

# Background Paper: What were the original intentions of the National Disability Insurance Scheme?

## 1. Introduction

In 2008, Australia ratified the United Nations Convention on the Rights of Persons with Disabilities (**CRPD**). Ratifying a treaty means that a country consents to being bound by the treaty. The CRPD sets out the human rights of people with disability and recognises that countries have obligations to ensure that people with disability enjoy those rights. For example, the CRPD enshrines the rights of people with disability to access the community, live independently, participate fully in all aspects of life and to have choices equal to others.

In 2009, Australia ratified the Optional Protocol to the CRPD. In doing so, it makes Australia more accountable for violations of its international obligations.

The CRPD requires countries to establish a framework to promote, protect and monitor its implementation.<sup>1</sup> Australia implements the CRPD through legislation and policy. Australia's policy framework to implement the CRPD began with the *National Disability Strategy 2010-2020*. An important part of that strategy was to consider alternative approaches to the funding and delivery of disability services with a focus on early intervention and long-term care.

As part of that Strategy, in 2009, the Australian Government announced the Productivity Commission (**PC**) would conduct a public inquiry into a national long-term disability care and support scheme.<sup>2</sup> The inquiry considered:

- how a scheme could be designed and funded to better meet the long-term needs of people with disability;
- how to determine the people most in need of support and the services that should be available to them; and
- how a scheme could take account of the desired outcomes for each person, with a focus on early intervention.<sup>3</sup>

From the PC's inquiry, the National Disability Insurance Scheme (**NDIS**) was born. An object of the *National Disability Insurance Scheme Act 2013* (Cth) (**NDIS Act**) is to give effect to Australia's obligations under the CRPD.

This Background Paper considers the PC's 2011 Inquiry Report into Disability Care and Support and the PC's 2017 Study Report into NDIS Costs,<sup>4</sup> which lay down the original vision and design for the NDIS.

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<sup>1</sup> *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 33.

<sup>2</sup> Productivity Commission, *Disability Care and Support* (Inquiry Report No 54, 31 July 2011) Volumes 1 and 2 ('Inquiry Report') 93.

<sup>3</sup> *Ibid* Terms of Reference, 94

<sup>4</sup> Productivity Commission, *National Disability Insurance Scheme (NDIS) Costs* (Study Report, October 2017) ('Costs Report').

By revisiting these reports, we aim to clarify the original intentions of the NDIS and the principles that underpinned it to provide useful context for evaluating past and proposed reforms.

## 2. Who was the NDIS for?

The NDIS was intended to bring specialist disability services under a single umbrella, moving away from the previous fragmented and ineffective disability system.

The PC envisaged the NDIS would serve the following three communities.<sup>5</sup>

### **Tier 1: For every Australian**

The NDIS would provide insurance against the costs of support in the event of acquiring a significant disability. The PC's use of the word 'insurance' is to reflect the need to ensure that the community pools resources to provide reasonable long-term supports for people acquiring a significant disability.

As well as offering insurance, the NDIS would seek to minimise the impacts of disability for all Australians by creating community awareness of issues that affect people with a disability and promoting opportunities for people with disability to maximise their social and economic participation.<sup>6</sup>

### **Tier 2: For all people with disability and their carers**

Anyone with, or affected by, disability could seek information from the NDIS about care and support options for specific disabilities and service providers. This would be in addition to individualised funded support provided by the NDIS (tier 3). Tier 2 would include referrals to services for which the NDIS was not directly responsible ie, mainstream services and community groups.

The goal was to increase the number of existing supports, to promote community engagement and employment for people with disabilities. The PC provided the example of a local area coordinator linking people with disabilities to local community groups (ie, a sailing club) and the NDIS would provide small grants to help such groups involve people with disabilities. The vision was that not-for-profit organisations would lead capacity building in the community by gathering voluntarily provided resources. With improved funding for tier 3 services under the NDIS, not-for-profit organisations may be able to redirect resources to providing tier 2 supports. In addition to not-for-profit organisations, local government may also offer such community activities.

