



# **NDIS**

# **Reform Plan**

**A COMPREHENSIVE  
SOLUTION**

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## INTRODUCTION

The fundamental basis of the National Disability Insurance Scheme (NDIS) is the concept that it is an Insurance Scheme. By replacing the welfare concept, it took away the funding fluctuations caused by changes in the economy and other funding calls on the budget and guaranteed a whole of life view to funding requirements.

The primary focus of the Scheme (according to the Legislation) is to give Participants 'choice and control' over their supports, within the constraints of what is 'reasonable and necessary' for their approved disability.

There is little doubt that for the majority of those in the scheme, its introduction has brought a major improvement in their life. They are able to access the supports, Assistive Technology (AT) and Home Modifications they need. Through the goal focussed operation of the scheme, they are assisted to undertake new goals, and this results in an improved quality of life and in most cases greater participation in society.

Unfortunately, for various reasons, it falls short of this promise and therefore, its potential. The Scheme is failing both Participants and taxpayers.

It was expected to cost \$21.6 bn for 460,000 participants in 2019 – an average of \$47,000. It is now \$34bn for 500,000 Australians, an average of \$68,000. It was intended to be shared 50/50 with the States. Frydenberg's guarantees around fully funding the scheme in the last few years took pressure off the States to honour that split. There is every reason to expect an even greater commitment to the ongoing support of the Scheme by the Labor Party, given they introduced it when last in control. This is even more certain now with Participant numbers at 530,000.

This policy does not attempt to comment on whether current funding is enough at this stage, but just recognises that without significant review, this will only continue to increase. It also recognises that in order to control costs, rather than focussing on the real causes of cost 'blowouts', the NDIA is reducing package sizes for the most vulnerable, leaving them unsupported in the way they need.

For Participants, the biggest issue facing the NDIS is security of individual funding. Insecurity and systemic issues, coupled with a constantly changing process, mean that few Participants have any confidence that current funding can be relied on in the future, and a feeling that annual reviews require a fight for funding. An adversarial rather than collaborative process now exists and given that the Scheme aims to help some of the most vulnerable in our society, fear and even paranoia have become common emotions.

The National Disability Insurance Agency (NDIA) is the administrative arm of the Scheme. It has a central Federal Government arm which oversees its operation, but the States oversee much of the 'face to face' interaction. Much of this interaction is sub-contracted to Service Providers rather than being undertaken by NDIA employees, but this is not apparent in correspondence, and it is not clear that Local Area Coordinator's (LAC's) belong in this category, even though they are the main people who perform Plan Reviews and deal with Participants.

This State/Federal/Sub-contract responsibility is totally 'hidden' and makes it very difficult to establish where failures in the system belong. This hidden responsibility is a major failure in almost every area of government operations in Australia today and prevents identification of the real source of dysfunction, meaning that responsibility is averted and thus change is impossible.

At the same time, the constantly changing processes, often driven by the agenda of the Government of the day rather than the opinions of NDIA staff themselves, have seen reductions in individual funding and confusion around entitlements. In so many ways, the 'choice and control' promised by the legislation has been shifted from Participants to the NDIA or Service Providers (SPs) for reasons which Participants and their carers neither understand nor support.

Although participation in the Scheme requires a recognition of permanent disability, which implies the concept of 'once you're in, you're in', so many Participants don't believe this is the reality. Even when Participants are confident of lifetime participation, very few would be prepared to say they are confident that 'reasonable and necessary' funding will be maintained.

And so, a Scheme that was intended to give our disabled community confidence that Australia would support them, has become a source of stress and distrust, and leaves them feeling that the support they so desperately need is still not seen as a right, but something to be fought for on a constant basis.

## **1 IMAGE ISSUES**

The concept of the NDIS being an insurance scheme implies a rehabilitative intention and brings with it an expectation that over time, funding can be reduced. This is in direct opposition to the concept of permanency required to gain participation in the first place, and certainly cannot be a reality for those with chronic disabilities, for which improvement is not possible. For them, maintenance of support is the only way forward, but for too many recently, even this is no longer the case.

Some have called for a return to a view of the NDIS as a welfare system, in the mistaken belief that this will improve the funding allocation issues. Although this will recognise the fact that ongoing funding will not always result in improvement in an individual's situation, this would undo much of the initial intentions of the Scheme.

And yet, at the same time, evidence suggests that the contribution of the NDIS to the GDP of Australia has a ratio of 1:2.25.

The reality is that for individual's, funding is not only an investment in their future, providing in many cases, the return of basic human rights, but also provides the potential not only of increased participation in, but hopefully contribution to, the future of Australia.

**Recommendation 1.1: Rename NDIS to recognise the real cost/benefit value - financial, social and individual - of the scheme – suggestion National Disability Investment Scheme.**

This one word would have a major impact in the perception of the Scheme without requiring redesign of the logo.

