury at work in 2007 that has resulted in living 'in constant and often debilitating pain'.⁵²⁶ With significant mobility issues, Ms Clarke said that the injury has 'affected every part of my life including my social life', such that in 2013 she was medically retired from work. In 2017, Ms Clarke applied for the NDIS but was informed that she did not meet the access criteria as '... [the NDIA] do not consider my disability substantive enough'.⁵²⁷ Ms Clarke explained:

They basically said that my issues are chronic, that the help I needed would be met by general health services, and that there was no way in hell I would be eligible for any other service at this point.⁵²⁸

4.64 Ms Hollywood acknowledged the struggle in trying to determine jurisdictional lines, but that it is a struggle that needs to be resolved as people are missing out on getting the supports they need:

We have examples ... where it is a systemic issue and people have actually struggled to get the supports that they need. That may not be the fault of the health system and it may not be the fault of the NDIS system, but we are in a transition process and agencies are trying to work out who is responsible for what. Those jurisdictional lines ... need to be clarified. Sometimes that has been worked out at an individual officer or worker level. It is actually also the responsibility of the government agencies as a whole to have those clearer policy settings.⁵²⁹

4.65 Indeed, many other inquiry participants expressed this view, drawing particular attention to 'grey areas' in items, supports and services that they argued are in need of clarification, including catheters, insulin and dysphagia treatment.⁵³⁰

4.66 For example, Mr Killeen highlighted catheter management as an area of concern, stating that while the NDIS will fund continence consumables, such as catheters, it may not fund maintenance because it is considered a chronic health issue:

The technical issue we have here is that NDIS is to fund disability supports, supports that are specific to deal with your disability. People with quadriplegia manage their bladders often with catheters. The NDIS will fund continence consumables, including the catheters. Health is saying that the changing of that is disability maintenance, which is what we would argue the case. NDIS is saying that its interpretation, in some areas, is it is a chronic health condition, it is a health issue. ... If you are fully aware that you need to get funding for a catheter change through your NDIS package or plan, you would be asking for that in your original application and subsequent review. If you do not know to ask for it because you actually do not know you are about to be knocked back from your longstanding community health services when you go for your original interview if it is not in your plan, if it is not as your goals, if it is not in your services, you do not get NDIS funding.⁵³¹

⁵²⁶ Evidence, Ms Jennifer Clarke, Individual not covered by the NDIS, 17 September 2018, p 46.

⁵²⁷ Evidence, Ms Jennifer Clarke, Individual not covered by the NDIS, 17 September 2018, p 47.

⁵²⁸ Evidence, Ms Jennifer Clarke, Individual not covered by the NDIS, 17 September 2018, p 48.

⁵²⁹ Evidence, Ms Romola Hollywood, Director Policy and Advocacy, People with Disability Australia, 17 September 2018, p 34.

⁵³⁰ Submission 299, Benevolent Society, p 5.

⁵³¹ Evidence, Mr Greg Killeen, Senior Policy and Advocacy Officer, Spinal Cord Injuries Australia, 2 October 2018, pp 51-52.

- 4.67** Mr Tony Jones, Policy and Advocacy Manager, Spinal Cord Injuries Australia, stated that discussions around this confusion, including with NSW Health, have come down to 'the applied principles and the interpretations of the applied principles', thereby leading to inconsistencies in funding under the NDIS.⁵³² However, Mr Jones argued: 'As anyone will know, when it comes to complex disability it is not always a black and white issue'.⁵³³
- 4.68** Indeed, Ms Koff, Department of Health, acknowledged that 'it is the reality for us from the health system perspective, that there does seem to be individual planner variation as to what is approved and what is not approved'.⁵³⁴ She stated that, even though there are mechanisms in place within NSW Health to address these issues, including opportunities to escalate cases, '... it has been frustrating in some quarters where we get quite a difference in variation to support for various types of services...'.⁵³⁵
- 4.69** Mr Jones also referred to insulin as another grey area, or as he described 'a huge can of worms'.⁵³⁶ Mr Jones advised that generally people will seek to use their own carers to administer insulin if it is within their funding package 'because it offers a sense of continuity of care'. However, Mr Jones argued that many service providers 'do not feel confident around this whole issue', stating:
- It is a grey area in that the policy around whether or not a support worker is able to actually administer insulin is an issue of itself. The agency itself is reluctant to want to fund nursing support for that because of the cost. But not only that, from the point of view of the participant getting access to a registered nurse at the times that you need insulin administration is very difficult. It is a very difficult issue.⁵³⁷
- 4.70** Indeed, the following case study of Mr Lee and Mrs Penny Flowers, and their daughter Kym, demonstrates the complexity – and deep frustration – around drawing lines between disability and health.

Case study – Lee and Penny Flowers⁵³⁸

Lee and Penny Flowers's daughter, Kym Flowers, is 34 years old with type 1 diabetes and cerebral palsy. Kym has spent the past six months in hospital and is deemed homeless.

⁵³² Evidence, Mr Tony Jones, Policy and Advocacy Manager, Spinal Cord Injuries Australia, 2 October 2018, p 51.

⁵³³ Evidence, Mr Tony Jones, Policy and Advocacy Manager, Spinal Cord Injuries Australia, 2 October 2018, p 51.

⁵³⁴ Evidence, Ms Elizabeth Koff, Secretary, Department of Health, 2 October 2018, p 75.

⁵³⁵ Evidence, Ms Elizabeth Koff, Secretary, Department of Health, 2 October 2018, p 75.

⁵³⁶ Evidence, Mr Tony Jones, Policy and Advocacy Manager, Spinal Cord Injuries Australia, 2 October 2018, p 52.

⁵³⁷ Evidence, Mr Tony Jones, Policy and Advocacy Manager, Spinal Cord Injuries Australia, 2 October 2018, p 52.

⁵³⁸ Submission 83, Mr Lee and Mrs Penny Flowers, p 1; Submission 83a, Mr Lee and Mrs Penny Flowers, pp 2-3; Evidence, Mr Troy Wright, Public Service Association and Community and Public Sector Union, 2 October 2018, pp 68-69.

Under the former Ageing, Disability and Home Care (ADHC), Kym lived in a group home where she met others like her. After ten years, the group home moved to a purpose built home. After the move, Kym's care declined which resulted in Kym's medical problems to escalate and her being admitted into hospital regularly.

Due to Kym's complex medical and diabetic needs, Kym could not return to a group home environment and has been living in a hospital bed for six months.

Lee and Penny Flowers have said that since 'Kym started with NDIS her world has turned upside down, not providing her with a GOOD LIFE, but a life to be far more complex, and unachievable, with no one able to provide the care and support Kym deserves.'

Describing themselves as getting older, Lee and Penny Flowers wanted Kym to get used to being away from the family home and to become as independent as she could. Now, they say that the '[r]eality is that Kym continues to languish in hospital whilst everyone avoids responsibility and ignores the facts that my daughter is a[n] insulin depend[e]nt diabetic [who] would like to lead a full life...but now, no one will take responsibility.'

The Flower's are frustrated, being ping-ponged back and forth between state agencies, being told Kym's case is not a health issue, it is a disability; and it is not a disability, it is a health issue.

The NSW Ministry of Health and local hospital staff are engaged with the National Disability Insurance Agency (NDIA) to seek a solution while Kym remains in hospital awaiting review of her National Disability Insurance Scheme plan, including funding for diabetes care.

* UPDATE: At the time of publication, Kym has been transferred to new accommodation, however, some matters around her care and support remain unresolved.⁵³⁹

- 4.71** In reference to the same intersection issues emerging in education, Mr Troy Wright, Assistant General Secretary, NSW Public Service Association and Branch Secretary, Community and Public Sector Union (PSA/CPSU), stated: 'People with a disability do not deserve this. They do not deserve to be pushed around, treated as a line item and not in an agency's budget. There needs to be a holistic approach. That holistic approach was there with ADHC; it is not there now'.⁵⁴⁰

⁵³⁹ Correspondence from Hon Ray Williams MP, Minister for Disability Services, to Chair, 3 December 2018; Email from Mr Lee and Mrs Penny Flowers to secretariat, 3 December 2018.

⁵⁴⁰ Evidence, Mr Troy Wright, Assistant General Secretary, NSW Public Service Association and Branch Secretary, Community and Public Sector Union NSW, 2 October 2018, p 69.

4.72 Mr Coutts-Trotter acknowledged that these intersection issues 'play out in very profound ways in people's lives',⁵⁴¹ stating: 'If you cannot administer insulin, you need help to do it. It is an absolute necessity'.⁵⁴²

4.73 To this end, Mr Coutts-Trotter advised that much work has been put into identifying 'the line' between the NDIS and healthcare systems, such that policy explicitly detailing appropriate boundaries has been approved by eight out of nine jurisdictions. However, as a Scheme co-governed by all jurisdictions across the country, full agreement is yet to come. Mr Coutts-Trotter stated:

I remind people that the scheme is co-governed by all nine jurisdictions. New South Wales has got eight of these nine jurisdictions to agree at a really explicit level of detail about the appropriate boundary between the healthcare systems and the NDIS on each of these issues. Minister Williams has been trying to bring that to the Disability Reform Council to get a policy decision on it. We have worked long and hard to try to get these issues addressed as a matter of urgency at a high policy level, and in the interim just try to manage case by case as best we can to meet people's proper needs.⁵⁴³

Committee comment

4.74 The committee notes the many significant concerns raised by inquiry participants about the intersection between the NDIS and the healthcare system, and how the lack of clarity around jurisdictional lines has impacted considerably on the lives of many people with disability who also have chronic health concerns.

4.75 The committee notes the evidence of the NSW Government that this issue has been recognised across jurisdictions and has indeed been brought to the attention of the Disability Reform Council. The committee is encouraged that policy has been developed explicitly detailing appropriate boundaries but shares the frustrations of the many inquiry participants who are seeking clarity that a resolution has not been forthcoming.

4.76 Therefore, the committee recommends that the NSW Government actively pursue, through its role on the Council of Australian Governments Disability Reform Council, an agreement about jurisdictional lines between the National Disability Insurance Scheme and New South Wales healthcare system as a matter of priority.

⁵⁴¹ Evidence, Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, 2 October 2018, p 74.

⁵⁴² Evidence, Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, 2 October 2018, p 74.

⁵⁴³ Evidence, Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, 2 October 2018, pp 74-75.

Recommendation 11

That the NSW Government actively pursue, through its role on the Council of Australian Governments Disability Reform Council, an agreement about jurisdictional lines between the National Disability Insurance Scheme and New South Wales healthcare system as a matter of priority.

The need for a 'safety net'?

4.77 With the implementation of the NDIS and the transfer of specialist disability services from the NSW Government to non-government organisations, many inquiry participants called for a public sector 'safety net' to capture people with disability, particularly those with complex and challenging needs, whom others would walk away from.

4.78 For example, Mr Bowden, People with Disability Australia, argued that, in the absence of the NSW Government as a direct provider of disability services, there is no longer the guarantee of support that was once there, especially for those who have challenging behaviours. Mr Bowden asserted that the non-government sector are walking away from people now in a way that the NSW Government never did. Mr Bowden stated:

... the NDIS market, the service providers are not providing a guarantee of support or service in the same way that was a guarantee given to people with disability by the State Government. That worked really well for a small but important cohort of people who, for a range of reasons, have difficulties engaging with services. They might be viewed by services as being challenging, complex, or antisocial in respect of their engagement. The non-government sector, the private sector, might walk away from those people and they are walking away from those people now. The New South Wales Government was not doing that. It would always say, "We are here to assist you, regardless of what is going on. We will try and try and try to get the supports right in a way that is centred around you, that gets to know you and engages with you in a really positive way."⁵⁴⁴

4.79 Ms Ellen Small, Policy and Project Officer, Physical Disability Council of NSW, expressed a similar view, raising concerns that service providers may cherry pick clients, much to the detriment of people with complex needs. Ms Small stated:

[Physical Disability Council of NSW] is concerned that private service providers will be apprehensive or choose to not take on challenging clients due to the costs involved and that this may leave individuals with complex care and support needs without appropriate services and without a provider of last resort..⁵⁴⁵

4.80 According to Mr Bowden, there is little commitment from the non-government sector to ensure assistance is provided to people with disability where needed:

⁵⁴⁴ Evidence, Mr Matthew Bowden, Co-Chief Executive Officer, People with Disability Australia, 2 October 2018, p 34.

⁵⁴⁵ Evidence, Ms Ellen Small, Policy and Project Officer, Physical Disability Council of NSW, 2 October 2018, p 49.

We are seeing people facing evictions who would never have been evicted from a group home or respite service run by the New South Wales Government because there was that commitment to always be there to provide that assistance. There is not the same level of commitment, unfortunately, given by the non-government sector.⁵⁴⁶

- 4.81** Mr Wright, PSA/CPSU, argued that ADHC has 'always operated as that safety net ... ADHC was always there for that 40 per cent of people whose complex medical needs or behavioural needs were beyond that of the private sector and non government organisations. It has always been there'.⁵⁴⁷
- 4.82** As such, Mr Wright called for the re-establishment of a public sector safety net, asserting that there is widespread support for the idea. Mr Wright warned though that '... our calls ... for the re-establishment of, and investment in, public sector service provision as a safety net would require brave decision-making beyond politics'.⁵⁴⁸

The need for a 'provider of last resort'

- 4.83** Stakeholders also made a case for a 'provider of last resort', arguing that there is a critical need to ensure crisis situations are managed appropriately, without impacting on mainstream services.⁵⁴⁹
- 4.84** Ms Karen Stace, NSW Sector Operations Manager, National Disability Services, argued that under block funding arrangements prior to the NDIS, service providers had 'more flexibility to be able to deal with people who were knocking on their doors in crisis or requiring slightly more supports at one time and less supports at other times...'.⁵⁵⁰ She made comparisons with the current situation where, she asserted, service providers are 'very much dictated by what is in the plan and what they are able to provide. If it is not in the plan then it is very difficult for providers to provide that and when they are they are often doing that unfunded'.⁵⁵¹
- 4.85** This means that in crisis situations, according to numerous inquiry participants, people are scrambling to find immediate appropriate care and support for the person with disability in need. Mr Pooley described the practical reality of what happens when such a situation emerges:

In practical terms what happens is if there is a Friday afternoon crisis or somebody who needs urgent support in the majority of cases if they have engaged with a service provider there are a lot of panicked calls between the service provider and the agency to identify the specific change in circumstances and to come up with an interim ad hoc

⁵⁴⁶ Evidence, Mr Matthew Bowden, Co-Chief Executive Officer, People with Disability Australia, 2 October 2018, p 34.

⁵⁴⁷ Evidence, Mr Troy Wright, Assistant General Secretary, NSW Public Service Association and Branch Secretary, Community and Public Sector Union NSW, 2 October 2018, p 69.

⁵⁴⁸ Evidence, Mr Troy Wright, Assistant General Secretary, NSW Public Service Association and Branch Secretary, Community and Public Sector Union NSW, 2 October 2018, p 64.

⁵⁴⁹ Evidence, Ms Therese Sands, Co-Chief Executive Officer, People with Disability Australia, 17 September 2018, p 36.

⁵⁵⁰ Evidence, Ms Karen Stace, NSW Sector Operations Manager, National Disability Services, 17 September 2018, p 31.

⁵⁵¹ Evidence, Ms Karen Stace, NSW Sector Operations Manager, National Disability Services, 17 September 2018, p 31.

solution to that person's circumstances. Then over the course of the next few weeks, sometimes months, they engage with the agency about getting a plan review, identifying what service or accommodation options the person needs. That is the practical reality at the moment.⁵⁵²

- 4.86** Stakeholders expressed concerns about the impact these situations will have – and are already having – on mainstream now that there is no ‘provider of last resort’ function. As Ms Romola Hollywood, Director Policy and Advocacy, People with Disability Australia, argued:

... [i]t does impact on mainstream services So people may end up in the health system in emergency hospital arrangements or something like that simply because there is nowhere else for them to go. It is having an impact on mainstream services and whether those mainstream services have the supports necessary, have the staff training et cetera in a crisis mode again is a question of concern for us.⁵⁵³

- 4.87** Mr Simpson, NSW Council for Intellectual Disability, shared this view, stating:

That is a major problem right now with ADHC having closed services and the National Disability Insurance Agency [NDIA] not having any adequate system in place. The lack of that problem having been addressed means that it is likely that there are a lot of people with intellectual disability currently in jail or in hospitals or psychiatric hospitals not because they need to be there but because that provider of last resort structure is not in place.⁵⁵⁴

- 4.88** Mr Simpson added that the NDIA’s response to resolving the issue of crisis situations ‘has been very slow’, stating: ‘I must say that the kind of ideas they have got are quite positive, but the current progress is quite glacial in pace. In the meantime the big problem is that the New South Wales Government has exited from service provision before there is some alternative system in place’.⁵⁵⁵

- 4.89** Mr Simpson argued that this will continue to be a problem, at an ongoing cost to the NSW Government, unless a clear mechanism is in place:

...very reasonable fear ... that the State Government exiting from service provision will mean that this issue of provider of last resort is not adequately filled into the future, with the result that people with disability, especially people with complex needs, will suffer and the State Government may well find itself meeting the cost of meeting their needs in the highly undesirable context of jails and psychiatric hospitals.⁵⁵⁶

- 4.90** For Mr Wright, PSA/CPSU, reinvestment in ADHC is necessary, asserting that it is ‘cost neutral to the Government’ in comparison to the ‘increased drain’ on mainstream services when people

⁵⁵² Evidence, Mr Tony Pooley, Senior Manager, State Operations, National Disability Services, 17 September 2018, p 31.

⁵⁵³ Evidence, Ms Romola Hollywood, Director Policy and Advocacy, People with Disability Australia, 17 September 2018, pp 31-32.

⁵⁵⁴ Evidence, Mr Jim Simpson, Senior Advocate, NSW Council for Intellectual Disability, 2 October 2018, p 39.

⁵⁵⁵ Evidence, Mr Jim Simpson, Senior Advocate, NSW Council for Intellectual Disability, 2 October 2018, pp 43-44.

⁵⁵⁶ Evidence, Mr Jim Simpson, Senior Advocate, NSW Council for Intellectual Disability, 2 October 2018, p 44.

are inappropriately directed to aged care, child protection, the health system or correctional services.⁵⁵⁷

4.91 According to the NDIA, the ‘traditional concept of “provider of last resort” does not naturally fit with the new model of choice and control’ in the Scheme. The Agency advised that instead it has established a number of initiatives around ‘empowering participants, building capability in the market and improving NDIA processes to ensure participants can access supports critical to their wellbeing’.⁵⁵⁸

4.92 These initiatives are referred to as ‘Maintaining Critical Supports’, and include:

- implementation of critical service issues response mechanisms, which involves dedicated resources and nominated points of contact to work collaboratively with the participant, the service provider and the government officials
- improvement of the participant pathway to build the capability of participants and their families to diversify and strengthen support solutions, enhance plan implementation strategies and create greater flexibility in the use of approved funds
- development of the Market Enablement Framework to guide NDIA actions to monitor and build the market to respond to the needs of people with disability
- after-hours crisis response mechanisms being trialled selectively in New South Wales and South Australia until in January 2019, when it will be reviewed to assess demand and effectiveness’.⁵⁵⁹

4.93 With regard to the after-hours crisis support function, the committee received evidence that it involves a phone service to liaise with emergency services and a number of providers of short-term specialist disability services who have been engaged to provide supports if required. The committee was also told that the service is available only to emergency and health services in NSW – and not directly to participants.⁵⁶⁰

Committee comment

4.94 The committee acknowledges the concerns of a number of inquiry participants that, with the NDIS implementation and transfer of specialist disability services from the NSW Government, there is strictly no longer a public sector ‘safety net’ to capture people with disability. The committee notes in particular evidence suggesting that there is no longer any guarantee that a person will get the support they need, which would have once been delivered by the NSW Government, if a service provider chooses not to deliver.

4.95 The committee supports the call from stakeholders who seek to have a public sector safety net, and thus recommends that the NSW Government reinstate its role as a public sector safety net to capture people with disability, particularly those with complex and challenging needs.

⁵⁵⁷ Evidence, Mr Troy Wright, Assistant General Secretary, NSW Public Service Association and Branch Secretary, Community and Public Sector Union NSW, 2 October 2018, p 69.

⁵⁵⁸ Answers to supplementary questions, National Disability Insurance Agency, 23 October 2018, p 5.

⁵⁵⁹ Answers to supplementary questions, National Disability Insurance Agency, 23 October 2018, pp 5-6.

⁵⁶⁰ Answers to supplementary questions, National Disability Insurance Agency, 23 October 2018, p 6.

Recommendation 12

That the NSW Government reinstate its role as a public sector safety net to capture people with disability, particularly those with complex and challenging needs.

- 4.96** The committee also notes the evidence about the need for a 'provider of last resort' in crisis situations. The committee is troubled by evidence presented in this and previous chapters suggesting that people with disability are ending up in hospitals or jails because immediate support has not been available and there has been nowhere else for them to go.
- 4.97** While the committee acknowledges that the concept of 'provider of last resort' does not fit within the NDIS model, the committee is of the view that it is a necessary function that must be made available to any person with disability who may need it in times of crisis.
- 4.98** The committee therefore recommends that the NSW Government be established as a service provider of last resort to the National Disability Insurance Scheme to ensure crisis situations are managed appropriately.
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Recommendation 13

That the NSW Government be established as a service provider of last resort to the National Disability Insurance Scheme to ensure crisis situations are managed appropriately.

- 4.99** The committee acknowledges the evidence presented in previous chapters and in this one detailing the gaps in service for people with disability in New South Wales.
- 4.100** To this end, the committee recommends that the NSW Government address service gaps, beyond those already addressed by our recommendations, by investing in services and supports for people with disability, regardless of their eligibility for the NDIS.
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Recommendation 14

That the NSW Government address service gaps by investing in services and supports for people with disability, regardless of their eligibility for the National Disability Insurance Scheme.

Working towards a state of inclusion

- 4.101** On reflection of the Scheme's implementation, including the transfer of disability specific supports to the non-government sector, and the changes in governance of disability support provision in New South Wales, inquiry participants considered the way forward from here. After all, as Mr Pooley, National Disability Services, suggested, the responsibility is 'on us all
-

collectively' to work towards an 'inclusive and engaged broader service system ... so they can be as accommodating as possible for all people with a disability'.⁵⁶¹

- 4.102** As discussed earlier in the report, many stakeholders expressed support for the principles of the NDIS and broader reform in the disability sector that has seen a move towards more person-centred support for people with disability, a view shared by Mr Jonathan Harms, Chief Executive Officer, Mental Health Carers NSW:

We ... generally support the NDIS and think that it is fantastic that Australia has finally got around to a comprehensive model to meet the needs at the population level of everyone who requires significant disability support in this country. We also appreciate the model ... of individual package funding because the intention is to empower people.⁵⁶²

- 4.103** However, inquiry participants equally argued that there is a need to look beyond the NDIS to the more broader disability support ecosystem. For example, Mr Butcher, Mission Australia, stated: '...[W]e would also advocate for other services apart from the NDIS to be factored into our disability support model.'⁵⁶³

- 4.104** Indeed, Mr Harms asserted that 'no single solution for such complex problems is often going to be suitable to meet the whole population's needs',⁵⁶⁴ stating:

There is a case for government to continue funding services of last resort that the market is not capable of delivering, as well as offering more block funded services that provide different kinds of support for people in the community, which is going to be the kind that is more suitable for some people.⁵⁶⁵

- 4.105** Mr Harms illustrated the different needs of people with disability and how they may be catered for with an analogy: '... some people are quite happy to sit at the table and order a meal off a menu; other people are going to need to take their plate to the buffet and pick a bit off as they need it'.⁵⁶⁶

- 4.106** Mr Harms explained that there those with disability whose circumstance and capacity enable them to utilise the NDIS to their best advantage, while there are others who require a different model of support:

I think in the NDIS there are people who can definitely seek and manage a package of funding, particularly if they do not have cognitive impairment or mental illness, but

⁵⁶¹ Evidence, Mr Tony Pooley, Senior Manager, State Operations, National Disability Services, 17 September 2018, p 31.

⁵⁶² Evidence, Mr Jonathan Harms, Chief Executive Officer, Mental Health Carers NSW, 2 October 2018, p 24.

⁵⁶³ Evidence, Mr Luke Butcher, Area Manager (Western NSW and Special Projects), Mission Australia, 2 October 2018, p 9.

⁵⁶⁴ Evidence, Mr Jonathan Harms, Chief Executive Officer, Mental Health Carers NSW, 2 October 2018, p 24.

⁵⁶⁵ Evidence, Mr Jonathan Harms, Chief Executive Officer, Mental Health Carers NSW, 2 October 2018, p 24.

⁵⁶⁶ Evidence, Mr Jonathan Harms, Chief Executive Officer, Mental Health Carers NSW, 2 October 2018, p 24.

other people require a different model of support for them to be able to access and have all their needs met.⁵⁶⁷

- 4.107** Similarly, Ms Paterson acknowledged this position, arguing that there is perhaps reason to consider a dual approach that accommodates both those with the ability to maximise the flexibility, choice and control of the NDIS and those who need the support of a block-funded program, such as those whose disability is not likely to require progressively less support over time:

There seems to be a lack of understanding that some disabilities impact. Most disabilities do not improve. The insurance model of the NDIS is based on the assumption that you spend a lot of money on someone to begin with and you kind of work towards them needing less support in the future, and becoming productive members of society and paying tax. For a lot of people, that is just not going to happen. That is partially why I personally—and it is very much a personal view—think that there should be two systems. For someone like me with productive capacity, for whom a flexible individualised funding program works, I should be able to choose something like the NDIS. People who through no fault of their own either are not productive or cannot manage the choices should be able to go with a block funded program.⁵⁶⁸

- 4.108** In addition, in seeking to support the 'vision of being a state of inclusion', Ms Sands, People with Disability Australia, argued for the establishment of a Disability Inclusion Minister 'with a budget for reform and responsibility for leadership and disability rights and inclusion'. Ms Sands also highlighted the need for strong commitment to implementing and funding the New South Wales Disability Inclusion Plan', discussed earlier in the chapter.⁵⁶⁹

- 4.109** Whichever the way forward, Mr Kinmond, NSW Ombudsman, argued that there is critical need to use what has been learnt to date – whether it be from the NDIS or from broader reform across the sector – to inform decisions that will ensure greater outcomes for people with disability over time:

... [W]e need to use the data and embed the lessons from the test cases to ensure that ongoing system reform is taking place to drive less problems, more solutions and better outcomes over time. This process is relevant to both discrete NDIS system reform as well as the reforms that are taking place and that need to take place in relation to the mainstream New South Wales service system.⁵⁷⁰

Committee comment

- 4.110** The committee believes that New South Wales is at an important juncture with disability reform. There has been much change and there may still be more to come as all stakeholders in the

⁵⁶⁷ Evidence, Mr Jonathan Harms, Chief Executive Officer, Mental Health Carers NSW, 2 October 2018, p 24.

⁵⁶⁸ Evidence, Ms Melinda Paterson, NDIS participant, 17 September 2018, p 44.

⁵⁶⁹ Evidence, Ms Therese Sands, Co-Chief Executive Officer, People with Disability Australia, 17 September 2018, p 30.

⁵⁷⁰ Evidence, Mr Steve Kinmond, Deputy Ombudsman and Community and Disability Services Commissioner, NSW Ombudsman, 2 October 2018, p 3.

delivery of disability supports, including people with disability themselves, get used to the changing landscape.