Governments would continue to support a range of community and carer support services for people with lower level or shorter-term disabilities. These supports would be mainly block-funded (ie, funding a 'block' of services from a provider that will deliver those services to participants), with some limited charges to users of the supports.<sup>7</sup>

The PC considered that the National Disability Insurance Agency (**NDIA**) should consult with not-for-profit organisations and relevant government agencies on the best arrangements for 'community capacity building' or 'social inclusion' initiatives. Following consultation, the PC suggested ways in which the NDIA should apply funding allocated for tier 1 and tier 2. For example, the NDIA could fund local initiatives to address disability issues within the community (ie, access to buildings and public spaces) and offer grants to community groups for activities that would result in social or economic benefits to people with disability.<sup>8</sup>

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<sup>5</sup> Inquiry Report (n 2) 158-166, Recommendation 3.1.

<sup>6</sup> Ibid 10, 12; *National Disability Insurance Scheme Act 2013* (Cth) ('*NDIS Act*') s 3(1)(h).

<sup>7</sup> Inquiry Report (n 2) 12-13; 219-222.

<sup>8</sup> Ibid Recommendations 4.1 and 4.2.

For both tier 1 and tier 2, the PC viewed that the population of potential 'participants' would be very high, but the overall costs would be small. Tier 2 would also represent a form of early intervention by possibly limiting tier 2 participants from transitioning into tier 3 as their disability progresses.<sup>9</sup>

### **Tier 3: For people with significant and long-term disabilities**

Tier 3 would be targeted at the much smaller group of people with significant care and support needs. The focus on those 'most in need of funded supports' would also recognise that it is important not to displace the role of the family and the community in supporting people with disabilities where people's needs are best met in ways other than government funding.

Following an assessment process on a nationally consistent basis,<sup>10</sup> the NDIS would provide individually tailored supports. This third function would account for most of the costs of the NDIS.<sup>11</sup>

The NDIS would not cover people whose requirements for support would most appropriately be met by other systems eg, people with certain health conditions for which the publicly funded healthcare system was best suited.

## **3. What principles frame the NDIS?**

The main principles underpinning the NDIS were:

- **Promoting the participation and inclusion of people with disability in the community:** to improve the wellbeing of people with disability and their carers and reduce the longer-term costs of care and support.<sup>12</sup> This is consistent with the goals of the NDIS to give effect to Australia's international obligations,<sup>13</sup> such as the equal right of persons with disability to access support services and achieve full inclusion and participation in the community.<sup>14</sup>
- **Engaging the community:** this is strongly linked to promoting community participation and inclusion of people with disability. Engaging the community includes campaigns to raise awareness and change attitudes about disability, increasing access to information for people with disability and support the participation of people with disability in community activities. Inclusive arrangements benefit the whole community.<sup>15</sup>
- **Giving 'choice and control' to people with disability:** to enhance wellbeing, independence and social and economic participation. People with disability are better placed to know what they need, and decision-making power should be given to them, rather than government and service providers.<sup>16</sup>
- **Certainty of lifelong support:** to provide a certain and sufficient source of future funding for proper life planning of people with disability.<sup>17</sup>
- **Greater sustainability:** to ensure people with disability have certainty of access to support in the long-term, strong governance is needed to ensure a sustainable and efficient scheme.<sup>18</sup>

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<sup>9</sup> Ibid 608.

<sup>10</sup> *NDIS Act* ss 3(1)(c), (f).

<sup>11</sup> Inquiry Report (n 2) 13-14.

<sup>12</sup> Ibid 202-207.

<sup>13</sup> *NDIS Act* ss 3(1)(a), (i).

<sup>14</sup> Inquiry Report (n 2) 203; *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 19.

<sup>15</sup> Inquiry Report (n 2) 207-218.

<sup>16</sup> Ibid 30, 151, 343, 358; *NDIS Act* ss 3(1)(c), (e).

<sup>17</sup> Inquiry Report (n 2) 6, 105, 644-647.