**Recommendation 1.2: All NDIA guidelines and practises should be reviewed to ensure that the principle of 'choice and control' focuses on Participants. Serious attention should be paid to practices where that balance rests more with SPs than Participants and is addressed in more detail later in this document.**

There are major disparities between Aged Care support funding levels and NDIS funding levels, especially for those with disabilities. While the need for a cut off between the two is understood, this has left some people with disabilities without the support they so desperately need.

**Recommendation 1.3: The Ministries of Health and Aged Care and the NDIS work closely with each other with a view to bringing funding for both sectors closer together.**

**Recommendation 1.4: Especially in light of this disparity, the NDIS Legislation/guidelines should be reviewed to include those disabled, at least through accident, to be included in the NDIS.**

**Recommendation 1.5 NDIS Board to**

- a) include equal Participant and Service Provider Representation**
- b) be free from Government or other interested party agenda direction**
- c) ensure a Participant first emphasis in all policies and decisions**

## 2 RESPONSIBILITY

The NDIS was initially funded 50/50 between State and Federal governments. Although the split is still close to this, recent increases in funding requirements have seen the Federal government share increase. It is not clear how this responsibility is split. Although many assume it is as simple as one administrative agency funded by the 2 governments, each State administers much of the Scheme, meaning that some processes are different in each State.

This is the same complicated setup that applies in most shared government functions in Australia. It is the main source of confusion for citizens and a convenient way to keep responsibility hidden from stakeholders. It is also a major source of frustration, red-tape, and inefficiency in function. It has seen blame directed at the Federal Government when the reality is a complicated web of control (or not!). Aged Care, Health and Education are some of the most obvious areas outside the NDIS where this structure exists, but the reality is that it permeates through every facet of government.

As a result, much of the face-to-face interaction is undertaken by Local Area Coordinators or their equivalent (LAC's), These are employees of sub-contractors employed by each State government. The reality is that these individuals are often not aware of a participant's disability, requirements, or special circumstances. It is regularly the case that an LAC for one Plan Review is not the same person at the next review. Until recently, this person could not be directly contacted, and Participant's only contact with the NDIA was through the National Call Centre, where personal details were unknown, which had the effect of dehumanising participants.

Even though this sub-contract set-up is clearly stated on the NDIS website, job titles imply they are all NDIA employees. Many participants still believe they are actually dealing with the NDIA when they talk to these people.

Plan Reviews are usually undertaken at this level and information is then relayed to the NDIA delegate (often then a State Employee) for a final decision. It is often the case that participants understand that agreement has been reached in a Plan Review, only to find no mention of certain important (to the Participant anyway) items in the Final Plan.

**Recommendation 2.1: That the State/Federal/sub-contract responsibility be clearly identified. Use of the NDIS signature must include clear identification of where in the web the signatory sits.**

**Recommendation 2.2: The Plan Review process be streamlined with current sub-contract functions to be moved from State to Plan responsibility, through the introduction of a Plan Support Team (recommendation 2.5), allowing the Participant to choose who is representing them.**

The NDIS allows management of the Scheme in 3 main ways. Agency Managed means all payments are made by the NDIA itself and forces Participants to use NDIS Registered Providers, while Plan and Self Managed Participants are able to use anyone at all for Service Provision.

For those who are Self Managed, the Plan Management role is completed by themselves (unpaid) and for those who are Plan Managed, they are funded to employ a Plan Manager (PM) directly. There is an NDIA guide which outlines the responsibilities of Plan Managers, including oversight of Fund usage and a responsibility to ensure services and charges are consistent with the NDIA Pricing guidelines and are provided as charged.

Unfortunately, the NDIA does not provide the same support for agency managed Participants and some Participants have found themselves in serious financial difficulties when Plan Funds are

exhausted and Service Providers take recovery action against the Participants themselves, who are legally responsible for unpaid amounts regardless of the fact that they were unaware of the debt and therefore had no control over its incursion. Although rates charged are subject to NDIA guidelines, unscrupulous SPs can charge for hours not worked and/or at higher rates and once funds are exhausted, payments merely stop, leaving Participants unaware of the situation. Although the Participant is legally liable, the reality is that responsibility for continued spending when plan funds are exhausted, rests equally with the NDIA and the SP, it is hard to understand why, when dealing with other organisations, service stops immediately when payment is not received, but in the case of the NDIS SP's continue regardless.

Although fund balances are usually available on the Participant Portal, many participants believe their fund issues are sufficiently dealt with by the NDIA, or worse, are not even able to access the portal and it hasn't always been possible to see details of charges made on funds through the Portal. For many, they are incapable of understanding the issue so important to their personal financial position.

The majority of those who are happy to be Agency Managed assume that they have no financial responsibility, the reality is that the ultimate responsibility for reviewing their fund usage remains with them and the consequences for failing to do so are devastating. The worst part of this reality is that it is our most vulnerable that are in this category.