- 4.111** However, with this change, we are compelled to consider whether we are on the right track towards building a state of inclusion. This includes an examination not just of the implementation of the NDIS, but of the broader reform in disability.
- 4.112** The committee notes the evidence of inquiry participants who suggest there may be merit in adjusting our approach to account for people with the ability to maximise the flexibility, choice and control of the NDIS and also those who may need a different model of support.
- 4.113** The committee agrees with stakeholders that, whichever the way forward, we must learn from the lessons that have come with the reform to date.

Role of advocacy organisations

- 4.114** This next section outlines the significant, important and changing role that advocacy plays in supporting people with disability, whether they are part of the NDIS or not.
- 4.115** There are two types of advocacy engaged by disability organisations – individual and systemic.
- 4.116** Individual advocacy supports people with disability to understand and exercise their rights, either through one-to-one support, or by supporting people to advocate for themselves individually or in a group.⁵⁷¹
- 4.117** Systemic advocacy seeks to introduce and influence longer term changes to ensure the rights of people with disability are attained and upheld to positively affect the quality of their lives. Systemic advocates can influence positive changes to legislation, policy and service practices and work towards raising and promoting community awareness and education of disability issues.⁵⁷²
- 4.118** Advocacy organisations offer support to people with disability who may need supports, their families and their carers.⁵⁷³ The Mental Health Carers NSW submission explained how advocacy specifically assists individuals who are engaging with the NDIS:

Advocacy can support people to identify and articulate their goals, strengths and needs, to understand what types of supports and services are available through the NDIS and to feel confident in asking for them. Advocacy has considerable potential to enable participants to make independent choices about how they utilise supports in their plan and to ask for a review or appeal if they are unhappy with a decision and they may not be able to take these vital steps without it.

⁵⁷¹ Department of Social Services, *National Disability Strategy 2010 – 2020, An initiative of the Council of Australian Governments* (2011), p 17.

⁵⁷² Department of Social Services, *National Disability Strategy 2010 – 2020, An initiative of the Council of Australian Governments* (2011), p 17.

⁵⁷³ Evidence, Ms Serena Ovens, Executive Officer, Physical Disability Council of NSW, and Convenor, NSW Disability Advocacy Alliance, 2 October 2018, p 34.

Advocacy services can provide extensive pre-planning support and also help consumers and carers prepare for a plan review.⁵⁷⁴

- 4.119** The NSW Disability Advocacy Alliance highlighted in their submission the important role that advocacy organisations play in not just supporting participants, but also service providers:

All of the Alliance members interact with the NDIS on a daily basis, either directly through supporting their individual membership groups and stakeholders to navigate the scheme; through funding to deliver NDIS ILC projects or NDIS reviews and appeals; or indirectly in providing information, advice and handling complaints from individuals with disability or service providers trying to understand the nuances of the scheme, and in advising and shaping government policy that is constantly changing as the NDIS is implemented in NSW.⁵⁷⁵

- 4.120** Mr Bowden, People with Disability Australia, stressed that advocacy acts as a critical safeguard for the NDIS and its interaction with mainstream services:

[Advocacy] is going to always be required in respect of a safeguarding provision for the scheme and for people with disability who are engaging with the scheme. One of the large areas of our work is about assisting with the intersection between the scheme and mainstream services, be that child protection systems, justice systems, education et cetera, so that the plan and supports in other environments are working in a way that is conducive to a person having a good life.⁵⁷⁶

- 4.121** Furthermore, advocacy organisations work closely alongside government agencies and organisations to provide expert advice and save expensive consultancy costs. Ms Ovens, NSW Disability Advocacy Alliance, told the committee:

Our organisations also work hand in hand with the current Government. We provide expert advice to over 100 government and other advisory boards and committees and, like today's hearing, submit on many inquiries and consultations saving government millions of dollars on expensive consultants. Consultants cannot tell government what living with disability in New South Wales is like, only people with disability can do that. In fact, a recent commissioned report indicated that for every dollar spent on advocacy the government received a return of \$3.50, an unusually high return on investment and extremely effective use of resources.⁵⁷⁷

- 4.122** Ms Ovens also stated that advocacy organisations provide the government with an opportunity to hear directly from people with disability:

In providing that information and being on those committees, we give expert advice to people with disability on how to change, how to be inclusive, how to build a better New South Wales and, as I said, at a much cheaper cost than we would if we had involved a consultant, many of whom would not have the disability knowledge or the background that we get from our own members feeding in on what is important to them, what

⁵⁷⁴ Submission 291, Mental Health Carers NSW, p 9.

⁵⁷⁵ Submission 294, NSW Disability Advocacy Alliance, p 2.

⁵⁷⁶ Evidence, Mr Matthew Bowden, Co-Chief Executive Officer, People with Disability Australia, NSW Disability Advocacy Alliance, 2 October 2018, pp 35-36.

⁵⁷⁷ Evidence, Ms Serena Ovens, Convenor, NSW Disability Advocacy Alliance, 2 October 2018, p 32.

changes they need to see happen, what is still not working well for them within community.⁵⁷⁸

- 4.123** Advocacy organisations also work on a one-on-one basis with people ineligible for the NDIS. They help raise and resolve issues about people's contact with mainstream services, and identify systemic issues affecting people with disability in relation to those services.⁵⁷⁹ In their submission, the Physical Disability Council of NSW explained:

Much of the work our organisations undertake and supports fall outside of the remit of the NDIS, and includes state-based issues across the broader mainstreams arena of education, employment, health, access, finance, justice and human rights.⁵⁸⁰

- 4.124** Ms Sands, People with Disability Australia, also highlighted how advocacy was integral to the continued wellbeing of those people who were ineligible for the NDIS:

We are providing individual advocacy to many people with disability to support them—many people who are either not eligible for the NDIS or have received what they perceive to be or that may be inadequate NDIS plans that do not meet their needs. But there are many people who are not eligible for the NDIS who are now struggling to find the supports they need to continue to live their lives the way they did before. ... They are in quite dire situations in many cases.⁵⁸¹

Funding for advocacy

- 4.125** The committee heard that advocacy funding is limited within the NDIS. The Federal Government will play a role in funding some advocacy through its National Disability Advocacy Program, which allocates a total \$20 million of funding across the whole country.⁵⁸²
- 4.126** In addition, there is the NDIA's Information Linkages and Capacity Building (ILC) program, which provides grants to organisations to deliver activities in the community that increase the capacity of communities to be more inclusive and diverse.⁵⁸³
- 4.127** However, Mr Coutts-Trotter, FACS, indicated that the ILC program 'has not been effective enough to date' and that 'the ILC grants program has just not stood up quickly enough and was not effective in supporting this kind of capability'.⁵⁸⁴

⁵⁷⁸ Evidence, Ms Serena Ovens, Convenor, NSW Disability Advocacy Alliance, 2 October 2018, p 35. See also, Submission 294, NSW Disability Advocacy Alliance, p 5.

⁵⁷⁹ Submission 347, NSW Ombudsman, p 20.

⁵⁸⁰ Submission 191, Physical Disability Council NSW, p 13.

⁵⁸¹ Evidence, Ms Therese Sands, Co-Chief Executive Officer, People with Disability Australia, 17 September 2018, p 30.

⁵⁸² Evidence, Ms Serena Ovens, Convenor, NSW Disability Advocacy Alliance, 2 October 2018, p 36.

⁵⁸³ Submission 342, National Disability Insurance Agency, p 4.

⁵⁸⁴ Evidence, Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, 2 October 2018, p 82.

- 4.128** The NDIA told the committee that 'getting ILC investment right is crucial for all people with disability, as well as for Scheme sustainability',⁵⁸⁵ and that in 2019/20 it was 'adopting a more strategic and pragmatic approach' to ILC investment – focusing more on building individual capacity, such as peer support, advocacy and individual advocacy, and community capacity and being more accessible.⁵⁸⁶
- 4.129** The NSW Government announced that funding for disability advocacy in New South Wales would expire on 30 June 2018, with the transfer of \$13 million of New South Wales funding for disability advocacy, information and representative organisations to the Federal Government to fund the NDIS.⁵⁸⁷
- 4.130** After the successful 'Stand by Me' campaign organised by the NSW Disability Advocacy Alliance and sustained pressure from advocacy groups,⁵⁸⁸ the NSW Government announced in April 2018 that the proposed funding cuts would not take place and a Transitional Advocacy Funding Supplement of \$26 million would be available for advocacy services until June 2020.⁵⁸⁹
- 4.131** The funding aims to address the short-term practical gaps in the early stages of the NDIS around advocacy and inclusion activities of people with disability in their communities.⁵⁹⁰
- 4.132** Mr Tim Reardon, Secretary of the Department of Premier and Cabinet, explained that this level of funding 'is appropriate to ensure there is [a] managed transition' of advocacy. He said that the NSW Government was committed to monitoring the situation closely as they 'did not want to see a service delivery gap'.⁵⁹¹
- 4.133** In response to the NSW Government's commitment only until June 2020, the committee heard of the significant impacts this would have on organisations, their staff and the people they represent. Ms Serena Ovens, Convenor of the NSW Disability Advocacy Alliance stated:

Most of the organisations ... will either close or will lose between 33 per cent and 50 per cent of their current services through a loss of New South Wales funding. That will mean huge gaps for people with disability and nowhere to get that voice. From a systems perspective, it means people will have to do things individually.⁵⁹²

...

The loss of \$13 million from the New South Wales State funding means that more than half of all advocacy, be it individual, the information, be it systemic advocacy and peak organisations, will be lost in 2020 when the New South Wales Government does not fund advocacy from that point.⁵⁹³

⁵⁸⁵ Submission 342, National Disability Insurance Agency, p 4.

⁵⁸⁶ Evidence, Ms Vicki Rundle, Deputy Chief Executive Officer, Government Communications and Stakeholder Engagement, National Disability Insurance Agency, 17 September 2018, p 17.

⁵⁸⁷ Submission 148, NSW Council for Intellectual Disability, p 9.

⁵⁸⁸ Submission 191, Physical Disability Council NSW, pp 11-12.

⁵⁸⁹ Submission 313, NSW Government, p 22.

⁵⁹⁰ Submission 313, NSW Government, p 22.

⁵⁹¹ Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 2 October 2018, p 81.

⁵⁹² Evidence Ms Serena Ovens, Convenor, NSW Disability Advocacy Alliance, 2 October, p 35.

⁵⁹³ Evidence Ms Serena Ovens, Convenor, NSW Disability Advocacy Alliance, 2 October, p 36.

4.134 The NSW Disability Advocacy Alliance noted that as there is only 10 per cent of people with disability that are eligible for an individually funded package under the NDIS, there is concern in the community for what supports will be available to the remaining 90 per cent (approximately 1.2 million people) who are not eligible, should there be no further funding of advocacy services.⁵⁹⁴

4.135 A number of stakeholders highlighted the NSW Government's key obligations regarding the support and inclusion of any person with disability under the *Disability Inclusion Act* and 'whether a person has a plan under the NDIS' or not.⁵⁹⁵

4.136 Ms Ya'el Frisch, Project Officer Advocacy at the NSW Council of Social Service (NCOSS) asserted that:

...we welcome the announcement for additional funding ... but we truly believe that the New South Wales Government needs to commit to long-term funding for disability advocacy which is crucial to assist people with disability to access mainstream services whether or not they are eligible for the NDIS.⁵⁹⁶

4.137 Legal Aid NSW expressed the view that without advocacy funding, the 'promise of the NDIS' could not be fulfilled:

...we believe that the promise of the NDIS cannot be fully realised without a sustained commitment to fund advocacy services to meet the needs of vulnerable people who lack the capacity to advocate on their own behalf, both with the NDIA and with mainstream systems. The NDIS is a complex legislative and administrative scheme, and some people with disability need independent and client-centred advocacy services to ensure they can navigate the scheme with success.⁵⁹⁷

4.138 For those organisations already engaging in individual advocacy, such as the NSW Council for Intellectual Disability, the lack of ongoing funding means that their capacity to provide support and development to people with intellectual disability may cease. Mr Jim Simpson, Senior Advocate at the NSW Council for Intellectual Disability remarked:

To use ourselves as an example, what has been central to our being over the years is developing and supporting the role of people with intellectual disability as leaders in our organisation and as leaders in public debate ... If the New South Wales Government stops funding disability advocacy in two years' time, our capacity to provide that support and development for people with intellectual disability as leaders and in public debate will stop. People with intellectual disability will be silenced. That is something that is of grave concern to us.⁵⁹⁸

⁵⁹⁴ Submission 294, NSW Disability Advocacy Alliance, p 2; Submission 258, National Disability Services, p 28.

⁵⁹⁵ Submission 275, Carers NSW, p 9; Evidence, Ms Serena Ovens, Convenor, NSW Disability Advocacy Alliance, 2 October 2018, pp 37-38.

⁵⁹⁶ Evidence, Ms Ya'el Frisch, Project Officer Advocacy, NSW Council of Social Service, 2 October 2018, p 31. See also, Submission 152, NSW Council of Social Service, p 2.

⁵⁹⁷ Submission 351, Legal Aid NSW, p 6.

⁵⁹⁸ Evidence, Mr Jim Simpson, Senior Advocate, NSW Council for Intellectual Disability, 2 October 2018, p 40.

- 4.139** Mr Coutts-Trotter acknowledged the issue of advocacy funding and advised that they will be monitoring the situation:

...we do not know what the landscape will look like in 24 months' time. ... the Government agreed to fund transitional arrangements for advocacy organisations because the ILC grants program has just not stood up quickly enough and was not effective in supporting this kind of capability.⁵⁹⁹

What has changed for advocacy due to the NDIS?

- 4.140** Systemic advocacy organisations informed the committee that rather than being able to look at the bigger system, they are now having to engage more time and resources to individual advocacy. Ms Ovens of the NSW Disability Advocacy Alliance explained that their organisations have had to:

... assist people through that process, be it providing education to help people understand how to navigate the NDIS, how to access it in the first place, how to action a plan and ensure that they are getting what they need for their plans. It is taking more and more of our time and effort and ... takes away from our day-to-day role, which is looking at the bigger system...⁶⁰⁰

- 4.141** The NDIS has generated additional work for advocacy organisations and they have begun to forward enquiries or clients to other community or government services, many of whom also do not have the capacity to manage the demand.⁶⁰¹

- 4.142** With the absence of the NSW Government being a service provider of last resort, disability advocacy organisations have had to 'step up' and act as the conjugate between service providers and participants. Mr Matthew Bowden, Co-Chief Executive Officer of People with Disability Australia, stated:

The market is failing people with disability in that respect, so this is coming to disability advocates to sort out and try and broker a positive working relationship between the service provider and the person with the NDIS plan. We can be successful with that some of the time but not all of the time. We are seeing people facing evictions who would never have been evicted from a group home or respite service run by the New South Wales Government because there was that commitment to always be there to provide that assistance. There is not the same level of commitment, unfortunately, given by the non-government sector. This is another critical piece that attention really needs to be put to.⁶⁰²

- 4.143** The committee heard from Mr Anthony Mulholland, who is not only a recipient of the Council's services and an NDIS participant, but now acts as an advocate himself for others.

⁵⁹⁹ Evidence, Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, 2 October 2018, pp 81-82.

⁶⁰⁰ Evidence, Ms Serena Ovens, Convenor, NSW Disability Advocacy Alliance, 2 October 2018, p 35.

⁶⁰¹ Submission 294, NSW Disability Advocacy Alliance, p 7.

⁶⁰² Evidence, Mr Matthew Bowden, Co-Chief Executive Officer, People with Disability Australia, NSW Disability Advocacy Alliance, 2 October 2018, p 34.

It is important for me that people with disability have a voice and speak up. I like to do advocacy work. I find the reward is to see the achievements I can achieve to help other people achieve things that they had been never been able to achieve and seeing the outcomes of what it can be like and also seeing the success of what I can achieve to help people achieve things, because I know it is hard. Having an intellectual disability, there is a lot that goes on you. It is also my way to make sure that my friends do not have the problems I have had and what I have gone through to achieve what they can achieve.⁶⁰³

- 4.144** Another issue was the difficulty of reaching people who had received supports before but had it changed or removed. If people are isolated or lacking any support structure, they might be falling through the cracks and not getting the supports they are entitled to. Ms Ovens, Executive Officer of the Physical Disability Council of NSW, told the committee:

... many of these people are very isolated ... They are not often interested in dealing with people they do not know. They often isolate themselves, so just getting a letter that might tell them that transferring is going to happen is not enough; we need to ensure that we continue to try to work with whomever might be used to supporting them to ensure that they get that contact and that they are aware ... that they have the right to access the NDIS, and if they are not considered eligible, that there are steps and processes in place.⁶⁰⁴

- 4.145** Advocacy organisations try to work with whomever had supported them previously to ensure they get the relevant contact and are aware that they have the right to access the NDIS.⁶⁰⁵

- 4.146** The assistance of advocacy organisations in searching for and locating these types of participants, especially those with psychosocial disability, was acknowledge by Ms Vicki Rundle, Deputy Chief Executive Officer, Government Communications and Stakeholder Engagement of the National Disability Insurance Agency:

We are doing some work with each State and Territory government and the sector on reaching hard-to-find participants. We are doing a lot more work going out more aggressively and looking for participants, particularly people with psychosocial disability in areas. We are using the sector a lot to do that and help us.⁶⁰⁶

Benefits of advocacy

- 4.147** Advocacy organisations as independent players in the system play an important role in ensuring the success of the NDIS and in monitoring and evaluating its effectiveness. They play an even

⁶⁰³ Evidence, Mr Anthony Mulholland, Member, NSW Council for Intellectual Disability Advocacy Group, 2 October 2018, p 39.

⁶⁰⁴ Evidence, Ms Serena Ovens, Executive Officer, Physical Disability Council of NSW, 2 October 2018, p 54.

⁶⁰⁵ Evidence, Mr Tony Jones, Policy and Advocacy Manager, Spinal Cord Injuries Australia, 2 October 2018, p 51; Evidence, Ms Serena Ovens, Executive Officer, Physical Disability Council of NSW, 2 October 2018, p 53.

⁶⁰⁶ Evidence, Ms Vicki Rundle, Deputy Chief Executive Officer, Government Communications and Stakeholder Engagement, National Disability Insurance Agency, 17 September 2018, p 14.

greater role supporting those 90 per cent of people with disability in New South Wales who are ineligible for the NDIS.⁶⁰⁷

- 4.148** Advocacy organisations provide supports for a range of people, who have varying levels of prior contact or knowledge of the disability system. Ms Karen Wakely, an NDIS carer, told the committee:

Advocacy is really important because you do not know what you do not know. You are there with your limited experience of the system. Sometimes you are hearing stuff that does not sound quite right, but you do not necessarily know how that is fitting within a policy context.⁶⁰⁸

- 4.149** The committee also heard that the NDIS has proven difficult to navigate, even for those with medical backgrounds or for professionals working in the disability sector.

- 4.150** Dr Santhi Chalasani, an NDIS carer and medical professional, advised that despite having had 20 years' experience navigating the health system, the NDIS system has been 'so confusing and so difficult to navigate'⁶⁰⁹ for her and her family.

- 4.151** Dr Chalasani explained how advocacy has helped her family through a 'very difficult and emotional time' when her young son was diagnosed with autism. She emphasised that, 'It is incredibly important to have an advocate who is able to go through the steps with you',⁶¹⁰ especially for people whose first language is not English or for those with limited knowledge or understanding of the system.⁶¹¹

- 4.152** Ms Paterson, an NDIS participant, who also works in the disability sector explained that, despite her experience and knowledge of the sector, she still sees advocacy as being essential:

... because if you are in the middle of a highly stressful situation – and it is potentially very emotional – you need someone with a cool head who is a bit objective and is highly skilled and has a legal background. I do not so I absolutely need advocates at certain points.⁶¹²

- 4.153** Ms Paterson described her personal experience of needing advocacy to ensure that a community college she wanted to attend was accessible. She recounted:

So rather than me yelling and screaming down the phone, and getting in a fight with that institution, I had an advocate help me with that and it got sorted out. That is probably the one that sticks in my mind but keep in mind that some of the block-funded advocacy services also have regular newsletters, they have websites, they offer different types of information sessions or training for their members.⁶¹³

⁶⁰⁷ Submission 294, NSW Disability Advocacy Alliance, p 3.

⁶⁰⁸ Evidence, Ms Karen Wakely, NDIS carer, 17 September 2018, p 55.

⁶⁰⁹ Evidence, Dr Santhi Chalasani, NDIS carer, 17 September 2018, p 55.

⁶¹⁰ Evidence, Dr Santhi Chalasani, NDIS carer, 17 September 2018, p 55.

⁶¹¹ Evidence, Dr Santhi Chalasani, NDIS carer, 17 September 2018, p 55.

⁶¹² Evidence, Ms Melinda Paterson, NDIS participant, 17 September 2018, p 42.

⁶¹³ Evidence, Ms Melinda Paterson, NDIS participant, 17 September 2018, p 43.

- 4.154** Ms Ovens of the NSW Disability Advocacy Alliance stated that the advocacy organisations are often best placed to link people to the appropriate services and supports because they have significant experience within the system:

[people] often even come to us just to find out what services might be available in a community because many of us have been there for 25, 60, 100 years and have amazing relationships with the other services and other supports within the area.⁶¹⁴

- 4.155** Some organisations provide a service specific to a particular disability and without ongoing funding, accumulated knowledge and information could be lost. Mr Killeen, Senior Policy and Advocacy Officer at Spinal Cord Injuries Australia told the committee:

Organisations like Spinal Cord Injuries Australia, which is in its fifty-first year, has been running an information service and has years of built-up resources. It has a library and knowledge; it provides information for people specifically with spinal cord injury and similar physical injuries. If that funding stops, all that knowledge and information, if it is not funded elsewhere—and you cannot get funding in your plan to access information—will simply be lost.⁶¹⁵

- 4.156** Further, advocacy organisations work closely with the Government by sitting alongside a number of government boards and advisory committees. The Government often consults the advocacy sector for feedback, comment and direction, or at times, for access to their individual members with disability for expertise and lived experience.⁶¹⁶

- 4.157** The sector also argues that advocacy is cost-effective for the Government. In an October report commissioned by the Stand By Me campaign, it revealed that for every dollar spent on advocacy, the NSW Government would receive a return of \$3.50.⁶¹⁷

Committee comment

- 4.158** The committee acknowledges the significant contribution of advocacy organisations in the disability sector. We note the important work they do in supporting and advocating for anyone with a disability, their families and their carers, regardless of whether they are eligible for the NDIS. The committee believes it is imperative that funding from the NSW Government continue after 2020 to ensure people with a disability can exercise their rights and be included members of the community. The committee also acknowledges the importance of the broader advocacy services and advice these organisations provide.

⁶¹⁴ Evidence, Ms Serena Ovens, Convenor, NSW Disability Advocacy Alliance, 2 October 2018, p 33.

⁶¹⁵ Evidence, Mr Greg Killeen, Senior Policy and Advocacy Officer, Spinal Cord Injuries Australia, 2 October 2018, p 55.

⁶¹⁶ Submission 191, Physical Disability Council NSW, p 12.

⁶¹⁷ NSW Disability Advocacy Alliance, *The Gaps are Getting Bigger for People with Disability in NSW* (2010) <http://standbyme.org.au/wp-content/uploads/2018/10/Stand-By-Me-Report-The-Gaps-are-Getting-Bigger-for-People-with-Disability-in-NSW-web.pdf>

Recommendation 15

That the NSW Government provide ongoing funding and support to advocacy organisations beyond 2020.

- 4.159** In addition to ongoing funding for advocacy organisations, the committee believes there is a role for a Public Advocate in the disability area. This issue is explored in chapter 6.

Chapter 5 The disability sector workforce

The National Disability Insurance Scheme (NDIS) has dramatically changed the disability workforce and is expected to generate 30,000 new jobs in New South Wales. Following the transfer of Family and Community Service (FACS) disability service providers to the private sector, non-government organisations now deliver 95 per cent of all disability services in New South Wales.⁶¹⁸ The move from a largely government-contracted system to a market economy insurance scheme, and from block funding to individualised plans, has led to major changes in the disability workforce. The quality and sustainability of the disability workforce is a crucial component of the success of the NDIS.

The NDIS has enhanced the quality of life of many participants, nonetheless, a number of stakeholders expressed concerns that several factors were impacting on the quality of services provided under the NDIS. These factors, outlined in this chapter, include changes in workplace culture, a high turnover of staff, the increasing casualisation of the workforce due to market pressures, a lack of professional development and training and regional and rural workforce shortages. Furthermore, the NDIS pricing regime has made it harder for service providers to support complex clients and the loss of block funding has threatened the sustainability of some organisations.

Disability workforce snapshot

- 5.1** National Disability Services is the peak body for non-government disability services. In July 2018, the *Australian Disability Workforce Report* (third edition) was released.⁶¹⁹ Consistent with early editions, the report found that the disability workforce was predominately made up of females (70 per cent) with nearly half (46 per cent) of workers were casually employed, an increase from previous quarters.⁶²⁰
- 5.2** The average number of hours worked by a disability support worker was around 22 hours per week.⁶²¹ The disability support workforce is also older than the Australian workforce overall.⁶²² Service providers reported that in New South Wales, 23 per cent of newly recruited workers had a disability-related qualification (Certificate III and above).⁶²³

⁶¹⁸ Submission 313, NSW Government, p 11.

⁶¹⁹ National Disability Services, *Australian Disability Workforce Report: Third edition*, July 2018, https://www.nds.org.au/images/workforce/ADWR-third-edition_2018_final.pdf

⁶²⁰ National Disability Services, *Australian Disability Workforce Report: Third edition*, July 2018, pp 8 and 15, https://www.nds.org.au/images/workforce/ADWR-third-edition_2018_final.pdf; See also, National Disability Services, *Australian Disability Workforce Report: Second edition*, February 2018, <https://www.nds.org.au/pdf-file/cc8a1d63-821b-e811-973b-0050568e2189>

⁶²¹ National Disability Services, *Australian Disability Workforce Report: Third edition*, July 2018, p 10, https://www.nds.org.au/images/workforce/ADWR-third-edition_2018_final.pdf

⁶²² National Disability Services, *Australian Disability Workforce Report: Third edition*, July 2018, p 15, https://www.nds.org.au/images/workforce/ADWR-third-edition_2018_final.pdf

⁶²³ National Disability Services, *Australian Disability Workforce Report: Third edition*, July 2018, p 15, https://www.nds.org.au/images/workforce/ADWR-third-edition_2018_final.pdf

- 5.3** The disability support workforce grew by 13.8 per cent in the 2017-18 financial year, which reflected an annual growth rate of 3.8 per cent for the permanent workforce and 26.8 per cent for the casual workforce.⁶²⁴
- 5.4** As at 30 September 2018, 47 per cent of national service providers were individual/sole trader operated business while the remaining providers were registered as a company or organisation.⁶²⁵ Furthermore, 80-90 per cent of payments made by the NDIA are received by 25 per cent of providers.⁶²⁶ The number of approved service providers increased by 7 per cent in the last quarter.⁶²⁷ In New South Wales, there is an average of 1.68 providers per participant.⁶²⁸

NDIS ready disability workforce

- 5.5** As part of getting the disability workforce ready for the NDIS transition, the NSW Government transferred the former Ageing, Disability and Home Care (ADHC) staff to the non-government sector and supported disability workforce and sector development activities. Also, service providers were required to apply for registration with the NDIS.
- 5.6** As noted in the NSW Government submission the increased access to supports under the NDIS means 'there will need to be a significant increase in the disability service workforce'.⁶²⁹ Since the rollout of the NDIS, more than 50,000 jobs have been created in the healthcare and social services sector.⁶³⁰ The NDIS is expected to generate 30,000 new jobs in the disability sector in New South Wales, and 90,000 jobs nation-wide.⁶³¹ Over the next five years, it is expected that the NDIS will account for one in five new jobs.⁶³²
- 5.7** In response, the NSW Government has spent over \$30 million in disability workforce and sector development activities.⁶³³ Mr Tim Reardon, Secretary of the Department of Premier and Cabinet, said that there 'is a very big workforce and jobs opportunity within the NDIS' and that

⁶²⁴ National Disability Services, *Australian Disability Workforce Report: Third edition*, July 2018, p 7, https://www.nds.org.au/images/workforce/ADWR-third-edition_2018_final.pdf

⁶²⁵ Council of Australian Governments, Disability Reform Council: Quarterly Performance Report – New South Wales, 30 September 2018, p 53, <https://www.ndis.gov.au/medias/documents/q1-201819-report-full/Report-COAG-for-Q1-of-Y6-Full-report.pdf>

⁶²⁶ Council of Australian Governments, Disability Reform Council: Quarterly Performance Report – New South Wales, 30 September 2018, p 3, <https://www.ndis.gov.au/medias/documents/q1-201819-national-performance/National-Performance-Report-as-at-30-Sep-2018.pdf>

⁶²⁷ Council of Australian Governments, Disability Reform Council: Quarterly Performance Report – New South Wales, 30 September 2018, p 34, <https://www.ndis.gov.au/medias/documents/q1-201819-national-performance/National-Performance-Report-as-at-30-Sep-2018.pdf>

⁶²⁸ Council of Australian Governments, Disability Reform Council: Quarterly Performance Report – New South Wales, 30 September 2018, p 73, <https://www.ndis.gov.au/medias/documents/q1-201819-report-full/Report-COAG-for-Q1-of-Y6-Full-report.pdf>

⁶²⁹ Submission 313, NSW Government, p 30.