<sup>18</sup> Ibid 105, 637, Chapter 14.

## 4. Social insurance model

The NDIS was designed as a social insurance model.<sup>19</sup> A social model reflects that disability arises socially rather than medically. An insurance model means that services are guaranteed to insure people against long-term or ongoing risks.

Under a social insurance model, the NDIS would take the risk of disability support costs away from individuals and distribute it across the Australian community by pooling funding from the broader community.<sup>20</sup> In essence, a social insurance model insures all Australians against the costs associated with long-term and significant disability.

A social insurance model was preferred over other options, such as private insurance and welfare. Private insurance policies are not suited to universal coverage of the population against the potential costs of long-term disability care and support.<sup>21</sup> Further, the NDIS was intended to move away from previous disability welfare systems to one of providing reasonable and necessary supports for people to engage in education, employment and community activities.<sup>22</sup>

## 5. Eligibility and assessment to access the NDIS

The assessment process would determine the tier(s) of the NDIS that would be appropriate to each person who contacts the system.

For people in tier 2 and tier 3, the assessment process would determine what supports outside the NDIS people should be referred to, such as not-for-profit organisations, employment services or mental health services.<sup>23</sup>

For tier 3 participants, the Government made clear in its Terms of Reference to the PC that the NDIS should focus on individuals with the greatest care and support needs.<sup>24</sup> Consistent with this, the PC strongly envisaged that individually tailored supports should be granted to people with significant and ongoing support needs.<sup>25</sup> The criteria for eligibility would assess a person's disability and functional capacity (ie, their ability to do things, including social activities).<sup>26</sup>

First, a participant would have a disability that is, or is likely to be, permanent. The PC recognised the potential complexity of the 'permanence' criterion. Even so, 'permanence' is a key tenet of the NDIS.<sup>27</sup> Permanence is about the irreversible nature of disability, which may be of a chronic or episodic nature.<sup>28</sup> The PC warned that relaxing the criterion for 'permanence' could threaten the sustainability of the NDIS.<sup>29</sup>

In addition to 'permanence', participants would either:

- have significantly reduced functioning in self-care, communication, mobility or self-management and require significant ongoing support (the *NDIS Act* added the activities of learning or social interaction); or
- be in an early intervention group.<sup>30</sup>

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<sup>19</sup> Ibid iv-v, 975-976; *NDIS Act* s 3(2)(b).

<sup>20</sup> Inquiry Report (n 2) 33.

<sup>21</sup> Ibid 637.

<sup>22</sup> Costs Report (n 4) 78.

<sup>23</sup> Inquiry Report (n 2) 18.

<sup>24</sup> Ibid Terms of Reference, 165.

<sup>25</sup> Ibid 165-166.

<sup>26</sup> Ibid 174, Recommendation 3.2.

<sup>27</sup> Costs Report (n 4) 175-176.

<sup>28</sup> Inquiry Report (n 2) 174.

<sup>29</sup> Ibid 185.

<sup>30</sup> Ibid 174-175.

The assessment criteria for eligibility were not intended to be rigid. In other words, the PC did not intend for individuals who did not 'neatly slot' into the criteria to miss out on much needed supports and services.<sup>31</sup> Therefore, in addition to significantly reduced functioning or early intervention, the PC proposed a 'third category' of people who have large identifiable benefits from support that would otherwise not be captured. The PC cautioned that the NDIA could only apply this third category in limited circumstances, to avoid posing a risk to the overall sustainability of the NDIS.<sup>32</sup>

The NDIS was intended to provide funding determined by need, rather than an arbitrary amount.<sup>33</sup> The PC saw this feature as an essential element to avoid the chronic underfunding that beset the disability system in the past.