**Recommendation 2.3: Choices between NDIA (Agency) Managed, Plan Managed or Self Managed must rest with the Participant unless it can be proved that funds have been misspent while they were managed by the Participant.**

**Recommendation 2.4: An Alert mechanism (including personal contact) be established when a funding balance is not within expected levels.**

In some cases only, the NDIS also provides funding for Support Coordinators (SC's). In recent years, the NDIA has been trying to move LAC responsibilities to include this support for those whose Plan does not include an SC. Although in principle, this intention is commendable, in that it ensures that the support function is provided to all Participants, it creates confusion when this position then performs a Plan Review. By combining the 2 roles, Participants will effectively be dealing with a potential Trojan Horse. We must accept that one role is supportive and one adversarial and we cannot blame participants from wondering if information gained in the Support Coordinator role could be used to negative effect when the next Plan Review comes along.

Also Unfortunately, there are no clear guidelines for Support Coordinators. This leaves confusion about what can be expected from the SC role. Some provide minimal assistance in finding services and others are taking a real interest in suggesting and finding SPs. The best Support Coordinators take a real personal interest in the Participant, making themselves available for any help the Participant may need, for ensuring the Participant is properly supported by Service Providers and even advocating\* for them with SPs and the NDIA.

\*Note: the use of the word advocate in this context, is not to replace the use of "Advocates" in the traditional sense, but simply refers to the process of acting on the behalf of the Participant in relation to their needs.



**Recommendation 2.5: That ALL Plans establish a Plan Support Team made up of a Support Coordinator, Plan Manager and the Participant or their nominee. These three roles to be responsible for**

- Ensuring services are arranged in accordance with Plan goals and funding
- Ensuring all services are performed to the benefit of the Participant
- Assume responsibility for ensuring appropriate use of government funds, especially within the definition of 'reasonable and necessary'.
- Provision of services remain within Plan Funding limits and that the Participant is aware whenever spending is not within expectations.
- Report Service Providers who commit fraud, by overcharging or charging for services that are not provided in accordance with reasonable expectations, to the NDIS Quality and Safeguards Commission (NQSC)
- Oversight of a 'Plan Support Network' ensuring all SPs and carers are working together for the benefit of the Participant and ensuring that Plan goals are achieved

In the case of Self Managed Participants, the third place on the Support Team would need to be filled by a third party from the Plan Support Network (unrelated to the Participant).

The basic concept is the Participant and 2 independent Support Providers who know the Participant and their disability. In order to avoid the Conflict of Interest outlined in Recommendation 2.7, it should not be an SP receiving more than 50% of the funding of the Participant and must be an individual, not an SP itself.

**Recommendation 2.6: As part of this major change, it is further recommended that this Plan Support Team perform initial Plan review functions in accordance with NDIA guidelines replacing the LAC function currently provided by State Sub-contractors.**

Releasing the State funding for inclusion in individual Plans will remove one level of contact and involvement in the whole process and therefore remove a major source of stress and frustration for Participants.

Establishment of this functionality would provide the following benefits:

- Redefine the Plan Review process to become collaborative rather than adversarial
- Remove one layer of red tape from the review process
- Move responsibility for costing Plan submissions to Plan Managers (from NDIA funded staff)
- Ensure the interests of both the NDIS and the Participant are protected
- Ensure Participants are assisted in achieving the best outcome from their plan
- Combined with Recommendation 2.3, remove opportunities for fraud and neglect
- Assist the NQSC in identifying unscrupulous Service Providers
- Ensure internal control principles are applied to all Plans
- Provide confidence that Participants are given the 'choice and control' the Scheme promised

**An NDIA guide for this team must be issued, clearly outlining the roles of the Plan Support Team and PMs and SCs in light of the introduction of this team.**

The next major failure in this area is the fact that the funding for Plan Management is unrealistic and makes the most basic mistake in financial management. By funding a minimal monthly fixed rate for this function and then allowing an hourly rate that is less than that charged by most bookkeepers

(let alone Accountants), for assisting the Participant with their plan management, the skill level of the staff involved in the process is guaranteed to be unacceptable. It is the equivalent of paying a GP the same amount as the receptionist and expecting the skills of a medical specialist.

When the most important issue from a financial point of view, of the NDIS as a whole, is the cost blowout and where it is generally accepted within NDIS circles that the cost management within the Scheme has major issues, this seems to be the first and most important place that control must be tightened, or one could argue, actually introduced.

The flat fee of around \$100 month to pay SPs and provide monthly reports and oversight of spending (as required by the NDIS Plan Manager Guide and pricing guidelines), REGARDLESS OF THE PLAN SIZE, there are few Plan Managers who would actually be prepared to take on a large plan. In most cases, this has meant that Plan Management is provided by SPs. THIS CREATES A CLEAR CONFLICT OF INTEREST.

There are many horror stories of Participants being told there are insufficient funds available for support in areas outside their own provision area due to lack of free funds and 'manipulating' clients towards their own circle of 'preferred' Providers.