⁶³⁰ Submission 313, NSW Government, p 14.

⁶³¹ Submission 313, NSW Government, pp 3, 14; Submission 342, National Disability Insurance Agency, p 6.

⁶³² Submission 342, National Disability Insurance Agency, p 6.

⁶³³ Submission 313, NSW Government, pp 3, 7.

the NSW Government will continue to 'forecast and look at what demand will be going forward'.⁶³⁴

- 5.8** Mr Michael Coutts-Trotter, Secretary of the Department of Family and Community Services, reported that while there has been a doubling of the number of registered NDIS providers in New South Wales, there 'is much more to do' because 'the challenge of filling all of those roles is really significant'.⁶³⁵ He outlined the training and investment in growing job opportunities to support the disability workforce:

... since 2011, in New South Wales alone \$56 million has been spent by the State Government to build the capacity of providers and the workforce. Most recently, for example, under the Smart and Skilled program, 7,250 students completed a certificate III in individual support. More than \$12 million has been spent providing grants for disability businesses to scale up more rapidly, including \$4.5 million for Aboriginal businesses. There has been quite a bit of focus from the State Government.⁶³⁶

- 5.9** The Industry Development Fund was established in 2009 with \$24 million as a joint initiative of the NSW Government and National Disability Services. Key projects under the Fund include the NDIS Provider Toolkit, Sector Support Consultants and Quality Support Project.⁶³⁷
- 5.10** The NSW Government's Disability Sector Scale-Up provided three types of support to help businesses and organisations 'leverage the expected \$6.8 billion investment in the NSW disability sector'.⁶³⁸ This comprised a Business Acceleration Grants program with grants of up to \$2 million, business advisory services and Making it our Business, a support package for Aboriginal businesses and Aboriginal Community Controlled Organisations that would like to move into or expand in the disability sector.⁶³⁹
- 5.11** National Disability Services acknowledged that while the NSW Government has made significant investments in the development of the workforce through the Industry Development Fund and the Disability Sector Scale-Up funding, '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'.⁶⁴⁰
- 5.12** The NDIA noted that the Commonwealth Government has also made significant investments in market and workforce readiness including the following initiatives:

⁶³⁴ Evidence, Mr Tim Reardon, Secretary, Department of Premier and Cabinet, 17 September 2018, p 10.

⁶³⁵ Evidence, Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, 17 September 2018, p 10.

⁶³⁶ Evidence, Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, 17 September 2018, p 10.

⁶³⁷ Submission 313, NSW Government, p 39.

⁶³⁸ NSW Government, Department of Industry, *Disability Sector Scale-Up program*, <https://www.industry.nsw.gov.au/business-and-industry-in-nsw/assistance-and-support/dssu>; See also, Submission 313, NSW Government, p 39.

⁶³⁹ NSW Government, Department of Industry, *Disability Sector Scale-Up program*, <https://www.industry.nsw.gov.au/business-and-industry-in-nsw/assistance-and-support/dssu>

⁶⁴⁰ Emphasis omitted. Submission 258, National Disability Services, p 4.

- \$110 million to prepare participants and providers for transition to the NDIS through the Sector Development Fund (SDF). Eighty-nine projects have been funded through the SDF to build community capacity and engagement, increase individual support and disability sector capacity and service provider readiness. This fund will also assist with the expansion and diversification of the workforce.
- \$64.3 million to support the growth of the NDIS market and workforce through the new NDIS Jobs and Market Fund.
- \$33 million through the Boosting the Local Care Workforce Program to develop the capacity of existing disability and aged care service providers to operate effectively and expand their workforces and to encourage new providers to enter the NDIS market.⁶⁴¹

5.13 In 2018, the Commonwealth Joint Standing Committee on the National Disability Insurance Scheme released their report, *Market readiness for provision of services under the NDIS*, which found that there is currently no clear national strategy to grow the disability workforce despite the need to grow the industry, and that they had received evidence that 'there are currently virtually no incentives to choose a career in the disability support sector'.⁶⁴²

Transfer of NSW Government employees to non-government sector

5.14 As at 10 August 2018, more than 9,565 direct service delivery staff (employed by the former ADHC) in New South Wales had transferred to non-government organisations.⁶⁴³ The transfer included case managers, occupational therapists, speech pathologists, physiotherapists, behaviour support staff, dietitians, psychologists, nurses and therapy assistants, along with management and support staff.⁶⁴⁴

5.15 An initiative, called Working Together, commenced in June 2014, and 'provided staff with practical tools and resources to support them during this significant time of reforms'.⁶⁴⁵ Similarly, the NDIS Mobility Pathway was established to support the movement of non-frontline staff in FACS who supported disability service delivery, such as policy, program and corporate services staff.⁶⁴⁶

5.16 Prior to the transfer, ADHC employees were engaged under one of three State Awards.⁶⁴⁷ As compensation, they were offered a 'transfer payment' of up to eight weeks depending on their length of service and a two year employment guarantee (or six months in the case of casual employees).⁶⁴⁸ As stated in the NSW Government submission:

⁶⁴¹ Submission 342, National Disability Insurance Agency, p 6.

⁶⁴² Joint Standing Committee on the National Disability Insurance Scheme, *Market readiness for provision of services under the NDIS*, September 2018, Commonwealth of Australia, p ix.

⁶⁴³ Submission 313, NSW Government, p 3.

⁶⁴⁴ Submission 313, NSW Government, p 13.

⁶⁴⁵ Submission 313, NSW Government, p 13.

⁶⁴⁶ Submission 313, NSW Government, p 13.

⁶⁴⁷ Submission 343, Public Service Association of NSW and Community and Public Sector Union NSW, p 19.

⁶⁴⁸ Submission 343, Public Service Association of NSW and Community and Public Sector Union NSW, p 19; Submission 313, NSW Government, p 13.

The employment guarantee specified that if staff were transferred as part of the transfer of disability services to the non-government sector, their employment terms and conditions, including salary or rate of pay, would transfer with employment.

For casual or temporary employees, their employment and employment terms and conditions are guaranteed for up to six months from the date of transfer. For staff that were ongoing FACS employees, their employment and employment terms and conditions are guaranteed for two years from the date of transfer. All transferred employees have the protection, under the *Fair Work Act 2009* (Cth), of their award terms and conditions of employment for up to five years post transfer.⁶⁴⁹

Registration of service providers

5.17 A service provider is required to be registered and approved by the NDIA in order to receive payment for their services by the NDIA.⁶⁵⁰ The NDIA cannot pay unregistered providers to deliver NDIS services to participants.⁶⁵¹ However, NDIS participants who are self-managing their own plans are able to use unregistered providers in line with principles of choice and control.⁶⁵²

5.18 Registration entails submitting a registration request indicating the types of support the provider is accredited to provide.⁶⁵³ Mr Graeme Head, Commissioner of the National Disability Insurance Scheme Quality and Safeguards Commission (NDIS Commission), described the registration process and the 'suitability assessment':

In the suitability assessment of any provider who we are considering reregistering or any new provider, all of the relevant matters about their fitness, as it were, to operate appropriately in the sector can be considered. We can take quite strong regulatory action, including suspension of registration, revocation of registration, or issue banning orders where we determine there are problems. Of course, we are working with the NDIA and the Department of Social Services as the work ramps up on fraud prevention and response. However, we have a very good set of regulatory tools to consider relevant matters at both the front end of the process and to take action were inappropriate activities are identified to us along the way.⁶⁵⁴

⁶⁴⁹ Submission 313, NSW Government, p 13.

⁶⁵⁰ National Disability Insurance Scheme, *FAQs for service providers*, <https://ndis.nsw.gov.au/serviceproviders/adhc-funding-arrangements-and-ndis-transition/faqs-for-service-providers/>

⁶⁵¹ National Disability Insurance Scheme, *FAQs for service providers*, <https://ndis.nsw.gov.au/serviceproviders/adhc-funding-arrangements-and-ndis-transition/faqs-for-service-providers/>

⁶⁵² Evidence, Mr Graeme Head, Commissioner, National Disability Insurance Scheme Quality and Safeguards Commission, 17 September 2018, p 25; Evidence, Ms Samantha Taylor, Registrar, National Disability Insurance Scheme Quality and Safeguards Commission, 17 September 2018, p 26.

⁶⁵³ Council of Australian Governments, Disability Reform Council: Quarterly Performance Report – New South Wales, 30 September 2018, p 33, <https://www.ndis.gov.au/medias/documents/q1-201819-national-performance/National-Performance-Report-as-at-30-Sep-2018.pdf>

⁶⁵⁴ Evidence, Mr Graeme Head, Commissioner, National Disability Insurance Scheme Quality and Safeguards Commission, 17 September 2018, p 27.

5.19 Mr Head also explained the auditing of providers:

An extremely important feature of the arrangements for the commission is that when we register people, it is not simply a process of people applying to be registered and quality issues not being addressed up front. For each of the providers that we have already transferred—so transitional rules actually transferred people under our jurisdiction—the commission, based on the sort of complexity of supports that are provided by a provider, such as recency of audit, history of compliance and a range of different features like that, determined which of the organisations who have transferred are in the highest priority category for auditing under the new practice standards. The practice standards themselves deal with an array of issues to do with complex supports and complex care, some of which have been the subject of commentary in both the current Ombudsman's report and previous reports. Already within the first 11 weeks we have people on an audit timetable—on a reregistration timetable, I should say—that includes the necessary level of auditing against practice standards. The prioritisation of providers around that has been directly linked to a range of factors that relate to risk.⁶⁵⁵

5.20 The committee heard that the NDIS Code of Conduct applies to all NDIS providers, even unregistered providers.⁶⁵⁶ Breaches of the Code can result in a range of penalties, including education, compliance and enforcement action or prohibiting the provider from operating in the NDIS market.⁶⁵⁷ The NDIA can also institute civil charges.⁶⁵⁸

Issues facing the disability sector workforce

5.21 Stakeholders expressed concerns that several factors were impacting on the quality of services provided under the NDIS, including, workforce issues and the NDIS pricing regime which in turn impact on the sustainability of service providers.

5.22 The main challenges facing service providers in adapting to the NDIS include adjusting to cultural change, and the interrelatedness of workforce issues, such as high turnover of staff, the casualisation of the workforce, a lack of professional development and training and rural and regional staff shortages. The current NDIS pricing structure also makes it difficult for service providers in terms of ensuring covering costs to deliver services. Each of these are addressed in more detail below.

Cultural change

5.23 Many organisations and service providers reported that transitioning to the NDIS meant increased administrative demands and additional costs, and told of a highly stressed workforce

⁶⁵⁵ Evidence, Mr Graeme Head, Commissioner, National Disability Insurance Scheme Quality and Safeguards Commission, 17 September 2018, p 25.

⁶⁵⁶ Evidence, Ms Samantha Taylor, Registrar, National Disability Insurance Scheme Quality and Safeguards Commission, 17 September 2018, p 26; Evidence, Mr Graeme Head, Commissioner, National Disability Insurance Scheme Quality and Safeguards Commission, 17 September 2018, p 25.

⁶⁵⁷ National Disability Insurance Scheme (Code of Conduct) Rules 2018, Preamble (5). Submission 304, Australian Services Union NSW and ACT Services Branch, p 10.

⁶⁵⁸ *National Disability Insurance Scheme Act 2013* (Cth) s 73V.

that was struggling to cope with the change of culture and administrative burden of the NDIS.⁶⁵⁹ Greenacres Disability Services said that service providers 'are not coping under the weight of the bureaucracy associated with [the implementation of the NDIS] and inadequate pricing'.⁶⁶⁰

5.24 Many service providers reported difficulty recruiting allied health professionals, particularly psychologists, physiotherapists, occupational therapists and speech therapists.⁶⁶¹ The Dietitians Association of Australia said that the uncertainty in the market and frequent changes in administrative requirements in the NDIA environment are a 'barrier' for Accredited Practising Dieticians entering the disability workforce.⁶⁶² Likewise, Occupational Therapy Australia said that many services are prioritising non-NDIS clients and withdrawing their NDIS provider status 'having found the NDIS process too stressful and difficult to manage'.⁶⁶³

5.25 The Gabrielle Centre for Children observed that staff burnout with the 'increased demands of being an NDIS provider' is a serious concern:

Staff are spending excessive amounts of personal time preparing reports, dealing with administrative challenges with the portal, and advocating on behalf of their clients to NDIA staff/LAC's/ECEI's. They are often the ones who are supporting families who are distressed by their plan budgets being reduced, and they are the ones supporting highly-anxious families as they prepare for their child's NDIS review- often on an unpaid basis. The lack of formal family/carer support services has shifted the demand for this support to therapists, as they are often the only trusted support in the child's life. This support is generally unpaid, but the toll taken on therapists is considerable.⁶⁶⁴

5.26 The Business Centre, which is a not for profit business advisory service which supports businesses across the disability sector, stated that many NDIS providers 'express marked stress and anxiety associated with a system which is struggling to find its feet'.⁶⁶⁵ Their submission noted that a survey of 2,700 people found that 55 per cent of providers see themselves as continuing within the sector for another two years and that 36 per cent of businesses are considering deregistering.⁶⁶⁶ The responses that they received to their survey revealed a workforce that was frustrated, with one respondent stating that they felt that the quality of service was now 'less important than quantity of billable hours'.⁶⁶⁷

5.27 The move into the NDIS environment with billable hours has been difficult for many service providers who had entered the profession wanting to help people and were used to 'a customer

⁶⁵⁹ Submission 191, Physical Disability Council of NSW, p 10; Submission 199, Greenacres, p 8; Submission 225, Mental Health Coordinating Council, p 6; Submission 244, Empowerability, p 3; Submission 245, The Business Centre, pp 25-26; Submission 249, Speech Pathology Australia, p 13; Submission 268, The Gabrielle Centre for Children, pp 8-9; Submission 286, United Voices NSW, p 5; Submission 290, Occupational Therapy Australia, p 5.

⁶⁶⁰ Submission 199, Greenacres, p 9.

⁶⁶¹ National Disability Services, *Australian Disability Workforce Report: Third edition*, July 2018, https://www.nds.org.au/images/workforce/ADWR-third-edition_2018_final.pdf

⁶⁶² Submission 292, Dietitians Association of Australia, p 5.

⁶⁶³ Submission 290, Occupational Therapy Australia, p 5.

⁶⁶⁴ Submission 268, The Gabrielle Centre for Children, p 8.

⁶⁶⁵ Submission 245, The Business Centre, p 3.

⁶⁶⁶ Submission 245, The Business Centre, p 3.

⁶⁶⁷ Submission 245, The Business Centre, pp 25-26.

relationship management system' rather than 'a more commercialised application of disability services'.⁶⁶⁸ Ms Maria Munoz, a former case manager to The Benevolent Society and to FACS, wrote in her submission that she 'lost a profession':

It is quite disconcerting to think of the participants in terms of [Key Performance Indicators] and percentage of money made in the month - this inside the organization I worked for after the transfer; billable hours became the main inspiration in this new world of NDIS.⁶⁶⁹

- 5.28** Early Childhood Intervention Australia expressed the view that with the requirement on staff to 'maintain minimum billable hours', the focus on billing and financial sustainability has 'shifted the emphasis' of early childhood intervention services 'away from realising outcomes for the family to only the child'.⁶⁷⁰
- 5.29** Mr Steve Forsyth, whose daughter receives support under the NDIS, raised concerns that 'There is growing evidence that the providers are increasingly working under a Business Model at the expense of a person-centred service'.⁶⁷¹
- 5.30** Ms Jo-Anne Hewitt, Executive Director Disability, The Benevolent Society, observed that staff 'are really struggling to stick to their billable hours' and are 'tending to jump in and support a person where they just have not got the right amount in their plan'.⁶⁷²
- 5.31** Ms Hewitt reported that taking over government services has been 'an incredibly costly exercise':

We opened 35 new centres on one weekend. That was obviously an investment we chose to make. But moving the business model and moving the culture and practice of the staff that we have into an NDIS environment has been painstaking and slow. We currently are at a rate of 42 per cent billable hours and we need to get to 78 per cent in order to break even on our salaries budget...

We have worked out in our business model that people need to ... be providing a client service that is billable for between 78 and 80 per cent of their available time. That is either seeing a client face to face or writing a report or a case note or something that can bill back to the NDIS. It has taken us the better part of 15 months to get to a point where our staff are working at 42 per cent capacity. Some of that is about cultural change.⁶⁷³

Workforce issues

- 5.32** Regarding the transfer of employees to non-government organisations and private providers, the Public Service Association of NSW and Community and Public Sector Union NSW

⁶⁶⁸ Evidence, Ms Anita Le Lay, Head of Disability, Uniting, 2 October 2018, p 13.

⁶⁶⁹ Emphasis omitted. Submission 224, Ms Maria Munoz, p 1.

⁶⁷⁰ Submission 261, Early Childhood Intervention Australia, p 7.

⁶⁷¹ Submission 247, Mr Steve Forsyth, p 1.

⁶⁷² Evidence, Ms Jo-Anne Hewitt, Executive Director Disability, The Benevolent Society, 2 October 2018, p 13. See also, Evidence, Ms Anita Le Lay, Head of Disability, Uniting, 2 October 2018, p 13.

⁶⁷³ Evidence, Ms Jo-Anne Hewitt, Executive Director Disability, The Benevolent Society, 2 October 2018, p 12.

(PSA/CPSU) stated that the 'disbanding of ADHC has put all disability workers at the mercy of non-government and private providers, who themselves are at the mercy of the market' which has 'resulted in an increasingly unskilled, casualised workforce, high staffing turnover, and the abdication of many experienced public sector staff from the industry'.⁶⁷⁴

- 5.33** They also reported that the transition of ADHC staff was 'excruciatingly drawn-out and poorly communicated to employees' and that for many employees it was only their commitment to their work and the relationships with participants that motivated them to remain in the sector 'during a disempowering and frustrating process':

No options were provided to employees nor redundancies offered, rather they were transferred, via purpose-built legislation, to their new employers as though they were part of the organisation's chattels and as though they were part of a sale of property.⁶⁷⁵

- 5.34** Mr Tony Wright, Assistant General Secretary, Public Service Association and Community and Public Sector Union, spoke about the 'industrial ramifications of the forced transfer of ADHC employees to the private sector'.⁶⁷⁶ He said:

If there is a workforce crisis that emerges in the private sector it is because they have failed to remunerate and honour the conditions of employment those people have crossed over on. They are dedicated, professional public servants that have chosen disability services in the State sector as their career. Many of our members have been with ADHC for 10, 20 years—they love their job, they love the people they work with, they enjoy it, they are rewarded for it. If there is a workforce crisis coming up it is because we are going for the cheapest workers not the best workers.⁶⁷⁷

- 5.35** The PSA/CPSU raised concerns about the current employment conditions of those in the disability workforce, noting that 'new employers and service providers have sought to cut, limit and reduce the employment rights of transferred employees'.⁶⁷⁸ Furthermore, they contended that people generally only work in the non-government disability sector for up to five years, in contrast to the government sector where employees 'looked forward to making it their careers'.⁶⁷⁹ They stated:

This was attributed to not merely the remuneration, but the training, education and work benefits that made up the conditions of employment. The privatisation of ADHC dismantles a career trajectory for disability support workers that has long existed where workers would go on to work in more senior roles in the department. This is highly

⁶⁷⁴ Submission 343, Public Service Association of NSW and Community and Public Sector Union NSW, p 24. See also, Submission 209, New South Wales Nurses and Midwives' Association (in conjunction with the Australian Nursing and Midwifery Federation), pp 22-23.

⁶⁷⁵ Submission 343, Public Service Association of NSW and Community and Public Sector Union NSW, pp 19, 22.

⁶⁷⁶ Evidence, Mr Tony Wright, Assistant General Secretary, Public Service Association and Community and Public Sector Union, 2 October 2018, p 63.

⁶⁷⁷ Evidence, Mr Tony Wright, Assistant General Secretary, Public Service Association and Community and Public Sector Union, 2 October 2018, p 72.

⁶⁷⁸ Submission 343, Public Service Association of NSW and Community and Public Sector Union NSW, pp 20-21.

⁶⁷⁹ Submission 343, Public Service Association of NSW and Community and Public Sector Union NSW, p 23.

beneficial in not only staff development but provides stability for the workers, the department, and for the clients themselves. The loss of a career trajectory for disability workers and the subsequent high turnover of staff and unskilled workforce is at the detriment of the people the NDIS is tasked to protect.⁶⁸⁰

- 5.36** The New South Wales Nurses and Midwives' Association (in conjunction with the Australian Nursing and Midwifery Federation) raised similar concerns, noting that many of their members working in the disability sector have worried about the conditions of their employment after the FACS employment guarantee expires in two years for permanent staff, or six months for casual employees.⁶⁸¹ They observed:

The response from FACS has largely been that this is a growth industry, experienced disability nurses will be in short supply, and effectively supply and demand will serve to protect the employee's interests, along with the needs of people with disability. These responses have provided little comfort or assurance.⁶⁸²

- 5.37** They said that some service providers were motivated by reducing costs and aimed to quickly 'disentangle transferred staff from any FACS imposed commitments or obligations imposed by the *Fair Work Act*'. They wrote:

So what approach has been adopted to casual staff as the six month period is due to expire? Unfortunately based on some member experiences, the mooted approach by some NGOs is to *quietly suggest* to such transferred staff that they will not remain on the casual roster beyond the six months, although that may be negated if they were to resign (and effectively jettison their copied State instrument) and are re-employed on the federal Nurses Award⁹ (a by far inferior industrial instrument).⁶⁸³

- 5.38** This approach has made attracting and retaining nursing staff in the disability sector difficult and was particularly distressing for people with disabilities and their carers who had developed a long established rapport and relationship with staff, particularly residents in a group home.⁶⁸⁴

High turnover of staff and staff shortages

- 5.39** Many stakeholders were concerned about skilled and qualified staff exiting the industry and a loss of that experience and skills.⁶⁸⁵ The Australian Services Union NSW and ACT Services Branch noted that 'Low pay and insecure work threaten the capacity of the NDIS to attract and

⁶⁸⁰ Submission 343, Public Service Association of NSW and Community and Public Sector Union NSW, p 23.

⁶⁸¹ Submission 209, New South Wales Nurses and Midwives' Association (in conjunction with the Australian Nursing and Midwifery Federation), pp 22-23.

⁶⁸² Submission 209, New South Wales Nurses and Midwives' Association (in conjunction with the Australian Nursing and Midwifery Federation), p 22.

⁶⁸³ Submission 209, New South Wales Nurses and Midwives' Association (in conjunction with the Australian Nursing and Midwifery Federation), p 23.

⁶⁸⁴ Submission 209, New South Wales Nurses and Midwives' Association (in conjunction with the Australian Nursing and Midwifery Federation), p 23.

⁶⁸⁵ Submission 245, The Business Centre, p 3; Submission 343, Public Service Association of NSW and Community and Public Sector Union NSW, p 23; Submission 304, Australian Services Union NSW and ACT Services Branch, p 5; Submission 298, Mission Australia, p 3; Submission 350, Australian Psychological Society, p 4.

retain the skilled and qualified workers needed to maintain the NDIS workforce'.⁶⁸⁶ They noted that many of their members reported that the 'precarious working conditions of the NDIS' are forcing them to seek more secure and better paid jobs outside of the NDIS.⁶⁸⁷

- 5.40** The PSA/CPSU raised concern about the 'mass exodus of experienced and qualified staff from the sector' at a time 'when Australia is foreseeing a dramatic increase in disability support jobs':

When you then consider the lack of training being made available to new staff and the very low bar that has been set to quality for positions, this can only lead to a dysfunctional industry and a lower standard of care for people with disability.⁶⁸⁸

- 5.41** The Productivity Commission released a report in October 2017 which found that disability workforce growth remains too slow and will need to more than double from 2014-15 to 2019-20.⁶⁸⁹ The report found that the disability care workforce will not be sufficient to deliver the supports expected to be allocated by the NDIA by 2020 and recommended that:

State and Territory Governments should rely on their previous experience in administering disability care and support services to play a greater role in identifying workforce gaps and remedies tailored to their jurisdiction.⁶⁹⁰

- 5.42** Dr Joe Gurka from the Brain Injury Rehabilitation Service, Westmead Hospital noted that there is a 'dearth of professionals in the community who have capacity to take on referrals of NDIS participants' and that there is a 'workforce crisis' as the number of people accessing the Scheme increases.⁶⁹¹

- 5.43** Staff shortages often caused stress for NDIS participants as there was a lack of continuity of care. The Multicultural Disability Advocacy Association of NSW stated in their submission:

Choice and control relies heavily on the availability of services and a properly trained workforce. High staff turnover in an industry already experience chronic workforce shortages and many with limited training or experience, has had notable effects on the delivery of services to people with disability. As an example, one of our consumers has had close to ten (10) different support workers within a few months. Each time a new support worker is allocated, the person with disability or carer must develop trust and provide the appropriate (and extensive) disability specific training...⁶⁹²

⁶⁸⁶ Submission 304, Australian Services Union NSW and ACT Services Branch, p 5. See also Submission 286, United Voice NSW, p 4; Submission 276, Settlement Services International, p 2.

⁶⁸⁷ Submission 304, Australian Services Union NSW and ACT Services Branch, p 5.

⁶⁸⁸ Submission 343, Public Service Association of NSW and Community and Public Sector Union NSW, p 23.

⁶⁸⁹ Australian Government, Productivity Commission, *National Disability Insurance Scheme (NDIS) Costs* (2017), pp 2, 32, 36.