The PC recommended the development of assessment tools (a 'toolbox') to determine the level of needs and funding, with different tools suited to particular needs for support (for example, aids and appliances compared with needs for job readiness training).<sup>34</sup> These tools needed to be:

- **valid:** testing what they intended to test;
- **reliable:** producing consistent results if people are re-tested, tested by another assessor, or if people with similar characteristics are assessed;
- **rigorous:** to guard against people overstating the supports they need; and
- **cost-effective:** collecting information in the most economical manner.<sup>35</sup>

The PC suggested that implementation of the NDIS should not be delayed in the absence of 'perfect' tools, recognising that the tools would need to be continually monitored and better tools developed over time.<sup>36</sup>

To ensure fair use of assessment tools and protect sustainability, the PC considered a range of safeguards, including:

- **objective assessments** conducted by an allied health professional drawing upon existing medical reports and collaborating with the person with disability and their 'circle of support' (ie, family, carers and direct support professionals);<sup>37</sup>
- supports be '**reasonable and necessary**' (see further below).<sup>38</sup>

Not only would the assessment process be person-centred, but it would be forward looking. It would focus on the supports needed to maintain the person in their present situation, as well as those required to make them more independent. It would consider the supports that would allow a person to fulfil a range of functions, rather than only respond to what an individual cannot do.<sup>39</sup>

The assessment process would take into account the person's natural supports ie, informal carers. Where an informal carer would be providing a substantial share of a person's care, the PC considered carers could be assessed to consider the sustainability of the caring role and whether the carer would benefit from their own supports ie, counselling or training. The aim would be to support the carer relationship as well as the carer.<sup>40</sup>

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<sup>31</sup> Ibid 175.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid 257.

<sup>34</sup> Ibid 19.

<sup>35</sup> Ibid 19, 316-319, Recommendation 7.3.

<sup>36</sup> Ibid 337-339.

<sup>37</sup> Ibid 326-327, Recommendation 7.2 and 7.4.

<sup>38</sup> Ibid 337.

<sup>39</sup> Ibid 18, 330.

<sup>40</sup> Ibid 331-332.

## 6. Early intervention

One of the principles framing the NDIS is that it takes a lifetime approach to providing care and support. Early intervention is one way to achieve this. Early intervention invests resources in the early stages of a person's disability to improve their functioning or reduce the supports they need later, minimising costs over the long-term.<sup>41</sup>

The PC considered 'early' interventions would be early *in the life of a person* or early relative *to the identification or appearance of the disability*. It would mainly comprise two groups. One group would be those for whom there was a reasonable potential for early interventions that would improve their level of functions (as in autism, acquired brain injury and sensory impairments). The other would be those with newly diagnosed degenerative diseases, such as multiple sclerosis and Parkinson's disease, for whom early intervention would enhance their lives.<sup>42</sup> To fund such interventions, the PC recommended at a minimum, evidence that the intervention would be safe, significantly improve outcomes and cost-effective.<sup>43</sup>

Early intervention might not necessarily be one-off, but could be periodic or episodic (eg, a person with vision impairment may require relatively short-term assistance when their vision or circumstances change or when they have a need for a new aid or training in the acquisition of a new skill). Additionally, the PC also advised that early intervention should encompass interventions to help people with disability transition to typical lifetime points ie, beginning school, entering the workforce and ageing.<sup>44</sup>

Around the time of the PC's Costs Report, the NDIA had introduced the Early Childhood Early Intervention (**ECEI**) pathway to address emerging cost pressures including from higher than expected numbers of children entering the NDIS, and lower than expected participants (particularly children) exiting the NDIS. The ECEI pathway is designed to be a 'gateway' to the NDIS for children aged 0-6 years.<sup>45</sup>

It was intended that many early interventions to reduce the risk of disability would continue to be under the control of agencies outside the NDIS, such as health, education, child protection, housing and criminal justice services.<sup>46</sup> The NDIS was not seen as being the primary funder or coordinator of such interventions.

Yet, given the objective of early intervention, the PC considered it a priority for the NDIA to establish an evidence base of economic analyses of early interventions to assess value for money. The PC proposed at least three ways of building the evidence base:

- by the NDIA interrogating its own data;
- by the NDIA commissioning research on specific interventions; or
- service providers applying, along with economic analyses, to the NDIA for funding of an intervention. The NDIA would need to independently assess the quality of the analyses.