**Recommendation 2.7: The NDIS explicitly recognises a conflict of interest between Service Providers and Plan Managers and issues directives that prevent PMs from managing funds where these conflicts exist. These directives should place a clear fiduciary duty on Plan Managers to ensure the protection of Participants and their Funding. The NDIA must also accept the same fiduciary duty for Agency Managed Plans.**

**Recommendation 2.8: The Amount included in NDIS Funding be reviewed urgently to ensure that PMs are funded at market rates for proper financial oversight of Plans. This must include**

- market rates for a qualified review
- removal of a flat monthly fee to recognise the oversight required of larger funds
- Funding commensurate with Plan size

**inclusion of Plan Support requirements per recommendation 2.5.**

### **3 CAPITAL FUNDING (ASSISTIVE TECHNOLOGY AND HOME MODIFICATIONS)**

As previously mentioned, one of the major issues with the NDIS is reductions Plan Funding. It would appear that some of this comes from the Insurance view of the scheme and an emphasis on the need to justify Assistive Technology and Home Modification funding in terms of future savings. The same issue occurs with Capacity Building funding. This focus has had the following consequences.

- 1) An overreliance on Occupational Therapists (OT's) for these applications, causing availability issues, with the result that OTs are in short supply and able to pick and choose the easiest requests.
- 2) An unrealistic expectation of the NDIA to see improvement, especially with degenerative diseases.
- 3) An inability to accept maintenance rather than improvement in justifying AT/HM.
- 4) Reductions in funding based on expected rather than actual improvements.
- 5) Reluctance by OTs to support 'risky' requests for fear of prosecution by the NDIA when expected improvements are not achieved, shifting the 'choice and control' away from Participants.

At the same time, although the NDIA have made attempts to remove this reliance on OTs for Capital Applications, this update to processes was made, but not made clear to those involved with the Scheme.

The reality is that process of completing the application is an administrative one. It should be a compilation of the inputs of more than one specialist.

**Recommendation 3.1: Applications for Capital Funding be prepared by the Plan Support Team, to include reports from all relevant Allied Health Professionals. This would remove the pressure on OTs to complete these reports themselves and would allow them to just specialise in the original purpose of the Occupational Therapist role, giving its input 'equal' weight with physiotherapists, other allied Health Professionals and other SPs involved in the actual one on one ongoing support of the Participants.**

**Recommendation 3.2: Plan Funding around Capital to include a clear statement of funding the NDIA expects to be reduced in subsequent Plans due to the introduction of the AT/HM. This would allow this potential reduction to be addressed in the light of deterioration due to delays in approval and any other issues which may have arisen.**

**Recommendation 3.3: In line with the Plan Support team responsibilities, given the initial Plan submission will come from them, it is essential that relevant delegates within the NDIA responsible for final approval of Plans have knowledge of the particular disability faced by Participants. Most specifically, they must understand**

- How much is permanent
- How much is capable of improvement
- How much is degenerative and
- in this light, how delays in approval will affect the Participant's 'journey'.
- Prior to reviewing any Plan submission, it is imperative that they review previous Plans.

This is especially relevant in the case of Mental Health related disability. There are elements of these disabilities that may appear to have been dealt with, where any event in the Participant's life could lead to a resurgence of more intense issues. It must also be possible for the Plan Support team to deal directly with the delegate for an urgent response when required.

**Recommendation 3.4: The NDIA need specialists in degenerative diseases (especially those like Motor Neuron Disease) who can move fast when required. Additionally, arrangements should be made to establish a mechanism to make rental of equipment available immediately, knowing the need will be short lived in such cases, rather than requiring purchase of AT/HM.**

And again, let's not forget those with Mental Health issues in this conversation. A certain level of crisis funding is short term, but for most, a need for an underlying level of ongoing support will always be there.

#### 4 ENTRY TO THE NDIS

One of the biggest issues with entry to the NDIS is the fact that the costs associated with Allied Health Professional Reports are the responsibility of the applicant. NDIA statistics confirm that the number of Participants in the scheme is overrepresented by those at higher socio-economic levels by more than 20%.

The LNP's attempt to address this problem was Independent Assessments. They coupled it with a way to reassess Participants as well and the backlash saw the end of the legislation. At the same time the opposition's response was 'there is nothing wrong with the scheme that the Labor Government put in place 10 years ago, we should leave it as it is'.

The desire to standardise the assessment process is logical. It reduces time for the NDIA to complete an assessment and make a decision. The reality is that many of the tests proposed to be used during the Independent Assessments saga are a logical way to provide some standardisation of disability recognition. They do not look at the reasons for the disability, but at the functional effects.

The concerns raised during this era were legitimate and the majority of them centred around issues with introducing yet another person into the review process who did not understand the individual's situation and who, for those with social and/or trust issues, was another stranger.

It also added yet another layer of red tape and therefore cost. Their intention was to help remove the socio-economic bias, unfortunately, their attempt at independence was inefficient and divisive, adding to the adversarial concept.

The mistake was that these tests could be completed by any Health Professional and as such, the Health Professional already dealing with a person would be best placed to decide the ones that are relevant and to complete them. Where information additional to these tests is required, they are also best placed to provide it.

Applications should also include a statement from the person, their family, and any other interested parties.