⁶⁹⁰ Australian Government, Productivity Commission, *National Disability Insurance Scheme (NDIS) Costs* (2017), p 57.

⁶⁹¹ Submission 316, Brain Injury Rehabilitation Service, Westmead Hospital, p 2.

⁶⁹² Submission 193, Multicultural Disability Advocacy Association of NSW, p 9. See also: Submission 291, Mental Health Carers NSW, p 17.

- 5.44 One Door Mental Health reported that there has been a 'de-skilling of the psychosocial disability workforce caused by drift out of the sector'.⁶⁹³ They stated that of the 25 redundancies made recently when they adapted to NDIS, 'all but 1 person found work outside the mental health sector', noting that many of these employees are those in whom One Door 'had invested significant time and money training'.⁶⁹⁴

Casualisation of the workforce

- 5.45 One of the impacts of the NDIS is the increased casualisation of the workforce.⁶⁹⁵ The casual workforce comprises approximately 48 per cent of the disability workforce, which is much higher than other industries.⁶⁹⁶

- 5.46 Disability organisations, particularly small and medium sized organisations, have preferred casual workers to minimise their risk.⁶⁹⁷ However, this has led many employees to 'feel less secure and increasingly disposable', and has had a negative impact on the collective morale in the sector.⁶⁹⁸ The Public Service Association of NSW and Community and Public Sector Union NSW commented:

There is even a feeling amongst disability workers that in order to respond to market pressures and maximise profits, the non-government and private sector is perhaps even intentionally pushing out permanent and/or experienced staff and replacing them with inexperienced casual staff.⁶⁹⁹

- 5.47 The downsides of increasing casualisation for organisations is high turnover of staff and a greater administrative burden.⁷⁰⁰ The *Australian Disability Workforce Report* (second edition) found that casual workers in the disability sector have a turnover rate which is 1.6 times the turnover rate of permanent workers, a rate that 'appears to be increasing'.⁷⁰¹

⁶⁹³ Submission 123, One Door Mental Health, pp 5-6. See also, Submission 252, Flourish Australia, p 5.

⁶⁹⁴ Submission 123, One Door Mental Health, p 5. See also, Submission 252, Flourish Australia, p 5.

⁶⁹⁵ Submission 343, Public Service Association of NSW and Community and Public Sector Union NSW, p 21; Submission 286, United Voices NSW, p 7; Evidence, Ms Ellen Small, Policy Officer, Physical Disability Council of NSW, 2 October 2018, p 49.

⁶⁹⁶ National Disability Services, *Australian Disability Workforce Report: Third edition*, July 2018, https://www.nds.org.au/images/workforce/ADWR-third-edition_2018_final.pdf; See also, National Disability Services, *Australian Disability Workforce Report: Second edition*, February 2018, <https://www.nds.org.au/pdf-file/cc8a1d63-821b-e811-973b-0050568e2189>; Submission 343, Public Service Association of NSW and Community and Public Sector Union NSW, p 21.

⁶⁹⁷ Evidence, Mr Ned Lambley, Disability Support Worker, Hunter Region, Australian Services Union, 2 October 2018, p 66; Evidence, Ms Natalie Lang, Branch Secretary, Australian Services Union, 2 October 2018, p 70; Submission 244, Empowerability, p 3; Submission 291, Mental Health Carers NSW, pp 16-17.

⁶⁹⁸ Submission 343, Public Service Association of NSW and Community and Public Sector Union NSW, p 21.

⁶⁹⁹ Submission 343, Public Service Association of NSW and Community and Public Sector Union NSW, p 23.

⁷⁰⁰ Evidence, Ms Anita Le Lay, Head of Disability, Uniting, 2 October 2018, p 13.

⁷⁰¹ National Disability Services, *Australian Disability Workforce Report: Second edition*, February 2018, <https://www.nds.org.au/pdf-file/cc8a1d63-821b-e811-973b-0050568e2189>

5.48 According to Dr Ellen Small, Policy Officer, Physical Disability Council of NSW, the NDIS has led to greater casualisation of the disability workforce 'in order to meet the demand for flexible services'.⁷⁰² Muscular Dystrophy NSW noted that it has become harder to attract and retain skilled staff due to the casualisation of the workforce and their inability to offer permanent positions or contracts with a term longer than 12 months.⁷⁰³

5.49 This was also a concern for not-for-profit organisation Empowerability Inc. who expressed the following view:

The transient and vulnerable nature of the market mixed with the juggle of pricing and award coverage has led to an aversion to offering permanent part time positions to support staff and in turn many organisations are casualising their workforce. This presents significant issues for staff in managing their personal commitments, and also to providers in maintaining staffing levels as staff seek other permanent options. This results in further administrative work due to the continual need to locate suitably qualified resources.⁷⁰⁴

5.50 The increasing casualisation of the workforce also has a negative impact on people with disability. The PSA/CPSU noted that many clients are now supported by 'unfamiliar faces, strangers they have never met resulting in months of work and development being lost', which can lead to increased violence behavior, agitation and disruption:

Many clients are vulnerable, have multiple diagnoses including physical and intellectual disabilities as well as mental health complications which can result in them being physically threatening. A key form of support for many of these people is having a stable group of people they know supporting them. It can take months for a new disability support worker to build the trust and confidence of a particular client in order for the client to have the sense of security needed for an improved quality of living.⁷⁰⁵

5.51 Mr Ned Lambley, Disability Support Worker, Hunter Region, Australian Services Union, described his experience moving from a permanent job to casual work and the impact this has had on his life goals:

There is a lot more casualisation because, as has already been touched upon, there is that push to minimise the risk. For myself, my first job in the industry was a permanent job, coming in with no experience. The job that I applied for, that was what I was offered. That was over 10 years ago. From there my second job was a full-time position and I then worked full time right up until after the NDIS was rolled out.

I recently came back from overseas and on re-entering the job market I have taken two casual positions because there is no permanent work available. When I was working in a management role, we did recruitment and there is certainly enormous potential for jobs. There are a lot of jobs out there. It has never been hard to get a job in this industry. There have never been more people wanting to do this work than was available. Now there is nowhere near the number of people required who are interested in doing the work. People like myself who have experience and have built up their skills, we are now

⁷⁰² Evidence, Ms Ellen Small, Policy Officer, Physical Disability Council of NSW, 2 October 2018, p 49.

⁷⁰³ Submission 170, Muscular Dystrophy NSW, p 5.

⁷⁰⁴ Submission 244, Empowerability, p 3.

⁷⁰⁵ Submission 343, Public Service Association of NSW and Community and Public Sector Union NSW, p 21. See also, Submission 291, Mental Health Carers NSW, p 17.

looking to leave the industry because we need a permanent job. I want to buy a house and I cannot do that doing this sort of work.⁷⁰⁶

- 5.52** Mr Lambley also described the experiences of his colleagues and the inherent instability and vulnerability of work in this sector, noting that many in the sector were worried about saying 'no' to a shift in case they were not offered another shift:

I worked last week with a gentleman who was working across two jobs; he was working 70-hour weeks as a casual across two jobs. Other people who I have worked with they might go a week with no work because the client that they work with is in hospital. They could go a month with no work or they could suddenly have no work because their client has left the service or has passed away.⁷⁰⁷

Professional development and training

- 5.53** Many stakeholders raised concern about the lack of training and professional development with inadequate funding to cover the cost of delivering training, mentoring, coaching and adequate support supervision in the NDIS pricing model.⁷⁰⁸ This resulted in limited opportunities for the progression of careers and acted as a disincentive for remaining in the industry.⁷⁰⁹ It also made it difficult for disability organisations in finding and maintaining a skilled workforce.⁷¹⁰

- 5.54** Greenacres Disability Service reported that providers were shouldering the cost of induction, staff meetings, training sessions and unfunded committee meetings, which was not sustainable.⁷¹¹ According to Greenacres:

We would like to maintain a happy, engaged and permanent workforce, however this is challenging when trying to meet the flexibility needs of participants and train and educate workers, whilst still operating at the required minimum of 95% time in direct support.⁷¹²

- 5.55** Similarly, Dr Ellen Small, Policy Officer, Physical Disability Council of NSW noted '[i]n many cases, service providers cannot provide staff training and development, ongoing supervision, and care coordination due to having inadequate hours funded for this purpose.'⁷¹³

⁷⁰⁶ Evidence, Mr Ned Lambley, Disability Support Worker, Hunter Region, Australian Services Union, 2 October 2018, p 67.

⁷⁰⁷ Evidence, Mr Ned Lambley, Disability Support Worker, Hunter Region, Australian Services Union, 2 October 2018, p 70.

⁷⁰⁸ Submission 199, Greenacres, p 3; Submission 236, Aged Persons, Younger People with a Disability and Carers Forum, p 3; Submission 286, United Voices NSW, p 7; Submission 244, Empowerability, p 3.

⁷⁰⁹ Submission 244, Empowerability, p 3.

⁷¹⁰ Submission 252, Flourish Australia, p 3.

⁷¹¹ Submission 199, Greenacres, pp 7-8.

⁷¹² Submission 199, Greenacres, p 8.

⁷¹³ Evidence, Ms Ellen Small, Policy Officer, Physical Disability Council of NSW, 2 October 2018, p 49.

- 5.56** Stakeholders also noted that there was a lack of training of casual staff,⁷¹⁴ and a lack of training, more generally, on working with participants with multiple disabilities, mental health conditions and medical conditions.⁷¹⁵
- 5.57** Furthermore, The Benevolent Society noted that the coordination of students has decreased following transition to NDIS.⁷¹⁶ This was also a concern raised by the Occupational Therapy Australia and the Dietitians Association of Australia, with the latter noting that the 'private practice environment is not currently set up for student placements' which limits the opportunities for dietetic students to have exposure to disability as an area of practice.⁷¹⁷ Early Childhood Intervention Australia likewise said that student placements are 'vital for the development of the workforce', however due to cost pressures early childhood intervention services are finding it increasingly difficult to offer student placements.⁷¹⁸
- 5.58** Ms Natalie Lang, Branch Secretary, Australian Services Union, spoke about the need for a workforce strategy to support ongoing training and acquiring new skills and qualifications under the NDIS. According to Ms Lang:

Disability sector workers are highly skilled and passionate about what they do, but their capacity to have their skills recognised, to develop new skills and to retain relevant, person-centred qualifications is severely limited. Continuing professional development, in-house training and induction, and access to study leave for formal qualifications is now rarely provided for in the sector. As the sector has become more competitive, access to these supports has been diminished as providers drive to reduce costs.⁷¹⁹

- 5.59** As many workers in the disability sector work for multiple employers over the span of their careers, the need for portable training entitlements for workers was discussed by the Australian Services Union in addition to other portable entitlements such as long service leave.⁷²⁰ Regarding portable training entitlements, Ms Lang observed:

The workforce is absolutely willing and desirous of having those good, strong careers and the NDIS is very capable of providing them, provided that we have an investment by government, at all government levels. That means we need the Federal and State governments to get onboard and jointly invest in a portable training entitlement. That means with the workers receiving and accruing that entitlement, regardless of where they are working, we can overcome some of the challenges of this insecure work we are seeing while building strong career paths that will allow people like Mr Lambley to want to build a career and stay in the sector.⁷²¹

⁷¹⁴ Submission 276, Settlement Services International, p 2.

⁷¹⁵ Submission 241, Prospect Farm Accommodation, p 5; Submission 252, Flourish Australia, p 5.

⁷¹⁶ Submission 299, The Benevolent Society, p 6. See also, Submission 245, The Business Centre, p 31.

⁷¹⁷ Submission 290, Occupational Therapy Australia, p 5; Submission 292, Dietitians Association of Australia, p 5.

⁷¹⁸ Submission 261, Early Childhood Intervention Australia, p 8.

⁷¹⁹ Evidence, Ms Natalie Lang, Branch Secretary, Australian Services Union, 2 October 2018, p 65.

⁷²⁰ Submission 304, Australian Services Union NSW and ACT Services Branch, p 8; Evidence, Ms Natalie Lang, Branch Secretary, Australian Services Union, 2 October 2018, p 65.

⁷²¹ Evidence, Ms Natalie Lang, Branch Secretary, Australian Services Union, 2 October 2018, p 67. See also, Submission 304, Australian Services Union NSW and ACT Services Branch, p 8.

5.60 Empowerability drew attention to the limited opportunities for career progression for disability service workers due to the lack of training and professional development:

Traditionally the disability sector has always been understaffed and a less attractive industry than many other industries. With the increase of funding into the sector with the introduction of the NDIS, there is a challenge to successfully recruit and maintain quality staff. The NDIS funds do not provide for assistance with this challenge as there is no funding for training and ongoing development, therefore resulting in limited opportunities for progression of careers.⁷²²

5.61 The Commonwealth Joint Standing Committee on the National Disability Insurance Scheme considered professional development and training, including portable training entitlements, in their recent report on market readiness. The joint committee acknowledged the importance of opportunities for training and professional development for disability workers, but that 'in the context of the NDIS there is, at present, no provision for access to funding for training for disability workers...'.⁷²³ The joint committee also recognised the value of portable training entitlements, stating:

The committee sees merit in the proposal of a portable training entitlement system for people who are working for NDIS registered organisations or are sole-traders registered with the NDIS. Such a system would ensure that disability workers continue to upskill and provide high quality care to participants. This would also assist in making the disability sector a more attractive career option and in retaining some of the workforce currently considering moving to other sectors.⁷²⁴

5.62 The joint committee thus recommended a review of options for ensuring disability workers have access to funded training, including consideration of a portable training entitlements system.⁷²⁵

5.63 Another area of concern was the need for training in cultural competency to ensure the NDIS workforce is responsive to the cultural needs of participants from Culturally and Linguistically Diverse (CALD) backgrounds.⁷²⁶ The Multicultural Disability Advocacy Association of NSW made the following recommendation:

In order to create a stronger workforce, we strongly recommend the State Government invest a greater focus in providing development opportunities including funded training in social services, cultural competency and disability. Request for State assistance in this regard is increasingly necessary as the NDIS pricing that service providers must follow does not leave services with the economic means by which to invest in staff training.⁷²⁷

⁷²² Submission 244, Empowerability, p 3.

⁷²³ Joint Standing Committee on the National Disability Insurance Scheme, *Market readiness for provision of services under the NDIS*, September 2018, Commonwealth of Australia, p 46.

⁷²⁴ Joint Standing Committee on the National Disability Insurance Scheme, *Market readiness for provision of services under the NDIS*, September 2018, Commonwealth of Australia, p 46.

⁷²⁵ Joint Standing Committee on the National Disability Insurance Scheme, *Market readiness for provision of services under the NDIS*, September 2018, Commonwealth of Australia, p 46.

⁷²⁶ Submission 175, Centre for Disability Research and Policy, pp 4-5; Submission 193, Multicultural Disability Advocacy Association of NSW, p 9; Submission 258, National Disability Services, p 24.

⁷²⁷ Submission 193, Multicultural Disability Advocacy Association of NSW, p 9.

Regional, rural and remote workforce

5.64 Many participants in regional, rural and remote areas missed out on continuity of care as the medical and allied health workforce often visited intermittently and were on short term contracts.⁷²⁸ In rural and regional areas, there can be long waiting periods to obtain appointments.⁷²⁹ Some participants may also have their plans 'unrealised' due to the lack of available providers in rural and remote areas.⁷³⁰

5.65 Staff shortages were particularly noticeable in rural and regional areas. Dr Kim Bulkeley, Industry Advisor, Occupational Therapy Australia observed:

There are emerging shortages in the occupational therapy workforce, particularly in rural and remote areas of New South Wales. This has impacted on the accessibility of early intervention supports for children particularly and OTA notes that timely access has become increasingly difficult with long wait times as the workforce fails to keep pace with the growing demand. This increased demand has led private practices to recruit more staff, resulting in the employment of new graduates who require training and upskilling in this specialised area of practice.⁷³¹

5.66 Some areas also relied on a fly in, fly out workforce. Mr Matthew Bowden, Co-Chief Executive Officer, People with Disability Australia, NSW Disability Advocacy Alliance, advised:

The market is also not ready, particularly in areas in rural and regional and remote locations in New South Wales. People have money in their plans and they are not able to spend it because there is not the service system there, or there might be only a fly in, fly out service.

For example, therapists are not on the ground, so you might not have an occupational therapist or a speech pathologist for your child in a remote area. They might only visit once every six months or annually, and so you might be on a long waiting list for that service, and then you get the service but you can only spend a small amount of your plan on that and you are not getting the therapy that you actually need.⁷³²

5.67 Dr Kim Bulkeley, Industry Advisor, Occupational Therapy Australia, also highlighted the issue of a lack of growth in the early intervention service workforce, especially in rural and regional areas:

The waiting times for the childhood early intervention services are not about assessment and eligibility because that is a much more soft entry point but that is about workforce and not having the capacity growing at the rate at which it is needed when the other services have been taken away and are no longer receive funding. That is about the implementation lag where these services have not been able to upscale. That is especially so in rural and remote areas. I do quite a lot of research in western New South Wales,

⁷²⁸ Submission 298, Mission Australia, p 12.

⁷²⁹ Submission 298, Mission Australia, p 13.

⁷³⁰ Submission 290, Occupational Therapy Australia, p 3. See also, Submission 295, Information on Disability & Education Awareness Services, p 6.

⁷³¹ Evidence, Dr Kim Bulkeley, Industry Advisor, Occupational Therapy Australia, 2 October 2018, p 56.

⁷³² Evidence, Mr Matthew Bowden, Co-Chief Executive Officer, People with Disability Australia, NSW Disability Advocacy Alliance, 2 October 2018, p 36.

in north west areas such as Brewarrina, Bourke, Lightning Ridge. There are services out there and the ECEI providers were only announced in June and July this year and the others were unfunded from 30 June this year. So that transition has been incredibly difficult and it has meant that a lot of people are in a really difficult situation with having no ongoing funding to provide support but they do not want to walk away from clients and responsibilities.⁷³³

- 5.68** Mission Australia noted that some rural and remote areas have low levels of public transport access and relatively low levels of vehicle ownership, which may mean that services need to be flexible to travel to these locations to deliver services. This, however, was not a viable option in many areas as travel distances between towns 'can range from 5 to 7 hours'.⁷³⁴ They stated that there is a particular lack of expert services for young people in rural and remote areas and that travel distance and time can deter service providers from going into smaller communities to provide services such as speech therapy.⁷³⁵
- 5.69** Mission Australia recommended that the NSW Government 'intervene to ensure there are sufficient incentives to hire and retain skilled professionals and provide appropriate training. This needs to be reflected in pricing for service providers to attract skilled staff in [regional, rural and remote] areas'.⁷³⁶

Loss of block funding

- 5.70** The loss of block funding has threatened the sustainability of some disability service providers who have since had to rely on NDIS individual plans, particularly in regional, rural and remote areas. Silverlea Early Childhood Services described the changes to their service with the induction of the NDIS:

Prior to NDIS Silverlea Early Childhood was block funded by ADHC at approximately \$230,000.00 per year. NDIS plans currently are only making a total of \$1500.00 per month equating to \$18,000.00 per year. If we cannot replace this lost revenue, Silverlea will be obliged to cease operation within the next 12 months after 58 years of continuous service to the most vulnerable members of our community.⁷³⁷

- 5.71** Silverlea Early Childhood Services noted in their submission that since the changes to block funding in 2014 they have made every effort to adapt to the new environment in which they operate, including implementing changes to service delivery, seeking out potential partnerships and mergers with local preschools and therapy services, and researching state and federal funding.⁷³⁸
- 5.72** They note that many of the children that attend Silverlea do not meet the criteria for NDIS despite having a definite delay and disability, and in order for Silverlea to operate in the NDIS environment they must charge fees which 'sadly results in a lot of clients falling through the

⁷³³ Evidence, Dr Kim Bulkeley, Industry Advisor, Occupational Therapy Australia, 2 October 2018, p 59.

⁷³⁴ Submission 298, Mission Australia, p 13.

⁷³⁵ Submission 298, Mission Australia, p 7.

⁷³⁶ Submission 298, Mission Australia, p 3.

⁷³⁷ Submission 220, Silverlea Early Childhood Services, p 2.

⁷³⁸ Submission 220, Silverlea Early Childhood Services, p 2.

gaps because many low socio-economic families in Broken Hill and the Far West cannot afford to pay for Early Intervention'.⁷³⁹

5.73 Silverlea Early Childhood Services state that their service is not sustainable and they 'cannot survive relying solely' on the NDIS.⁷⁴⁰ They note that this would leave vulnerable families without support in Broken Hill and families would need to travel at least three hours or more to receive early intervention and other services, such as primary schools, preschools and health services.⁷⁴¹

5.74 National Disability Services recommended that block funding or hybrid-based funding be considered for these areas:

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. 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 markets in co-operation with state governments and peak bodies.⁷⁴²

5.75 National Disability Services stated that greater clarity is required on how the NDIA intends to intervene in areas of thin markets, supporting the recommendation of the Commonwealth Joint Standing Committee that the NDIA 'develop and publically release a strategy to address thin markets' in co-operation with state governments and peak bodies.⁷⁴³

NDIS pricing

5.76 The NDIA set price controls for supports included in participant plans, which specify the maximum prices that registered providers can charge NDIS participants for specific supports.⁷⁴⁴ The NDIA update these price controls at least annually, 'taking into account market trends, changes in costs and wage rates'.⁷⁴⁵

⁷³⁹ Submission 220, Silverlea Early Childhood Services, p 2.

⁷⁴⁰ Submission 220, Silverlea Early Childhood Services, p 2.

⁷⁴¹ Submission 220, Silverlea Early Childhood Services, p 2.

⁷⁴² Submission 258, National Disability Services, p 24. See also, Joint Standing Committee on the National Disability Insurance Scheme, *Market readiness for provision of services under the NDIS*, September 2018, Commonwealth of Australia.

⁷⁴³ Submission 258, National Disability Services, p 24.

⁷⁴⁴ National Disability Insurance Scheme, *NDIS price guide: Victoria, New South Wales, Queensland, Tasmania (valid from 1 July 2018)*, <https://www.ndis.gov.au/medias/documents/price-guide-nsw-201819-pdf/201819-Price-Guide-VIC-NSW-QLD-TAS.pdf>

⁷⁴⁵ National Disability Insurance Scheme, *Pricing and payment*, <https://www.ndis.gov.au/providers/pricing-and-payment>

- 5.77** The committee heard that the NDIS pricing is inadequate and may impact on sustainability of service providers and the quality of care provided to participants.⁷⁴⁶ In 2018, the Commonwealth Joint Standing Committee on the National Disability Insurance Scheme found that 'many service providers were unable to operate even moderately profitably under NDIS pricing'.⁷⁴⁷ Several stakeholders also cited research from UNSW Social Policy Research Centre which 'found the capped prices for disability support work are too low to cover the actual costs of service provision' and that the current pricing arrangements are not 'fully enabling disability support workers to deliver services which are personalised, coordinated, responsive or safe'.⁷⁴⁸
- 5.78** The Aged Persons, Younger People with a Disability and Carers Forum said that the 'pricing structure does not allow providers time to report on incidents and to be able to respond with corrective actions to meet the quality and safeguard system' and recommended that the pricing structure be reviewed.⁷⁴⁹ The Community Living Association advised that the 'costing model of NDIS means that the face-to-face work will be done by increasingly untrained, unsupported and overstretched staff'.⁷⁵⁰ The Centre for Disability Research and Policy said that the pricing model covers care but does not cover other important aspects of service provision, such as training, management and career progression.⁷⁵¹
- 5.79** United Voices NSW stated in their submission that the disability sector has 'long experienced low pay', however 'what is most concerning is that the current funding arrangements under the NDIS are actively working to place even further downward pressure on wages'.⁷⁵² According to United Voices NSW:

Not only does the NDIS funding and pricing framework institutionalise low pay, it entrenches award conditions as the ceiling rather than the minimum, preventing any capacity for providers to appropriately compensate and attract skilled and experienced workers. The supports provided under the NDIS are not ones that can be carried out exclusively with entry-level, unskilled workers. Not only do the low wages act as a barrier to entry, it is a disincentive to remain in the sector as it becomes apparent that there is no prospect for pay progression over time, thus making it difficult for workers to justify remaining in the sector. The following example of one United Voice member is typical of the sector: this member has over 30 years of experience, yet remains paid only \$24 per hour, an increase of only a few dollars an hour above an unskilled and inexperienced worker. Her skill level is vital to meeting the needs of disabled clients with complex needs and the care received by her clients would be unparalleled compared to those

⁷⁴⁶ Submission 236, Aged Persons Younger People with a Disability and Carers Forum, p 1; Submission 284, Macarthur Disability Services Ltd, p 4; Submission 295, Information on Disability & Education Awareness Services, p 6; Submission 244, Empowerability, p 3.

⁷⁴⁷ Joint Standing Committee on the National Disability Insurance Scheme, *Market readiness for provision of services under the NDIS*, September 2018, Commonwealth of Australia, p 38.

⁷⁴⁸ Submission 286, United Voice NSW, p 4; Submission 191, Physical Disability Council of NSW, p 10. See also, N. Cortis, F. Macdonald, B. Davidson and E. Bentham, 'Reasonable, necessary and valued: Pricing disability services for quality support and decent jobs' (SPRC Report 10/17, Social Policy Research Centre, UNSW Sydney, 2017).

⁷⁴⁹ Submission 236, Aged Persons Younger People with a Disability and Carers Forum, p 3.

⁷⁵⁰ Submission 339, Community Living Association, p 2.

⁷⁵¹ Submission 175, Centre for Disability Research and Policy, p 7.

⁷⁵² Submission 286, United Voices NSW, p 4.

provided by a new entrant. As is common in the sector, only those who have a deep personal conviction in the work they do can sustain these efforts for so little reward.⁷⁵³

- 5.80** The Physical Disability Council of NSW (PDCN) expressed the view that the price guide for disability support work 'has significant consequences for the well-being of disability support workers and the quality of care provided to NDIS participants'.⁷⁵⁴ They observed:

The current NDIS pricing for disability support work is based on direct hours of support provided to the participant, and does not allow for staff training and development, ongoing supervision and support of workers, staff meetings, care coordination and the completion of administration tasks such as making detailed client notes (essential for consistency of care). Combined with the increasing casualisation of the disability workforce PDCN is concerned about a decline in the quality of services received by NDIS participants. PDCN can state that in some regions service providers have decided to not register to work within the NDIS, due to concerns over the low pay levels.⁷⁵⁵

- 5.81** In their submission, One Door Mental Health, a specialist mental health recovery organisation stated that quality of workforce issues are exacerbated by low cost estimates used by the NDIA:

One Door experience suggests that there is a significant paucity of skilled, qualified and eager people to work in a mature market for psychosocial disability support under the NDIS. In the context of the NDIS, quality-of-workforce issues are being exacerbated by low cost estimations being used by the NDIA to reimburse service provision. With these low rates of reimbursement there are insufficient funds for service providers of the highest relevant qualification to provide the best quality of service to clients. For example, many One Door employees working in the NDIS with the SCHADS qualification at 4-7 have been replaced by employees with SCHADS at 2- 3.⁷⁵⁶

Complex clients

- 5.82** Participants may have complex needs because of a co-occurring health condition, or due to behaviours of concern, or a mental health condition.⁷⁵⁷ They may also have complex needs because of involvement in other government service systems, such as health, mental health, justice and child protection.⁷⁵⁸
- 5.83** Many providers expressed concern that participants with complex needs may fall through the gap.⁷⁵⁹ The New South Wales Nurses and Midwives' Association advised that complex needs

⁷⁵³ Submission 286, United Voices NSW, p 4.