An established evidence base could lead to the development of guidelines to assist the NDIA in deciding whether people with disability obtain early intervention support under tier 3.<sup>47</sup>

## 7. Individual choice and control

In designing the NDIS, there was a strong rationale for people with disability to have more control over what and how support services were delivered.<sup>48</sup> The PC recognised that people

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<sup>41</sup> Ibid 608-609; Costs Report (n 4) 153.

<sup>42</sup> Inquiry Report (n 2) 751.

<sup>43</sup> Ibid 171,615, 627.

<sup>44</sup> Ibid 615-616.

<sup>45</sup> Costs Report (n 4) 19, 151.

<sup>46</sup> Inquiry Report (n 2) 632.

<sup>47</sup> Ibid 607, 624-630, Recommendations 13.1 and 13.2.

<sup>48</sup> Ibid 6.

have different, complex and changing preferences about their lives.<sup>49</sup> Therefore, it was important that such choices were tailored and individualised to the preferences of each person with significant disability.

The PC made several recommendations to shift decision-making power from government and service providers to people with disability to enhance their choice and agency. The proposed 'individual choice' model would enable people to choose how much control they wanted to exercise.<sup>50</sup> The 'individual choice' model was not intended to force people to take full control or no control, but rather was intended to be flexible so that individuals would ultimately decide.<sup>51</sup>

The PC envisaged two approaches to individual choice:

- **self-directed funding**: the budget, based on an individual assessment of the person's needs, would be 'cashed out', giving the person freedom to 'trade off' different services under their budget to suit their individual and evolving needs, choose their own service providers and directly employ support workers.<sup>52</sup>
- **'choice of provider'**: after an assessment, people would be given an individualised package of supports, with the option to choose different service providers for different support needs.<sup>53</sup>

Giving people with disability 'choice' would enable greater participation in education, employment and the community.<sup>54</sup> In the PC's view, enhancing choices was 'the area of largest benefit'<sup>55</sup> and would lead to an improvement in quality of care, greater independence and overall wellbeing.<sup>56</sup>

## 8. Funding specialist disability support

The NDIS was intended to fund specialist disability supports. These are supports that would otherwise not be reasonably met without NDIS funding, or that are not more appropriately met by other systems.

The NDIS was not intended to respond to shortfalls in mainstream government-funded services such as education, health care, public housing, transport and employment services.<sup>57</sup> Notably, the PC intended for the interface between the NDIS and other disability and mainstream services to be as 'seamless as possible'.<sup>58</sup>

Specialist disability supports would include:<sup>59</sup>

- Aids and appliances – products to improve functioning and enhance independence
- Home modifications – to the structure, layout or fittings of a home
- Vehicle modifications – to allow access to travel as a passenger or drive a motor vehicle
- Personal care – to enable an individual to take care of themselves
- Community access – to provide opportunities for people to enjoy their full potential for social independence (the intention is to allow people a lot of choice and innovation in this area)
- Respite – to provide a short-term break for people with disability and carers
- Specialist accommodation support such as group homes

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<sup>49</sup> Ibid 355.

<sup>50</sup> Ibid 30.

<sup>51</sup> Ibid 30-31.

<sup>52</sup> Ibid 346, 372-376.

<sup>53</sup> Ibid 347.

<sup>54</sup> Costs Report (n 4) 3.

<sup>55</sup> Ibid 69.

<sup>56</sup> Ibid 134-135, Finding 3.1.

<sup>57</sup> Inquiry Report (n 2) 237-239.

<sup>58</sup> Costs Report (n 4) 221.

<sup>59</sup> Inquiry Report (n 2) 226-228.