**Recommendation 4.1: Applications for NDIS funding should include at least 2 Assessments from an approved list of International Disability related tests. They should also include a statement from the Participant and their carers. All costs are to be refunded to a maximum fixed amount.**

Once they become a participant, any updates of these criterion, already paid for by NDIS funding, should automatically be made available to the individual, to be attached to the Participant file. This will prevent the need for new Allied Health Professionals to repeat these tests unless an update is required. At the moment, reports are paid for by the NDIS (through Participant's funding) but may never actually be passed on. In the private sector, no one pays for a report unless they already have it, the NDIA should expect nothing less.

If a Participant changes Providers, these reports can then be made available to the new Provider, removing the need for the new provider to undertake their own tests (increasing NDIS costs). If these reports are held by the Plan Support Team, they would have control over this process.

**Recommendation 4.2: NDIA Regulations must make it clear that no invoices should be tendered for reports unless they are provided to Participants first.**

Many disabilities are chronic – they are here for the duration. In fact, the stated purpose of the NDIS is to provide support for permanently disabled Australians confirms this. Significant reductions in funding in particular areas, suggest that although most physical disabilities are clearly permanent (severed spinal cord, missing limb etc), everything else can be ‘cured’.

Only the most ignorant believe that autism can be cured or that mental health issues don’t behave like a phoenix, emerging from ashes of the next crisis life throws at them. A child with autism, for example, will never be cured. Their autism is as much a part of them as their eye colour. Yes, early intervention can give them the ability to progress through school with limited or even no help from the Special Education Program supplied by the State, but the move from childhood to adulthood requires a whole new set of skills and the Education system will be gone.

**Recommendation 4.3: The NDIS should therefore only close the file on a Participant when it is agreed by everyone that this problem will NEVER recur.** Apparently impossible given its permanency requirement.

**Participant files should only be deactivated during this time.** If the Participant needs help in the future, a new assessment would be required, but the whole process of re-applying, and the associated cost in time and money, should not.

## 5 PLAN REVIEWS

For the majority of Participants in the NDIS, the annual Plan Review is a process surrounded by stress. It involves significant time compiling reports, information and, ideally, costing required supports. The reality is, that failure to compile this information to be presented at the Review, may well result in a reduction in funding.

For most, it feels like a fight for funding. The whole process is essentially adversarial, where it should feel more consultative.

NDIA statistics confirm that the funding amounts received by those at higher socio-economic levels are >20% higher than those at lower levels.

The change in focus from Insurance to Investment, should aid in changing this concept, but more importantly, the move from State sub-contractors to the Plan Support Team will help remove pressure on Participants.

Recent attempts by the NDIA to reduce the costs of the Scheme have seen significant reductions to the funding of some Participants. In some cases, this is totally inconsistent with needs and has included the decision that those who had previously been funded for 24/7 care, no longer needed this level of support. Unless there is support for this type of change by Allied Health Professionals, this is a potentially dangerous decision.

It is imperative that such decisions be immediately reversed. If the NDIA have sufficient reason to question the level of support, they should request a functional assessment and negotiate such changes with the Plan Support team.

Other problems arising from Plan Reviews are:

1. Plans are approved without advising the Participant.
2. Plan dates are based on the date of approval, meaning that Plan periods are seldom comparable.
3. Capital applications are often approved separately from Plans and trigger a date reset
4. Some Plan Reviews are delayed leaving Participants without funding
5. Constant changes in LAC's
6. LACs are effectively intermediaries and don't always pass on information to delegates
7. Untrained LAC's
8. No knowledge participants at Reviews – constantly needing to explain disability
9. Review done with vulnerable Participants without others present
10. ....

**Recommendation 5.1: New Plans must be advised to Participants at least 7 days before they become active.**

**Recommendation 5.2: Every effort should be made for new plans to be reviewed and put in place before the current Plan expires. The starting date should correspond with the expiry of the existing Plan.**

**Recommendation 5.3: Any Plan that is not approved in time, should be automatically rolled over until approved.**

**Recommendation 5.4: Approvals for Capital Funding should be additional to the existing Plan and should not result in any change to Plan dates.**

**Recommendation 5.5: Any intention to reduce funding must take the following steps before it occurs**

- 1. Functional reassessment request including advice of an intention to reduce funding.**
- 2. Review and consultation with the Plan Support Team**
- 3. Where the functional assessment supports a reduction in support, there must be a staged reduction in funding of no more than 10% per annum.**



## 6 APPEALS

Current Appeals to the AAT are at record levels. The fight is often a 'David and Goliath' one, with constant delays, claims of lost paperwork and reports, requests for additional reports and often where a Participant is without legal representation. The cost is usually in excess of the funding amount that is the subject of the appeal. Where the State/Federal responsibility divide sits is never made clear and Participants are left with incredible stress.

In order to review decisions before getting lawyers involved, it would make sense to involve an Independent Review Panel that provides an Australia wide application of NDIS Policy. While the AAT provides an appeal process to review the application of the Law, an appeal process that can also apply the 'spirit' of the law along cost/benefit analysis to the Plan which looks at quantitative and qualitative implications for both the NDIS and the Participant.