⁷⁵⁴ Submission 191, Physical Disability Council of NSW, p 10.

⁷⁵⁵ Submission 191, Physical Disability Council of NSW, p 10.

⁷⁵⁶ Submission 123, One Door Mental Health, pp 4-5. See also, Submission 252, Flourish Australia, p 5.

⁷⁵⁷ NDIS, *Improving the NDIS participant and provider experience*, 26 February 2018, p 27, <https://www.ndis.gov.au/medias/documents/pathway-review-report/Report-NDIS-Pathway-Review.pdf>

⁷⁵⁸ NDIS, *Improving the NDIS participant and provider experience*, 26 February 2018, p 27, <https://www.ndis.gov.au/medias/documents/pathway-review-report/Report-NDIS-Pathway-Review.pdf>

⁷⁵⁹ Submission 209, New South Wales Nurses and Midwives' Association (in conjunction with the Australian Nursing and Midwifery Federation), pp 2, 7; Submission 343, Public Service Association

'may not be best served or compatible with the market approach of the NDIS' and 'are and will be best served under (pre) existing models of care provided by FACS':

[F]or many, especially those with profound disabilities and/or complex co-morbidities, the complete withdrawal of government operated and provided services, often embedded within a framework of collaborative networks with the public health system, reduced choice and removed the option to remain to have their needs managed via the previous services provided by FACS.⁷⁶⁰

5.84 Many providers struggled with the cost pressures related to delivering support to participants with complex needs as these participants often required a higher level of support and more skilled workers, which often involved further workforce training and development, additional time for reporting and higher supervision ratios.⁷⁶¹ The Centre for Disability Research and Policy raised the issue that the NDIS funding model was leading to the loss of a more highly qualified workforce because the pricing model did not support more qualified staff working at higher levels.⁷⁶² Furthermore, they noted that because of the NDIS funding model, many people with serious mental illness may miss out on the services they need and that there were reports of 'services refusing to work with people with complex needs and difficult behaviours caused by their mental illness'.⁷⁶³

5.85 Prospect Farm Accommodation reported that disability support workers are often required to undertake tasks that they are not funded for:

[T]he NDIS will fund supports for a person with severe intellectual disability but not his diabetes. This is of little help to the support worker who must supply the day – to day care of the person, settle their behaviour, read their blood glucose levels, prepare their diet and get them to their day support on time. Such a division [between what the NDIS considers a "disability" and what is considers a "medical condition"] is in reality a falsity, as the support worker must attend to ALL the needs of the individual, funded or not. To do otherwise would be unthinkable.⁷⁶⁴

5.86 The NSW Council for Intellectual Disability advised that there has never been 'an adequate supply of skilled workers in the disability service sphere' and that this was particularly acute in relation to people with complex behavior support needs.⁷⁶⁵ They observed:

The supply of a skilled workforce to work with this group has arguably been declining when it needs to increase with the implementation of the NDIS. Factors leading to a

of NSW and Community and Public Sector Union NSW, p 2; Submission 299, The Benevolent Society, p 14; Submission 329, People with Disability Australia, pp 15-17.

⁷⁶⁰ Submission 209, New South Wales Nurses and Midwives' Association (in conjunction with the Australian Nursing and Midwifery Federation), p 7.

⁷⁶¹ Evidence, Ms Anita Le Lay, Head of Disability, Uniting, 2 October 2018, p 10; Submission 299, The Benevolent Society, p 14; Submission 347, NSW Ombudsman, p 5; Submission 236, Aged Persons Younger People with a Disability and Carers Forum, p 3; Submission 258, National Disability Services, pp 5, 9.

⁷⁶² Submission 175, Centre for Disability Research and Policy, p 7.

⁷⁶³ Submission 175, Centre for Disability Research and Policy, p 7. See also, Submission 123, One Door Mental Health, pp 6-7.

⁷⁶⁴ Submission 241, Prospect Farm Accommodation, p 9.

⁷⁶⁵ Submission 148, NSW Council for Intellectual Disability, p 10.

decline in the workforce have included the tender out of ADHC services and many experienced workers then choosing to leave the disability services sphere.⁷⁶⁶

5.87 The Benevolent Society stated that as the NDIS operates in an open market environment, they witnessed some providers 'cherry-picking clients' and choosing not to provide services to people with complex needs due to the costs to the organisation and the requirement for more experienced staff.⁷⁶⁷ The Aged Persons, Younger People with Disabilities and Carers Forum recommended that safeguards be developed to ensure NDIS participants with complex care requirements have the same access to choice of supports.⁷⁶⁸

5.88 According to Ms Anita Le Lay, the Head of Disability at Uniting:

Our position as a NDIS registered provider has us working with people who have more intensive and super intensive needs so upper complex range of participants. At the moment, reflective of the NDIS price guide it would be fair to say Uniting has concerns and is doing a whole or range of things to look at how it can make its future sustainable. In order to work and support people of complexity you need a workforce that is skilled, experienced, who have professional development opportunities, have some semblance of a career path and who are able to paid appropriately.⁷⁶⁹

5.89 The NSW Government acknowledged that the transition to the NDIS has been 'more challenging for some', noting that the process of securing an NDIS plan of supports can 'pose particular complexities for some individuals' including those with psychosocial disability, those with complex needs and those with concurrent disabilities and medical conditions.⁷⁷⁰

Independent Pricing Review

5.90 In February 2018, McKinsey & Company released their Independent Pricing Review of the NDIA in which they consulted over 1,000 individuals across Australia.⁷⁷¹ In this review they noted key concerns raised by providers and other stakeholders that the current loadings for complex participants did not reflect the additional costs of serving these participants, such as higher wages for a more skilled workforce, additional time required for training and reporting, and higher supervision ratios.⁷⁷² McKinsey & Company recommended adding 'a third tier to the complexity loading of 10%, to account for higher levels of skills/experience of workers and additional training required'.⁷⁷³

⁷⁶⁶ Submission 148, NSW Council for Intellectual Disability, p 10.

⁷⁶⁷ Submission 299, The Benevolent Society, p 14.

⁷⁶⁸ Submission 236, Aged Persons Younger People with a Disability and Carers Forum, p 3.

⁷⁶⁹ Evidence, Ms Anita Le Lay, Head of Disability, Uniting, 2 October 2018, p 10.

⁷⁷⁰ Submission 313, NSW Government, pp 4-5.

⁷⁷¹ McKinsey & Company, *Independent Pricing Review: National Disability Insurance Agency*, Final report, February 2018, <https://www.ndis.gov.au/medias/documents/ipr-final-report-mckinsey/20180213-IPR-FinalReport.pdf>

⁷⁷² McKinsey & Company, *Independent Pricing Review: National Disability Insurance Agency*, Final report, February 2018, p 4, <https://www.ndis.gov.au/medias/documents/ipr-final-report-mckinsey/20180213-IPR-FinalReport.pdf>

⁷⁷³ McKinsey & Company, *Independent Pricing Review: National Disability Insurance Agency*, Final report, February 2018, p 6, <https://www.ndis.gov.au/medias/documents/ipr-final-report-mckinsey/20180213-IPR-FinalReport.pdf>

- 5.91** The Independent Pricing Review noted that there is no simple definition of what complexity means in a pricing context and 'as a result, the term complexity is used inconsistently'.⁷⁷⁴ The Independent Pricing Review recommended that the NDIA develop a definition for complexity which is 'linked to the skills required to meet participant's needs, and use specialized planning resources to classify what skills are required, and which participants require higher skilled support workers'.⁷⁷⁵ Other recommendations included updating the pricing structure for the core support item 'Group based activities in a centre'.⁷⁷⁶
- 5.92** The report also recommended an additional tier of "Very Complex" to help providers recover the cost of supporting more complex participants.⁷⁷⁷ However, The Gabrielle Centre for Children advised that the tiered pricing levels recommended in the McKinsey report 'poses a serious threat' to the viability of their organisation and that they 'would be unable to offer service to lower tier clients at the proposed rates, which are \$70 less per hour than the current price guide allows, and maintain a sustainable service'.⁷⁷⁸
- 5.93** The NDIA accepted the Independent Pricing Review's recommendations and agreed to add a price tier that accounts for complexity of supports, to be implemented within six months as part of the next price review.⁷⁷⁹ The NDIA is also in the process of developing a pathway for people with complex needs and people with psychosocial disability to access the NDIS, which will be piloted and rolled out nationally.⁷⁸⁰

Committee comment

- 5.94** The committee is concerned that the disability workforce is experiencing a number of challenges that are causing skilled workers to leave the industry and that market forces may not reward those who remain in the industry. In particular, the committee draws attention to concerns about the lack of training and professional development for disability employees, despite the importance of such opportunities to ensure career progression and longevity in the industry, and a skilled workforce to deliver disability services.

⁷⁷⁴ McKinsey & Company, *Independent Pricing Review: National Disability Insurance Agency*, Final report, February 2018, p 48, <https://www.ndis.gov.au/medias/documents/ipr-final-report-mckinsey/20180213-IPR-FinalReport.pdf>

⁷⁷⁵ Recommendation 6: McKinsey & Company, *Independent Pricing Review: National Disability Insurance Agency*, Final report, February 2018, <https://www.ndis.gov.au/medias/documents/ipr-final-report-mckinsey/20180213-IPR-FinalReport.pdf>

⁷⁷⁶ Recommendation 9: McKinsey & Company, *Independent Pricing Review: National Disability Insurance Agency*, Final report, February 2018, <https://www.ndis.gov.au/medias/documents/ipr-final-report-mckinsey/20180213-IPR-FinalReport.pdf>

⁷⁷⁷ Recommendation 7: McKinsey & Company, *Independent Pricing Review: National Disability Insurance Agency*, Final report, February 2018, <https://www.ndis.gov.au/medias/documents/ipr-final-report-mckinsey/20180213-IPR-FinalReport.pdf>

⁷⁷⁸ Submission 268, The Gabrielle Centre for Children, pp 8-9.

⁷⁷⁹ NDIS, *Independent Pricing Review: NDIA response*, 2 March 2018, pp 7-8, <https://www.ndis.gov.au/medias/documents/ndia-ipr-response-pdf/NDIA-IPR-Response.pdf>

⁷⁸⁰ NDIS, *Improving the NDIS participant and provider experience*, 26 February 2018, pp 26, 27, <https://www.ndis.gov.au/medias/documents/pathway-review-report/Report-NDIS-Pathway-Review.pdf>; Submission 342, National Disability Insurance Agency, p 2.

- 5.95 The committee notes the recommendation of the Commonwealth Joint Standing Committee on the National Disability Insurance Scheme addressing this issue, and on a similar basis recommends that access to funded training be made available for all disability employees, including consideration of portable training entitlements.

Recommendation 16

That the NSW Government advocate, through its role on the Council of Australian Governments Disability Reform Council, that the National Disability Insurance Agency provide access to funded training for disability employees, including consideration of portable training entitlements.

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- 5.96 The committee is of the view that the NSW Government needs to ensure that the quality of the disability workforce is high and responsive to the needs of people with disability and believes a disability sector workforce strategy, as discussed in the next section, may serve this purpose.
- 5.97 The committee is concerned that some regional, rural and remote services may not be viable in the NDIS market. People with disability in these areas are at risk of falling through the gaps. The committee supports the Commonwealth Joint Standing Committee's recommendation and urges the NDIA to develop a strategy to address thin markets.
- 5.98 The committee considers it crucial that the disability sector workforce be properly remunerated to ensure that a high quality of care is provided to people with disability. Proper remuneration will lead to retaining quality staff and reducing staff shortages. Accordingly, the committee recommends that the NSW Government use its role on the Council of Australian Governments Disability Reform Council to advocate that the NDIA review its pricing structure with a view to ensuring disability sector workers and service providers are funded to provide quality services, including funding for case management, administration and supervision.

Recommendation 17

That the NSW Government advocate, through its role on the Council of Australian Governments Disability Reform Council, that the National Disability Insurance Agency:

- develop a strategy to address thin markets, such as in regional, rural and remote areas
- review its pricing structure with a view to ensuring disability sector workers and service providers are funded to provide quality services, including funding for case management, administration and supervision.

The need for a disability sector workforce strategy in New South Wales

5.99 The NSW Government partnered with National Disability Services, Jobs Australia and the Australian Services Union 'to deliver the Industrial Relations and Workforce Development Strategy'.⁷⁸¹ Their submission states:

The strategy enhanced the capacity of the disability sector workforce to meet the changing needs and choices of people with disability, assist organisations to develop robust human resource management practices and develop a flexible and responsive workforce.⁷⁸²

5.100 Two programs were developed under the strategy and since 2016 both were rolled out nationally and funded through the Commonwealth Government.⁷⁸³ These programs were Carecareers which 'aims to increase the attraction and retention of staff in the disability sector, whilst improving recruitment practices by using an online, central recruitment portal' and ProjectABLE which 'offers workshops to high school and tertiary students to encourage consideration of a career in the disability sector'.⁷⁸⁴

5.101 The NSW Government advised that the Commonwealth Government is currently developing a national market and workforce strategy which 'will aim to better identify market and workforce opportunities in the NDIS, including opportunities to work with state and territory governments to grow the market and workforce'.⁷⁸⁵

5.102 Many stakeholders advocated for a workforce strategy to deal with workforce development, training and job quality.⁷⁸⁶ Ms Natalie Lang, Branch Secretary, Australian Services Union, advised:

This strategy must ensure the following: that wages and working conditions are attractive enough to recruit and retain the tens of thousands of new workers required as the NDIS rolls out; that work in the NDIS provides for good secure jobs with regular working hours and predictable income for workers; that career paths in the sector are developed so workers can see a positive, long-term future working in this field; and, finally, that there is a systematic strategy for ongoing training and professional development of the workforce so the diverse needs and aspirations of people with a disability can be supported.⁷⁸⁷

5.103 Recommendations made to the committee included that a workforce strategy enhance the role of TAFE colleges in training of disability service workers,⁷⁸⁸ and include an engagement and

⁷⁸¹ Submission 313, NSW Government, p 14.

⁷⁸² Submission 313, NSW Government, p 14.

⁷⁸³ Submission 313, NSW Government, pp 14-15.

⁷⁸⁴ Submission 313, NSW Government, pp 14-15. See also, NDIS, *Building the workforce and developing the market*, https://www.ndis.gov.au/building_workforce

⁷⁸⁵ Submission 313, NSW Government, p 14.

⁷⁸⁶ Submission 245, The Business Centre, p 41; Evidence, Ms Natalie Lang, Branch Secretary, Australian Services Union, 2 October 2018, p 65.

⁷⁸⁷ Evidence, Ms Natalie Lang, Branch Secretary, Australian Services Union, 2 October 2018, p 65.

⁷⁸⁸ Submission 148, NSW Council for Intellectual Disability, p 10.

recruitment drive in schools and universities.⁷⁸⁹ In their submission, the Autism Advisory and Support Service state:

Since the introduction of NDIS, many senior and experienced therapists have found there is more money to be made in working as a standalone practice than working for an organization. This has created a void in the sector for senior and experienced therapists, in particular in the field of Occupational Therapy. There is also a lack of experienced, capable support workers. Most workers in the field of disability support seem to be individuals with limited English and no experience in the sector.⁷⁹⁰

Committee comment

- 5.104** While we note that the Commonwealth Government is currently developing a national market and workforce strategy as a matter of priority, the committee is of the view that the NSW Government needs to develop a statewide workforce strategy with a focus on supporting access to disability services in regional, rural and remote areas. In developing this strategy, the NSW Government should consult thoroughly with stakeholders. As New South Wales has the largest population and highest number of NDIS participants in the country, the NSW Government should take responsibility for ensuring a quality and highly responsive disability workforce in New South Wales.

Recommendation 18

That the NSW Government develop a New South Wales Disability Workforce Strategy, involving thorough stakeholder consultation, with a focus on supporting access to disability services in regional, rural and remote areas as a matter of priority.

⁷⁸⁹ Submission 115, Autism Advisory and Support Service, p 2.

⁷⁹⁰ Submission 115, Autism Advisory and Support Service, p 2.

Chapter 6 Oversight of disability services

This chapter focuses on the current oversight and complaint mechanisms for disability services in New South Wales. The chapter specifies the roles and responsibilities of the NSW Ombudsman since 1 July 2018, and what falls within the remit of the newly established National Disability Insurance Scheme Quality and Safeguarding Commission (NDIS Commission). The chapter also examines the role of the NSW Government within the regulatory framework and the issues facing people, who are not NDIS participants, who seek to make a complaint about a disability service provider. The chapter concludes by considering calls to establish a Public Advocate in New South Wales.

Oversight and complaint mechanisms for disability services in NSW

6.1 There are various options available to participants of the NDIS who wish to complain about the NDIS, the NDIA, plan decisions, service providers, staff conduct and other matters:

- Complaints can be made directly to the service provider. All registered NDIS service providers must implement and maintain a complaints management and resolution system that is appropriate for the size of the provider and for the classes of supports or services provided by the provider.⁷⁹¹
- The NDIA handles complaints about the NDIA and participant plans, and will continue to do so with the establishment of the NDIS Commission.⁷⁹² This includes complaints concerning staff conduct, processes and decisions. If an individual has a complaint about a staff member or process, they can make a complaint directly to the NDIA by telephone, email, in person or in writing.⁷⁹³
- The NDIS Commission has primary responsibility for handling complaints and receiving notifications of reportable incidents involving NDIS service providers.⁷⁹⁴
- The Commonwealth Ombudsman has jurisdiction to investigate the administrative actions of the NDIA and the NDIS Commission.⁷⁹⁵
- Participants can also lodge an appeal with the Administrative Appeals Tribunal (AAT) after an internal review of their plan has been conducted by the NDIA.⁷⁹⁶

⁷⁹¹ *National Disability Insurance Scheme Act 2013* (Cth) s 73W.

⁷⁹² NDIS Quality and Safeguards Commission, *Feedback about the NDIA*, <https://www.ndiscommission.gov.au/about/complaints-about-ndia>

⁷⁹³ National Disability Insurance Scheme, *Feedback and complaints*, <https://ndis.gov.au/about-us/contact-us/feedback-complaints.html>

⁷⁹⁴ Submission 347, NSW Ombudsman, p 2.

⁷⁹⁵ Commonwealth Ombudsman, *Annual Report 2016-17: Part 4 – What We Do*, <http://www.ombudsman.gov.au/publications/reports/annual/all-reports/docs/2016-17/part-4-what-we-do>

⁷⁹⁶ *National Disability Insurance Scheme Act 2013* (Cth) s 103; NDIS, *Planning*, p 14, <https://www.ndis.gov.au/medias/documents/pathway-booklet2-pdf/NDIS014-Participant-Pathway-Book2-16pp-A4-Accessible-.pdf>

- 6.2 New South Wales based non-NDIS participants seeking to complain about a disability service, can lodge a complaint with the NSW Ombudsman.⁷⁹⁷ The NSW Ombudsman will continue to have jurisdiction over services funded, licensed or operated by FACS, including FACS-operated disability accommodation and assisted boarding houses and in coordinating the Official Community Visitor Scheme.⁷⁹⁸

Responsible agencies

- 6.3 As outlined above, there are a number of agencies that play a role in the oversight of disability services in New South Wales, these are outlined below, along with the various related issues raised by stakeholders during the inquiry.

NDIS Quality and Safeguarding Commission

- 6.4 The NDIS Commission has been fully operational in New South Wales and South Australia since 1 July 2018. The NDIS Commission has assumed responsibility, from the NSW Ombudsman, of registering and monitoring the compliance of NDIS service providers, responding to new complaints about NDIS service providers and overseeing reportable incidents.⁷⁹⁹
- 6.5 However, prior to the commencement of the NDIS Commission, the Commonwealth and NSW Governments agreed that an interim extension would be given to the NSW Ombudsman to have jurisdiction over NDIS service providers until 1 July 2019. The arrangement permits the NSW Ombudsman's office to finalise matters that they received prior to 1 July 2018, manage legacy issues and maintain some current arrangements where there is uncertainty determining what the arrangements will be in the long term.⁸⁰⁰
- 6.6 During this transitional period, the NDIS Commission and the NSW Ombudsman are working together to ensure there is 'no wrong door' for people making a complaint, to minimise the duplication of effort in relation to any individual matter and to review the deaths of people with disability in residential care.⁸⁰¹

Broader regulatory remit and powers

- 6.7 The NDIS Commission has been given a broad suite of regulatory powers, and is also focused on capacity building for both service providers and participants. Mr Graeme Head, Commissioner of the NDIS Commission, explained some of its primary functions to the committee:

⁷⁹⁷ NSW Ombudsman, *Community and Disability Services*, <https://www.ombo.nsw.gov.au/what-we-do/our-work/community-and-disability-services>

⁷⁹⁸ Evidence, Mr Steve Kinmond, Community and Disability Services Commissioner/Deputy Ombudsman, NSW Ombudsman, 2 October 2018, p 2. See also: Submission 347, NSW Ombudsman, p 10.

⁷⁹⁹ Submission 313, NSW Government, p 27.

⁸⁰⁰ Submission 313, NSW Government, p 29; Submission 347, NSW Ombudsman, p 3.

⁸⁰¹ Submission 347, NSW Ombudsman, pp 2-3.

We register and regulate NDIS providers and we do that using some new tools that were developed as part of the [NDIS Quality and Safeguarding] Framework, new practice standards and a new code of conduct. We undertake compliance monitoring, investigation and enforcement action. We respond to complaints and reportable incidents, including abuse and neglect of participants. We are involved in national policy development and setting for the screening of workers and, importantly, national oversight and policy in relation to behaviour, support and monitoring the use of restrictive practices within the NDIS but also working with the service system to reduce and eliminate the use of those practices.

...

So in addition to taking formal regulatory action, the Commission is equipped to work with the sector to build capacity, lift capability, to educate participants and consumers about their rights and how they can use our complaints function to raise issues that they are concerned about in respect of supports they are receiving.⁸⁰²

Registering and regulating NDIS service providers

- 6.8** The NDIS Commission has a broader range of functions than those of the NSW Ombudsman,⁸⁰³ and one of their duties is to register and regulate NDIS service providers.
- 6.9** As of September 2018, the NDIS Commission had coverage of approximately 8,500 registered service providers in New South Wales.⁸⁰⁴ This number does not capture the number of unregistered service providers in New South Wales.
- 6.10** New and existing service providers in New South Wales who transitioned to the NDIS Commission on 1 July 2018, are now subject to a more comprehensive regulatory framework than what was in place before.⁸⁰⁵
- 6.11** The NDIS Commission has created an audit timetable for the reregistration of transferrable service providers. Providers have then been prioritised according to risk and past performance. These factors includes consideration of the recentness of audit and history of compliance.⁸⁰⁶
- 6.12** Depending on what services and supports they deliver, the NDIS service provider and their key personnel are now required to undergo relevant suitability assessments and quality audits against the new NDIS practice standards. This renewal process, coupled with information collected regarding any prior complaints and reportable incidents informs the NDIS Commission on the quality of the organisation's services and supports, as well as areas to target for education or

⁸⁰² Evidence, Mr Graeme Head, Commissioner, NDIS Quality and Safeguarding Commission, 17 September 2018, p 22.

⁸⁰³ Evidence, Mr Steve Kinmond, Deputy Ombudsman, and Community and Disability Services Commissioner, NSW Ombudsman, 2 October 2018, p 2.

⁸⁰⁴ Evidence, Mr Graeme Head, Commissioner, NDIS Quality and Safeguarding Commission, 17 September 2018, p 26.

⁸⁰⁵ Evidence, Mr Graeme Head, Commissioner, NDIS Quality and Safeguarding Commission, 17 September 2018, p 28.

⁸⁰⁶ Evidence, Ms Samantha Taylor, Registrar, NDIS Quality and Safeguarding Commission, 17 September 2018, p 25.

improvement.⁸⁰⁷ The NDIS Commission can also take into account adverse findings or referrals from other bodies.⁸⁰⁸

- 6.13** Mr Head explained that the NDIS Commission could take into account a broad range of factors, 'In the suitability assessment of any provider who we are considering reregistering or any new provider, all of the relevant matters about their fitness ... to operate appropriately in the sector can be considered'.⁸⁰⁹
- 6.14** NDIS service providers are now subject to new and comprehensive practice standards that set out the rights of participants and the responsibilities of providers when delivering services.⁸¹⁰ The practice standards consist of a core module and several supplementary modules that apply depending on what types of supports and services are delivered by a provider, as well as the corporate structure of an organisation.⁸¹¹
- 6.15** The NDIS Commission's approach to providers and deciding what level of practice standards are applicable to them is proportionate to the level of risk assessed, the nature of supports and services offered and the legal configuration of the provider.⁸¹²
- 6.16** Providers who deliver lower level supports and already have an existing regulatory frame around their practice, such as allied health professionals, go through a more straightforward, simple audit to verify they have the ability to operate the contemporary practice authorisations, insurances, complaints and other incident management systems.⁸¹³
- 6.17** Providers who deliver higher levels of supports, such as to participants requiring complex supports or care, are subject to a more vigorous checking process. Ms Samantha Taylor, Registrar at the NDIS Commission explained:

For example, where participants in a service might have very complex health needs, how they might make sure that they have the workers and the people with the knowledge and right connections with health practitioners to assist people with those complex needs where they are providing specialist behaviour supports, specialist support coordination, early intervention and so forth. The nature of the supports that an NDIS provider is delivering will determine the level of consideration through an

⁸⁰⁷ Submission 342, National Disability Insurance Agency, p 6.

⁸⁰⁸ Evidence, Ms Samantha Taylor, Registrar, NDIS Quality and Safeguarding Commission, 17 September 2018, p 27.

⁸⁰⁹ Evidence, Mr Graeme Head, Commissioner, NDIS Quality and Safeguarding Commission, 17 September 2018, p 27.

⁸¹⁰ NDIS Quality and Safeguards Commission, *NDIS Practice Standards – NDIS Practice Standards and Quality Indicators*, July 2018, p 5, <https://www.ndiscommission.gov.au/sites/default/files/documents/2018-07/NDIS%20Practice%20Standards.pdf>

⁸¹¹ NDIS Quality and Safeguards Commission, *NDIS Practice Standards – NDIS Practice Standards and Quality Indicators*, July 2018, p 4, <https://www.ndiscommission.gov.au/sites/default/files/documents/2018-07/NDIS%20Practice%20Standards.pdf>

⁸¹² Evidence, Ms Samantha Taylor, Registrar, NDIS Quality and Safeguarding Commission, 17 September 2018, p 27.

⁸¹³ Evidence, Ms Samantha Taylor, Registrar, NDIS Quality and Safeguarding Commission, 17 September 2018, p 27.

assessment that they will need to undertake, basically the depth of an audit and to satisfy the commission.

If someone is delivering core supports, complex supports, such as accommodation or other skills with daily living or those specialist aspects of delivery that I just described, they will need to undertake what we refer to as a certification audit, which is a full review of all the elements of service delivery, as well as the management and governance within the organisation.⁸¹⁴

- 6.18** The new practice standards require providers to ensure that a participant has the right level of support (formal, informal or advocacy) to assist them in the execution of the participant's plan.⁸¹⁵
- 6.19** There was some concern from inquiry participants that once registered there was no ongoing external checks in place for service providers. Ms Alisa Coleman, an NDIS participant who is currently undergoing the complaints process regarding her own service provider, told the committee that following registration, service providers did not have to strictly adhere to any specific requirements or extra compliance.⁸¹⁶
- 6.20** When she raised her concern to the NDIA, with the assistance of the Australian Human Rights Commission, the NDIA's response was that 'All providers need to manage their own compliance obligations and ensure that they meet or exceed the relevant requirements of each jurisdiction'. Ms Coleman expressed her alarm to the committee that providers were seemingly allowed to self-manage their compliance with the Scheme. She felt this should not be permitted and that service providers be held to strict account by the NDIA.⁸¹⁷
- 6.21** Mr Head, NDIS Commission, advised that the Commission had strong regulatory powers it could use against NDIS service providers:

We can take quite strong regulatory action, including suspension of registration, revocation of registration, or issue banning orders where we determine there are problems.