- Domestic assistance – to enable individuals to live independently in the community
- Transport assistance – to provide or coordinate individual or group transport services
- Orientation and mobility training – for independence to move safely around their community
- Supported employment services and specialist transition to work programs that prepare people for jobs
- Therapies such as occupational, speech, physiotherapy and counselling
- Local area coordination and development to maximise independence and participation in the community
- Guide dogs and assistance dogs including the reasonable costs of being assessed for the dog, user training and veterinary costs
- Whole-of-life personal planning – more wide ranging or intensive assistance with planning.

The PC encouraged the development of more high quality and innovative supports.<sup>60</sup>

## 8.1 Reasonable and necessary supports

As funding of supports could not be unconstrained, it was intended the NDIS would fund specialist disability supports on a ‘reasonable and necessary’ basis.<sup>61</sup> Reasonable and necessary supports are those that help participants to engage in education, employment and community activities.<sup>62</sup>

Previous disability support schemes across all jurisdictions suffered from insufficient funding in terms of service coverage and spending per participant.<sup>63</sup> The PC envisioned that the reasonable and necessary threshold would rectify this issue.

The ‘reasonable and necessary’ threshold was modelled on a standard used by the Lifetime Care and Support Authority in NSW and the Victorian Transport Accident Commission.<sup>64</sup>

In observing the call for certainty around the meaning of ‘reasonable and necessary’ supports, the PC recommended the NDIS adopt ‘equally relevant’ guidelines developed by the NSW Lifetime Care and Support scheme, considering.<sup>65</sup>

- the benefit of the support to the participant;
- appropriateness of the support and service (ie, whether the support is in line with current clinical practice);
- appropriateness of the provider (ie, whether the provider is appropriately qualified and/or registered);
- cost-effectiveness having regard to the short and long-term benefits of the service;
- whether the support or service would be most appropriately provided through the NDIS rather than, for instance, the health system or other systems and departments.<sup>66</sup>

These criteria would need to change over time to adapt to changes in technology and community norms.<sup>67</sup>

As long as an individual meets the eligibility criteria, and the supports are ‘reasonable and necessary’, the supports provided under the NDIS were intended to be uncapped such that an individual would continue to receive the supports for as long as they need.<sup>68</sup>

<sup>60</sup> Ibid 22; *NDIS Act* ss 3(1)(g), (ga).

<sup>61</sup> Inquiry Report (n 2) Recommendation 5.1; *NDIS Act* s 3(1)(d).

<sup>62</sup> Costs Report (n 4) 3.

<sup>63</sup> Inquiry Report (n 2) 111.

<sup>64</sup> Ibid 257-258.

<sup>65</sup> Ibid 258.

<sup>66</sup> Ibid 258-261; *NDIS Act* s 3(d).

<sup>67</sup> Inquiry Report (n 2) 258.

<sup>68</sup> Costs Report (n 4) 152.



## 9. Disability within First Nations communities

The PC stated that supporting First Nations people with a disability should be an important and specific goal of the NDIS. Although the Closing the Gap initiative is a whole-of-government approach, it does not target disability directly.

In the PC's view, there would be more opportunities for early intervention among First Nations communities due to the higher rate of disability arising from identifiable risk factors.<sup>69</sup> While the NDIA would not be the main provider of programs to reduce the incidence of preventable disability, the PC noted the value in the NDIA funding preventative measures with a First Nations focus.<sup>70</sup> For example, health initiatives targeting otitis media (which can lead to deafness) among First Nations children could potentially decrease the rate of disability and have important socio-economic flow on effects.<sup>71</sup>

The PC recognised that First Nations people with disability experienced particular barriers to accessing disability services. To improve accessibility and delivery of disability services to First Nations people, the Productivity Commission suggested embedding services within the community, employing and developing First Nations staff and improving services through cultural awareness training.<sup>72</sup>

## 10. Financial sustainability

The financial sustainability of the NDIS is important to give people with disability certainty about receiving reasonable supports over their lifetime.<sup>73</sup>

The PC envisioned financial sustainability would be guided by the following principles and parameters:

- **The NDIS was intended to supplement, not replace, existing income support programs:** for example, the Disability Support Pension which assists people whose incapacity for work is due to illness or injury including people without a lifelong disability. The PC envisaged that better economic, employment and independence outcomes for people with disability would result in substantial economic benefits.<sup>74</sup>
- **The NDIS should focus on cost-effective early interventions:** a deficiency of previous disability support schemes was their crisis-driven approach to funding needs, which impeded a longer-term approach to achieving beneficial outcomes for people with disability and the community at large. The objective of early intervention is to fund supports that would over the long-term increase economic participation by people with disability and their carers.<sup>75</sup> The PC was aware that insufficient early intervention outside of tier 3, could impact the sustainability of the NDIS.<sup>76</sup>
- **The benefits of the NDIS would significantly exceed the costs:** benefits include improved outcomes for NDIS participants, their families and informal carers; increased economic participation for both NDIS participants and their informal carers; and efficiency gains and cost savings in the disability support system and savings to other government services (see further below).<sup>77</sup> The PC calculated the NDIS would only have to produce an annual gain of \$3,800 per participant to meet a cost-benefit test. Given the scope of the benefits to be achieved, the PC believed that test would be passed easily.<sup>78</sup>

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<sup>69</sup> Inquiry Report (n 2) 545-546.

<sup>70</sup> Ibid Recommendation 11.1.

<sup>71</sup> Ibid 546-547.

<sup>72</sup> Ibid Recommendation 11.2.

<sup>73</sup> Ibid 33.

<sup>74</sup> Ibid 55-56, 257.

<sup>75</sup> Ibid 605.

<sup>76</sup> Ibid 608.

<sup>77</sup> Ibid 2, 259; Costs Report (n 4) 128.

<sup>78</sup> Inquiry Report (n 2) 941.

- **Financial sustainability is an obligation of the NDIA:** with the NDIA to oversee the administration of the NDIS, the PC recommended this obligation should be enshrined in legislation and should be a specific obligation of the board, management and the Minister.<sup>79</sup> This is picked up in the *NDIS Act* which provides that the NDIA is to manage, advise, and report on the financial sustainability of the NDIS including by identifying and managing risks relevant to NDIS sustainability.<sup>80</sup> The PC also proposed the NDIA's oversight of the NDIS be subject to external monitoring and auditing.<sup>81</sup>
- **Gathering and analysing data for continual improvement:** the PC considered that to achieve financial sustainability, a thorough and ongoing understanding of the short and long-term financial pressures and risks would be required. Data collection and analysis would provide critical feedback and improve sustainability by reducing inefficiencies, monitoring service providers and assessing the overall cost-effectiveness of particular services and interventions.<sup>82</sup>
- **The Australian Government should be the single funder of the NDIS:** this was the PC's preferred funding option as this would be more efficient than coordinating funding from eight different governments and provide greater certainty of long-term funding.<sup>83</sup> This would be more in line with an insurance-based scheme (see further above), which is designed to take a lifetime approach to disability care and support.<sup>84</sup> Contrary to the PC's recommendation, in implementing the NDIS, the Commonwealth, State and Territory governments contribute funding to the NDIS.<sup>85</sup>

Giving effect to the objects of the NDIS must be done through the lens of financial sustainability.<sup>86</sup> The PC noted this may involve 'tradeoffs' between some goals, for example, giving people *complete* choice and power over the use of disability funding may raise accountability issues.<sup>87</sup> The PC reflected that the challenge for the future of the NDIS planning process was on one hand to find the right balance between individualisation and good outcomes for participants, and on the other ensuring equity among participants and the financial sustainability of the NDIS. The PC recognised that '[i]t is likely to be some time before the right balance is struck.'<sup>88</sup>

## 11. Benefits of the NDIS

It was fundamental to the establishment of the scheme that the NDIS would generate substantial economic benefits including many intangible and equity outcomes. Some of these benefits are as follows:

- **Wellbeing gains to people with disabilities:** funding supports that develop the capacity of people with disability to participate in the community will increase their social and economic participation. Further, greater choice and individualised support would lead to a range of positive wellbeing outcomes including higher satisfaction with life, confidence in their care, feelings of control, health and employment.<sup>89</sup> Importantly, choice is critical to people with disability being able to maintain dignity and independence.
- **Higher rates of employment of people with disability:** the PC estimated that employment for people with mild to profound disabilities would rise by around 100,000 by 2050 (equivalent to the average OECD rate). This would translate to around \$8 billion in

<sup>79</sup> Ibid 432-433, Recommendation 9.6.