In the final year of the previous government, legislative changes were put in place to allow the CEO of the NDIA to review and alter Plans whenever they felt necessary. Although this could have been done in order to allow that final review process along with the ability to introduce an 'act of grace' component to this final decision, the level of distrust in the system was such that this was seen as a way to further erode Participant rights and/or funding.

**Recommendation 6.1 A Nationwide Independent Review Panel be established with equal representation from NDIA Staff and experts in the relevant area/s subject to appeal. This should also include Participants. This panel should be charged with compiling realistic cost benefit analysis and be able to make 'act of grace' decisions which allow compassionate decisions where appropriate without creating precedent for future decisions.**

**Recommendation 6.2: All cases under internal review or appeal with the AAT due to reductions in funding should be reassessed in line with Recommendation 5.5.**

There are also appeals around Agency/Fund/Self Management, mainly with the NDIA taking back management. This has the following consequences for Participants

- Given the risk previously outlined, where the NDIA do not review fund usage, without review through the Portal, Participants can find themselves liable for large personal debts
- along with current processes where SPs can 'quarantine' Core Funds for themselves, they could find other SPs shut out of funding.
- Current SPs who are not NDIS Registered are no longer able to support the Participant
- The change implies that the NDIA believes the Participant is incapable of managing their funds.
- Removal of 'choice and control' over funds, which is contrary to the intention of the NDIS Legislation.

In most cases, this is done without clear (if any) justification.

**Recommendation 6.3: Agency/Fund/Self Management should be choice of the Participant unless there is reason to believe mismanagement. Any NDIA decision to change this must include clear justification.**

At the same time, significant costs are being born by the AAT, Legal Aid, Participants themselves and the NDIA by the AAT process. In many cases, especially around Capital Items, the costs of this process is in excess of the amount originally requested.

This is not responsible financial management of the Scheme, nor is it conducive to Participant wellbeing or positive public sentiment.

**Recommendation 6.4: Other AAT Appeals should be reassessed with a view to ensuring that cost/benefit analysis supports the process. This needs to take into consideration Participant stress, public expectations and precedents that have or will be set.**

Another issue that is causing great concern in certain circles of the NDIS community, is increasing numbers of cases where the NDIA seems to be taking away family/carer control over a Participant's funding by instituting a Guardian over the Plan and thus removing any family/carer involvement. In the Plan.

This most commonly occurs in the area of Mental Health and is often an area of concern for all involved, especially where violence occurs. It must be remembered that those left to deal with the Participant when funded support is not there, are the most important people in any discussion of the best way forward. It is not in the best interest of any Participant to remove them from the centre of the process.

In cases where it can be proved that family and others who, by the existence of an Enduring Power of Attorney (EPOA) or other instrument, have been awarded control, are exerting undue negative influence over the affairs of that person, this would be a legitimate action, but otherwise, this should not occur. In such cases, NDIS funding is the end of the line in dealing with problems and should be because of other legal action.

In fact, this type of action should NEVER be undertaken in isolation. If someone has an EPOA, the first action should be a revocation of that EPOA, but while ever it exists, it should be respected by not only the NDIS, but also by other Government Agencies. The same applies to families.

The Plan Support Team and the larger Plan Support Network (per recommendation 2.5) are the best placed to identify any issues where carers are exerting undue influence over a Participant's life. Even though that person is a part of that Team, the Support Coordinator and Plan Manager (supported by the Plan Support Network), constitute a majority and must be able to limit that control and, if necessary, must be able to force change to prevent such coercion.

The NDIA must never act on its own.

**Recommendation 6.5: Any Plans where this action has been taken, must be reviewed in the light of the above discussion. The status quo must be reinstated, and a Plan Support Team and Plan Support Network established. These teams must review the situation within 2 months and provide a binding recommendation to the NDIA.**

Neurodivergence: For some, short term support is all that's needed to learn a new skill, but for others, independence is never 100%. Take cooking for example, we can teach a person with autism to cook, but they may always need supervision for their own safety.

These needs are necessary and ongoing, but the funding decision needs to be clear about whether this is recognised in each case. Those involved in the training are best placed to make this decision and their recommendations must be followed.

## 7 CARER PAYMENTS

At the present time the NDIS will not allow payment for support to be made to family members. The reasoning is twofold. Firstly, NDIS funding is not intended to be income for the Participant and hopefully assists in helping them to work wherever possible, and secondly, this philosophy is thus extended to family members.

Through Centrelink, carers are able to claim a Carer Allowance that is not means tested, or a Carer Payment, which is. In either case, it is not enough to support the family, forcing them to find external employment.

At the same time, in order to support the Participant while their family member goes out to that external employment, the NDIS funds a Service Provider to support the Participant.

The reality is that many of these carers would willingly stay home and spend more time caring for the Participant and would, somewhat obviously, do a better job than most Support workers.

From a wholistic point of view, this situation is neither logical nor does it offer the best solution for the Participant. Neither does it operate to the financial benefit of society.