...

we have a very good set of regulatory tools to consider relevant matters at both the front end of the process and to take action were inappropriate activities are identified to us along the way.⁸¹⁸

⁸¹⁴ Evidence, Ms Samantha Taylor, Registrar, NDIS Quality and Safeguarding Commission, 17 September 2018, pp 26-27.

⁸¹⁵ Evidence, Ms Samantha Taylor, Registrar, NDIS Quality and Safeguarding Commission, 17 September 2018, p 26.

⁸¹⁶ Evidence, Ms Alisa Coleman, NDIS participant, 17 September 2018, p 40.

⁸¹⁷ Evidence, Ms Alisa Coleman, NDIS participant, 17 September 2018, p 40.

⁸¹⁸ Evidence, Mr Graeme Head, Commissioner, NDIS Quality and Safeguarding Commission, 17 September 2018, p 27.

- 6.22** With the rollout of the NDIS Commission in New South Wales, Mr Head reassured the committee that NDIS service providers are now 'subject to a more comprehensive regulatory framework than was in place prior to [1 July 2018]'.⁸¹⁹

Unregistered providers

- 6.23** Not all providers of NDIS supports and services have to be registered with the NDIS Commission. The NDIS Quality and Safeguarding Framework allows for some providers to be unregistered. Unregistered providers are still subject to the NDIS Commission's code of conduct.⁸²⁰ Mr Head explained:

But the Framework itself explicitly acknowledges the right of people with disabilities to exercise choice and control and there are circumstances in which those participants actively choose to use unregistered providers and that is a matter for them.

...

But choice and control is an underpinning principle of the *National Disability Insurance Scheme Act* and unregistered providers are part of that service delivery system.⁸²¹

- 6.24** Mr Head told the committee that the Commission is working hard to ensure unregistered providers are aware of their obligations under the code of conduct and what sanctions will be applied if they fail to uphold these obligations.⁸²² The Commission is also reaching out to and communicating with self-managing participants, who generally utilise the services of unregistered providers, to ensure that they know the code of conduct applies to any worker they directly employ or to any business from which they purchases services or supports.⁸²³
- 6.25** Worker screening will also apply to unregistered providers when the NDIS worker screening system is introduced on 1 July 2019.⁸²⁴
- 6.26** However, the NSW Ombudsman noted that while 'self-managing NDIS participants may request that workers have an NDIS Worker Screening check, it is not compulsory'.⁸²⁵ The NSW Ombudsman supported the inclusion of a commitment, to monitor and review the effectiveness of the arrangements relating to unregistered providers, in the Intergovernmental Agreement on Nationally Consistent Worker Screening for the NDIS.⁸²⁶

⁸¹⁹ Evidence, Mr Graeme Head, Commissioner, NDIS Quality and Safeguarding Commission, 17 September 2018, p 28.

⁸²⁰ Evidence, Mr Graeme Head, Commissioner, NDIS Quality and Safeguarding Commission, 17 September 2018, p 25.

⁸²¹ Evidence, Mr Graeme Head, Commissioner, NDIS Quality and Safeguarding Commission, 17 September 2018, p 26.

⁸²² Evidence, Mr Graeme Head, Commissioner, NDIS Quality and Safeguarding Commission, 17 September 2018, p 26.

⁸²³ Evidence, Ms Samantha Taylor, Registrar, NDIS Quality and Safeguarding Commission, 17 September 2018, p 26.

⁸²⁴ Evidence, Mr Graeme Head, Commissioner, NDIS Quality and Safeguarding Commission, 17 September 2018, p 26; Submission 347, NSW Ombudsman, p 13.

⁸²⁵ Submission 347, NSW Ombudsman, p 13.

⁸²⁶ Submission 347, NSW Ombudsman, p 13.

- 6.27 Any complaints about unregistered NDIS service providers and their services can be made to the NDIS Commission.

NDIS Fraud Taskforce

- 6.28 The Commonwealth Government announced on 24 July 2018 that an NDIS Fraud Taskforce would be established to address crime committed against the NDIS.⁸²⁷ The NSW Government noted that the Taskforce would 'address potential and alleged reform against the scheme'.⁸²⁸
- 6.29 The NSW Government believes that the Taskforce 'will help ensure NDIS funds are used to support people with disability'.⁸²⁹

Late implementation of the Framework and the NDIS Commission

- 6.30 The committee heard that the NDIS Commission is of little benefit for those people who were engaged in a complaints process prior to its rollout. Ms Alisa Coleman, the NDIS participant who had been engaged in a complaints process about her service provider, said that the NDIS Commission would probably be of limited help to her:

It would have been nice if [the Commission] had been up and running before the rollout of the NDIS started. I am now so far down the complaints process that I have been involved in for the last 18 months – almost the entire length of my times as a NDIS participant – that I think the framework and its arrival is a little bit late for me. ... I do not think at this point that it is going to serve me.⁸³⁰

- 6.31 The Physical Disability Council of NSW noted that there was also a need for more awareness and clarity about the NDIS Commission in the community:

The progressive roll-out of the NDIS Commission has been timed to coincide with the NDIS reaching full implementation in each state and territory. ... PDCN recommends greater publicity and the provision of clear information to ensure public awareness of the new process for reporting and the transition of responsibilities for safeguarding measures to the NDIS Commission.⁸³¹

- 6.32 The committee received a number of submissions from stakeholders who were cautiously optimistic about the future of the NDIS Commission.⁸³² It was generally acknowledged that it

⁸²⁷ Media release, Hon Michael Keenan MP, Minister for Human Services, Minister Assisting the Prime Minister for Digital Transformation, and Hon Angus Taylor MP, Minister for Law Enforcement and Cyber Security, 'NDIS Fraud Taskforce established to tackle crime', 24 July 2018.

⁸²⁸ Submission 313, NSW Government, p 29.

⁸²⁹ Submission 313, NSW Government, p 29.

⁸³⁰ Evidence, Ms Alisa Coleman, NDIS participant, 17 September 2018, p 41.

⁸³¹ Submission 191, Physical Disability Council NSW, p 9.

⁸³² Submission 176, Name suppressed, p 4; Submission 240, Name suppressed, p 3; Submission 252, Flourish Australia, p 4; Submission 262, Family Advocacy, p 16; Submission 268, The Gabrielle Centre for Children, p 7; Submission 283, Mr Martin McNally, p 11; Submission 290, Occupational Therapy Australia, p 4; Submission 298, Mission Australia, p 12.

was premature to judge the effectiveness of the NDIS Commission⁸³³ and people were waiting for more clarity on what the remit of the NDIS Commission will be as the NDIS matures.⁸³⁴

Committee comment

- 6.33** The committee notes that the NDIS Commission commenced operating in New South Wales two years after the state began transitioning to the NDIS on 1 July 2016. The committee is of the opinion that it would have been more beneficial to participants and service providers if the NDIS Commission had commenced operating at the beginning of the transition to the NDIS.
- 6.34** The committee recognises that as the NDIS Commission has a significant role to play in the oversight of the NDIS service providers, and as it has only been in operation since 1 July 2018 it is too soon to qualitatively judge or assess its effectiveness. However, the committee acknowledges the vulnerability of people with a disability and seeks to ensure that oversight mechanisms are strengthened to ensure service providers are complying with the comprehensive practice standards and the code of conduct that set out the rights of participants and the responsibilities of providers when delivering services. We recommend that the NSW Government advocate for this on an ongoing basis through the Council of Australian Governments Disability Reform Council.

Recommendation 19

That the NSW Government advocate on an ongoing basis, through the Council of Australian Governments Disability Reform Council, for a strengthening of the oversight mechanisms to ensure service providers are complying with the comprehensive practice standards and the code of conduct that set out the rights of participants and the responsibilities of providers when delivering services.

Administrative Appeals Tribunal

- 6.35** A further avenue for oversight is the AAT. Participants can also lodge an appeal with the AAT after an internal review of their plan has been conducted by the NDIA.⁸³⁵ The latest NDIS quarterly report for the period 1 July to 30 September 2018 cites that of the 267 appeals that were made during that period, 48 per cent of appeals were in relation to the participant's initial plan and 40 per cent were in relation to the access decision.⁸³⁶

⁸³³ Submission 180, Mrs Johanna Hovian, p 4; Submission 225, Mental Health Coordinating Council, p 6; Submission 262, Family Advocacy, p 16; Submission 299, The Benevolent Society, p 17; Submission 304, Australian Services Union NSW and ACT Services Branch, p 11; Submission 329, People with Disability Australia, p 11.

⁸³⁴ Submission 249, Speech Pathology Australia, pp 11-12; Submission 329, People with Disability Australia, pp 40-41.

⁸³⁵ *National Disability Insurance Scheme Act 2013* (Cth) s 103; NDIS, *Planning*, p 14, <https://www.ndis.gov.au/medias/documents/pathway-booklet2-pdf/NDIS014-Participant-Pathwa-y-Book2-16pp-A4-Accessible-.pdf>

⁸³⁶ Council of Australian Governments Disability Reform Council, Quarterly Report: 30 September 2018, p 52, <https://www.ndis.gov.au/medias/documents/q1-201819-report-full/Report-COAG-for-Q1-of-Y6-Full-report.pdf>

- 6.36** The AAT conducts independent merits review of a wide range of administrative decisions made under Commonwealth laws by the Australian Government.⁸³⁷ Under the *National Disability Insurance Act 2013 (Cth)*, most decisions can be subjected to internal review and then may be reviewable by the AAT.⁸³⁸ The list of reviewable decisions can be found in Section 99 of the Act, which includes decisions about who is eligible to access the Scheme, the supports provided under the Scheme and the registration of service providers.⁸³⁹
- 6.37** With the increasing number of participants joining the Scheme the number of requests for AAT reviews have also increased. The number of review requests rose from 46 in 2015-16 to 186 in 2016-17.⁸⁴⁰ In 2017-18, 758 applications for review were received.⁸⁴¹
- 6.38** The committee heard of cases that have progressed to the AAT. One relating to the application of the eligibility criteria. Mr Tony Jones, Policy and Advocacy Manager, Spinal Cord Injuries Australia advised how they had assisted former Community Care and Support Program clients, who were previously in receipt of low level support through the CCSP, a program funded by the NSW Government prior to the NDIS, to test their eligibility through the AAT and seek appeals against decisions that deemed them ineligible for the Scheme. Mr Jones advised that in all cases, the original decisions were overturned.⁸⁴²

NSW Government

- 6.39** In addition to the NDIS Commission, the NSW Government still has a role of oversight for certain aspects of the NDIS as outlined below. Also, stakeholders recognised that the NSW Government has a responsibility for oversight of services provided to people with disability outside of the Scheme (this is discussed in the next section). Under the new Quality and Safeguards Framework that the NDIS Commission will implement, the NSW Government advised that it will undertake three functions:
- Administration of the NDIS Worker Check in New South Wales (effective 1 July 2019);
 - Authorisation requirements for restrictive practices for NDIS providers; and
 - Contribution to a multilateral view of the role of the Official Community Visitor programs in the NDIS.⁸⁴³

⁸³⁷ Administrative Appeals Tribunal, *The Administrative Appeals Tribunal – Who we are and how we can help you*, <http://www.aat.gov.au/applying-for-a-review/fact-sheets/the-administrative-appeals-tribunal>

⁸³⁸ National Disability Insurance Agency, *Operational Guideline – Review of Decisions – Conducting an Internal Review*, 9 December 2013, p 2, https://www.ndis.gov.au/html/sites/default/files/documents/og_review_decisions_internal_review.pdf

⁸³⁹ *National Disability Insurance Act 2013 (Cth)* s 99.

⁸⁴⁰ National Disability Insurance Agency, *Annual Report 2016-17 (2017)*, p 141, https://annualreport.ndis.gov.au/wp-content/uploads/2017/11/NDISAnnualReport2017_Accessible.pdf

⁸⁴¹ National Disability Insurance Agency, *Annual Report 2017-18 (2018)*, p 111, <https://www.ndis.gov.au/medias/documents/annual-report-201718/2017-18-Annual-Report.pdf>

⁸⁴² Evidence, Mr Tony Jones, Policy and Advocacy Manager, Spinal Cord Injuries Australia, 2 October 2018, p 50.

⁸⁴³ Submission 313, NSW Government, p 27.

- 6.40** The NSW Government acknowledges that it remains responsible for safeguarding people with disability outside of NDIS funded services, and for ensuring services funded by or under the control of New South Wales are safe and of sufficient quality.⁸⁴⁴

NSW Ombudsman

- 6.41** The NSW Ombudsman believes that since the rollout of the NDIS Commission in New South Wales, the regulatory framework for NDIS participants and providers has been enhanced overall.⁸⁴⁵
- 6.42** Whilst the NSW Ombudsman has retained some of its functions, such as coordinating the Official Community Visitors (OCV) scheme and having jurisdiction over the services operated, licensed and funded by the Department of Family and Community Services, it is not clear whether it will continue to do so past the national rollout of the NDIS Commission. Mr Steve Kinmond, Deputy Ombudsman and Community and Disability Services Commissioner said, 'The nature of future oversight in this area will need to be settled in due course'.⁸⁴⁶

Official Community Visitors Scheme

- 6.43** The NSW Ombudsman advised that Official Community Visitors (OCVs) are independent ministerial appointees who visit people in full-time residential care, including people with disability in supported accommodation, children and young people in residential out-of-home care and people living in assisted boarding houses.⁸⁴⁷
- 6.44** It was indicated by the NSW Ombudsman that OCVs are a vital safeguard in identifying and raising issues affecting residents and promoting their rights. At times, OCVs are the only independent parties in contact with a resident, with the ability to observe their living conditions and the care given to them.⁸⁴⁸
- 6.45** The NSW Government has shown ongoing support for the OCV scheme, providing funding over the last two financial years (2015-16 and 2016-17) to accommodate an increased number of residences.⁸⁴⁹
- 6.46** It was highlighted by the NSW Ombudsman that the OCV scheme is not included in the NDIS Quality and Safeguarding Framework. The NSW Ombudsman observed that in 2018, there will be a multilateral review of existing community visitor schemes in relation to people with disability and will examine the intersection of the schemes with the NDIS. The outcomes of the review should inform what the future of the OCV scheme is in New South Wales.⁸⁵⁰

⁸⁴⁴ Submission 313, NSW Government, p 4.

⁸⁴⁵ Submission 347, NSW Ombudsman, p 10.

⁸⁴⁶ Evidence, Mr Steve Kinmond, Deputy Ombudsman, and Community and Disability Services Commissioner, NSW Ombudsman, 2 October 2018, p 2.

⁸⁴⁷ Submission 347, NSW Ombudsman, p 10.

⁸⁴⁸ Submission 347, NSW Ombudsman, p 10.

⁸⁴⁹ Submission 347, NSW Ombudsman, p 10.

⁸⁵⁰ Submission 347, NSW Ombudsman, p 10.

- 6.47** The NSW Ombudsman supports the notion that a community visitor scheme be part of the national framework and that the annual reports of the NSW OCV scheme is evidence of the scheme's value and the outcomes it achieves for highly vulnerable residents.⁸⁵¹
- 6.48** There is also strong support amongst peak disability organisations that the NSW Government continues to support an OCV scheme.⁸⁵² For example, the NSW Council for Intellectual Disability acknowledged that the scheme is 'an important monitoring mechanism for people who are often very vulnerable and have impaired capacity to recognise and speak out about infringements of their rights'. It recommended that the NSW Government maintain the existing community visitor role and ensure it is linked to the NDIS Commission.⁸⁵³

Oversight and protections for people engaging with mainstream services

- 6.49** The NSW Ombudsman will continue to examine the responsibilities of the State's service system, such as in the health and justice spheres.⁸⁵⁴
- 6.50** The NSW Ombudsman will also continue to be responsible for reviewing the deaths of people with disability in residential care through a joint approach with the NDIS Commission until 1 July 2019. It has not been settled as to who will be responsible for reviewing these deaths after 1 July 2019. Mr Head, NDIS Commission, stated:

The existing reviewable deaths function of the [NSW] Ombudsman's Office has been extended in its current form until the end of the current financial year. The Commission will determine, when the other jurisdictions come in, how it will approach specific reviews.⁸⁵⁵

- 6.51** Mr Michael Coutts-Trotter, Secretary of Department of Family and Community Services explained that the NSW Government was still considering who will be responsible for reviewing the deaths of people with disability in residential settings following 1 July 2019:

... the Government is considering the Ombudsman's report, the inquiry into elder abuse, and the recommendations of the NSW Law Reform Commission, all of which go to recommendations to better prevent and respond to the types of abuse.⁸⁵⁶

- 6.52** The NSW Ombudsman emphasised that the NSW Government has ongoing obligations to provide an accessible and responsive health system for all people with disability, and not just people with disability living in residential care.⁸⁵⁷

⁸⁵¹ Submission 347, NSW Ombudsman, p 10.

⁸⁵² Submission 191, Physical Disability Council NSW, p 9; Submission 294, NSW Disability Advocacy Alliance, p 8; Submission 295, Information on Disability and Education Awareness Services, p 6.

⁸⁵³ Submission 148, NSW Council for Intellectual Disability, p 11.

⁸⁵⁴ Evidence, Mr Steve Kinmond, Deputy Ombudsman, and Community and Disability Services Commissioner, NSW Ombudsman, 2 October 2018, pp 2-3.

⁸⁵⁵ Evidence, Mr Graeme Head, Commissioner, NDIS Quality and Safeguarding Commission, 17 September 2018, p 24.

⁸⁵⁶ Evidence, Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services, 5 November 2018, Budget Estimates 2018-2019 inquiry, p 25.

⁸⁵⁷ Evidence, Mr Steve Kinmond, Deputy Ombudsman, and Community and Disability Services Commissioner, NSW Ombudsman, 2 October 2018, p 2.

- 6.53** The NSW Ombudsman also called for the NSW Government to legislate resident rights and protections for people with disability renting in long-term supported accommodation.⁸⁵⁸ The NSW Government addressed this concern in their submission, advising that they are 'currently considering the best way to ensure these rights and protections can be provided'.⁸⁵⁹

Committee comment

- 6.54** The committee notes that the NDIS Commission and the NSW Ombudsman are working together on certain oversight matters for the NDIS. The committee recommends that the NSW Government support ongoing arrangements between the NSW Ombudsman and the NDIS Commission, such as reviewing the deaths of people with disability in residential settings, beyond 1 July 2019 with a view to establishing a national approach to the review of deaths of people with disability in residential care.

Recommendation 20

That the NSW Government advocate, through the Council of Australian Governments Disability Reform Council, for a strengthening of the oversight mechanisms in relation to the National Disability Insurance Scheme, through:

- supporting ongoing arrangements between the NSW Ombudsman and the NDIS Quality and Safeguards Commission beyond 1 July 2019; and
 - establishing a national approach to the review of deaths of people with disability in residential care.
-

- 6.55** The committee recognises the importance of the Official Community Visitors scheme and its work in protecting the rights of vulnerable adults in the community. We note that the Official Community Visitors scheme is not included in the NDIS Quality and Safeguarding Framework at this stage. The committee believes that such a scheme should be in place regardless of which level of government has responsibility and so in the meantime we recommend that the NSW Government continue to support the ongoing funding of a New South Wales Official Community Visitors Scheme, with the view of formally seeking the inclusion of such a scheme in the Framework.

Recommendation 21

That the NSW Government continue to support the ongoing funding of a New South Wales Official Community Visitors Scheme with the view of formally seeking the inclusion of such a scheme in the NDIS Quality and Safeguarding Framework.

- 6.56** The committee supports the NSW Ombudsman view that the NSW Government has an ongoing obligation to provide an accessible and responsive health system for all people with disability.

⁸⁵⁸ Submission 347, NSW Ombudsman, p 13.

⁸⁵⁹ Submission 313, NSW Government, p 29.

Oversight of disability service delivery for people outside of the Scheme

6.57 The NSW Government stated that it 'remains responsible for safeguarding people with disability outside of NDIS services (for example, in home or community settings) and for ensuring services funded by or under the control of New South Wales are safe and of sufficient quality'.⁸⁶⁰

6.58 The NSW Law Reform Commission further emphasised the NSW Government's role and responsibility in ensuring the safety of all people with disabilities:

With the NDIS operating within [New South Wales], it is also important to ensure that State and Commonwealth oversight mechanisms interact effectively to guarantee the safety of people with disabilities and prevent abuse.⁸⁶¹

6.59 As stated earlier, the NSW Ombudsman will continue to have jurisdiction over services operated, funded or licensed by FACS, including FACS-operated disability accommodations and assisted boarding houses.⁸⁶²

6.60 The NSW Law Reform Commission's recent report stated that people with disability who are outside of government service settings fall into a gap and it was necessary to ensure protection of their rights. The NSW Law Reform Commission notes that 'the NSW Ombudsman cannot investigate suspected abuse that is occurring in a private home ... or investigate a situation where a person is not receiving (or is not eligible to receive) community services'.⁸⁶³ It recommended that a Public Advocate be established to investigate allegations of abuse and neglect of these people.⁸⁶⁴

6.61 The NSW Ombudsman also pointed to this gap in oversight relating to the alleged abuse in family or community settings. It said that the vast majority of reports of alleged abuse and/or neglect of adults with disability living in community settings related not to the conduct of service providers, but to the conduct of the person's family, other informal supports or members of the community.⁸⁶⁵

6.62 Without any active promotion, the NSW Ombudsman received 207 matters of concern between 1 July 2016 and 30 June 2018 relating to people with disability. Eighty per cent of these matters involved abuse within family or community settings, prompting concerns that these numbers are not an adequate representation of the prevalence of abuse and neglect.⁸⁶⁶

⁸⁶⁰ Submission 313, NSW Government, p 4.

⁸⁶¹ NSW Law Reform Commission, *Review of the Guardianship Act 1987*, Report No 145 (2018), p 23.

⁸⁶² Evidence, Mr Steve Kinmond, Deputy Ombudsman, and Community and Disability Services Commissioner, NSW Ombudsman, 2 October 2018, p 2.

⁸⁶³ NSW Law Reform Commission, *Review of the Guardianship Act 1987*, Report No 145 (2018), p 217.

⁸⁶⁴ NSW Law Reform Commission, *Review of the Guardianship Act 1987*, Report No 145 (2018), p 34.

⁸⁶⁵ Submission 347, NSW Ombudsman, p 11.

⁸⁶⁶ Evidence, Mr Steve Kinmond, Deputy Ombudsman, and Community and Disability Services Commissioner, NSW Ombudsman, 2 October 2018, p 2.

The need for a Public Advocate

- 6.63** In 2016, the committee conducted an inquiry into Elder abuse in New South Wales and one of the recommendations that came out of the inquiry was for the NSW Government to introduce legislation to establish a Public Advocate's Office along the lines of the Victorian model.⁸⁶⁷
- 6.64** In its response to the committee's report, the NSW Government noted that at the time, the NSW Law Reform Commission was conducting an inquiry into the broader New South Wales guardianship framework, which specifically included consideration of establishing a NSW Public Advocate. The NSW Government's response was, 'Legislative change in this area should be deferred until the recommendations of the NSW Law Reform Commission Guardianship report can be considered'.⁸⁶⁸
- 6.65** The NSW Law Reform Commission's review of the *Guardianship Act 1987* has since been completed and it recommended that New South Wales establish the Office of the Public Advocate as an independent statutory position. The role would have a broad range of powers and responsibilities, including the ability to:
- ... advocate for people in need of decision-making assistance, mediate decision-making disputes, provide information, advice and assistance about decision-making, and investigate cases of potential abuse, neglect and exploitation.⁸⁶⁹
- 6.66** Within the disability sector, the Public Advocate is recommended to have investigative functions to obtain evidence about neglect, abuse and exploitation of people who need decision-making assistance. The Public Advocate would be an independent body, and therefore be able to investigate complaints about government agencies and advocate for systemic change.⁸⁷⁰
- 6.67** To ensure its independence and effectiveness, the NSW Law Reform Commission recommends that the Public Advocate have security of tenure, a dedicated staff and a duty to report to Parliament.⁸⁷¹ Mr Matthew Bowden of the NSW Disability Advocacy Alliance also stressed the need for independence from the Government:
- ... that this is also independent of other government agencies, that it is independent of organisations or offices such as the Office of the Public Guardian, New South Wales Trustee and Guardian, and it sits separately from the Ombudsman as well. It is important that the public advocate is able to critique the functions for people with disability of those offices as well, and those appointed statutory positions.⁸⁷²

⁸⁶⁷ General Purpose Standing Committee No. 2, NSW Legislative Council, *Inquiry into Elder abuse in New South Wales* (2016), p 143.

⁸⁶⁸ Correspondence from the Hon John Ajaka MLC, Minister for Ageing, Disability Services and Multiculturalism, to the Clerk of the Parliaments, providing government response to the inquiry into elder abuse in New South Wales, 9 January 2017, p 21.

⁸⁶⁹ NSW Law Reform Commission, *Review of the Guardianship Act 1987*, Report No 145 (2018), p 206.

⁸⁷⁰ NSW Law Reform Commission, *Review of the Guardianship Act 1987*, Report No 145 (2018), p 208.

⁸⁷¹ NSW Law Reform Commission, *Review of the Guardianship Act 1987*, Report No 145 (2018), p 208.

⁸⁷² Evidence, Mr Matthew Bowden, Co-Chief Executive Officer, People with Disability Australia, NSW Disability Advocacy Alliance, 2 October 2018, p 33.

- 6.68** This idea of an independent statutory authority was also supported by peak disability organisations such as the NSW Council of Intellectual Disability,⁸⁷³ People with Disability Australia⁸⁷⁴ and Legal Aid NSW.⁸⁷⁵
- 6.69** The NSW Law Reform Commission makes it clear that a Public Advocate should not replace the current work of community advocacy.⁸⁷⁶ Instead it should complement it by 'providing a vehicle for broad systemic advocacy, as well as representation where appropriate'.⁸⁷⁷ The NSW Law Reform Commission specifies that:
- Importantly, we do not see the Public Advocate's systemic advocacy as overtaking or substituting the role of non-government organisations and community advocacy organisations. ... We see those community organisations as essential ...
- Rather, the Public Advocate should play a role in referring people who need decision-making assistance to appropriate community organisations and/or assisting those organisations with providing advocacy support. The Public Advocate's focus would be on effecting cultural and societal change more broadly, rather than on advocacy in individual cases.⁸⁷⁸
- 6.70** A Public Advocate that works complementary to individual and systemic advocacy garnered the strong support of the NSW Ombudsman and peak disability organisations. Ms Kathryn McKenzie, Director of Disability of the NSW Ombudsman informed the committee, 'we are very clear in saying that the public advocate is not a replacement for community or individual advocates, it is a very different role'.⁸⁷⁹
- 6.71** Ms Ya'el Frisch, Project Officer, Advocacy at NCOSS stressed to the committee that a Public Advocate would not replace the need for advocacy funding, 'We would like to ... highlight that this role will be complementary, instead of the continuation of the funding for the community advocacy beyond 2020'.⁸⁸⁰
- 6.72** Mr Jim Simpson, Senior Advocate at the NSW Council for Intellectual Disability also emphasised that the Public Advocate should not be seen as a 'higher priority' to community advocacy.⁸⁸¹
- 6.73** Ms Serena Ovens, Convenor of the NSW Disability Alliance, explained the important role advocacy has in supporting the Public Advocate:

⁸⁷³ Evidence, Mr Jim Simpson, Senior Advocate, NSW Council for Intellectual Disability, 2 October 2018, p 41.