<sup>80</sup> *NDIS Act* s 118(1)(b).

<sup>81</sup> Inquiry Report (n 2) 435-437, Recommendation 9.7.

<sup>82</sup> Ibid 573, Recommendation 12.1.

<sup>83</sup> Ibid 678-683.

<sup>84</sup> Costs Report (n 4) 447.

<sup>85</sup> Ibid 451.

<sup>86</sup> *NDIS Act* s 3(3)(b).

<sup>87</sup> Inquiry Report (n 2) 103-104.

<sup>88</sup> Costs Report (n 4) 195.

<sup>89</sup> Inquiry Report (n 2) 31,

additional GDP in 2050 alone.<sup>90</sup> The PC also recognised that work provides people with social interactions and breaks down stereotypes of disability.<sup>91</sup>

- **Gains to carers:** better support for people with disabilities would be associated with significant wellbeing benefits for carers. The PC also considered the potential population of carers who may be able to return to work, which would translate to a significant increase in annual GDP.<sup>92</sup>
- **Savings to other government services:** improved disability support services would have less of a rebound on other government services. For example, proper supports such as appropriate wheelchairs, cushions, mattresses and attendant care would reduce the likelihood of pressure sores.<sup>93</sup>
- **Efficiency gains in the disability system:** by giving participants choice of supports and providers, over the long-term competition between service providers should encourage more innovative and cost-effective services.<sup>94</sup>
- **Fiscal gains:** such as from reduced use of income support by people who enter employment, which would take pressure off taxes.<sup>95</sup>
- **The NDIS as an insurance product:** people value insurance even if they never claim. Contributions to the NDIS insurance pool by taxpayers reflect the price that people would willingly pay for reasonable lifetime care and support if they were to acquire a significant disability.<sup>96</sup>

The PC recognised that many of these benefits will only be realised over the long-term. This reflects the adoption of an insurance model ie, upfront investments will save future costs.<sup>97</sup>

## 12. Looking ahead

We hope this Background Paper assists people with disability, peak bodies and their advocates to understand the original intentions of the NDIS and to consider past and future proposed amendments to the NDIS.

The vision of *Australia's Disability Strategy 2021-2031 (ADS)* is for 'an inclusive Australian society that ensures people with disability can fulfil their potential, as equal members of the community'.<sup>98</sup> The ADS states that the NDIS can help contribute to the seven Outcome Areas where changes are needed, being Employment and Financial Security; Inclusive Homes and Communities; Safety, Rights and Justice; Personal and Community Support; Education and Learning; Health and Wellbeing; and Community Attitudes. This Background Paper may also assist in ensuring the NDIS aligns with implementation of ADS.

PIAC works with disability rights organisations to make the NDIS fairer and to improve outcomes. Informed by the lived experience of people with disability and the priorities of our partners in the disability sector, we are focused on policy and law reform to improve decision-making by the NDIA, increase transparency and accountability.

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<sup>90</sup> Ibid 960.

<sup>91</sup> Ibid 271.

<sup>92</sup> Ibid 966. Based on the PC's examination, the increase to GDP would be around \$750 million annually.

<sup>93</sup> Ibid 948.

<sup>94</sup> Ibid 951.

<sup>95</sup> Ibid 957.

<sup>96</sup> Ibid 975-976.

<sup>97</sup> Costs Report (n 4) 129.

<sup>98</sup> Commonwealth of Australia (Department of Social Services), *Australia's Disability Strategy 2021-2031* (December 2021) 20.