**Recommendation 7.1: Family carers should be included in NDIS support funding. In order to prevent families taking advantage of the system, the rate paid should be equivalent to casual rates under the Social, Community, Home Care and Disability Services Industry Award and limited to a maximum of the average wage (plus Superannuation). Carers would be required to register for an ABN unless the Participant operates their own payroll to ensure Superannuation and Income Tax requirements were met. No Centrelink entitlements would exist.**

At current rates, that would be a saving of roughly \$25 per hour in NDIS funding costs, as the administrative costs of SPs would be removed. The actual numbers would need to be updated by the Pricing References Group each year when pricing for the NDIS was set.

If applicable, this would include time required for participation in the Plan Support team.

In the case of Self Managed Participants where the Parent/Guardian is the Manager, this time would be included as well.

This would need to be adjusted, where both parents were involved, for the combined income of those parents.

The savings to Centrelink (in both payments and administration), reductions in Health Care entitlements for the family (Participant excluded) and potential additional tax revenue, along with the reduced hourly cost to the NDIS, would mean that although NDIS costs would be likely to increase, the net cost to the Government as a whole would be minimal.

This also adds the additional advantage of creating a Superannuation investment for the future support of those being paid. At the moment, those forced to rely on Carer Payments have little or no Superannuation, meaning they will need to rely on the Aged Pension in the future.

## 8 GROUP ACCOMMODATION SETTINGS

The following discussion includes:

- Specialist Disability Accommodation (SDA)
- Supported Independent Living (SIL)
- Medium Term Accommodation (MTA)

These areas require a significant cost outlay in major capital commitment, along with staffing etc. At the same time, these providers assure us that there is significant interest from Superannuation Funds to invest in this type of accommodation, coupled with many Participants currently in aged care facilities, or waiting to move away from the family home where they have been living.

These facilities should offer the following advantages for Participants and their families

- An opportunity to build relationships with others with similar disabilities
- Increased opportunities to improve Independence.
- More freedom (both financial and personal) for family members
- Increased workforce participation and resulting Tax and Superannuation benefits
- Reduced stress on aging parents in relation to the future of their disabled children

Where a Participant's Plan includes funding for any of the above situations, it must be recognised that a major financial commitment has been made by an SP. There are currently major issues with delays in approval of both existing and new Plans.

Once a Participant is in the establishments, the NDIS must recognise this and ensure that a minimum ongoing commitment to existing arrangements be made. At the same time, when submissions are made for new entry into any of these arrangements, approval should be processed quickly. If this does not occur, SPs will be losing money and places in areas of high demand may be lost.

**Recommendation 8.1: Plans for those in these establishments should contain an ongoing commitment to that establishment, to be negotiated separately by the establishment itself.**

In other words, the responsibility to renegotiate funding rests with the establishment and once approved, all Participants living there will have their plans automatically adjusted for that component.

Any delays in Plan Reviews would see a continuation of existing funding arrangements per Recommendation 5.3.

## 9 REMOTE AREAS

NDIS statistics show that many Plans for Participants in remote areas are not fully drawn down. More often than not, this is because services are not available. This issue often overlaps with other Health Services as well.

At this stage, the demand for many of these services in cities is so high that there is little incentive for Providers to move into remote areas. At the same time, there is often insufficient demand to justify a full time presence.

A Coordinator role needs to be established to encourage the use of telehealth type practices and help to arrange remote visit 'rounds' by Service Providers in any necessary area. A Remote Coordinator for affected States, aligned with Health and Aged Care to ensure services are made available to all Australians who need their help.

Where additional incentives are required to arrange this support, the Coordinator can negotiate directly with the Pricing Reference Group on behalf of all affected Participants.

**Recommendation 9.1: A Coordinator role be established in each State to work with Health, Aged Care, and the NDIS to encourage SPs to undertake a 'travelling clinic', to provide services in remote areas.**

**Recommendation 9.2: Hospitals be encouraged to provide access for SPs to facilities in order to reduce the costs of providing services in these areas, with an aim of establishing permanent Practises where there is sufficient demand.**

## 10 COST CONSIDERATIONS

There are many issues around costs of the NDIS.

- 1) It is generally accepted that just the mention of the NDIS results in increased charges.
- 2) The NDIS pricing guidelines often have a level for Allied Health Professionals that is higher than charges for other clients.
- 3) It is accepted in almost every other profession, and indeed in the payment of these workers, that experience and time result in different pay levels, in the case of the NDIS, this is not the case. There is just one flat fee.
- 4) There are times when required support is available at a lower qualification level than actually specified e.g., Mental Health Worker v. Psychologist, OTs to teach cooking.