⁸⁷⁴ Submission 329, People with Disability Australia, p 40.

⁸⁷⁵ Submission 351, Legal Aid NSW, p 6.

⁸⁷⁶ NSW Law Reform Commission, *Review of the Guardianship Act 1987*, Report No 145 (2018), pp 213-214.

⁸⁷⁷ NSW Law Reform Commission, *Review of the Guardianship Act 1987*, Report No 145 (2018), p 207.

⁸⁷⁸ NSW Law Reform Commission, *Review of the Guardianship Act 1987*, Report No 145 (2018), pp 213-214.

⁸⁷⁹ Evidence, Ms Kathryn McKenzie, Director Disability, NSW Ombudsman, 2 October 2018, p 5.

⁸⁸⁰ Evidence, Ms Ya'el Frisch, Project Officer, Advocacy, NCOSS, 2 October 2018, p 33.

⁸⁸¹ Evidence, Mr Jim Simpson, Senior Advocate, NSW Council for Intellectual Disability, 2 October 2018, p 41.

... generally what has been recommended is that the community level advocacy is what feeds up many times to that high level public advocate. We see things early on, hopefully before they get to the point of needing the public advocate, but we can support systems change and ensure that where there are issues and where the public advocate is seeing them, we can go in and assist in reinforcing and/or helping with change across that.⁸⁸²

6.74 The Office of a Public Advocate also has the strong support of the NSW Ombudsman. Its submission emphasises that a Public Advocate could address:

... an important need for a comprehensive and sophisticated approach across government and community to recognising and appropriately responding to signs of abuse, neglect and exploitation of adults with disability (and vulnerable adults more broadly).⁸⁸³

6.75 In order to appropriately respond to allegations or suspicions of abuse and neglect, the NSW Ombudsman believes it is important for the Public Advocate to have 'access to the right information, adequate powers, and the cooperation and support of key government and non-government stakeholders'.⁸⁸⁴

6.76 Further, the Public Advocate would be able to investigate, not only in response to a complaint made to them, but of its own motion, if it has reasonable belief that there has been potential abuse, neglect and exploitation.⁸⁸⁵ The NSW Ombudsman currently does not have the authority to act on its own motion of suspected wrongdoing.⁸⁸⁶

6.77 When facilitating a response to suspected instances of abuse or neglect against people with disability, the NSW Law Reform Commission recommended that the Public Advocate take the lead to coordinate the exchange of information between agencies. This would enable an effective interagency response to alleged abuse, neglect and exploitation of vulnerable adults.⁸⁸⁷

6.78 The NSW Ombudsman also supported this idea in its submission:

We emphasised the important need for a Public Advocate (or equivalent) to investigate allegations of abuse, neglect and exploitation of vulnerable adults – including adults with disability and older people – and to take the lead in facilitating and coordinating the response to safeguard individuals.⁸⁸⁸

6.79 However, the NSW Ombudsman recommends going further than what the NSW Law Reform Commission suggested. The NSW Ombudsman believes that legislative provisions should also be introduced so that relevant agencies (and relevant non-governmental organisations) can

⁸⁸² Evidence, Ms Serena Ovens, Executive Officer, Physical Disability Council of NSW and Convenor, NSW Disability Advocacy Alliance, 2 October 2018, p 33.

⁸⁸³ Submission 347, NSW Ombudsman, p 5.

⁸⁸⁴ Submission 347, NSW Ombudsman, p 12.

⁸⁸⁵ Submission 347, NSW Ombudsman, p 12.

⁸⁸⁶ NSW Law Reform Commission, *Review of the Guardianship Act 1987*, Report No 145 (2018), p 217.

⁸⁸⁷ NSW Law Reform Commission, *Review of the Guardianship Act 1987*, Report No 145 (2018), p 217 and p 220.

⁸⁸⁸ Submission 347, NSW Ombudsman, p 12.

exchange information with each other, and not just through the Public Advocate, to provide a seamless response to an incident that could affect somebody's safety and wellbeing.⁸⁸⁹

- 6.80** A Public Advocate would also have the power and authority to investigate cases of abuse and neglect of people with disability within community and family settings. Mr Kinmond, Deputy Ombudsman advised that:

About 80 per cent of the 200 matters [the NSW Ombudsman] received in the past two years involved abuse within family or community settings; they did not involve abuse at the hands of disability service providers. I have been in this business for a long time, and some of the worst matters I have seen I have witnessed over the last two years.

So there is an absolute need for this State to move on the issue of a public advocate ... so that abuse and neglect matters within community settings can be responded to.⁸⁹⁰

- 6.81** Mr Kinmond admitted that a shocking breadth and severity of neglect exists when he said, 'the levels of abuse in this wonderful State of New South Wales that are taking place ... has shocked me'.⁸⁹¹
- 6.82** Mr Kinmond clarified that the Public Advocate should be a State, and not Federal, office. This was because 'the State needs to take responsibility for the issue because it is a matter pertaining to the rights of citizens within the State of New South Wales'.⁸⁹²
- 6.83** The NSW Government stated that it is 'currently considering the recommendations made by the [Law Reform Commission], and how these gaps might be best addressed in the context of the NSW safeguarding system'.⁸⁹³

Committee comment

- 6.84** The committee recognises that while it is clear that the NDIS Commission plays an important oversight mechanism for participants of the NDIS, it is not as clear what oversight is in place for people receiving disability services outside of the Scheme.
- 6.85** The committee understands that the NSW Ombudsman is available for people receiving disability services outside of the Scheme who seek to make a complaint about their service, but it is unclear how the role of the NSW Ombudsman will change following the full implementation of the NDIS.
- 6.86** The committee recommends that the NSW Government provide more clarity on what options are available to people who are not NDIS participants and seek to make a complaint about disability services. We recommend that the NSW Government conducts on an ongoing basis

⁸⁸⁹ Submission 347, NSW Ombudsman, p 13.

⁸⁹⁰ Evidence, Mr Steve Kinmond, Deputy Ombudsman, and Community and Disability Services Commissioner, NSW Ombudsman, 2 October 2018, p 2.

⁸⁹¹ Evidence, Mr Steve Kinmond, Deputy Ombudsman, and Community and Disability Services Commissioner, NSW Ombudsman, 2 October 2018, p 5.

⁸⁹² Evidence, Mr Steve Kinmond, Deputy Ombudsman, and Community and Disability Services Commissioner, NSW Ombudsman, 2 October 2018, p 5.

⁸⁹³ Submission 313, NSW Government, p 29.

an education campaign to ensure that people receiving disability support outside of the NDIS are aware of the complaint mechanisms available to them.

Recommendation 22

That the NSW Government conducts on an ongoing basis an education campaign to ensure that people receiving disability support outside of the National Disability Insurance Scheme are aware of the complaint mechanisms available to them.

- 6.87** The committee is alarmed by the figures presented by the NSW Ombudsman in relation to matters involving people with disability and abuse within family and community settings. The committee strongly supports establishing a Public Advocate with the powers to investigate cases of potential abuse, neglect and exploitation of people with disabilities, as well as being the lead agency to liaise with other government and non-government stakeholders and coordinate responses of alleged abuse.
- 6.88** The committee believes that the Public Advocate should not replace, but complement the important work carried out by community and individual advocacy organisations and that of the NSW Ombudsman.
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Recommendation 23

That the NSW Government establish an Office of a Public Advocate.

Appendix 1 Submissions

No.	Author
1	Name suppressed
2	Name suppressed
3	Name suppressed
4	Ms Jodie Bailie
5	Name suppressed
6	Mrs Jane Balke Andersen
7	Name suppressed
8	Mrs Nicole McManus
9	Mrs Nicole Clarke
10	Northern Prosthetics
11	Name suppressed
12	Mrs Karen Hair
13	Mr Steven Leask
14	Name suppressed
15	Name suppressed
16	Mr Michael Sultana
17	Mrs Helen Bonynge
18	Mr Brett McPherson-Smith
19	Ms Manda Leong Johnston
20	Name suppressed
21	Mr Bjarke Aaso
22	Mr Anthony Nechvatal
23	Name suppressed
24	Mr Scott Collins
25	Name suppressed
26	Miss Kim Mcnamara
27	Name suppressed
28	Name suppressed
29	Name suppressed
30	Mrs Lorraine Tydeman
31	Name suppressed
32	Mrs Kelly Jones

No.	Author
33	Name suppressed
34	Confidential
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36	Name suppressed
37	Name suppressed
38	Mrs Dianne Butler
39	Name suppressed
40	Mrs Betty Slatyer
41	Name suppressed
42	Name suppressed
43	Name suppressed
44	Name suppressed
45	Mrs Katrina Clark
46	Name suppressed
47	Mrs Janene Theol
48	Mrs Karen Cartwright
49	Ms Kathleen Lowry
50	Confidential
51	Mr Patrick Hayes
52	Miss Nicole Lu
53	Mr Phillip Sanchez
54	Name suppressed
55	Name suppressed
56	Name suppressed
57	Mrs Dianne Marshall
58	Name suppressed
59	Confidential
60	Confidential
61	Name suppressed
62	Mr Bruce Wotton
63	Confidential
64	Mrs Michele Nichols
65	Name suppressed
65a	Name suppressed
66	Name suppressed

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68	Confidential
69	Mrs Anita Leembruggen
70	Name suppressed
71	Name suppressed
72	Name suppressed
73	Name suppressed
74	Mrs Andrea Watts
75	Ms Belinda Lockwood
76	Miss Gabrielle Ringger
77	Ms Belinda Dixon
78	Name suppressed
79	Name suppressed
80	Ms Carolyn Randle
81	Ms Hayley Nicholls
82	Ms Cheryl Sagar
83	Mr Lee and Mrs Penny Flowers
83a	Mr Lee and Mrs Penny Flowers
84	Name suppressed
85	Mrs Susan Munro
86	Name suppressed
87	Name suppressed
88	Name suppressed
89	Name suppressed
90	Mrs Sandy Golder
91	Name suppressed
92	Confidential
93	Name suppressed
94	Mr Andrew Brak
95	Name suppressed
96	Ms Emily Ward
97	Name suppressed
98	Name suppressed
99	Mr John Burchell
100	Silverlea Services

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103	Name suppressed
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105	Confidential
106	Name suppressed
107	Name suppressed
107a	Name suppressed
108	Name suppressed
109	Ms Breannon Little
110	Ms Madeleine Keaton
111	Ms Sharon Grocott
112	Name suppressed
113	Name suppressed
114	Name suppressed
115	Autism Advisory and Support Service
116	Mrs Cindy Harrison
117	Name suppressed
118	Name suppressed
119	Mrs Dale Chapple
120	NSW Council for Intellectual Disability Advocacy Group
121	Motor Neurone Disease Association of NSW
122	Name suppressed
123	One Door Mental Health
124	Name suppressed
125	Name suppressed
126	Name suppressed
127	Dr Sushil Anand
128	Mr Gregory Callow
129	Name suppressed
130	Name suppressed
131	Mr Andrew Blair
132	Mr Othmane Hamidi
133	Confidential
134	Name suppressed

No.	Author
135	Mrs Mandy Schroder
136	Name suppressed
137	Mrs Louise Williams-Ponce
138	Public Interest Advocacy Centre (PIAC)
139	Name suppressed
140	Mr Wayne Wright
141	Name suppressed
142	Ms Janet Hadson
143	Name suppressed
144	Ms Elizabeth Wall Smith
145	Name suppressed
146	Name suppressed
147	Name suppressed
148	NSW Council for Intellectual Disability
149	Name suppressed
150	Name suppressed
151	Northcott
152	NSW Council of Social Service (NCOSS)
153	Disability Advocacy NSW
154	Name suppressed
155	Mr Gabriel Van Duinen
156	Confidential
157	Mrs Kathy Manning
158	Ms Jane Scott
159	Name suppressed
160	Royal Australasian College of Physicians
161	Mr Bernard Wilkat
162	Voices for Central Coast Disability
163	Ms Lorraine Diaz
164	The Ella Centre
165	Mrs Cheryl McDonnell
166	Ms Cheryl Gardner
167	Name suppressed
168	Ms Christine Read
169	Name suppressed

No.	Author
170	Muscular Dystrophy NSW
171	Ms Miriam de Vries
172	Family Planning NSW
173	The Mai-Wel Group
174	Name suppressed
175	Centre for Disability Research and Policy
176	Name suppressed
177	Self Help for Hard of Hearing People (Hearing Matters Australia)
178	Independent Audiologists Australia Inc
179	Ms Vicky Carter
180	Mrs Johanna Hovian
181	Name suppressed
182	Name suppressed
183	Mr Greg Franklin
184	Name suppressed
185	Name suppressed
186	Rehab Health and Fitness Australia
187	Name suppressed
188	Confidential
189	Confidential
190	Name suppressed
191	Physical Disability Council of NSW
192	Confidential
193	Multicultural Disability Advocacy Association of NSW
194	Mr Dave Young
195	Department of Developmental Disability Neuropsychiatry (3DN)
196	Ms Wendy Cuneo
197	Ms Linda Summer
198	Mr Peter Bennett
199	Greenacres
200	Australian Association of Developmental Disability Medicine Inc.
201	Name suppressed
202	Name suppressed
203	Ms Nerida Jackson
204	Summer Foundation

No.	Author
205	Name suppressed
206	Mr Steve Ryan
207	Ms Linda McCourt
207a	Ms Linda McCourt
208	Name suppressed
209	New South Wales Nurses and Midwives' Association (in conjunction with the Australian Nursing and Midwifery Federation)
210	Ms Angele Van Den Heuvel
211	Name suppressed
212	Mr Ben Ryan
213	Name suppressed
214	Mr Daniel Ryan
215	Name suppressed
216	Name suppressed
217	Name suppressed
218	Name suppressed
219	Name suppressed
220	Silverlea Early Childhood Services
221	Mr David Peachey
222	Ms Dianne Chain
223	Ms Ya'el Frisch
224	Ms Maria Munoz
225	Mental Health Coordinating Council
226	Paraplegic and Quadriplegic Association of NSW (ParaQuad NSW)
227	Ability Technology
228	Mr Peter Reeves
229	Mrs Luisa Rojas
230	Mr Gary Dunne
231	Mrs Kristy Brennen
232	Ms Natalie Atherton
233	Name suppressed
234	Name suppressed
235	Confidential
236	Aged Persons Younger People with a Disability and Carers Forum
237	Huntingtons NSW & ACT

No.	Author
238	NDIS Peer Support Group Lawson
239	Mrs Melinda Adderley
240	Name suppressed
241	Prospect Farm Accommodation
242	Multiple Sclerosis Australia
243	Ms Amanda Brodbeck and Ms Catherine Rush
244	Empowerability Inc
245	The Business Centre
246	Name suppressed
247	Mr Steve Forsyth
248	Ms Sharon Dal Broi
249	Speech Pathology Australia
250	Community Industry Group
251	Mr Adam Johnston
251a	Mr Adam Johnston
252	Flourish Australia
253	Regal Home Health
254	Young People in Nursing Homes National Alliance
255	Name suppressed
256	Ms Jennie Fenton
257	Human Rights Watch Australia
258	National Disability Services
259	Mr Russell Bonney
260	Royal Institute for Deaf and Blind Children
261	Early Childhood Intervention Australia
262	Family Advocacy
263	Confidential
264	Confidential
265	Hunter Prelude
266	Name suppressed
267	Confidential
268	The Gabrielle Centre for Children
269	Mr Peter Fletcher
270	Mrs Jacqui Funnell
271	Central and Eastern Sydney Primary Health Network

No.	Author
272	Name suppressed
273	Confidential
274	Name suppressed
275	Carers NSW
276	Settlement Services International
277	Sylvanvale Foundation
278	Women's Legal Service NSW
279	Ms Judith Nicholas
280	Name suppressed
281	Ms Helen Julian
282	Mrs Veronica Miller
283	Mr Martin McNally
284	Macarthur Disability Services Ltd
285	Community Restorative Centre (CRC)
286	United Voice NSW Branch
287	Confidential
288	Ms Debra Tate
289	Ms Brigitte Krstanoski
290	Occupational Therapy Australia
291	Mental Health Carers NSW Inc.
292	Dietitians Association of Australia
293	Illawarra Disability Alliance
294	NSW Disability Advocacy Alliance
295	Information on Disability & Education Awareness Services
296	Spinal Cord Injuries Australia
297	Australian Lawyers Alliance
298	Mission Australia
299	Benevolent Society
300	Being
301	Community Transport Organisation
302	Ms Linda Bobeth
303	Name suppressed
304	Australian Services Union NSW and ACT Services Branch
305	Confidential
306	Women's Domestic Violence Court Advocacy Service NSW Inc.

No.	Author
307	Intellectual Disability Rights Service
308	New South Wales Women's Alliance
309	Confidential
310	Name suppressed
311	Name suppressed
312	Mr Chris Brockway
313	NSW Government
314	Dr Arthur Chesterfield-Evans
315	Ms Raychelle Sullings
316	Brain Injury Rehabilitation Service, Westmead Hospital
317	Mental Health Review Tribunal
318	Australian College of Nursing
319	Name suppressed
320	Ms Judith Szalontai
321	Name suppressed
322	Name suppressed
323	Name suppressed
324	Name suppressed
325	Mr john neve
326	Name suppressed
327	Mr Brian Algeo
328	Ms Jacqueline Whittaker
329	People with Disability Australia
330	Confidential
331	Ms Philomena Macdonald
332	Name suppressed
333	Mr Bruce Young-Smith
334	Name suppressed
335	Name suppressed
336	Name suppressed
337	Name suppressed
338	Mr Adam Hewber
339	Community Living Association Inc
340	Name suppressed
341	Name suppressed

No.	Author
342	National Disability Insurance Agency
343	Public Service Association of NSW and Community and Public Sector Union NSW
344	Name suppressed
345	Name suppressed
346	Refugee Council of Australia
347	NSW Ombudsman
348	Cranes, Grafton, NSW
349	Mr Sam Pavone
350	Australian Psychological Society
351	Legal Aid NSW
352	Uniting

Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Monday, 17 September 2018 Jubilee Room, Parliament House, Sydney	Mr Tim Reardon	Secretary, Department of Premier and Cabinet
	Mr Michael Coutts-Trotter	Secretary, Department of Family and Community Services
	Ms Elizabeth Koff	Secretary, NSW Health
	Mr Peter Severin	Acting Secretary, Department of Justice
	Ms Vicki Rundle	Deputy Chief Executive Officer – Government, Communications and Stakeholder Engagement
	Mr Scott McNaughton	General Manager – Government, National Disability Insurance Agency
	Ms Chris Faulkner	General Manager – Advisory Services, National Disability Insurance Agency
	Ms Stephanie Gunn	General Manager – Critical Services Issue Response, National Disability Insurance Agency
	Mr Graeme Head	Commissioner, NDIS Quality and Safeguards Commission
	Ms Samantha Taylor	Registrar, NDIS Quality and Safeguards Commission
	Ms Miranda Bruyniks	Complaints Commissioner, NDIS Quality and Safeguards Commission
	Mr Tony Pooley	Senior Manager, State Operations, National Disability Services
	Ms Karen Stace	NSW Sector Operations Manager, National Disability Services
	Ms Therese Sands	Co-Chief Executive Officer, People with Disability Australia
	Cr Romola Hollywood	Director Policy and Advocacy, People with Disability Australia
Ms Amber Curry	NDIS participant	
Ms Alisa Coleman	NDIS participant	

Date	Name	Position and Organisation
	Ms Melinda Paterson	NDIS participant
	Ms Katerina Athanassiou	Individual not covered by the NDIS
	Ms Jennifer Clarke	Individual not covered by the NDIS
	Ms Kerrie Tyler	Individual not covered by the NDIS
	Mr Scott Rand	NDIS carer
	Ms Ann Ridd	NDIS carer
	Ms Karen Wakely	NDIS carer
	Dr Santhi Chalasani	NDIS carer
Tuesday 2 October 2018 Macquarie Room, Parliament House, Sydney	Mr Steve Kinmond	Community and Disability Services Commissioner/Deputy Ombudsman, NSW Ombudsman
	Ms Kathryn McKenzie	Director, Disability, NSW Ombudsman
	Ms Anita Le Lay	Head of Disability, Uniting
	Ms Katherine Stone	Practice Lead Disability, Uniting
	Dr Tom McClean	Head of Uniting's Centre for Research, Innovation and Advocacy, Uniting
	Mr Luke Butcher	Area Manager (Western NSW and Special Projects), Mission Australia
	Ms Jo-Anne Hewitt	Executive Director Disability, The Benevolent Society
	Ms Yvonne Keane	CEO, Early Childhood Intervention Australia
	Mr Enis Jusufspahic	National Manager of Sector Development, Early Childhood Intervention Australia
	Ms Elena Katrakis	CEO, Carers NSW
	Ms Sarah Judd-Lam	Manager, Policy and Research, Carers NSW
	Mr Jonathan Harms	CEO, Mental Health Carers NSW
	Ms Peta Smit-Colbran	Policy Officer, Mental Health Carers NSW

Date	Name	Position and Organisation
	Ms Elyse Cain	Advocacy Manager , NSW Council of Social Service
	Ms Ya'el Frisch	Project Officer Advocacy, NSW Council of Social Service
	Ms Serena Ovens	Executive Officer, Disability Advocacy Alliance
	Mr Matthew Bowden	Co-Chief Executive Officer, People with Disability Australia, Disability Advocacy Alliance
	Mr Jim Simpson	Senior Advocate, NSW Council for Intellectual Disability
	Mr David Briggs	Advocacy and Policy Officer, Council for Intellectual Disability
	Mr Anthony Mulholland	Member, NSW Council for Intellectual Disability Advocacy Group
	Ms Ellen Small	Policy and Project Officer, Physical Disability Council of NSW
	Ms Serena Ovens	Executive Officer, Physical Disability Council of NSW
	Mr Tony Jones	Policy and Advocacy Manager, Spinal Cord Injuries Australia
	Mr Greg Killeen	Senior Policy and Advocacy Officer, Spinal Cord Injuries Australia
	Professor Graham Vimpani	Fellow, Royal Australasian College of Physicians
	Dr Jacqueline Small	Fellow, Royal Australasian College of Physicians
	Ms Imelda Todd	Industry Adviser, Disability, Occupational Therapy Australia
	Dr Kim Bulkeley	Industry Adviser, Disability, Occupational Therapy Australia
	Mr Dennis Ravlich	Manager, Member Industrial Services Team, NSW Nurses and Midwives Association
	Mr Marc Hopkins	Senior Professional Officer, NSW Nurses and Midwives Association

Date	Name	Position and Organisation
	Ms Nola Scilinato	Organiser, FACS and Disability Sector, NSW Nurses and Midwives Association
	Mr Troy Wright	Assistant General Secretary, Public Service Association Branch Secretary, Community and Public Sector Union
	Ms Naomi Fraser	Respite Client Liaison Officer, ADHC, Public Service Association/ Community and Public Sector Union
	Ms Shelley Odewhan	Student Access and Inclusion Project Officer, Southern Cross University, Public Service Association/ Community and Public Sector Union
	Ms Natalie Lang	Branch Secretary, Australian Services Union
	Mr Ned Lambley	Disability Support Worker, Hunter Region, Australian Services Union
	Mr Tim Reardon	Secretary, Department of Premier and Cabinet
	Mr Michael Coutts-Trotter	Secretary, Department of Family and Community Services
	Ms Elizabeth Koff	Secretary, NSW Health
	Mr Peter Severin	Acting Secretary, Department of Justice

Appendix 3 Minutes

Minutes no. 52

Thursday 21 June 2018

Portfolio Committee No. 2

Members' Lounge, Parliament House, Sydney at 9 am

1. Members present

Mr Donnelly, *Chair*

Mr Green, *Deputy Chair*

Mrs Houssos

Mr MacDonald

Dr Phelps

Mrs Taylor

Ms Walker (from 9.03 am)

2. Consideration of terms of reference

The Chair tabled a letter proposing the following self-reference:

Inquiry into the National Disability Insurance Scheme in New South Wales

That Portfolio Committee No. 2 – Health and Community Services inquire into and report on the provision of disability services across New South Wales, and in particular:

- (a) the implementation of the National Disability Insurance Scheme and its success or otherwise in providing choice and control for people with disability,
- (b) the experience of people with complex care and support needs in developing, enacting and reviewing NDIS plans,
- (c) the accessibility of early intervention supports for children,
- (d) the effectiveness and impact of privatising government-run disability services,
- (e) the provision of support services, including accommodation services, for people with disability regardless of whether they are eligible or ineligible to participate in the National Disability Insurance Scheme,
- (f) the adequacy of current regulations and oversight mechanisms in relation to disability service providers
- (g) workforce issues impacting on the delivery of disability services,
- (h) challenges facing disability service providers and their sustainability,
- (i) incidents where inadequate disability supports result in greater strain on other community services, such as justice and health services,
- (j) policies, regulation or oversight mechanisms that could improve the provision and accessibility of disability services across New South Wales, and
- (k) any other related matter.

Mrs Houssos moved: That the committee adopt the terms of reference.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Green, Mrs Houssos, Ms Walker

Noes: Mr MacDonald, Dr Phelps, Mrs Taylor

Question resolved in the affirmative.

3. Conduct of the inquiry into the National Disability Insurance Scheme in New South Wales

3.1 Closing date for submissions

Resolved, on the motion of Mrs Houssos: That the closing date for submissions be six weeks after the committee has agreed to the Chair's stakeholder list.

3.2 Stakeholder list

Resolved, on the motion of Mr MacDonald: That the secretariat circulate to members the Chair's proposed list of stakeholders to provide them with the opportunity to amend the list or nominate additional stakeholders, and that the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

3.3 Advertising

The committee noted that the standard practice is for all inquiries to be advertised via Twitter, Facebook, stakeholder letters and a media release distributed to all media outlets in New South Wales.

3.4 Hearing dates

Resolved, on the motion of Mr MacDonald: That the committee hold hearings in September/October, the dates of which are to be determined by the Chair after consultation with members regarding their availability.

4. Adjournment

The committee adjourned at 9.09 am *sine die*.

Alex Stedman

Clerk to the Committee

Minutes No. 53

Monday 25 June 2018

Portfolio Committee No. 2 - Health and Community Services

Clarence Valley Aboriginal Healing Centre, Grafton at 9.51 am

1. Members present

Mr Donnelly, *Chair*

Mr Green, *Deputy Chair*

Dr Faruqi

Mrs Houssos

Mr MacDonald

Dr Phelps

Mrs Taylor

2. Draft minutes

Resolved, on the motion of Mr Green: That draft minutes 50 and 51 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 17 May 2018 – Email from Mr Dale Hansson, World Breastfeeding Trends Initiative to the secretariat, advising of its report and seeking support for the initiative
- 1 June 2018 – Email from Mr Grant Mistler to the secretariat concerning accreditation at Phoebe House Inc regarding the inquiry into drug rehabilitation services
- 6 June 2018 – Email from Mr Ross Broad, Assistant Director, Department of Health and Human Services, Victoria to secretariat advising the department is not able to assist the committee with its inquiry into drug rehabilitation services.

4. Inquiry into the implementation of the National Disability Insurance Scheme and the provision of disability services in New South Wales

Resolved, on the motion of Mrs Houssos: That the title and terms of reference for the inquiry be amended by inserting 'and the provision of disability services' after 'National Disability Insurance Scheme'.

5. Inquiry into the provision of drug rehabilitation services in regional, rural and remote New South Wales**5.1 Answers to questions on notice and supplementary questions**

The committee noted that answers to questions on notice and additional information from the following organisations were published by the committee clerk under the authorisation of the resolution appointing the committee:

- NSW Health, received 8 May 2018
- Directions Health Services, received 18 May 2018
- Legal Aid NSW, received 5 June 2018.

5.2 Return of answers to questions on notice

Resolved, on the motion of Dr Phelps: That witnesses appearing at the hearings in Grafton and Lismore on 25 and 26 June 2018 be requested to return answers to questions on notice and supplementary questions within 10 days.

5.3 Invitation to witness – 3 July 2018

Resolved, on the motion of Mr Green: That Calvary Riverina Drug and Alcohol Centre, Calvary Riverina Hospital be invited to give evidence at the public hearing on Tuesday 3 July 2018.

5.4 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Wayne Jones, Chief Executive, Northern NSW Local Health District
- Ms Dee Robinson, General Manager, Mental Health, Drug and Alcohol Services, Northern NSW Local Health District
- Mr Mitch Dobbie, Manager, Tweed/Byron Drug and Alcohol Services
- Ms Corinne Maynard, Richmond/Clarence Drug and Alcohol Services.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Trish Collie, Drug and alcohol addiction specialist, Bulgarr Ngaru Medical Aboriginal Corporation
- Mr Trevor Kapeen, Drug and alcohol addiction worker, Bulgarr Ngaru Medical Aboriginal Corporation.

Dr Collie tendered the following document:

- Brochure, Stories about addiction and getting help, Bulgarr Ngaru Medical Aboriginal Corporation.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Sonya Mears-Lynch, Program Manager – Reconnect, Getting it Together and Youth on Track, Social Futures
- Ms Melinda Plesman, Family Referral Service Officer, Homelessness Youth Assistance Program, Clarence Valley, Social Futures.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Dr Robbie Lloyd, Community Relationships Manager, Port Macquarie Community College.

The evidence concluded and the witness withdrew.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Des Schroder, Director, Environment, Planning and Community, Clarence Valley Council
- Ms Sharon Moore, Project Officer, Clarence Valley Council
- Ms Sarah Nash, Project Officer, Clarence Valley Council.

Mr Schroder tendered the following document:

- Clarence Valley Council response to parliamentary inquiry into regional and remote rehabilitation services, dated 25 June 2018.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Janelle Brown, Manager, Clarence Valley Aboriginal Healing Centre
- Ms Julie Perkins, Chairperson, Clarence Valley Aboriginal Healing Centre.

Ms Brown tendered the following documents:

- Brochure, Clarence Valley Healing Centre
- Brochure, Healing Garden, Clarence Valley Aboriginal Healing and Support Service.

The evidence concluded and the witnesses withdrew.

The public and the media withdrew.

The public hearing concluded at 3:26 pm.

6. Tour of Clarence Valley Aboriginal Healing Centre

The committee conducted a tour of the Clarence Valley Aboriginal Healing Centre, guided by Ms Janelle Brown, Manager, Clarence Valley Aboriginal Healing Centre.

7. Adjournment

The committee adjourned at 3.45 pm, until 9.00 am, Tuesday 26 June 2018, Fountain Room, Lismore City Hall, 1 Bounty Street, Lismore (public hearing).

Samuel Griffith
Committee Clerk

Minutes no. 62

Monday, 17 September 2018

Portfolio Committee No. 2 – Health and Community Services
Jubilee Room, Parliament House, Sydney, at 9.04 am

1. Members present

Mr Donnelly, *Chair*

Mr Green, *Deputy Chair*

Mr Farlow

Mrs Houssos (via teleconference from 9.04 am to 9.19 am)

Mr Mallard
Mrs Taylor (until 4.15 pm)
Ms Walker

2. Previous minutes

Resolved, on the motion of Mr Green: That draft minutes nos. 60 and 61 be confirmed.

3. Correspondence

The Committee noted the following items of correspondence:

Received

- 25 June 2018 – Email from the Office of the Hon Natasha Maclaren-Jones MLC, Government Whip to the secretariat, advising that the Hon Scott Farlow will substitute the Hon Peter Phelps for the duration of the inquiry
- 25 June 2018 – Email from the Office of the Hon Natasha Maclaren-Jones MLC, Government Whip to the secretariat, advising that the Hon Shayne Mallard will substitute Mr Scot MacDonald for the duration of the inquiry
- 22 August 2018 – Email from Mr Larry Pierce, Chief Executive Officer, Network of Alcohol and other Drug Agencies (NADA) to the Chair, regarding NADA's endorsement of the Committee's report on the provision of drug rehabilitation services in regional, rural and remote New South Wales
- 28 August 2018 – Email from Ms Sue Batley, Executive Assistant, Greenacres Disability Services, to the secretariat, advising their support for the Community Industry Group's submission to the NDIS inquiry
- 3 September 2018 – Email from Mr Jim Simpson, Senior Advocate, NSW Council for Intellectual Disability (CID) to the Chair and Deputy Chair, requesting that both the NSW CID and their Advocacy Group appear as witnesses for the NDIS inquiry
- 9 September 2018 – Email from Ms Jodie Bailie to the secretariat, declining invitation to appear as a witness at hearing on 17 September 2018
- 9 September 2018 – Email from Mr Bruce Wotton to the secretariat, declining invitation to appear as a witness at hearing on 17 September 2018.

4. Inquiry into the National Disability Insurance Scheme in New South Wales

4.1 Approach to the publication of submissions

The committee noted that:

- submissions have been forwarded to members with any proposed redactions (whether requested by the author or identified by the secretariat) highlighted for their information and consideration
- where a submission author has requested for their submission to be made public, only significant adverse mention and/or the names of third party individuals have been highlighted for proposed redaction.

4.2 Public submissions

The committee noted the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 4, 6, 8, 10, 13, 16-19, 22, 24, 26, 30, 32, 38, 40, 45, 47-49, 51-53, 57, 62, 64, 67, 69, 74-77, 80, 82, 85, 90, 94, 96, 100-101, 104, 109-111, 115-116, 119-121, 123, 127-128, 131-132, 135, 137-138, 140, 142, 144, 148, 151-153, 155, 157-158, 160-166, 171-173, 175, 177-180, 183, 186, 191, 193-196, 198-200, 203-204, 206-207, 209-210, 212, 214, 220-228, 231-232, 236-239, 241-245, 247-250, 251a, 252-254, 256-262, 265, 268, 270-271, 275-279, 284-286, 289-295, 296-300, 304, 306-308, 313-318, 320, 325, 327-329, 331, 333, 338-339, 342-343 and 346-348.

4.3 Partially confidential submissions

Name suppressed submissions

Resolved, on the motion of Mr Farlow: That the committee authorise the publication of submission nos. 3, 5, 7, 11, 14-15, 20, 23, 25, 27-29, 33, 36-37, 39, 41, 43-44, 46, 54-55, 58, 61, 65, 66, 70-73, 78-79, 84, 86-87, 93, 95, 98, 106-108, 112, 117-118, 122, 124-125, 129-130, 134, 141, 143, 145-147, 150, 169, 174, 181, 184, 187, 190, 202, 208, 211, 213, 216-217, 219, 233-234, 246, 272, 274, 280, 303, 310-311, 319, 321-323, 326, 335, 337 and 344-345 with the exception of the author's name, which is to remain confidential, as per the request of the author.

Submissions to be considered for partial confidentiality (at the author's request)

Resolved, on the motion of Mr Farlow: That the committee authorise the publication of submission nos. 1, 2, 9, 12, 31, 42, 56, 65a, 81, 83, 83a, 88-89, 91, 99, 102, 103, 113-114, 126, 136, 139, 149, 154, 159, 167-168, 170, 176, 182, 197, 205, 218, 230, 240, 255, 266, 281-283, 288, 312, 324, 332, 334, 336, and 340-341 with the exception of the author's name and/or other identifying or sensitive information, which is to remain confidential, as per the request of the author.

Submissions to be considered for partial confidentiality (as identified by the secretariat)

Resolved, on the motion of Mrs Taylor: That the committee authorise the publication of submission no. 185, with the exception of:

- the submission author's name, which is to remain confidential, as per the request of the author
- identifying or sensitive information and/or potential adverse mention regarding third parties, which is to remain confidential, as per the recommendation of the secretariat.

Resolved, on the motion of Mrs Taylor: That the committee authorise the publication of submission no. 201, with the exception of:

- the submission author's name and the name of his psychologist, which is to remain confidential, as per the request of the author
- the names of other third party individuals, which is to remain confidential, as per the recommendation of the secretariat.

4.4 Return of answers to questions on notice

Resolved, on the motion of Mr Mallard: That witnesses be requested to return answers to questions on notice and supplementary questions within 14 calendar days of the date on which questions are forwarded to the witness.

4.5 Requests for *in camera* hearings and support persons

Resolved, on the motion of Mr Farlow: That the committee agree to requests from individuals with a disability who are appearing as a witness:

- to give evidence *in camera*, on the understanding that their transcript may be published with identifying information redacted
- to be accompanied by a support person when giving evidence, on the understanding that the support person cannot give evidence on the witness' behalf.

Resolved, on the motion of Mr Farlow: That the evidence of submission author no. 108 on 17 September 2018 be heard *in camera*.

4.6 Requests not to be filmed or photographed

Resolved, on the motion of Mr Green: That the committee agree to requests from Ms Melinda Paterson and Ms Katerina Athanassiou not to be filmed or photographed while they are giving evidence, and to advise the media and public gallery accordingly.

4.7 Public hearing

Witnesses, the public and the media were admitted.

Mrs Houssos joined the meeting.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Tim Reardon, Secretary, Department of Premier and Cabinet
- Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services
- Ms Elizabeth Koff, Secretary, NSW Health
- Mr Peter Severin, Acting Secretary, Department of Justice.

Mr Green left the meeting.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Vicki Rundle, Deputy Chief Executive Officer, Government, Communications and Stakeholder Engagement
- Mr Scott McNaughton, General Manager, Government, National Disability Insurance Agency
- Ms Chris Faulkner, General Manager, Advisory Services, National Disability Insurance Agency
- Ms Stephanie Gunn, General Manager, Critical Services Issue Response, National Disability Insurance Agency.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Graeme Head, Commissioner, NDIS Quality and Safeguards Commission
- Ms Samantha Taylor, Registrar, NDIS Quality and Safeguards Commission
- Ms Miranda Bruyniks, Complaints Commissioner, NDIS Quality and Safeguards Commission.

The evidence concluded and the witnesses withdrew.

Mr Green re-joined the meeting.

The following witnesses were sworn and examined:

- Mr Tony Pooley, Senior Manager, State Operations, National Disability Services
- Ms Karen Stace, NSW Sector Operations Manager, National Disability Services
- Ms Therese Sands, Co-Chief Executive Officer, People with Disability Australia
- Cr Romola Hollywood, Director Policy and Advocacy, People with Disability Australia.

The evidence concluded and the witnesses withdrew.

Mrs Taylor left the meeting.

4.8 *In camera* hearing

The committee previously resolved to take *in camera* evidence from submission author no. 108.

The committee proceeded to take *in camera* evidence.

Persons present other than the committee: Ms Rebecca Main, Ms Rhia Victorino, Ms Helen Hong, Ms Elise Williamson, Hansard reporters, and Witness A's support person.

The following witness was sworn and examined:

- Witness A.

The evidence concluded and the witnesses withdrew.

4.9 Public hearing

The following witnesses were sworn and examined:

- Ms Amber Curry, NDIS participant
- Ms Alisa Coleman, NDIS participant
- Ms Melinda Paterson, NDIS participant.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Katerina Athanassiou, individual not covered by the NDIS
- Ms Jennifer Clarke, individual not covered by the NDIS (via teleconference)
- Ms Kerrie Tyler, individual not covered by the NDIS (via teleconference).

Mrs Taylor re-joined the meeting.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Scott Rand, NDIS carer
- Ms Karen Wakely, NDIS carer
- Dr Santhi Chalasani, NDIS carer
- Ms Anne Ridd, NDIS carer (via teleconference).

The evidence concluded and the witnesses withdrew.

The public and media withdrew.

The public hearing concluded at 4.52 pm.

4.10 Partially confidential submissions

Submissions to be considered for partial confidentiality (as identified by the secretariat)

Resolved, on the motion Mr Green: That the committee authorise the publication of submission nos. 21, 35, 97, 229 and 251 with the exception of identifying or sensitive information, which is to remain confidential, as per the request of the secretariat.

4.11 Confidential submissions

Resolved, on the motion of Mr Farlow: That the committee keep submission nos. 50, 59-60, 63, 68, 92, 105, 133, 156, 188-189, 192, 235, 263-264, 267, 273, 305, 309 and 330 confidential, as per the request of the author.

Resolved, on the motion of Mr Farlow: That the committee keep submission no. 34 confidential, as per the recommendation of the secretariat.

4.12 Submissions from other jurisdictions

The committee noted that the following submissions were received from other jurisdictions: submission nos. 318-328 and 330-339.

4.13 Publication of the 'Guidelines for submission authors'

Resolved, on the motion of Mr Green: That the document 'Guidelines for submission authors' be published on the inquiry webpage to assist individuals making a submission.

4.14 Referral of complaints to the NDIS Quality and Safeguards Commission

Resolved, on the motion of Mrs Houssos: That the following text be published on the inquiry webpage to assist individuals seeking to make a complaint about their experience with the NDIS:

NDIS Quality and Safeguards Commission

The NDIS Quality and Safeguards Commission is a new independent agency established to improve the quality and safety of NDIS supports and services. As part of its functions, the Commission will respond to concerns, complaints and reportable incidents, including abuse and neglect of NDIS participants.

The Commission is now operating for people in New South Wales. Complaints can be made by:

- *phoning 1800 035 544 (free call from landlines) or TTY 133 677. Interpreters can be arranged.*
- *National Relay Service and ask for 1800 035 544.*
- *Completing a complaint contact form.*

Further information about the Commission can be found on their website.

5. Adjournment

The committee adjourned at 4.56 pm, until Tuesday 2 October 2018 (public hearing in Sydney for the inquiry into the implementation of the National Disability Insurance Scheme in New South Wales).

Rhia Victorino

Clerk to the Committee

Minutes no. 63

Tuesday, 2 October 2018

Portfolio Committee No 2 – Health and Community Services

Macquarie Room, Parliament House, 9.01 am

1. Members present

Mr Donnelly, *Chair*

Mr Farlow

Mrs Houssos

Mr Mallard (from 10.53 am)

Mrs Taylor (until 4.02 pm)

Ms Walker (from 9.38 am until 5.35 pm)

2. Apologies

Mr Green, *Deputy Chair*

3. Previous minutes

Resolved, on the motion of Mr Farlow: That draft minutes no. 62 be confirmed.

4. Correspondence

The Committee noted the following items of correspondence:

Received

- 14 September 2018 - Email from Ms Tenille Hawes, CEO of Silverlea Early Childhood Services, to the secretariat, declining invitation to be a witness at hearing on 2 October 2018
- 25 September 2018 – Email from Ms Vicki Rundle, Deputy CEO, National Disability Insurance Agency, to the secretariat, requesting that the NDIA appear at the hearing on 2 October 2018
- 28 September 2018 – Email from Mr David Briggs, Advocacy and Policy Officer, NSW Council for Intellectual Disability, to the secretariat, requesting that the organisation be able to take photos of the hearing on 2 October 2018.

5. Inquiry into the National Disability Insurance Scheme in New South Wales

5.1 Request to take photographs

Resolved, on the motion of Mrs Houssos: That the committee agree to the NSW Council for Intellectual Disability's request to take photographs of their members and staff giving evidence at the hearing and that the NSW Council for Intellectual Disability sign and return the relevant media guidelines.

5.2 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Steve Kinmond, Community and Disability Services Commissioner and Deputy Ombudsman, NSW Ombudsman
- Ms Kathryn McKenzie, Director, Disability, NSW Ombudsman

The evidence concluded and the witnesses withdrew.

Ms Walker joined the meeting.

The following witnesses were sworn and examined:

- Ms Anita Le Lay, Head of Disability, Uniting
- Ms Katherine Stone, Practice Lead Disability, Uniting
- Dr Tom McClean, Head of Uniting's Centre for Research, Innovation and Advocacy, Uniting
- Mr Luke Butcher, Area Manager (Western NSW and Special Projects), Mission Australia
- Ms Jo-Anne Hewitt, Executive Director Disability, The Benevolent Society

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Yvonne Keane, CEO, Early Childhood Intervention Australia
- Mr Enis Jusufspahic, National Manager of Sector Development, Early Childhood Intervention Australia

Mr Mallard joined the meeting.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Elena Katrakis, CEO, Carers NSW
- Ms Sarah Judd-Lam, Manager, Policy and Research, Carers NSW
- Mr Jonathan Harms, CEO, Mental Health Carers NSW
- Ms Peta Smit-Colbran, Policy Officer, Mental Health Carers NSW

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Elyse Cain, Advocacy Manager, NSW Council of Social Service
- Ms Ya'el Frisch, Project Officer Advocacy, NSW Council of Social Service
- Ms Serena Ovens, Executive Officer, Disability Advocacy Alliance
- Mr Matthew Bowden, Co-Chief Executive Officer, People with Disability Australia, Disability Advocacy Alliance

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Jim Simpson, Senior Advocate, NSW Council for Intellectual Disability
- Mr David Briggs, Advocacy and Policy Officer, Council for Intellectual Disability
- Mr Anthony Mulholland, Member, NSW Council for Intellectual Disability Advocacy Group

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Ellen Small, Policy and Project Officer, Physical Disability Council of NSW
- Ms Serena Ovens, Executive Officer, Physical Disability Council of NSW
- Mr Tony Jones, Policy and Advocacy Manager, Spinal Cord Injuries Australia
- Mr Greg Killeen, Senior Policy and Advocacy Officer, Spinal Cord Injuries Australia

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Prof Graham Vimpani, Fellow, Royal Australasian College of Physicians
- Dr Jacqueline Small, Fellow, Royal Australasian College of Physicians
- Ms Imelda Todd, Industry Adviser, Disability, Occupational Therapy Australia
- Dr Kim Bulkeley, Industry Adviser, Disability, Occupational Therapy Australia

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Dennis Ravlich, Manager, Member Industrial Services Team, NSW Nurses and Midwives Association
- Mr Marc Hopkins, Senior Professional Officer, NSW Nurses and Midwives Association
- Ms Nola Scilinato, Organiser, FACS and Disability Sector, NSW Nurses and Midwives Association
- Mr Troy Wright, Assistant General Secretary, Public Service Association Branch Secretary, Community and Public Sector Union
- Ms Naomi Fraser, Respite Client Liaison Officer, ADHC, Public Service Association/ Community and Public Sector Union
- Ms Shelley Odewhan, Student Access and Inclusion Project Officer, Southern Cross University, Public Service Association/ Community and Public Sector Union
- Ms Natalie Lang, Branch Secretary, Australian Services Union
- Mr Ned Lambley, Disability Support Worker, Hunter Region, Australian Services Union

Mrs Taylor left the meeting.

The evidence concluded and the witnesses withdrew.

The following witnesses were examined:

- Mr Tim Reardon, Secretary, Department of Premier and Cabinet
- Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services
- Ms Elizabeth Koff, Secretary, NSW Health
- Mr Peter Severin, Acting Secretary, Department of Justice

The evidence concluded and the witnesses withdrew.

Ms Walker left the meeting.

The public and media withdrew.

The public hearing concluded at 5.37 pm.

5.3 Public submissions

Resolved, on the motion of Mr Farlow: That the committee authorise the publication of submission nos. 349-352.

5.4 Partially confidential submissions

Submissions to be considered for partial confidentiality (at the author's request)

Resolved on the motion of Mr Farlow: That the committee authorise the publication of submission no. 35 with the exception of the author's name and/or other identifying or sensitive information, which is to remain confidential, as per the request of the author.

Submissions to be considered for partial confidentiality (as identified by the secretariat)

Resolved, on the motion of Mr Mallard: That the Committee authorise the publication of submission nos. 269 and 302 with the exception of identifying or sensitive information, which is to remain confidential, as per the request of the secretariat.

5.5 Confidential submissions

Resolved, on the motion of Mrs Houssos: That the committee keep submission no. 287 confidential, as per the request of the author.

6. Adjournment

The committee adjourned at 5.41 pm, *sine die*.

Rhia Victorino

Clerk to the Committee

Draft Minutes No. 66

Monday 3 December 2018

Portfolio Committee No. 2 - Health and Community Services

McKell Room, Parliament House, Sydney, at 10.02 am

1. Members present

Mr Donnelly, *Chair*

Mr Green, *Deputy Chair*

Mr Fang (substituting for Mrs Taylor)

Mrs Houssos

Mr Mallard

Ms Walker

2. Draft minutes

Resolved, on the motion of Mr Mallard: That draft minutes no. 65 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 3 October 2018 – Letter from Ms Alisa Coleman to the Chair, providing additional information following her appearance as a witness at the hearing on 17 September 2018
- 9 October 2018 – Letter from Ms Vicki Rundle, Deputy Chief Executive Officer, Government, Communications and Stakeholder Engagement, National Disability Insurance Agency, to the Chair, submitting a transcript clarification to evidence given at the hearing on 17 September 2018

- 18 October 2018 – Letter from Ms Yvonne Keane, Chief Executive Officer, Early Childhood Intervention Australia, to the secretariat, submitting a transcript clarification to evidence given at the hearing on 2 October 2018
- 22 October 2018 – Email from Mr Jonathon Harms, Chief Executive Officer, Mental Health Carers NSW, to the secretariat, submitting a transcript clarification to evidence given at the hearing on 2 October 2018
- 23 October 2018 – Letter from Ms Serena Ovens, Convenor, NSW Disability Advocacy Alliance, to the secretariat, providing additional information following her appearance as a witness at the hearing on 2 October 2018.

4. Inquiry into Budget Estimates 2018-2019

4.1 Consideration of Chair's draft report

The Chair tabled his draft report, entitled *Budget Estimates 2018-2019*, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Green: That:

The draft report be the report of the committee and that the committee present the report to the House;

The transcripts of evidence, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;

Upon tabling, all unpublished transcripts of evidence, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

That the report be tabled on Wednesday 5 December 2018.

5. Inquiry into the National Disability Insurance Scheme in New South Wales

5.1 Answers to questions on notice

Resolved, on the motion of Mr Farlow: That the committee authorise the publication of the following answers to questions on notice:

- The Benevolent Society, received 4 November 2018
- NSW Council of Social Service, received 6 November 2018.

5.2 Tended documents

Resolved, on the motion of Mr Farlow: That the committee accept and publish the following document tendered during the public hearing on 2 October 2018:

- Letter from Ms Natalie Lang, Branch Secretary, Australian Services Union NSW & ACT (Services) Branch, to the Chair, regarding Disability Support Worker minimum Award rates in NSW non-government organisations.

5.3 Additional information

Resolved, on the motion of Mr Mallard: That the committee authorise the publication and placement on the committee's website of the following correspondence from witnesses providing additional information:

- Letter from Ms Alisa Coleman, dated 3 October 2018
- Letter from Ms Serena Ovens, Convenor, NSW Disability Advocacy Alliance, dated 23 October 2018.

Resolved, on the motion of Mr Mallard: That the committee keep confidential the attachments to Ms Alisa Coleman's letter to the Chair, dated 3 October 2018.

5.4 Transcript clarifications

Resolved, on the motion of Ms Walker: That the committee authorise the publication of correspondence from the following witnesses clarifying their evidence at the public hearings and the inclusion of a footnote in the relevant transcripts noting the transcript clarification:

- Letter from Ms Vicki Rundle, Deputy Chief Executive Officer, Government, Communications and Stakeholder Engagement, National Disability Insurance Agency, dated 9 October 2018
- Letter from Ms Yvonne Keane, Chief Executive Officer, Early Childhood Intervention Australia, dated 18 October 2018
- Email from Mr Jonathon Harms, Chief Executive Officer, Mental Health Carers NSW, dated 22 October 2018.

5.5 Consideration of the Chair's draft report

The Chair tabled his draft report, entitled *Implementation of the National Disability Insurance Scheme and the provision of disability services in New South Wales*, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Ms Walker: That Recommendation 5 be amended by inserting 'adequacy of the' before 'provision of carer support'.

Resolved, on the motion of Mr Farlow: That the following new paragraphs be inserted after paragraph 3.144:

'The committee noted in chapter 1 that of the more than 97,000 NDIS participants in NSW, 26,000 are new entrants having never received any state-funded disability support before. Recently the NSW and Commonwealth Governments announced that the NDIS has reached a major milestone with 100,000 people in NSW now receiving support through the scheme. The 100,000 people now enrolled in NSW includes more than 31,000 people who were not previously receiving government funded disability support.

[FOOTNOTE: Media release, National Disability Insurance Scheme, '100,000 people in NSW now accessing life-changing NDIS supports', 21 November 2018.]

Since July 2013, over \$9.5 billion worth of supports have been committed to NDIS participants in NSW through their NDIS plans and \$4.5 billion has been paid to date.

[FOOTNOTE: Submission 313, NSW Government, p 2.]

Resolved, on the motion of Mr Farlow: That Finding 2 be amended by inserting at the end: 'The committee acknowledges that the NSW Government has implemented some transitional arrangements to manage the risks of service gaps and issues during the early years of the full scheme.'

Resolved, on the motion of Mr Mallard: That, subject to confirmation by the Minister for Disability Services and/or the Flowers' family, the following update and corresponding footnote be included in 'Case study – Lee and Penny Flowers': '* UPDATE: At the time of publication, Kym has been transferred to new accommodation, however, some matters around her care and support remain unresolved.'

Mr Farlow moved: That:

- Recommendation 12 be omitted: 'That the NSW Government reinstate its role as a public sector safety net to capture people with disability, particularly those with complex and challenging needs.'
- Recommendation 13 be omitted: 'That the NSW Government establish a "provider of last resort" in New South Wales to ensure crisis situations are managed appropriately.'
- and the following new recommendation be inserted instead:

'That the NSW Government through the Council of Australian Governments Disability Reform Council, investigate and consider options for the concept of a "public safety net" or "provider of last resort" arrangement.'

Question put.

The committee divided.

Ayes: Mr Fang, Mr Farlow, Mr Mallard.

Noes: Mr Donnelly, Mr Green, Mrs Houssos, Ms Walker.

Question resolved in the negative.

Resolved, on the motion of Ms Walker: That Recommendation 13 be amended by omitting 'establish a "provider of last resort" in New South Wales' and inserting instead 'be established as a service provider of last resort to the National Disability Insurance Scheme'.

Resolved, on the motion of Mrs Houssos: That paragraph 4.158 be amended by inserting at the end: 'The committee also acknowledges the importance of the broader advocacy services and advice these organisations provide.'

Resolved, on the motion of Mrs Houssos: That:

The draft report, as amended, be the report of the committee and that the committee present the report to the House;

The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;

Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;

Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;

That the report be tabled on Thursday 6 December 2018.

6. Adjournment

The committee adjourned at 11.04 am, *sine die*.

Rhia Victorino
Committee Clerk