**Recommendation 10.1 The Pricing Reference Group be charged with instituting charge levels for Allied Health Professionals that include at least 3 levels, based on the years with a particular Participant, also allowing the Participant the option to increase a level in the case of support above expectations**

- **With a requirement that where this specific increase involves a particular employee, the full value of this increase be passed on to the employee through incentives or pay level.**

**Recommendation 10.2: When specifying an Allied Health Professional support in a Plan, the NDIA consider, and allow more freedom for Participants to use, services from a lower qualification level e.g., Mental Health Worker v. Psychologist.**

**Recommendation 10.3: Guidelines be established around Management costs and profitability of SPs with audits by the NQSC to ensure roting is limited. These audits should be both random and on advice from Plan Support Teams. Deregistration should occur following 1 warning and SPs under caution should be listed and easily identified by potential clients.**

Service Agreements are required in the hiring of a Service Provider. They protect the rights of both Parties and outline behavioural and contractual obligations. They also contain a major inequity which, especially since COVID, has caused frustration to Participants and cost to the NDIS.

All Service Agreements include a Cancellation Clause to the effect that if a Participant cancels within 24 hours of an appointment, they are still charged the same rate as they would have been if the service was performed. This is regardless of whether there is any cost to the SP. In most cases, employees are casuals, meaning they personally lose income, but in fact the SP may make more from a cancellation than if the support was actually provided.

On the other side however, where an SP cancels within 24 hours, the penalty still goes to the Participant. In many cases, the support needs to be replaced by someone else, even if a family member needs to take the day off to cover the shift. Otherwise, they go without that support. That it was funded in the first place, confirms it was reasonable and necessary to the Participant.

**Recommendation 10.4: Where an SP cancels within 24 Hours of an appointment, without offering an acceptable (to the Participant) alternative, a credit for that support must be given.**

## 11 EMPLOYMENT

Ableism is built into our employment system. In most cases, to work full-time, you have to show up to your workplace inside certain hours. That might be logical if you work in a factory, but for so many other jobs, so much can be handled from elsewhere. COVID taught us that!

For those with disabilities, full time work is not always possible due to care requirements and thus the ability to work is severely limited. At the same time, for those whose employment experience is at a senior level, almost all positions require that full time commitment, leaving that potential untapped.

By not providing opportunities to take advantage of this expertise, businesses in general, but especially the NDIA, are doing themselves and Participants a disservice.

This needs to be addressed by the NDIA and inside the NDIA.

**Recommendation 11.1: The NDIA actively review their employment practises to identify positions that can be part time, casual and/or home based. Suggested areas are**

- **Planners/Delegates**
- **Policy/guidelines**
- **Training**
- **Advisory**

**Recommendation 11.2: Other employers be encouraged to apply the same principles in their own operations potentially through Tax Incentives and Grants.**

## Summary of recommendations

### **1 IMAGE ISSUES**

- 1.1 Rename to National Disability Investment Scheme
- 1.2 Review guidelines and practices to ensure 'choice and control'
- 1.3 Ministry of Aged Care and NDIS
- 1.4 Disability in the Aged
- 1.5 NDIS Board

### **2 RESPONSIBILITY**

- 2.1 State/Federal/sub-contract
- 2.2 Plan Review process to Plan Support Team
- 2.3 Plan Management choice to Participant
- 2.4 NDIA to advise Plan Funding issues
- 2.5 Plan Support Team
- 2.6 Plan Support Team to perform Initial Plan Review
- 2.7 Conflict of Interest and Fiduciary Duty
- 2.8 Review funding for Plan Managers

### **3 CAPITAL FUNDING**

- 3.1 Application by Plan Support Team
- 3.2 Approvals to identify future savings expectation
- 3.3 Approval by Delegates with understanding of the Participant's disability
- 3.4 Special Arrangements for Degenerative Diseases

### **4 ENTRY TO THE NDIS**

- 4.1 Applications and Funding
- 4.2 No Report No Pay

### **5 PLAN REVIEWS**

- 5.1 New Plan to be advised 7 days before activation
- 5.2 Plan Dates to be consistent year to year
- 5.3 Automatic rollover of Funding if new Plan is not approved on time
- 5.4 Capital Funding post Plan to be additional to existing Plan
- 5.5 Process for Plan Reductions

### **6 APPEALS**

- 6.1 National Appeal Process
- 6.2 Reassess Reduction Appeals following Recommendation 5.5
- 6.3 Reassess Management Appeals following Recommendation 2.3
- 6.4 Cost/Benefit Analysis on other appeals
- 6.5 Guardianship Issues
- 6.6 Ending Scheme Participation.

### **7 CARER PAYMENTS**

- 7.1 Carers be paid per Award Rates

### **8 GROUP ACCOMMODATION SETTINGS**

- 8.1 Service Providers to Negotiate Rates with Automatic Approval of Plan Amounts

### **9 REMOTE AREAS**

- 9.1 Coordinated Collaboration between Health, Aged Care and NDIS for Travelling Clinics
- 9.2 Hospitals to provide facilities where there is sufficient demand

### **10 COST CONSIDERATIONS**

- 10.1 Pricing Reference Group to institute charge levels for Service Providers
- 10.2 Realistic Allied Health Professional support requirement
- 10.3 Service Provider Profitability and Auditing
- 10.4 Service Provider Cancellations

### **11 EMPLOYMENT**

- 11.1 Increased NDIA employment Options
- 11.2 Other Employers



